VERMONT

VERMONT COMMISSION ON WOMEN

INFO SHEET

Requesting Salary History from a Job Applicant

In 2016, Massachusetts passed a historic law to accelerate progress towards pay equality.[1] Among other provisions, it prohibits employers from asking prospective hires about their salary histories prior to making a job offer.[2] In 2016, New York City's mayor signed a similar executive order preventing city agencies from asking about an applicant's previous compensation,[3] and in April 2017, the New York City Council passed legislation barring employers in the city from asking about compensation history.[4] In January 2017, the mayor of Philadelphia signed a law prohibiting employers from asking for salary history information at any point during the hiring process.[5] In January 2017, the mayors of Pittsburgh[6] and New Orleans[7] prohibited their city governments from requesting job applicants' prior salary history. In April 2017, the Illinois legislature passed a similar bill with the same provisions.[8] In 2016, two bills were introduced in the U.S. House of Representatives that would also prohibit employers from asking for salary history from a job applicant.[9] [10] Similar bills have also been introduced in California,[11] Connecticut,[12] Delaware,[13] Georgia,[14] Iowa,[15] Idaho,[16] Maryland,[17] Maine,[18] Mississippi,[19] Montana,[20] North Carolina,[21] New Jersey,[22] New York,[23] Oregon,[24] Pennsylvania,[25] Rhode Island,[26] Texas,[27] Virginia,[28] and Washington.[29] In Vermont, H.294 was introduced in February 2017 prohibiting employers from requesting or requiring an applicant's salary history until after they've made an offer for employment, including an initial salary offer.[30]

LEGAL CONSIDERATIONS

Paying employees differently based on gender is illegal in the United States. However, in April 2017, the 9th U.S. Circuit Court of Appeals ruled that **paying employees differently based exclusively on the employee's prior salaries is legal**.[31] This decision has triggered interest in laws prohibiting employers from asking about a job applicants current or past earnings.

LINK TO THE WAGE GAP

In 2017, women continue to experience a wage gap in nearly every occupation. In Vermont, women experience a wage gap of 16 cents on the dollar as compared to men.[32] Nationally, the wage gap is 20 cents on the dollar.[33] The gap is even wider for most women of color compared to white men. Nationally, we see:

- a 46 cent gap for Hispanic and Latina women;
- a 42 cent gap for American Indian and Alaska Native women;
- a 40 cent gap for Native Hawaiians and Pacific Islander women;
- a 37 cent gap for African American women; and
- a 15 cent gap for Asian women.[34]

The wage gap is also larger for marginalized communities. Examples include: LGBTQ individuals (transgender women's wages drop by a third after they transition);[35] and people with disabilities earn only 75% of what people without disabilities earn;[36] At the current rate of progress, the wage gap will not end until 2152 in the U.S.[37]

The wage gap begins early in women's work lives. According to a recent American Association of University Women study, one year after college graduation, a gender pay gap exists between women and men who majored in the same field.[38] For majors in engineering fields, that wage gap is 12% and for those in computer and information sciences, nationally, that wage gap is 23% one year after graduation.[39]

Once established, the wage gap grows during a career. **Raises, bonuses, and salaries at new jobs are frequently based on current earnings and salary history; for women and minorities already being paid less, this perpetuates the wage gap.**

For example, when starting a new job, a 5 percent pay increase might seem like a relatively large boost. But if a woman taking that position had been underpaid by 15 percent in her previous job, she still would be underpaid by 10 percent in her new position. Preventing an employer from learning a prospective employee's prior earnings can halt perpetuation of the wage gap.

In 2015, the U. S. Office of Personnel Management Acting Director Beth Cobert issued a memo cautioning agencies that, "Reliance on existing salary to set pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from his or her career or for whom an existing rate of pay is not reflective of the candidate's current qualifications or existing labor market conditions."[40]

Not relying on salary history requires employers to make clear, market-based decisions about pay. If employers provide a salary figure to applicants based on what they are worth to the company, rather than basing pay on what they previously earned, workers are more likely to be offered and to negotiate a fair and equitable wage.

THE ANCHORING EFFECT

Harvard Law School's program on negotiation describes the anchoring effect as a "**cognitive bias that describes the common human tendency to rely too heavily on the first piece of information offered (the "anchor") when making decisions**. During decision making, anchoring occurs when individuals use an initial piece of information to make subsequent judgments. Once an anchor is set, other judgments are made by adjusting away from that anchor, and there is a bias toward interpreting other information around the anchor. For example, an initial price for a used car sets the standard for negotiation, so that prices lower than the initial price seem more reasonable, even if they are higher than what the car is really worth."[41]

Research published in the Journal of Applied Social Psychology on the impact of "anchoring" effects on initial salary offers demonstrates that a higher anchor number does result in a higher first offer in salary negotiations.[42] Participants who were given an anchor number of $100,000 thought a candidate should have a higher salary than participants in the control group who were only told the candidates prior salary was $29,000.[43] **A low anchor set by a prior low salary can result in a lower initial offer from prospective employers.** Other research demonstrates that on average, for every dollar increase in the anchor, the final agreements rise by 37 cents.[44]

This anchoring effect was first identified in 1974,[45] and since then, dozens of studies have examined this now widely accepted phenomenon. Research conducted at MIT in 2006 further demonstrated the anchoring effect. Students first had to write the last two digits of their social security number as if it were the price of an item, and then make an actual bid on that item. People with high social security numbers paid up to 346 percent more than those with low numbers.[46]

Recognizing this anchoring effect, salary negation advice often includes recommendations to avoid answering questions about current salary, shifting the focus to the higher end of what the applicant would like to be paid at the job they are applying for.[47] [48] [49] [50]

THE IMPACT ON THE ECONOMY

If women earned equal wages as comparable male workers, the poverty rate in Vermont would be reduced by 57% and the increase in wages for working women and their families would equal one billion dollars, equivalent to 3.3% of the state's GDP.[51] Not only would this help Vermont women and their families make ends meet, but it would grow our economy and increase our state's income tax base.

NOTES

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