

Publications

Labor and Employment Alert: San Francisco Prohibits Salary Inquiries

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Daniel J. Clark

Michael C. Griffaton

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In July 2017, San Francisco joined New York City, Philadelphia, Delaware, Massachusetts, and Oregon in banning employers from asking applicants about their salary history. The “Parity in Pay Ordinance” prohibits San Francisco employers from using an applicant’s salary history in the hiring process or in determining what salary to offer an applicant. The city enacted its ordinance because “historical patterns of gender bias and discrimination repeat themselves” when employers consider applicants’ salary history in setting new hires’ salaries.

The ordinance broadly defines an “applicant” as a person applying for a job to be performed in the geographic boundaries of the city and whose application, in whole or part, will be processed or considered, whether or not through an interview, in the city. An “employer” is any individual, firm, corporation, partnership, labor organization or other organization that is or should be registered to do business in the city.

Prohibited Inquiries

An employer is prohibited from:

- Directly or indirectly inquiring about an applicant’s “salary history” using any mode of communication, including application forms and interviews. The ordinance defines “salary history” as the applicant’s current and past salary (compensation, commission, and/or benefits) in the applicant’s current position or in a prior position.
- Considering an applicant’s salary history as a factor in determining what salary to offer an applicant – even if the applicant voluntarily discloses his or her salary to the potential employer.
- Refusing to hire, disfavoring, injuring, or retaliating against an applicant for not disclosing his or her salary history.
- Releasing a current or former employee’s salary history to another employer without the employee’s written authorization.

An applicant may voluntarily disclose his or salary after an employer’s initial salary offer in order to negotiate a different salary.

Implementation and Enforcement

The ordinance becomes effective on July 1, 2018. The city's Office of Labor Standards Enforcement (OLSE) is authorized to investigate possible violations and enforce the ordinance. An employee, applicant, organization or other person may report suspected violations to the OLSE. When the OLSE finds a violation has occurred, it may issue a warning and notice to correct or a penalty of \$100, \$200, or \$500 (depending on whether it is a first or subsequent violation). OLSE may issue these penalties beginning on January 1, 2019.

Conclusion

Employers should review their policies and practices, including their interview forms and applications, to ensure they conform to the Parity in Pay Ordinance's requirements. Contact your Vorys lawyer if you have questions about employment law compliance in California or about pre-employment inquiries generally.