



Legislative Background

BOS File No. 170350

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Name: Police Code – Employer Consideration of Applicant’s Salary History

Legislation Overview:

Ordinance amending the Police Code to ban employers from considering current or past salary of an applicant in determining what salary to offer the applicant, and from asking applicants about their current or past salary; to prohibit employers from disclosing a current or former employee’s salary history without that employee’s authorization; authorizing the Office of Labor Standards Enforcement to implement and enforce these provisions; and authorizing the City to bring a civil action against an employer for violations.

Sponsor(s): Farrell, Tang, Ronen, Cohen, Breed

Date Introduced: 4/4/2017

Date Referred:

Scheduled for BOS Committee:

Existing Law

Existing law permits consideration of current or past salary in setting a job applicant’s salary. In addition, existing law permits asking job applicants questions about their current or past salary and doesn’t require that an employer have a current or former employee’s permission to share that employee’s current or past salary.

Amendments to Current Law

This Ordinance adds Article 33J (the “Parity in Pay Ordinance”) to the Police Code to prohibits consideration of current or past salary in determining what salary to offer an applicant. In addition, this Ordinance prohibits employers from asking applicants about their current or past salary. The Ordinance also prohibits disclosure of a current or former employee’s salary without that employee’s permission. This Ordinance does permit an employer to consider current or past salary, if the applicant discloses their current or past salary following an initial offer, to determine a counter-offer. The Ordinance authorizes the Office of Labor Standards Enforcement to implement and enforce the Article. Finally, the Ordinance authorizes the City to bring a civil action against an employer for violations of the Article.

The purpose of this ordinance is to narrow or close the gender-based wage gap. As a group, women in San Francisco are paid 84 cents for every dollar paid to their male counterparts, and that number falls even lower for African American and Latino or Hispanic women. Since women’s salaries have been consistently lower than those of men within the same field, past salaries inherently reflect and

perpetuate a wage gap. Prohibiting employers from using an applicant's salary history could alleviate some of the bias against those applicants who are disadvantaged by lower past or current salaries.

This ordinance would apply to any employer who does business in San Francisco, with the following exceptions: (1) public employees whose salaries are publically available, (2) employees covered by a collective bargaining agreement, and (3) those applying for positions within a company they already work for.

This Ordinance will be enforced through the OLSE. Employees, applicants, organizations, or other persons may report any suspected violations of the Article to the OLSE, which will keep the identifying information of those reporting confidential (unless disclosure of information is authorized). The Ordinance becomes effective in July 2018 with minimum wage increase. The OLSE will produce a best practices outreach document.

If the OLSE determines that a violation has occurred, it may issue a determination (providing a warning and notice to correct for any first time violation, or for any violation occurring during the first 12 months following the operative date of the Article). Following the initial 12-month period, the OLSE may impose an administrative penalty that the Employer must pay to the City for each employee or applicant to whom the violation occurred. If the OLSE feels that prompt compliance is not forthcoming, it may refer the action to the City Attorney, who may initiate a civil action.

The Director of the OLSE will establish rules governing the administrative process for determining and appealing violations, including procedures for: providing the employer with (1) notice of the violation, (2) a right to respond to the notice, (3) notice of the OLSE's determination of a violation, and (4) the opportunity to appeal the OLSE's decision to a hearing officer.

In the event of an appeal, the hearing will be conducted in a manner that satisfies the requirements of due process. The hearing officer's decision of the appeal will constitute the City's final decision; this decision can be filed for review in the San Francisco Superior Court. The City may bring a civil action in a court of competent jurisdiction against the employer violating this article, and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.

Definitions

"Applicant" shall mean 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; the term shall not include a person applying for a job with their current Employer.

"Employer" shall mean any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, which is or should be registered to do business in the City. "Employer" includes job placement and referral agencies and other employment agencies; the term does not include any unit of local, state, or federal government, except that it does include the City and County of San Francisco.

"Inquire" shall 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.

“Salary” shall mean an Applicant’s financial compensation in exchange for labor, including but not limited to wages, commissions, and any benefits.

“Salary History” shall mean an Applicant’s current and past Salary in the Applicant’s current position, or in a prior position with the current Employer or a prior Employer.

Considerations to Keep in Mind:

1. This law applies any employer with one or more employees.
2. There is no minimum hours worked per day or week for a qualified employee.
3. OLSE is able to bring Civil Enforcement.
4. According to the California Employer Association business under 50 employee generally do not have in house HR assistance or legal counsel.
5. OLSE has the best list of employers with 20 or more employees worldwide. The number of employers that range from 1 to 19 are in the tens of thousands.
6. How are businesses under 20 employees going to be informed of this new regulation? The legal implications of this legislation is much greater than the Lactation ordinance. The nuances of the law are not so apparent and can really trip up a small business that does not have access legal counsel.
7. For employers with under 20 employees, amend the legislation to require OLSE to issues warning for first time violations. This is to be extended past the first 12 month warning period.

Questions:

Does this regulation apply only to the hiring of position(s) in the boundaries of SF?

For companies in SF, that are hiring employees for a location outside of SF, does this law apply to positions outside of SF?

Can the conversation of salary history between the employer and the applicant for a position outside SF take place in SF?

Can an employer in SF refuse to hire, or otherwise disfavor, injure, or retaliate against an applicant for not disclosing his or her salary history to the employer for a position outside of SF?

Can employers work around this law by utilizing recruiters who are located outside San Francisco?

How is the law applied when the recruiting office of the company is located outside of San Francisco?

Can an employer ask the applicant/employee the salary amount they are looking for before offering the job?

How does this law work impact day labors? The guys who stand out in front of the paint stores?

Is it only against the law for a San Francisco employer to provide salary history to other SF employers or is it also against the law to for a San Francisco employer to provide salary history to an employer outside of San Francisco?

Does this law prevent an employer from showing the salary or salary range to a perspective employee or employee going for a promotion before the job offer? If not then, what is to prevent an employer from showing differing salary amount to different applicants during the interview process to gauge the response of the interviewee as a work around the law?