

San Francisco Bans Salary History Inquiries

On July 19, San Francisco became the third major city in the nation seeking to close the gender pay gap by curbing salary history inquiries. Starting next year, a new city ordinance will prohibit employers from inquiring about an applicant's salary history or disclosing current or former employees' history without their authorization. Employers will want to update their applicant screening, hiring and other employment practices to ensure compliance.

Background

Reflecting a growing trend, state and local measures aim to narrow the gender pay gap by curtailing the use of salary information to screen applicants and formulate job offers. Last year, Massachusetts became the first state to pass a law restricting salary history inquiries by private employers. (See our [August 3, 2016 FYI Alert](#).) Since then, two more states – Oregon and Delaware – have adopted similar restrictions. (See our [June 15, 2017](#) and [June 21, 2017](#) issues of *For Your Information*.)

Earlier this year, Philadelphia became the first major city in the nation to enact an ordinance barring employers from asking about, or requiring disclosure of, prospective hires' wage history. (See our [January 27, 2017 For Your Information](#).) That law remains on hold due to legal challenge. (See our [June 19, 2017 For Your Information](#).) On May 4, New York City enacted a salary history ban poised to take effect later this year. (See our [May 10, 2017 For Your Information](#).) Similar measures are under consideration by other cities and states, as well as at the federal level.



San Francisco's Salary History Ban

On July 19, San Francisco Mayor Ed Lee signed the [Parity in Pay Ordinance](#) aimed at narrowing the gender pay gap by prohibiting employers that are required to be registered to do business in the city from inquiring about a job applicant's salary history. Along with making compensation inquiries unlawful, the law generally prohibits employers from considering or relying on such history in determining whether to extend a job offer or in formulating its terms. The prohibition would not extend to employees applying for another job with their current employer. The new restrictions become operative July 1, 2018.

Comment. Existing California law specifies that prior salary cannot, by itself, justify any disparity in compensation, but it does not prohibit employers from inquiring about salary history. (See our [October 7, 2016 For Your Information.](#)) A bill ([A.B. 168](#)) currently pending before the California legislature would bar such inquiries statewide to prevent perpetuating gender wage disparities. The bill would prohibit both public and private employers from seeking – personally or through an agent – an applicant’s salary history information, including compensation and benefits, and would require them to provide the pay scale for a position upon request. The prohibition would not apply to salary history information that is disclosable to the public pursuant to specified federal and state law.

The new local law would apply to applicants whose work would be performed in whole or in part in San Francisco. With certain exceptions, it would also apply to applicants whose work would be performed under a contract with the city, or when the work would be performed on city property used under a lease, permit or license.

While the ordinance bars an employer from asking about salary history, an employer may ask for objective measures of an applicant’s past productivity, such as revenue or sales. It will not prevent an employer from informing an applicant of a position’s anticipated salary or salary range, or discussing the prospective hire’s salary, benefits and other compensation expectations. Those discussions may include unvested equity, deferred compensation or bonuses that an applicant would forfeit by switching jobs. To the extent that applicants “voluntarily and without prompting” disclose salary history, employers may verify its accuracy and consider the volunteered information in formulating a job offer.

The new law generally bars an employer from releasing a current or former employee’s salary history to a prospective employer absent the employee’s written authorization, but provides certain narrow exceptions. An employer would be able to provide such information if the release is required by law, part of a publicly available record, or subject to a collective bargaining agreement.

The ordinance authorizes the city’s Office of Labor Standards Enforcement (OLSE) to implement and enforce the new restrictions, levy fines of up to \$500 per violation, and refer cases to the city attorney for civil enforcement. OLSE will be developing rules for implementation and enforcement of the ordinance, along with employee rights notices in multiple languages that employers will be required to post in a conspicuous site at the workplace.

In Closing

Effective July 1, 2018, San Francisco employers will no longer be able to inquire about an applicant’s current or past salary or disclose current or former employees’ salary history without their authorization. Employers should update their applicant screening, hiring and other employment practices to ensure compliance.

Authors

Nancy Vary, JD

Abe Dubin, JD

Produced by the Knowledge Resource Center of Conduent Human Resource Services

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *FYI@* publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.