In Focus: Human Resources

RETAIL HR

Retailers Face Challenges as Laws Ban Salary History Disclosure

● Debra Schwartzfarb, vice president at Kirk Palmer Associates, sheds light on the potential impact of these laws.

BY **ARTHUR ZACZKIEWICZ**

Laws in several states now ban retailers and other businesses from asking for a job applicant's salary history.

Laws banning the practice of agencies and businesses asking job applicants for their salary history are now in effect – in various forms – in New York, Delaware, New Jersey, California, Massachusetts and Oregon. Industry consultants expect more states to draft and pass similar bans.

Some of the laws started on the local level and were later taken up by state policymakers after receiving widespread support. In May 2017 when the City of New York passed law number 125319, which prohibits employers from inquiring about a job applicant's salary history, proponents described it as a milestone for worker's rights.

Carmelyn Malalis, chair and commissioner of the New York City Commission on Human Rights, said at the time that inquiring about pay history during the hiring process "often creates a cycle of inequity and discrimination in the workplace, which perpetuates lower salaries for women and people of color. By taking salary history information out of the job interview and application process, employers and job applicants can engage in robust salary negotiations focused on the applicant's qualifications and the requirements for the job."

But for many businesses, these laws present some challenges. Here, Debra Schwartzfarb, vice president at Kirk Palmer Associates, discusses these laws and how it is impacting the retail industry.

WWD: In your view, how could these laws change hiring practices within the retail industry? What are the opportunities and potential challenges for retailers?

Debra Schwartzfarb: The laws are still new so the full impact is still unknown. I see the possible shift in this way:

Today, many companies value a role – and therefore the compensation of that role – based on the candidate they are meeting. In other words, they will base an offer on the current compensation of a given candidate rather than on the scope of the role they are filling. This practice can perpetuate the pay gap that most often impacts women and minorities. Without the benefit of knowing someone's compensation it will become necessary to value a given job based on the experience and skills needed to do the job and offer compensation accordingly.

Debra Schwartzfarb

Retail photograph by Shutterstock/AboutLife

For organizations that are not used to looking at positions in this way it may be a challenge at first. Spending time to understand where a role fits internally, as well in the marketplace, requires time and rigor. If a company chooses not to do this work, they may risk losing good candidates by "guessing" at compensation and under-offering a qualified candidate.

On the flip side, companies that do the research upfront and really know what they need in a role, and what they are willing and able to pay for that experience, will not likely get caught in a bind during the offer process. The more open and transparent they can be with potential candidates the more likely they will be able to meet expectations and get to a fair offer.

WWD: Do you feel these new laws will impact the gender and minority pay gap? If so, how?

D.S.: These laws could potentially drive changes that result in more productive candidates and companies. Whether it will help close the gender and minority pay gaps remains to be seen. If companies pay what a job is worth based on the required skills, then they can begin to chip away at the gaps. But if they underpay women or minorities based on the probability that they have made less in the past, and these groups continue to accept those offers, it will perpetuate the problem.

WWD: How are the candidates and the retailers you work with responding to these new laws?

D.S.: In cases where candidates aren't disclosing their compensation, some companies I've spoken with are taking an "aim low and see what happens" approach. This is risky, and it could result in losing strong candidates who could bring a lot of value to the company. It also exhausts the resources of HR teams that have spent time and effort to find, interview and, ultimately, offer a job to a qualified candidate. When there's a disconnect on compensation, the company can end up expending a lot of time and energy that could end up with zero results.

In terms of candidates, most I have encountered are still willing to disclose their actual compensation voluntarily and without prompting. This may be because they live in states where this is not the law or because they're not yet aware of the changes. It will take some time before we see a meaningful impact from these new laws and any broader impact will depend on how widely it is adopted across the country.

WWD: How might these laws impact how HR executives approach conversations with candidates?

D.S.: Ideally, HR executives will partner within the organization to determine the value that a given candidate brings to the table based on their experience. To effectively do this, HR professionals must align with the company on the parameters and worth of the job as well as what will be expected from the person who fills it. Once there is consensus and clarity, HR executives can have a direct, upfront conversation with a candidate.

They can provide guidelines for the role, learn a candidate's salary expectation and communicate a salary ceiling, when appropriate. By moving this discussion to the front of the conversation, HR executives can create a more open dialogue on both sides, identify any red flags early on and, importantly, ensure that all parties' expectations align, to avoid unnecessary surprises.

WWD: Does these laws change how candidates should prepare for a job interview?

D.S.: With these laws, it's important that candidates walk into an interview more prepared than ever. They must be ready to answer more specific questions to illustrate their worth regarding skills, experience and vision for a role. They also need to be thoughtful and understand the market value of their skill set, so if they choose to disclose their compensation expectation, they are realistic. If a candidate's view of their worth is not aligned with the marketplace this could result in setting unrealistic expectations and possibly pricing themselves out of a great job.

The bottom line is that candidates should know themselves and the marketplace and be ready to speak specifically about the value they can bring to the company.