

Tech Giants Stop Asking for Salary History, Everywhere in U.S.

By [Martin Berman-Gorvine](#)

Google, Facebook, and Cisco are among the employers in Silicon Valley that on Jan. 1 won't be allowed to ask job applicants about their salary history. The companies say they're not just going to do this in California—they're applying it nationwide to all job applicants.

[California's law](#) (A.B. 168), which takes effect Jan. 1 as the latest of a trend of such state and local laws, prohibits employers from asking what job candidates made in the past and using that information to help determine their salary offer. The candidates may choose to disclose their salary history voluntarily, however, and in that case the employers may use that information to come up with an offer. Also, employers are required to provide job applicants with a pay scale upon request.

"We are going to be stopping asking about salary history in offices across the U.S.," a Facebook spokesperson told Bloomberg Law, calling the enactment of the California law "a national opportunity" to change company policy and make it uniform for recruiters.

Facebook believes in paying men and women equally for the same work, which matches the goal of the salary history inquiry ban: putting an end to a legacy of pay discrimination against women and minorities, the spokesperson said.

She referred to an April 4 blog post on this equal pay policy by Lori Goler, vice president of people (equivalent to head of HR) at Facebook, who stated that the company assesses each employee's performance, "and then calibrate to ensure evaluation is consistent across teams and across Facebook," a process she said ensures gender pay equality.

Facebook determines what to offer applicants by regularly researching the market in each area where it is hiring, the spokesperson said.

Similarly, a Google spokesperson told Bloomberg Law in an email that the company "has already stopped asking candidates their salary history" no matter where it is interviewing them in the U.S. "Instead, we ask candidates their salary expectations, and we use this number merely as a reference point."

As for San Jose, Calif.-based Cisco, "although we'll start with a U.S.-wide approach to banning salary history inquiries, we certainly have an eye to extend it globally," a spokesperson told Bloomberg Law in a Dec. 21 email. The company sees removing the salary history question as helping ensure all its employees are paid fairly and equitably, the spokesperson said.

A Perception of Inequality

Tech companies are taking action in part due to a long-standing perception that they discriminate against women and minorities, whether that perception in the public's mind is justified or not, Anna Suh, litigation counsel in Mountain View, Calif.-based employment law firm Fenwick & West LLP, told Bloomberg Law. However, there is nothing in the new state law that is specific to tech companies, she said.

"Most of our clients outside California" are pre-emptively stopping asking job applicants about their salary history, before the legislative trend hits their area, she said.

But the opposite is the case for clients of Las Vegas-based law firm McDonald Carano. “My clients are following these laws in the jurisdictions in which they’re being passed,” rather than pre-emptively removing the question from their interview process across the country, Jessica Woelfel, a partner in the firm, told Bloomberg Law. She said she is in ongoing discussions with these clients about this growing legislative trend.

Implications of the New Law

In California’s case, there’s no specific penalty for asking an applicant’s salary history, which makes the law “ripe for enforcement under the [Private Attorneys General Act](#),” she said. This law authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the state of California for violations of its Labor Code.

“Plaintiffs may find it difficult to substantiate causality and harm, particularly unsuccessful applicants,” Lothar Determann, a partner with Baker & McKenzie, told Bloomberg Law in an email. “Perhaps the legislature wanted to give employers a transition period to change their practices with respect to salary history inquiries, before serious liability attaches.”

“By giving control to job applicants regarding information about them,” he noted, “the law also has a secondary effect as a data protection or privacy law.”

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