

# Pay Equity Issues & Insights Blog



## Pay Equity: New San Francisco Legislation Would Ban Employers From Seeking Salary History

By Chantelle Egan and Pamela Vartabedian

**Seyfarth Synopsis:** San Francisco may be the next jurisdiction to prohibit employers from asking job applicants about wage history.

San Francisco appears to be jumping on the bandwagon of its East Coast brethren by banning employers from considering the wage history of job applicants. On the heels of the passage of a similar salary ban in New York City and a new California state law prohibiting employers from relying on prior salary alone to justify differences in pay, San Francisco is considering removing prior salary information from the job application process entirely.

The wage history [ban](#) was introduced before the San Francisco Board of Supervisors on April 5th. A vote, and likely approval, is expected in May. We will update when we learn the final outcome of the ordinance.

The proposed ordinance, aimed at tackling pay inequity, would prohibit employers from asking an applicant about his or her current or past salary. Even if an applicant voluntarily discloses his or her salary history, the ordinance prohibits the prospective employer from considering the information when determining its opening salary offer to the applicant. Perhaps in a nod to the realities of salary negotiations, however, the ordinance permits a potential employer to consider an applicant's salary history if the applicant discloses this information after an initial offer, to determine a counter-offer. It also prohibits an employer from disclosing its current or former employees' salaries to a prospective employer without written authorization.

The ordinance has teeth too. The ordinance encourages reporting of suspected violations by any person or organization, not just the affected applicant. San Francisco's Office of Labor Standards Enforcement (the "OLSE") is not limited to issuing notices to correct violations and penalties (upwards of \$500 for each violation). Rather, the OLSE has complete discretion to refer an employer to San Francisco's City Attorney for civil prosecution if the OLSE deems the employer is failing to promptly comply with the law.

Supervisor Mark Farrell, one of the five supervisors to introduce the ordinance, has explained that the purpose of the wage history ban is to narrow or close the gender-based wage gap. Proponents claim that women often start out behind their male counterparts in salary and thus are at a disadvantage when salary negotiations focus on prior earnings—if a woman starts behind, she will never catch up if her new salary is linked to her salary history.

It's an idea that's starting to spread nationwide. If the ordinance passes, San Francisco will join [New York City](#), [Philadelphia](#), Puerto Rico, and [Massachusetts](#) in banning employers from asking prospective hires for their salary history. Employers should be mindful of these new restrictions and evaluate how the new legislation may impact their practices.

We are tracking these efforts in the [50-State Desktop Pay Equity Reference](#).

Join Seyfarth's Pay Equity Group for a [Webinar](#) on May 9th to discuss the wave of wage history bans and to discuss how you can prepare.

If you have any questions, please contact your Seyfarth attorney, [Chantelle Egan](mailto:cegan@seyfarth.com) at [cegan@seyfarth.com](mailto:cegan@seyfarth.com), [Pamela Vartabedian](mailto:pvartabedian@seyfarth.com) at [pvartabedian@seyfarth.com](mailto:pvartabedian@seyfarth.com), [Christine Hendrickson](mailto:chendrickson@seyfarth.com) at [chendrickson@seyfarth.com](mailto:chendrickson@seyfarth.com) or [Kristina Launey](mailto:klauney@seyfarth.com) at [klauney@seyfarth.com](mailto:klauney@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)



Attorney Advertising. Pay Equity Group is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP Pay Equity Group | April 19, 2017**

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.