

Mind the Gap: Unintended Consequences?



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New York City has a new law (Intro. 1253) that went into effect this month, preventing employers and talent advisors from seeking salary information from prospective employees (unless voluntarily provided or subject to public disclosure by law). Similar laws have recently been passed in California (statewide privacy bill A.B. 168 effective January 1, 2018), Oregon, Delaware, San Francisco, Massachusetts and Puerto Rico. Recent discussions about how these laws could impact the job market and future compensation decisions sent me straight to Google in search of the history of another proverbial law — the law of unintended consequences.

The roots of this discourse in the modern narrative go back to a 1691 letter John Locke wrote to the British Parliament, urging them to consider the unanticipated consequences of lowering interest rates. In 1759 during the Scottish Enlightenment, Adam Smith built economic concepts around this notion in his “Theory of Moral Sentiments”. Robert Merton, an American Sociologist, brought this idea once again to center stage when speaking of the unanticipated consequences of purposive action in a seminal paper he authored in 1936.

Over the years, the “law of unintended consequences” has become a dictum warning that any intervention in a complex system can create consequences we anticipate, even more interestingly consequences we don’t anticipate. Regardless of one’s view of the efficacy of human interventions in controlling the world around us, we must still look at every new law and ask: “I realize what this law is intended to do, but what, distinct from its intent, will really unfold?”

On this point, I find myself thinking – what are the right questions we should be asking as we think about these laws?

Question No. 1:

The New York City law and many of the others are designed to address, among other inequities, the gender pay gap — still at approximately 20% nationally as of 2015. Ostensibly, by forcing the discussion away from historical salary data, the intent of these laws is to try to reverse this unfortunate tide of history. But will it really change the way things work?

Hypothetically speaking, the answer is yes and no. Yes, in that it makes it easier for someone who has been underpaid to make a quantum leap in compensation.

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No, in cases where the new dearth of information plays to the strengths of the best negotiators – ones with the ambition and skill to negotiate and advocate most effectively on their own behalf. Will this advantage men more than women? Conventional wisdom says yes, although truthfully, if there is one call to action here, it is that we must all, human beings of every color and persuasion, endeavor to be really good advocates for ourselves. The confident among us will see this as an empowering vacuum that one can leverage to one's best advantage. The hesitant among us will fall further behind if we don't learn fast how to advocate for ourselves.

Question No. 2:

How will potential employees know what to ask for and what is considered reasonable? Where will salary data come from? From the employers' perspective, how can they know what is fair to offer? Reliable compensation data is readily available in some cases; however, it is at best conflicting, incomplete and ambiguous in other cases.

If anything, the power of grey market data will in all likelihood grow; more people than ever before will go to Quora, Glassdoor and similar forums to figure out what a "fair and reasonable salary ask" is. The lack of situation-specific data will for sure alter the dynamic and process associated with salary negotiations. Absent specific data on all candidates in a pool, it will be easier for everyone to claim they belong in, let's say, the 95th percentile.

Question No. 3:

Will these laws truly advance the notion of a fairer and freer market for the best talent? I guess it truly depends on the situation.

- For roles with fixed and known compensation bands such as union jobs, these laws may not help or hurt. Collective bargaining will still be the way in which agreements are reached.
- For roles in highly margin sensitive industries like grocery and mass retail, the market will continue to exercise the forces of supply and demand. The most vulnerable prospective employee with the humblest of demands will continue to get the job – keeping wages down to the lowest possible number. The only way to raise that floor will be to raise the confidence (and ability to exercise it) level of the most advantageously priced candidate.
- At the high-end of the market, the SEC mandates that CEO salaries and those of top officers in publicly traded companies be available to the public. Given these negotiations occur in the rare air of very short lists of qualified and proven applicants, that market will likely remain substantially unchanged.
- At the level immediately below public company officers and CEOs – VPs and SVPs, for instance – I suspect the lack of transparency will be seen as an opportunity by many strong candidates to shed the handicap of their current compensation levels. Their incentive will be to negotiate at the 95th percentile of whatever band they are seen to be in, and salary levels will surely be pressured to trend up.

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Broadly speaking, it is a little too soon to predict the eventual impact these laws will have when it comes to closing the gender gap in compensation. Will achieving this goal depend even more on women's ability to negotiate on their own behalf? Will women negotiate more aggressively than men? Or will male candidates be more aggressive and effective at achieving their goals? If the latter happens, the gender gap below the glass ceiling could well grow and not shrink. And there it is – the interesting and possible unintended consequence. I wonder what John Locke, Adam Smith and Robert Merton would have to say about this? As with all that we humans endeavor to test, only time will tell.

There is at least one thing we can all do with immediate effect – and that is to prioritize inclusion as a key criterion when we select new leaders. Inclusive leaders who foster inclusive cultures focused on excellence across the board are at the heart of an eco-system where laws like these would no longer be needed. That is a future we must all strive toward.

For more information

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