

San Francisco Joins Salary History Inquiry “Ban” Wagon

Jackson Lewis

Article By

[F. Christopher Chrisbens](#)

[Jackson Lewis P.C.](#)

[Pay Equity Advisor](#)

- [Labor & Employment](#)
- [California](#)

Thursday, July 27, 2017

The City of San Francisco (SF) is the latest governmental entity to join the trend towards prohibiting employers from asking job seekers about current or prior salary or wage rate or pegging starting pay to prior pay. [The SF Ordinance](#) is based on the following premise:

The problematic practices of seeking salary history from job applicants and relying on their current or past salaries to set employees’ pay rates contribute to the gender wage gap by perpetuating wage inequalities across the occupational spectrum... In effect, to the extent employers consider applicants’ salary history in setting salaries of new hires, historical patterns of gender bias and discrimination repeat themselves, causing women to continue earning less than their male counterparts and less than they would have earned but for their gender.

While not every employer or social scientist agrees with this statement, [New York City](#), [Philadelphia](#), Delaware and [Oregon](#) have passed similar laws. The State of [California](#) also appears poised to pass such a law with [A.B. 168 pending in the California Senate](#).

Each of these laws is subtly different and the parameters of the laws remain to be determined. For example, the SF Ordinance defines “inquire” to mean “any direct or indirect statement, question, prompting or other communication, orally or in writing, personally or through an agent, to gather information from or about an Applicant, using any mode of communication, including but not limited to application forms and interviews.”

The SF Ordinance also broadly provides, “An Employer shall not consider or rely 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.”

Other Notable Provisions

In addition, the SF Ordinance:

- Prohibits employers from releasing salary history information for any current or former employee to a prospective employer without written consent, unless required by law;
- Allows an applicant to voluntarily “and without prompting” disclose prior salary, in which case the employer may consider the prior salary but may not peg the applicant’s salary based solely on prior salary or justify paying the applicant differently than other employees doing substantially similar work;
- Permits employers to discuss a job applicant’s salary expectations without inquiring about salary history.

The Take-Away

As salary history inquiry laws continue to proliferate, employers in all jurisdictions should review their pay practices and determine whether and to what extent their organizations rely on prior salary to set starting pay and how prior salary factors, if at all, into the employer’s system for determining and defending pay.

Jackson Lewis P.C. © 2019

Source URL: <https://www.natlawreview.com/article/san-francisco-joins-salary-history-inquiry-ban-wagon>