To: Honorable Mayor and Members of the City Council

From: Commission on the Status of Women and Commission on Labor

Submitted by: Emmaline Campbell, Chairperson, Commission on the Status of Women
Libby Sayre, Chairperson, Commission on Labor

Subject: Referral Response: Prior Salary Referral

RECOMMENDATION
Void the referral to the Commission on the Status of Women and the Commission on Labor for a prior salary ordinance due to identical statewide legislation signed by Governor Brown on October 12, 2017.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
At their regular meeting on November 15, 2017 the Commission on the Status of Women voted to recommend the City Council void the referral for a prior salary ordinance to COSOW and Commission on Labor due to identical legislation approved by the state.

M/S/C (Campbell/Vasquez)
Ayes: Krause, Howard, Shanoski, Rudnick, Adhikari, Campbell, Vasquez.

Additionally, at their regular meeting of January 17, 2018 the Commission on Labor took the following action:

M/S/C (Fillingim/Castelli) to support the COSOW recommendation the City Council void the referral to the COSOW and Commission on Labor.

Passed Unanimously
BACKGROUND
On June 13, 2017, the City Council voted to refer the drafting of a prior salary ban ordinance to the Commission on the Status of Women and the Commission on Labor. Under the Commission on the Status of Women’s Equal Pay subcommittee, commissioners from both commissions worked to research and plan a draft ordinance.

On October 12, 2017, Governor Brown signed into law AB 168, a bill which prohibits employers from asking an applicant about their prior salary. This law covers all of the aspects that the Commissions would have included in an ordinance for Berkeley.

Based on this development, the Commissions have discontinued their work on this referral and ask the Council to void the referral.

ENVIRONMENTAL SUSTAINABILITY
No environmental impact.

RATIONALE FOR RECOMMENDATION
Ordinance preempted by state legislation.

ALTERNATIVE ACTIONS CONSIDERED
No other alternative actions were considered based on City Council’s referral.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission’s Report.

CONTACT PERSON
Shallon Allen, Secretary to the Commission on the Status of Women, 510-981-7071

Attachments:
  1: Referral from City Council – June 13, 2017
  2: Text of AB 168
REVISED
AGENDA MATERIAL

Meeting Date: June 13, 2017

Item Number: 46

Item Description: Referral to the Commission on the Status of Women and the Labor Commission: Banning Prior Salary Considerations on Job Applications in the City of Berkeley

Submitted by: Councilmember Sophie Hahn

This amendment reflects changes discussed with co-sponsoring councilmembers
CONSENT CALENDAR
June 13, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Sophie Hahn, Ben Bartlett, and Cheryl Davila

Subject: Referral to the Commission on the Status of Women and the Labor Commission: Banning Prior Salary Considerations on Job Applications in the City of Berkeley

RECOMMENDATION

1. Refer to the Commission on the Status of Women and the Labor Commission the creation of an ordinance banning employers in the City of Berkeley, including the City of Berkeley, 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.

2. Conduct public hearings to collect community input and invite relevant stakeholders to attend, including representatives from businesses, retail and not-for-profit employers, business and civic associations, and Berkeley employees.

FINANCIAL IMPLICATIONS

Staff time to draft the proposed ordinance.

BACKGROUND

According to US Census Bureau data, women make 79-80 cents for every dollar earned by men nationally, and Berkeley women earn only 71 cents for every dollar earned by men. The wage gap is worse for women of color, with African American women making 63 cents and Hispanic women making 54 cents to every dollar paid to a white man. There have been a number of legislative initiatives recently put forth to promote gender pay equity, both locally and nationally. Specifically, San Francisco Supervisor Mark Farrell introduced an ordinance in April that, if passed, would ban employers in the City of San Francisco—including the City itself—from considering or asking applicants about their current or past salary when making salary determinations. New York City passed a law barring employers from asking about salary history, and the State of Massachusetts also passed similar legislation, which will go into effect in 2018.

1 https://www.google.com/url?q=http://www.ci.berkeley.ca.us/Clerk/City_Council/2017/04_Apr/Documents/2017-04-04_Item_26a_Referral_Response_Gender_Pay_Equity.aspx&sa=U&ved=0ahUKEwjQ7JyU06nUAhUJ5MKHSFwCPsQFggFMnAA&client=internal-uds-cse&usg=AFQjCNE2IMGJlbjE1bY04UD5RzzeKdyHqQ
In 2012, the City of Berkeley formally adopted the Operative Principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which eliminates the discrimination against women in employment and other economic opportunities (BMC 12.20.050). This includes “ensuring that women enjoy […] equal remuneration, including benefits, and to equal pay with respect to work of equal value”. Eliminating salary history from application materials and salary determinations in the City of Berkeley is in line with this principle, and would reaffirm Berkeley’s commitment to equal pay for women.

Relying on job applicants’ current or past salaries to set employee pay rates is a problematic practice which can perpetuate a history of pay discrimination based on gender, race, or other factors not related to job qualifications or experience. Women applicants and people of color often end up at a significant disadvantage, because they are more likely to have earned less at previous jobs, based on their gender rather than qualifications or experience. In the recent case of Rizo v. Yovino, Fresno County Superintendent of Schools, the court stated that “a pay structure based exclusively on prior wages is so inherently fraught with risk…that it will perpetuate a discriminatory wage disparity that it cannot stand”. However, even considering prior salary as one of many factors when setting an employee’s salary can still carry-over past discrimination.

Removing prior salary disclosures from the job application and salary determination process is intended to make some progress toward closing the gender pay gap, achieving pay equity and reducing gender-based pay discrimination and discriminatory wage disparities. We ask the Commission on the Status of Women and the Labor Commission to use proposed and passed ordinances for reference in developing an ordinance that would eliminate past salary considerations from salary determinations in the City of Berkeley. New York City’s Int. No. 1253 and Supervisor Farrell’s proposed ordinance banning past salary questions in San Francisco are attached as references. Numerous other jurisdictions, including the State of Massachusetts, Philadelphia, and others have addressed this issue and can provide examples of ordinances to consider.

More information:


https://malegislature.gov/Bills/189/Senate/S2119

ENVIRONMENTAL SUSTAINABILITY
This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON
ATTACHMENTS

1. New York City Int. No. 1253
2. Proposed San Francisco Ordinance Banning Past Salary Questions
Assembly Bill No. 168

CHAPTER 688

An act to add Section 432.3 to the Labor Code, relating to employers.

[Approved by Governor October 12, 2017. Filed with Secretary of State October 12, 2017.]

legislative counsel's digest


Existing law imposes various restrictions on employers with respect to applicants for employment. A violation of those restrictions is a misdemeanor.

This bill would prohibit an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. The bill also would prohibit an employer from seeking salary history information about an applicant for employment and would require an employer, upon reasonable request, to provide the pay scale for a position to an applicant for employment. The bill would not prohibit an employer from voluntarily and without prompting disclosing salary history information and would not prohibit an employer from considering or relying on that voluntarily disclosed salary history information in determining salary, as specified. The bill would apply to all employers, including state and local government employers and the Legislature and would not apply to salary history information disclosable to the public pursuant to federal or state law. The bill would specify that a violation of its provisions would not be subject to the misdemeanor provision.

The people of the State of California do enact as follows:

SECTION 1. Section 432.3 is added to the Labor Code, to read:

432.3. (a) An employer shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.

(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.

(c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.

(d) Section 433 does not apply to this section.

(e) This section shall not apply to salary history information disclosable to the public pursuant to federal or state law, including the California Public
Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United States Code).

(f) This section applies to all employers, including state and local government employers and the Legislature.

(g) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.

(h) If an applicant voluntarily and without prompting discloses salary history information to a prospective employer, nothing in this section shall prohibit that employer from considering or relying on that voluntarily disclosed salary history information in determining the salary for that applicant.

(i) Consistent with Section 1197.5, nothing in this section shall be construed to allow prior salary, by itself, to justify any disparity in compensation.