

## SOPHIE HAHN

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## 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<sup>1</sup>. 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.<sup>2</sup> 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.

<sup>1</sup>

[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=0ahUKEwjQ7JyU06nUAhUL5mMKHSFWCPsQFggFMAA&client=internal-uds-cse&usq=AFQjCNE2iMGJLbjE1bYO4UD5RzzekDyHgQ](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=0ahUKEwjQ7JyU06nUAhUL5mMKHSFWCPsQFggFMAA&client=internal-uds-cse&usq=AFQjCNE2iMGJLbjE1bYO4UD5RzzekDyHgQ)  
<sup>2</sup> "America's Women and the Wage Gap." *National Partnership for Women and Families* (2017): Retrieved May 2017

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 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:

<http://www.sfchronicle.com/bayarea/article/S-F-proposal-seeks-women-s-pay-equity-11047696.php>

<http://www.nbcnews.com/news/asian-america/new-york-city-passes-law-banning-prior-salary-questions-hiring-n744021>

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

## ENVIRONMENTAL SUSTAINABILITY

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

## CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS

1. [New York City Int. No. 1253](#)

~~4.2.~~ Proposed San Francisco Ordinance Banning Past Salary Questions

~~2.3.~~ Berkeley Municipal Code Chapter 13.20

Int. No. 1253-A

By the Public Advocate (Ms. James), Council Members Crowley, Cumbo, Rosenthal, Salamanca, Lander, Ferreras-Copeland, Williams, Richards, Palma, Dromm, Rose, Reynoso, Gibson, Espinal, Cornegy, Kallos, Koslowitz, Rodriguez, Levine, Menchaca, Constantinides, Treyger, Torres, Miller, Mendez, Maisel, Chin, Barron, Mealy, Cohen, King, Levin, Eugene, Wills and Van Bramer

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting employers from inquiring about or relying on a prospective employee's salary history

Be it enacted by the Council as follows:

Section 1. Section 8-107 of the administrative code of the city of New York is amended by adding a new subdivision 25 to read as follows:

25. Employment; inquiries regarding salary history. (a) For purposes of this subdivision, "to inquire" means to communicate any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history, but does not include informing the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range. For purposes of this subdivision, "salary history" includes the applicant's current or prior wage, benefits or other compensation. "Salary history" does not include any objective measure of the applicant's productivity such as revenue, sales, or other production reports.

(b) Except as otherwise provided in this subdivision, it is an unlawful discriminatory practice for an employer, employment agency, or employee or agent thereof:

1. To inquire about the salary history of an applicant for employment; or

2. To rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract.

(c) Notwithstanding paragraph (b) of this subdivision, an employer, employment agency, or employee or agent thereof may, without inquiring about salary history, engage in discussion with the applicant about their expectations with respect to salary, benefits and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.

(d) Notwithstanding subparagraph 2 of paragraph (b) of this subdivision, where an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, such employer, employment agency, or employee or agent thereof may consider salary history in determining salary, benefits and other compensation for such applicant, and may verify such applicant's salary history.

(e) This subdivision shall not apply to:

(1) Any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation;

(2) Applicants for internal transfer or promotion with their current employer;

(3) Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant's salary

history, such disclosure shall not be relied upon for purposes of determining the salary, benefits or other compensation of such applicant during the hiring process, including the negotiation of a contract; or

(4) Public employee positions for which salary, benefits or other compensation are determined pursuant to procedures established by collective bargaining.

§ 2. This local law takes effect 180 days after it becomes law, provided that the commission on human rights may take such actions as are necessary to implement this local law, including the promulgation of rules, before such date.

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