

# San Francisco bans asking applicants about salary history

San Francisco has become the latest jurisdiction to enact a law banning employers from asking job applicants about their salary histories.

The San Francisco "Parity in Pay" Ordinance will go into effect July 1, 2018. Penalties for noncompliance will go into effect a year later.

Massachusetts was the first jurisdiction to enact such a law in the summer of 2016. Delaware, Puerto Rico, Oregon, New York City and Philadelphia passed similar ordinances earlier this year. More jurisdictions are expected to follow, possibly including California.

The laws are intended to help close the gender pay gap.

Under the San Francisco ban, an employer "shall not consider or rely on an applicant's Salary History as a factor in determining whether to offer Employment to an Applicant or what Salary to offer an Applicant." The ordinance provides that "n Employer shall not Inquire about an Applicant's Salary History."

The ordinance defines "inquire" as "any direct or indirect statement, question, prompting, or other communication ... to gather information from or about an Applicant ... including but not limited to application forms and interviews." The statute provides a specific carve-out from this prohibition "here an Applicant voluntarily and without prompting discloses Salary History ... or provides written authorization."

The ordinance also prohibits San Francisco employers from releasing the salary history of any current or former employee to that person's prospective San Francisco employer without written authorization from the employee (unless it is otherwise required by law, part of a publicly available record, or subject to a collective bargaining agreement). This means San Francisco employers must be cautious when responding to salary history inquiries in order to comply with this section of the ordinance.

The San Francisco Office of Labor Standards Enforcement will publish a new poster for employers to use prior to the ordinance's July 1, 2018, effective date. During the ordinance's first year, the OLSE may only issue warnings and notices to correct.

Beginning July 1, 2019, the OLSE may impose an administrative penalty of \$100 per violation, followed by \$200 for the next violation and \$500 for each subsequent violation.

San Francisco employers may want to review their hiring documentation and practices to address salary history inquiries. Train hiring managers to avoid salary history inquiries. Make sure they know how to respond to requests for verification of employment that seek salary information or confirmation.

Finally, employers may want to monitor pay equity legal developments to ensure that their policies and practices remain compliant.