Pay Equity Issues & Insights Blog

San Francisco's Salary History Ban "Finally Passes" After Two Rounds of Votes

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Seyfarth Synopsis: *San Francisco is likely to be the next jurisdiction to prohibit employers from asking job applicants about wage history. If signed by the Mayor, as expected, the law will go into effect on July 1, 2018 (with attendant penalties to take effect on January 1, 2019).*

On July 11, 2017, the Board of Supervisors for the City and County of San Francisco (the "City") passed the "Parity in Pay Ordinance," prohibiting employers from inquiring about a job applicant's salary history.

Several erroneous reports by others indicated that the ordinance passed on June 27, 2017. Supervisors in San Francisco, however, get two bites at the apple before an ordinance is passed. After an ordinance is out of committee, it is presented for a first reading and the supervisors cast their initial vote. Here, the Parity in Pay Ordinance "Passed On First Reading" on June 27, 2017. Thereafter, the ordinance was put up for a second vote at the next Board of Supervisors Meeting 14 days later on July 11, 2017, where it was "Finally Passed." Even after these two hurdles, the ordinance still is not law. The ordinance now needs to be presented to the Mayor for enactment.

What is Forbidden?

The ordinance would ban employers, those with contracts with the City, and their agents from considering current or past salary of an applicant in determining whether to hire an applicant or what salary to offer the applicant, and from asking applicants about their current or past salary. The ordinance would also to prohibit disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available.

Changes to the Ordinance

The ordinance has evolved since its initial introduction in April 2017, as discussed here, with the Government Audit and Oversight Committee weighing in on the final version of the ordinance that was presented to the Supervisors for a vote. The following highlights reflect the most significant changes to the revised version of the salary history ban:

- The salary history ban covers an application for any type of job for wages, including temporary or seasonal work and commissioned work.

- The ordinance no longer solely impacts those seeking employment within the geographic boundaries of the City. Now, if the sought after employment will be performed on City property or under contract funded by the City, employers may not ask about the applicant's current or past salary. According to Supervisor Mark Farrell's legislative aide, "City property" includes San Francisco Airport, although the airport is technically outside the city limits.

- The revised ordinance clarifies that the ban will not prohibit a prospective employer and applicant from discussing the applicant's pay expectations or any financial benefit the applicant would have to forego in order to take the new job (e.g., unvested equity or a future bonus through a current employer).

- If an applicant voluntarily, and without prompting by the prospective employer, discloses his/her salary history, the ordinance now permits the employer to consider that information. However, the ordinance clarifies that Salary History by itself cannot be used to justify paying any employee of a different sex, race or ethnicity less than such Applicant or prospective employee for doing substantially similar work under similar working conditions, in accordance with California Labor Code Section 1197.5.

- The ordinance instructs the City's Office of Labor Standards Enforcement (the "OLSE") to create a posting detailing applicants' rights that the employer must display in a conspicuous place.

- Penalties are now even steeper. Starting in January 2019, employers who violate the ordinance face penalties ranging from $100 to $500 per employee per violation. While contractors with the City may only be charged between $50 and $100 per violation, the City also can exercise the option to terminate the contract for violations of the salary ban with all outstanding moneys due being forfeited and retained by the City.

- If a single act by an employer impacts multiple applicants at the same time—e.g., if a written job application for a particular position includes a question about the applicant's salary history—the OLSE has the discretion to treat that violation as a single violation.

Implementation Timing

If signed by the Mayor, as expected, the law will go into effect on July 1, 2018—with attendant penalties to take effect on January 1, 2019—thereby joining New York City, Philadelphia, Delaware, Puerto Rico, Oregon and Massachusetts in banning employers from asking applicants about their salary history. Employers should be mindful of these new restrictions and evaluate how the new legislation may impact their practices.

We are tracking these efforts in the 50-State Desktop Pay Equity Reference.

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