

EMPLOYMENT LAW UPDATE: NEW SAN FRANCISCO ORDINANCE BANS INQUIRIES ABOUT PRIOR PAY IN HIRING PROCESS

On July 19, 2017, San Francisco Mayor Ed Lee signed the Parity in Pay Ordinance, which prohibits San Francisco employers from asking job applicants for their salary history or considering that history when making decisions regarding hiring and compensation. The purpose of the Ordinance, which goes into effect July 1, 2018, is to address “historical patterns of gender bias and discrimination,” which cause women to “continue earning less than their male counterparts and less than they would have earned, but for their gender.” California law already prohibits employers from relying solely on salary history when making compensation decisions. However, the Ordinance goes further and expressly prohibits San Francisco employers from doing any of the following:

- Inquiring directly or indirectly about an applicant’s salary history (which includes wages, commissions, and/or other financial compensation in exchange for labor in current or prior positions);
- Relying on an applicant’s salary history in determining whether to offer employment or how to compensate an employee;
- Refusing to hire or retaliating against an applicant for not disclosing her salary history; and
- Releasing a current or former employee’s salary history to an employer or prospective employer without the employee’s written authorization.

The only exception where an employer can consider an applicant’s salary history is when the applicant voluntarily discloses the history after an initial offer of employment is made. At that time, the employer can use the salary history in negotiating compensation.

The Ordinance applies to all private employers in San Francisco regardless of size if the applicant’s work will be performed in San Francisco and the application will be considered in whole or in part in the city. The Ordinance does not apply to independent contractors or current employees who submit applications for new positions with their employer. From July 1, 2018 through June 30, 2019, an employer who violates the Ordinance will be given a warning and a notice to correct. Starting July 1, 2019, employers will be given a warning and notice to correct for the first violation but then be issued a fine of up to \$100 per applicant for the second violation, a fine of up to \$200 per applicant for the third, and a fine of up to \$500 per applicant for subsequent violations.

Tip:

Based on the wording of the Ordinance, it is currently unclear whether the Ordinance applies to telecommuters working from San Francisco. Until we have clarity on that issue, it would be a best practice for employers to comply with the Ordinance for any applicant for a position who may telecommute or otherwise occasionally work remotely from San Francisco.

Please **contact Hoge Fenton's Employment Law Team** to discuss bringing your hiring processes into compliance with this new San Francisco Ordinance.

The Fine Print.

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