

## Employment Law Update

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### BILL CLARIFIES RESTRICTIONS ON SALARY INFORMATION REQUESTS

Last year, AB 168 added Section 432.3 to the California Labor Code. Section 432.3 prohibits employers and their agents from relying on salary history as a factor in deciding whether to hire an employment applicant or determining the salary amount to offer. While Section 432.3 permits an employer to consider such information if an applicant voluntarily shares it, the applicant's divulgence must be completely unprompted. The statute also requires employers, upon reasonable request, to provide a position's pay scale to an applicant applying for that position.

The statute, however, fails to define what is meant by "reasonable request." In addition, there has been some question regarding the term "pay scale" as well as who is an "applicant" under Section 432.3.

Recently, Governor Brown signed into law AB 2282 to clarify some of the ambiguities.

**Applicant.** The bill adds Section 423.3(k) to define the term "applicant." This term means an individual who seeks employment with the employer and who is not a current employee of that employer in any capacity or position.

**Pay scale and reasonable request.** "Pay scale" means a salary or hourly wage range. The statute defines "reasonable request" as a request made after an applicant has completed an initial interview with the employer.

The bill also clarifies that nothing in Section 423.3 prohibits employers from asking applicants about their salary expectations for the position.

Finally, AB 2282 also revises Labor Code Section 1197.5. Originally, Section 1197.5 simply stated that prior salary may not justify any disparity in compensation. However, the bill revises Section 1197.5 to make clear that employers may make compensation decisions for an existing employee based on that employee's existing salary, so long as the employer can justify any wage differential resulting from that compensation on one or more listed factors. Those factors include a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a *bona fide* factor other than race or ethnicity, such as education, training or experience.



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