



San Francisco Becomes Latest to Ban Salary History Inquiries

Insights

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Joining a growing list of state and local governments, San Francisco Mayor Ed Lee today signed an ordinance which will ban employers from asking job applicants about their salary histories. The new ordinance will go into effect on July 1, 2018.

Proponents of such bans generally argue that they are necessary to eradicate the gender pay gap, which they contend is exacerbated when employers base compensation on prior rates of pay which may reflect historic inequities.

What Does the Ordinance Do?

The “Pay in Parity Ordinance” applies to all employers registered to do business in the city, including contractors and subcontractors that contract with the city. It applies to applicants applying for jobs (including temporary, seasonal, part-time, or work through a temporary agency) to be performed in the geographic boundaries of the city and whose application, in whole or in part, will be solicited, received, processed or considered in the city.

The ordinance prohibits an employer from:

- Inquiring about an applicant’s salary history.
- Considering or relying on an applicant’s salary history as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.
- Refusing to hire or retaliating against an applicant for not disclosing his or her salary history.
- Releasing the salary of any current or former employee to a prospective employer without written authorization from the employee.

The ordinance provides that it does not prohibit an applicant from “voluntarily and without prompting” disclosing salary history, or an employer from considering that information in such a situation. However, the ordinance reiterates (as is already the case under state law at Labor Code Section 1197.5) that salary history by itself cannot be used to justify paying an applicant less for substantially similar work.

The ordinance will be enforced by San Francisco’s Office of Labor Standards Enforcement (OLSE). Failure to comply with the ordinance will subject employers to administrative penalties. For a first violation, the OLSE will issue a warning and a notice to correct. However, subsequent violations will

be subject to fines of up to \$100 for a violation, up to \$200 for a second violation, and up to \$500 for additional violations.

The ordinance also requires employer to post a notice advising employees of their rights in a conspicuous place at every workplace, job site or other location in the city frequently visited by employees, and send a copy of the notice to their employee's labor union or representative. OLSE shall publish a make available a sample notice prior to the effective date of the ordinance.

Ban on Salary History Inquiries Part of a Growing Trend

San Francisco is only the latest in a growing number of jurisdictions to enact prohibitions on the use of salary history information. A number of states (Delaware, Massachusetts, and Oregon) have passed similar laws which will become effective later this year or in coming years. Other cities are getting in on the action as well. Philadelphia passed an ordinance which was to go into effect in May, but is currently under legal challenge. New York City recently adopted an ordinance that will become law on October 31.

Pending Statewide Legislation

For several years in a row, the California Legislature has considered proposals to enact a statewide salary history ban. A current proposal, Assembly Bill 168, would similarly bar employers from inquiring into salary history of applicants. That bill is currently on the Senate floor, and is close to being sent to the Governor. It remains to be seen whether he will sign it into law.

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