**Hire with Confidence: How to Comply with “Ban the Box” and Other Trending Hiring Laws**

>> And another hot topic that I'm sure you have heard lately. What is the pay equity long? It is the law that refers to the salary question on job application . Like the one adopted by Massachusetts. So much like the band the box law, this law was the removal of the question that asked the applicant , starting and ending salary of their current job. Massachusetts is the first state to set the precedent by prohibiting the HIPAA question. This is for private employers and is effective as of January as of January 1 as of January 1, 2018. Other may call their logs different things but it all relates to fair pay, equal pay our pay equity. Whatever you want to call it, it means the same thing. Now the goal of pay equity , fair pay or equal pay, is to bridge the gap between, break the wage gap , bridge the wage gap between men and women. New York State is the recent enactment in January prohibiting the question of a public employer and Philadelphia followed along. However that law in Philadelphia is now on hold pending the discussion. And New Orleans followed shortly after in February. More recently New York City just issued an enactment in May for both public and private employers. This enactment will be effective starting October of this year.

So as you can see, this is becoming a trend and we are already seeing it take off. Besides the cities and states I just mentioned, including New Orleans, have recently adopted the prohibition wage history for public employers . Taxes also has a similar law

that is waiting to be signed any day now. And as we speak today there are other jurisdictions like California, Connecticut, Nebraska and Washington that are looking to pass similar laws as well.

When you look into your local and state laws to see if they apply to you, you want to pay particular attention if the law applies only to public employers are both public and private employers. Generally trends like this do start with public employers and they gradually move to private employers. It's really important to understand that it

Massachusetts being the leader will prohibit asking for salary history. You want to make sure not to assume these laws only apply to public employers.

And when it comes to the prohibiting of the salary history question enactment, we do believe that we will continue to see the numbers grow as time goes on with "Ban the Box" . You want to keep in mind that the laws with the history questions are just one part of the pay equity and fair pay laws being passed.

Many states and cities already have or are considering laws that require wage transparency and other equal pay measures as well. So this movement isn't necessarily restricting employers right to ask for salary to make job offers. You want to make sure you understand that as well. However, those laws that are outside this, those laws that are particular to that are really outside the scope of the webinar, and the information we will cover. I am basically speaking about the salary history portion of these laws. >> All right. The pay equity law is nothing [indiscernible]. It has been around for years, following the FLSA fair labor's act. FLSA is not only about hourly in overtime law, it also requires employers offer equal pay for equal work. This originates from the equal pay act of 1963 which instituted equal pay for equal work and ethics by President. John F. Kennedy . The equal pay act was created to abolish wage disparity based on sex. Meaning that a female should get paid the same as a male for the same work done, regardless of their sex.

The equal pay act of 1963 as long technically required equal pay for after equal work. But pay advocates have said it doesn't go far enough in that act alone because it doesn't provide for salary transparency, and it doesn't, it gives employers too much legal leeway when asked to justify pay disparities. >> This could obviously get out of whack very easily when salary renegotiations are made. On previous salary paid. Pay equity takes the laws that have been in place for years and assesses further by really enforcing employers to abide by them. That's especially with the introduction of the law prohibiting salary history westerns from job applications .

So why do we think the salary history question will make such a difference to force pay equity minced men and women? The goal like I said before the goal of the laws that prohibit employers for asking about salary history before an offer is made is to narrow the gap. We have all heard now that women are still being paid substantially less than men for doing the same exact job. This is nothing new. The gap actually goes beyond just men versus women. There are also gaps between other classes as well. Such as races and ethnicity. This law should help narrow that gap I trying to force employers to assess their salary based on the position and job duties, rather than arbitrarily setting up a on a candidates past salary history . >> So let's continue to discuss why pay equity exist. The reason behind this law is simple. I asking the salary history question it enables employers to allow pay discrepancies between women and minorities men. Removing the question will help employers maintain the equity based on the position being applied for and not the applicant's previous salary. Another major aspect of the pay equity law is that they close some of the loopholes I mentioned where were open before with the equal pay act of 1963, that employers have to justify pay differences. The equal pay act says that employers can defend the pay gap between workers of different genders by citing any factor other than sex. Which advocates criticize as an overly broad catchall defense. Some employers could defend higher pay for men arguing that the mail

male employee for higher salary, gets paid more because he is a family to support.

Of the nearly 90,000 workplace determinations seen by the EEOC last year and 2016, one of the top categories was actually equal pay discrimination. Pay discrimination is one category that has come to the forefront recently as this push for equal pay has taken off. More states are expected to follow suit and join the movement. Taxes in New Jersey are two of the most recent states to introduce proposed legislation for pay equity. And coming from the EEOC it's actually stated that they are already being, seeing great growing numbers of businesses. It was even seen during the week of the Super Bowl when Audi, the highest viewed commercials that night, displayed in their commercial they have equal pay for equal work. I'm sure some of you were able to see this commercial.

Over 15 other states or cities currently have similar pay equity enactments. Now they may not be prohibiting the salary history question but they do reinforce employers to comply with equal pay for equal work among their employees.

All right , let's move on to mandatory language when it comes to hiring. What to say, and how to say it. What you can ask or how it should be asked. Language is very important when it comes to hiring is as we all know, sometimes we don't mean what we say or how a question is asked is not interpreted the way that we intended.

Or expected .

Employers want to make sure to use a job application that abides by specific laws in their state. As we have been discussing throughout the presentation it is essential for you to understand the state, city and even county laws , where your business is located, so you remain compliant with all the business laws in your area. This is regarding the criminal history questions, the "Ban the Box" law , equity law or any pay equity laws I should say or the salary history question, as well as any other questions that need to be added or omitted. For example, volunteer worker information question. You want to know if they are state required or not . You also want to make sure that the job application you are using includes other legal disclosures and questions to safeguard your business. This is actually the very first step in hiring employees to work at your company. You want to get started with them on the right foot. Having a legally compliant application is a good start.

Some examples of state specific legal disclosures and language can be such that smoking laws, lie detector laws, sharing volunteer work information, drivers license information, and even applicants sharing their Social Security number. Some states even have multiple disclosures so again in order to understand all of the laws that apply to the states, city and counties, make sure they are fully compliant. In the next light I will share an example of the required legal disclosure in the state of Maryland. As well as other requirements job applications may have .

So here is the Maryland disclosure. This particular disc lobar

disclosure prevents an employer from demanding an applicant take a lie detector test as a condition of employment. This is required to be on job applications for businesses in Maryland. [indiscernible] every application used in Maryland should have this language somewhere . Other states may have different required disclosures or disclaimers such as probationary periods disclosures. No smoking disclosures. At will disclaimers, etc.

Some states even specify where the disclosure must be located. So you have to pay attention to that as well. Another example that comes to mind is the Massachusetts state requirement . The Massachusetts law requires that job application includes the request for verified work performed on a volunteer basis to be included on the job application. I know we moved on from the conversation around "Ban the Box" but I want to reiterate quickly that for the state that still allow unlimited form of criminal history questions, the way you word your criminal background question is critical and it usually is a matter of state law. So again, it's always important to make sure that any questions you have on the job application are exactly how they need to be worded. So your in full compliance.

It may be specific like California's requirement that we discussed earlier . >> Not to bring us to the home stretch of this presentation I wanted to discuss best practices when it comes to hiring.

There are do's and don'ts for employers to practice when it comes to hiring. We want to start with the negatives, don'ts . When it comes to job applications you don't want to ask for our candidates as is in. When it comes to interviewing, you don't want to ask any questions that reveal age are a membership in a protected class. I want to elaborate more why not to ask these on a job application. Or even an interview would be a best practice. Especially since most of you are attending this webinar wondering considering that the Social Security number is a common question in a job application. And when it comes to the interview, there are many questions that you could ask that would reveal an applicants age or membership in a protected class. You may not even intentionally do that. So when it comes to asking an applicant for their Social Security number on a job application, it is not necessarily required. And some states prohibit you for asking for a candidates SSN number. So again not to repeat myself as I said many times in the webinar today, you want to make sure you understand the state and city and or local laws.

And regardless of your state allowing it or not, it is a best practice not to have it on the job application anyway, just because of concerns. It is not necessary for determining whether a candidate is qualified for the position or not . And that is really what the purpose of a job application is. It is for you to find out information on the candidates work experience, their skills and education. That way you can determine if they are qualified for the position you have available.

Having the SSN on the application could also be a security issue. Because of the applicant or employee has the SSN falling in the wrong hands and your company, it gets released, and obviously it is a breach. And if something happens with that applicant and they find out there could be issues and your company could end up in hot water. I'm not saying you can't trust your employees but it's not worth the risk to have unnecessary information you don't need to have. So just eliminate all risk until there's a legitimate business reason to have that information.

When it is necessary, and there is a need for you to obtain that information, you want to make sure to take the proper steps to protect the information you are collecting. Most of the time the hiring manager does not need this information and only the human resources department needs it. Such as for background search or to authorize, providing [indiscernible] either way it's not needed at the time of the initial applicant intake or interview and therefore not needed on the application.

In regard to the interview questions that may reveal an applicants membership in a particular class, if you ask a question that inadvertently reveals the age or membership to a protected class, and you decide not to hire that person, you may be hit with the discrimination law even if membership in the protected class is not the reason that you chose not to hire that person. Lawsuits are expensive and time-consuming. Even if they are frivolous. Meaning that there is no basis for the lawsuit in the first place. So you don't want to give an applicant any reason, whether real or perceived, to create or file a lawsuit against you.

All right, now that we have talked about what you shouldn't do, let's move to the positive side

about what you should do. You should always include state specific protected classes in your EEOC statement. The equal employment opportunity statement, meaning it's protected from discrimination that can vary from state to state. Let me give you an example of that, like some states protect marital status and gender identity and others do not. You should also make sure that if you are a business that is located in multiple states, that your hiring process is correct within each state. You should also include a confidentiality clause. As well as the American for disabilities act, the ADA , reasonable accommodation class. And again I know I just mentioned, you want to make sure you are treating your applicants all the same, based on the state that your business is located in. >> Now I know this presentation delivered a ton of information so I quickly want to review what we went over. We discussed the "Ban the Box" legislation is growing for both public and private employers. You want to make sure that you know your state, city and local law, so you're using compliant job applications. And not asking questions that are going to get you against law unless they're permitted. You want to make sure you know your rights as an employer and that you can still conduct background checks even if your state bends the box . You need to know when an increase can take place and how to use that information legally. We also covered the new pay equity laws. Which may require removing salary history questions from job applications and what that means to employers. And also that this is on the rise, a trend that more and more states are adopting. We also went over the importance of being specific mandatory language in a job application, how it's always best to you state specific job applications for your hiring process. And lastly I listed do's and don'ts as best practices. All recommended from our employment attorneys here at [indiscernible] comply right to help protect you as a employer. >> That concludes the presentation portion of the webinar. The four we move on to Q&A, I would like to mention and recommend that you visit comply right.com.

And view the many other resources we have available to help you run your business. I recommend bookmarking the website because we are always adding new information to the site. Our team of employment and tourneys attorneys monitor what is going on in the federal, state, city and local employment arena. As we know with the new administration taking place, at the beginning of this year, there is and we have seen many employment law changes, and comply right is always on top of what is happening. It is a great place to keep track of what is going on.

So now let's move on to our Q&A session of the webinar so we can answer some of the questions you presented during the presentation. >> Thank you so much Jamie. We will now start the Q&A portion of our call. I will be reading the chat questions. In the time remaining we will address as many as we can. Please continue adding your questions in the Q&A box. And just a reminder if we don't have time to get to your question I in courage you do connect with a score mentor , available online or in a chapter near you. With that I want to go ahead and jump into these questions.

The first one comes from Keisha. Jamie, how can you find out which states cannot ask this question on job applications?

That is a great question Keisha. Obviously throughout the webinar you always want to make sure you're up-to-date on the federal, and more specifically your state, city and county laws. I did mention the website , and the organization and the presentation. The national employment Law Project. You can go to

nelt.org , and read the laws and the project . It gives you more history than I gave today. That is a great place to be able to see which states currently ban the box. Which ones are possibly considering it moving forward and things like that. A great place to check it out to whether your state bans the box or not.

The next question comes from Joan. What is the status of the overtime pay law, and how do you handle salaried employees?

That is a great question as well. Obviously we are going close to six months, within six months it will be a year we have had talks about the overtime law changes. We know that we just recently put Acosta into place. Yesterday he actually announced that he will issue a request for information on the FLSA overtime role in the next few weeks. Request for information are used to elicit comments from the public on changes that need to be made to agency regulation. The purpose is to provide the DOL with information that . can consider in evaluating the overtime rule. He will figure out really which way we will go forward. With projections there to raise at higher but not as high as was projected.

This should ultimately lead to a new proposed rule being issued that probably contains a [indiscernible] level and remove the salary adjustment based on what Acosta has said. We will have to wait and see, after he receives the a RAF.

Next question comes from Luke Krista. Does "Ban the Box" only apply to employees ?

That is a great question Krista. What I am assuming you are meaning is you're talking about the difference between employees and independent contractors. That usually is a very confusing, is a very confusing topic. What we are talking about in today's presentation, yes we are talking only about employees. When it comes to independent contractors, and employer, employees , there are very different regulations that need to be followed. I highly suggest that you touch base with a

SCORE mentor, legal attorney, to definitely get some kind of legal consultant to be sure that you understand the ramifications and the regulations that you need to follow when it comes to hiring independent contractors versus employees. What we are for referring to today is employees. >> Unfortunately time for only one more question. This comes from Kristin . How long do I need to hold onto job applications, for applicants I don't higher.

That's a great question as well. A lot of people think they can read get rid of them right away. I didn't hire them so why do I need their information, sometimes we ask a lot of high-security information on the job application. But at least one year is recommended to keep that job application. Required to keep it. You want to keep it at least one year, along with resumes, drug screenings, employee and test, reference checks, even background our credit checks, if you have done any for that applicant.

That is just to be safe on your side.

Okay. Those are all the questions we have time for. Ladies and gentlemen on behalf of SCORE and ComplyRight, I think you today for attending this webinar. Please enjoy the rest of the virtual conference and join us for the next series of webinars which starts in 15 minutes.

In closing out I give a big thank you to Jamie for presenting today, Jaime Lizotte thank you .

Thank you. Very quickly I want to point everybody, be sure to visit our news in the virtual conference. The booth in the virtual conference. We can answer any other questions you have. We are offering a 20% discount off of our state specific job applications. Go ahead and visit the job applications, the booth I'm sorry, to take advantage of that for specific state job applications. They are attorney written and approved to make sure you are in full compliance with your state, when using job applications and providing them to applicants applying to your company. Thank you Selena.

Thank you everyone. See you later. >>[Event concluded]