



ALIGNED GROWTH PARTNERS^{LLC}
Advisors to Boards of Directors and Management



BAN
THE BOX

California's New Salary History and Criminal Background Bans

Hedley Lawson | Managing Partner



ALIGNED GROWTH PARTNERS_{LLC}

Advisors to Boards of Directors and Management

California's Salary Ban



Can employers use recruiters to determine applicants' salary histories?

- ▶ Under California's new salary history ban (AB 168), employers are prohibited from seeking salary history information about an applicant "*personally or through an agent.*" Employers may want to take action to ensure that all internal representatives revise any practices that would be in violation of the law. Written applications should also be revised to the extent that they ask for information on salary history.
- ▶ Since employers may be liable for violations of the statute even if it is an outside recruiter who inquires about a candidate's salary history, employers may want to ensure outside recruiters conducting recruiting efforts are in compliance with the statute. Employers may also want to consider indemnification from external recruiters for any acts taken by external recruiters that may be deemed to violate the new law.



What happens if a job applicant volunteers salary history information?

- ▶ Although the law prohibits employers from inquiring about applicants' salary histories, applicants may still, "*voluntarily and without prompting,*" disclose their own salary history information to a prospective employer. The employer may consider or rely on that information in determining salary as long as prior salary is not the only factor justifying any disparity in compensation. This is consistent with **California's Fair Pay Act** (California Labor Code Section 1197.5). If job applicants voluntarily disclose their prior salary, employers may want to document the voluntary disclosure and take precautions to ensure that the disclosed prior salary does not become the sole factor in determining that individual's salary.



Can employers ask applicants about the benefits they have been provided in the past during the application process?

- ▶ The new California law **prohibits employers from asking about salary history information, including "compensation and benefits."**
- ▶ Employers cannot ask about the value of an applicant's benefits, such as equity, health insurance or other monetary benefits. However, at this point, without further guidance from regulators, employers may be able to ask if there would be benefits that the applicant would be giving up and whether that would be a barrier to making a transition, as long as the employers do not specifically ask about the monetary value of those benefits.



Can employers verify a selected applicant's salary history post-offer?

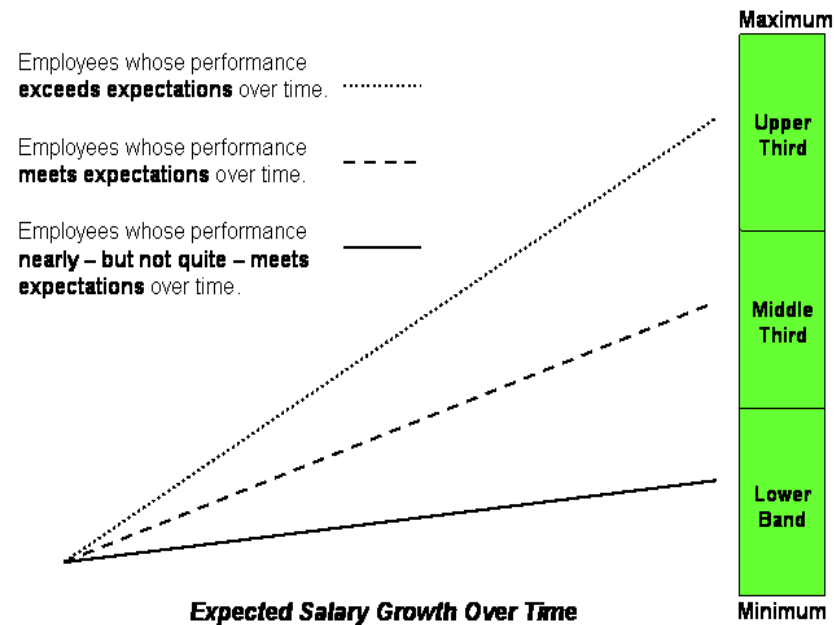
- ▶ Under the California law, ***employers are not prohibited from reaching out to a selected applicant's previous employer to verify the applicant's prior salary after the applicant has been given a job offer.***
- ▶ However, ***in certain jurisdictions***, such as San Francisco, ***employers may not disclose the salary history of any current or former employee to a prospective employer without written authorization from the employee.***



YES!

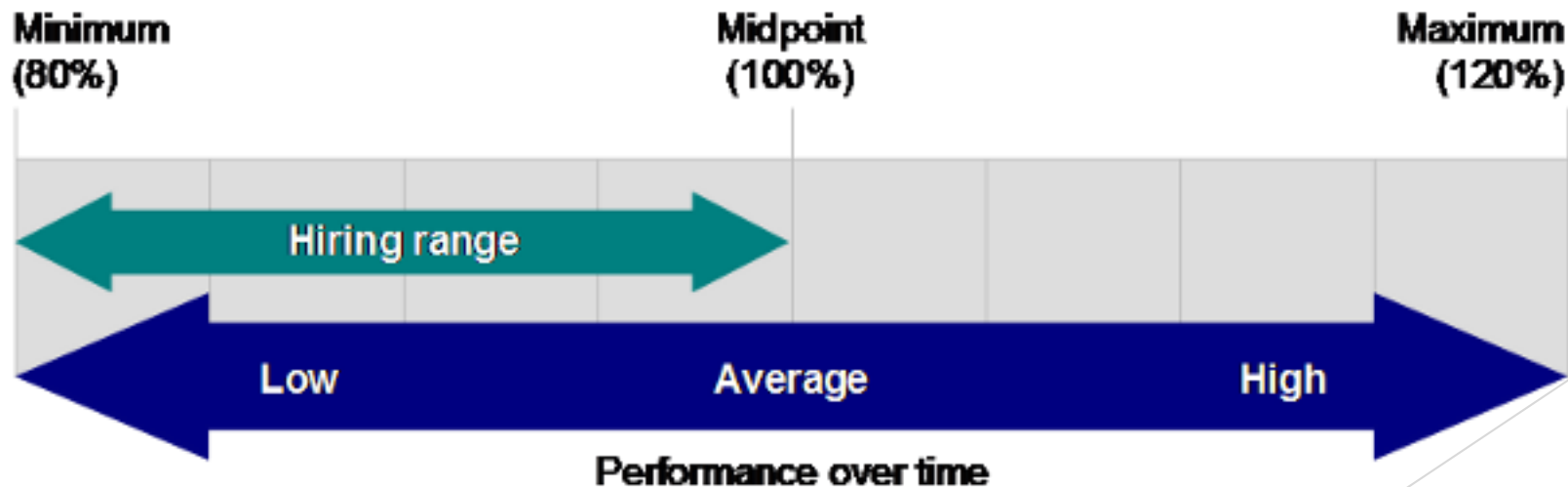
When does an employer need to provide a salary range to an applicant?

- ▶ Upon "**reasonable request**," employers are **now required to provide a "pay scale" for an applied-for position to an applicant.**
- ▶ Although the law does not specifically define "pay scale," employers may want to be prepared in advance to disclose the company-approved pay range for a position. **When providing the salary range, employers may qualify it by explaining that the salary offered will be based on appropriate factors such as qualifications and experience.**



When does an employer need to provide a salary range to an applicant? (con't.)

- ▶ Employers may want to consider using salary bands in recruiting materials so that applicants can identify the possible salary range for self-selection purposes. Employers may also want to implement a system to document when an applicant requests a pay scale and that his or her request was fulfilled. Both written and oral requests for a pay scale must be satisfied.



So, what should you do?

- ▶ Remove compensation questions from hiring forms, such as job applications, candidate questionnaires and background check forms.
- ▶ Update interview and negotiation policies and procedures.
- ▶ Train hiring managers and interviewers on the new provisions.
- ▶ Make interviewers aware that this law has an oral component which applies to their conversations with candidates via phone or in-person.
- ▶ Do not ask or allow external search firms **OR** recruiters to seek compensation information from prospective candidates.

...And California's Criminal Background Ban

Why must employers “Ban the Box” regarding criminal history in the hiring process?

- ▶ A new law that took effect January 1, 2018, has significantly changed the hiring process for California ***employers with five or more employees***
- ▶ AB 1008 enacted a state-wide “Ban the Box” law that ***limits how and when employers can consider criminal history in hiring decisions***



- ▶ You **cannot ask, or consider in any way, an applicant's conviction history before you have made a conditional job offer to the applicant.** The law also **bans questions about conviction history on job applications**
- ▶ Once you make a conditional job offer, you can ask about an applicant's conviction history — but **some inquiries are always off limits**
- ▶ You must now follow a specific process if you intend to deny employment based on what's in an applicant's criminal conviction history — including providing required notices to the applicant and conducting an individualized assessment about how a conviction directly and adversely affects the specific job duties at issue



- ▶ And lastly, you must now follow a specific process if you intend to deny employment based on what's in an applicant's criminal conviction history — including providing required notices to the applicant and conducting an individualized assessment about how a conviction directly and adversely affects the specific job duties at issue



About Your Speaker – Hedley Lawson

Hedley Lawson brings decades of experience as a senior corporate executive and board and management advisor to his role as Managing Partner for Aligned Growth Partners, LLC. In his role, Hedley leads the firm's global strategic, operational and organizational excellence advisory and consulting practice, as well as its M&A and Executive Search practices. Hedley and his firm serve publicly-listed and privately-held high technology, medical device, banking and finance, food and wine, construction and development, and other lines of business from the Northern California Wine Country; San Diego, California; Richmond, Virginia; Adelaide, Australia; and Singapore

Hedley's executive leadership experience includes serving as Vice President Global Human Resources for Multi-Fineline Electronix, Inc. (MFLEX) where he was responsible for MFLEX's global human capital and strategic planning. In his first year with the company, he doubled its workforce in China from 10,000 to 20,000 employees. Subsequently, he led the global executive team's strategic planning, resulting in record revenue, operating income, margin growth, and ROIC. The company was subsequently recognized by *Business Week* and *Fortune* Magazines as one of America's fastest growing corporations.

Prior to joining MFLEX, Hedley held senior corporate executive positions including serving for 20-years as Senior Vice President Human Resources and Quality Management, and Vice President Americas for SOLA International, Inc. where he was known for building SOLA North America's business culture and being a part of the senior leadership team in M&A, strategic planning, and operational and sales execution and growth. Hedley also conceived and led the industry-acclaimed annual wholesale laboratory "*SOLA Business and HR Conference*," and was a highly-regarded speaker at OLA, COLA, MOLA, SECO, and industry annual company meetings.

Hedley holds a Bachelor of Arts degree in Political Science from Sonoma State University, and a Master's degree with a double major in human resources management and organizational development from Golden Gate University, San Francisco. He is a graduate of the Wharton School of Business, University of Pennsylvania in-residence Financial Management and Executive Leadership programs. He holds membership in the National Association of Corporate Directors (NACD), the International Executive Resource Group (IERG), and other professional associations. Hedley is also an Accredited Investor.

Our Global Offices and Contact Information

United States:

HEDLEY LAWSON, JR., *Managing Partner*

Northern California - Wine Country: 1+707-217-0979

hlawson@alignedgrowth.com

BARRY WEITZENBERG, *Senior Partner*

Northern California – Wine Country: 1+707-322-2683

bweitzenberg@alignedgrowth.com

D. TOM DALE, *Senior Partner and Head of Office*

Southern California – San Diego: 1+858-231-2008

tdale@alignedgrowth.com

CLIFF GRUSCHOW, *Senior Partner and Head of Office*

Richmond, Virginia: 1+214-708-4584

cgruschow@alignedgrowth.com

Australia:

KONG NG, *Senior Partner and Head of Office*

Adelaide, Australia: +61-481-547-030

kong@alignedgrowth.com

Singapore:

CP LEE, *Senior Partner and Head of Office*

CPLee@alignedgrowth.com +65-9176-7593

KS LEE, *Senior Partner*

KSlee@alignedgrowth.com +65-9839-0601