

From: Jennifer Weggeman [mailto:[JWeggeman@worknetdupage.org](mailto:JWeggeman@worknetdupage.org)]

FYI - More discussion on salary history laws....

Jennifer Weggeman, M.A.  
Career Counselor/Workshop Facilitator  
DuPage County Workforce Development Division Worknet DuPage Career Center  
TEL: 630-955-2032

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From: Ask The Headhunter [mailto:[news1@asktheheadhunter.com](mailto:news1@asktheheadhunter.com)]  
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To: Jennifer Weggeman <[JWeggeman@worknetdupage.org](mailto:JWeggeman@worknetdupage.org)>  
Subject: Ask The Headhunter - Use California's new law for better job offers

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#### SPECIAL EDITION

Salary History: Use California's new law for better job offers

Talk to Nick: For job hunters, managers, HR

Discussion: It's illegal to ask your salary

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Note: This article is not legal advice or a substitute for obtaining competent legal counsel about salary history disclosure laws.

You've probably heard this from an HR manager who has demanded to know your salary history while you're applying for a job: "It's required. If you don't disclose your salary we cannot proceed with your candidacy."

It's akin to a salesman on a car lot demanding to see your bank account balance before he tells you the price of the car you want. Once that cat is out of the bag, you can't negotiate effectively.

It's illegal to ask your salary<<http://srv.ezinedirector.net/?n=8886922&s=218927161>>

California prohibits employers from asking your salary history. But it forces them to tell you their salary range.

Does this mean you're off to the races and higher pay? Join us to discuss this complicated new law!<<http://srv.ezinedirector.net/?n=8886923&s=218927161>>

Now the State of California has made it illegal for employers to ask your prior salary. See Assembly Bill No. 168<<http://srv.ezinedirector.net/?n=8886924&s=218927161>>. (See also this article in the San Francisco Chronicle<<http://srv.ezinedirector.net/?n=8886925&s=218927161>>.) This can help you negotiate a better compensation deal.

You have 2 new powers over personnel jockeys

But not so fast. Hiding your old salary isn't going to help you get a higher job offer unless you can obtain another critical bit of information from the employer: What's the salary range for the job you're applying for?

Good news: The California legislature thought of that, too. Starting January 1, 2018, employers can't ask your old salary and, if you request it, they have to tell you what the pay range is for the job you want.

You now have two new powers over employers and their personnel jockeys in California. You may:

1. Decline to disclose your salary.
2. Ask the employer "to provide the pay scale for a position."

What you need to know

It's important to understand the details of your new rights. Therein lies your real power -- the power to avoid wasting your time with jobs, applications, interviews, recruiters and employers who want to break you down so you'll cave in and accept a lower job offer. Use these powers thoughtfully, and you should be able to get the kind of salary you want.

Here's what the new California law says (emphasis added):

SECTION 1. Section 432.3 is added to the Labor Code, to read:

432.3. (b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.

Now we'll expand on the aforementioned two new powers you can exercise when applying for a job.

1. Decline to disclose your compensation

This means never disclose your prior pay or the value of your benefits:

- When you fill out a job application.
- When an HR recruiter from the company requests it.
- When a third-party recruiter (or headhunter) solicits you for a job at the company.
- When you participate in a telephone interview.
- When you communicate with the employer or recruiter via e-mail or otherwise.
- During a job interview, and,
- Apparently, under this new law, after you've been hired and you're filling out employment paperwork.

An employer that doesn't know your old salary and benefits has a harder time low-balling a job offer. I can't tell you how many times I've heard employers say, "Our offers are 5-10% above a person's old salary. That's our policy." As if that has anything to do with the value of the new job -- or the value you bring to it! For more about this, see Revealing my salary earned me a lower job offer!<<http://srv.ezinedirector.net/?n=8886926&s=218927161>>

Never disclose your prior salary to anyone connected to an employer where you're applying for a job in California (or anywhere else, but in that case for other reasons). Because if you do, you've relinquished your rights -- because there's a gotcha in the new law. We'll discuss that in a minute.

First let's look at the more important of the two powers California now grants you.

## 2. Request the pay range of the job

This is the best part. The employer has to tell you what the job pays. This is what will help you avoid wasting your time on jobs that don't pay in a range you're willing to accept.

(c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.

You read that right. They can't ask for your salary history, but they have to tell you the pay range of the job you're applying for. If you ask. So ask! And ask in advance of filling out forms, having interviews, and otherwise investing your time.

I think it's more important to know the pay range of a job than it is to withhold your own pay information. But, of course, it's best to use these two tools in tandem for maximum benefit.

Now, here's the tough-love part. When they tell you the pay range, don't kid yourself if it's lower than you'd like. Don't proceed under the impression that you can "talk them higher" later on. Conversely, if you use this law to apply only for jobs that pay twice what you may be worth, you'll probably be disappointed if you expect enormous job offers.

## Beware the gotcha in this salary history law

Those two new powers can gain you a lot during your job search in the State of California, unless you're applying for a government job or other job that's exempt. (Read the full text of the new law.<<http://srv.ezinedirector.net/?n=8886927&s=218927161>>)

Now let's get to the aforementioned gotcha. Read this next part of the new law carefully. (Emphasis added.)

432.3. (g) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.

Yep. That means you're free to spill the beans if you want to. And here's how spilling the beans will get you screwed:

432.3. (h) If an applicant voluntarily and without prompting discloses salary history information to a prospective employer, nothing in this section shall prohibit that employer from considering or relying on that voluntarily disclosed salary history information in determining the salary for that applicant.

Got that? Once you disclose your salary history "voluntarily and without prompting," much of your protection under this law disappears.

## Why you may need a lawyer

Any time you're dealing with a massive amount of money -- like the salary you're going to earn for a year or more -- it may be worth consulting a lawyer. A consultation with a labor or employment lawyer, to ensure you know what you're doing in an employment matter, will cost you only a small fraction of that massive amount of

money in order to protect that massive amount of money. Consider making an initial investment in legal advice, then proceed prudently.

You may also need a lawyer if you find an employer has violated California's new law, because of one more gotcha:

(d) Section 433 does not apply to this section.

Section 433<<http://srv.ezinedirector.net/?n=8886928&s=218927161>> of the California Labor Code says:

433. Any person violating this article is guilty of a misdemeanor.

This means that while violations of other sections of the Labor Code are a misdemeanor, a company that demands your salary history or refuses to tell you the salary range of a job is not committing a misdemeanor. This new law does not define the penalties for violations.

If you want to fight violations of this new law, you'll probably need a lawyer. It might even turn out that this Section 433 clause renders Section 432.3 toothless once it winds up in court.

What about your state?

Similar laws are under consideration (or have already been passed) in some major cities including New York City, San Francisco, Philadelphia and Pittsburgh, and in some states including California, Massachusetts, Delaware, Oregon and Puerto Rico.

Some of the legislation is controversial, and special interests are trying to block it. The Washington Post offers a good rundown in "New York City just banned bosses from asking this sensitive question."<<http://srv.ezinedirector.net/?n=8886929&s=218927161>>

This issue is so hot that it's best to look up your own city and state for accurate information.

What's your best option?

We've barely touched on the myriad issues these laws raise. If you're interested, you'll find more here: Goodbye to low-ball salary offers<<http://srv.ezinedirector.net/?n=8886930&s=218927161>>.

Whether there's a law against demanding your salary history or not, you can always say NO and decline to disclose the information. (See Keep Your Salary Under Wraps<<http://srv.ezinedirector.net/?n=8886931&s=218927161>>.) As long as you're not party to a contract whereby you have agreed to disclose salary information (an employment contract might be an example), you never have to disclose it. There is no law I know of that obligates you to disclose your salary.

Of course, refusing to disclose might result in an employer rejecting you as a candidate. That may be their right.

In that case you may be better off finding a more reasonable employer who isn't trying to manipulate salary negotiations by insisting on knowing your prior pay. You'll get the best deal possible if you withhold information about your prior compensation, because the employer will be forced to base an offer on the value you prove you can deliver. (Did we just open a new can of worms? Yup. We don't pretend anything is easy around here. See How do I prove I deserve a higher offer?<<http://srv.ezinedirector.net/?n=8886932&s=218927161>>)

Have you encountered one of these new laws in the wild? What happened? What's your take on this kind of

legislation -- and on how to best protect your ability to negotiate compensation? What other issues do these new laws raise? Join us for discussion!<<http://srv.ezinedirector.net/?n=8886933&s=218927161>>

Best,

Nick Corcodilos  
Ask The Headhunter®

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Talk to Nick<<http://srv.ezinedirector.net/?n=8886934&s=218927161>>

This popular new feature is a way to talk with me directly. Are you job hunting? Are you a manager trying to hire more effectively? Maybe you work in HR and would like new perspectives on recruiting and hiring.

Sometimes you have a question too detailed for the newsletter, or it's confidential. I'm not a counselor, nor do I want to be. I will not hold your hand through a job search or consult to you for a year. Talk to Nick<<http://srv.ezinedirector.net/?n=8886935&s=218927161>> enables you to ask me specific questions in short conversations privately via telephone.

"Nick, The biggest thing that stuck out to me was the idea of simply talking shop to people, and not even mentioning that I'm looking for a job. It didn't take much of that before I made friends with a lot of new people and was able to land a job with one of them. Thanks!"

- Dan Crookston

Fee: \$225 for a full hour. E-mail me your Talk to Nick request<mailto:[news1@asktheheadhunter.com](mailto:news1@asktheheadhunter.com)?Subject=Talk\_to\_Nick> in 50 words or less. If I can help, I will e-mail you to arrange time to talk. (Payment: Via PayPal or major credit card. For now, this service is available only to U.S. subscribers.)

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- Diana Ost <<http://srv.ezinedirector.net/?n=8886938&s=218927161>>

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Oh, Yeah! I love success stories, thank-yous, and how Ask The Headhunter worked for you. Don't hold back: Please share your comments.<<mailto:news1@asktheheadhunter.com>?subject=Reader\_Comments>

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