

<b>Subject:</b> Action - Bill 4-19, Personnel – Merit System - Requesting Salary History - Prohibited	
<b>Purpose:</b> Final action – vote expected	
<b>Analyst:</b> Robert H. Drummer, Senior Legislative Attorney	<b>Committee:</b> GO
<b>Keywords:</b> #MoCoEqualPay Other search terms: equal pay, salary history, wage gap and pay disparities	

**EXPECTED ATTENDEES**

Karen Plucinski, Acting Director of the Office of Human Resources

**COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS**

Government Operations and Fiscal Policy Committee recommends enacting Bill as introduced.

**DESCRIPTION/ISSUE**

This Bill would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant’s starting salary.

**SUMMARY OF KEY DISCUSSION POINTS**

- Relying on past salary history to determine the starting salary for a new County employee could have an unintentional adverse impact on female and minority applicants.
- OHR is ready to implement this Bill for County merit employees by revising the Personnel Regulations.

**This report contains:**

Staff Report to the Council

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**MEMORANDUM**

May 3, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 4-19, Personnel – Merit System - Requesting Salary History - Prohibited

PURPOSE: Action – Roll call vote required

Expected attendees:

Karen Plucinski, Acting Director of the Office of Human Resources

<p><b>Government Operations and Fiscal Policy Committee recommendation (3-0):</b> approve Bill as introduced.</p>
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Bill 4-19, Personnel – Merit System - Requesting Salary History - Prohibited, sponsored by Lead Sponsor Councilmember Glass and Co-Sponsors Council President Navarro, Council Vice-President Katz, Councilmembers Friedson, Jawando, Rice, Hucker, Riemer and Albornoz, was introduced on March 5, 2019. A public hearing was held on March 26 with 6 speakers and a Government Operations and Fiscal Policy Committee worksession was held on April 4.<sup>1</sup>

Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

**Background**

Title VII of the Civil Rights Act of 1964 prohibited employment discrimination based on race, color, religion, sex, or national origin. Although this landmark legislation took effect on July 2, 1964 for the private sector, State and local government employees were included by amendment in 1972.<sup>2</sup>

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<sup>1</sup>#MoCoEqualPay

Other search terms: equal pay, salary history, wage gap and pay disparities

<sup>2</sup> Congress did not extend these protections to their own staffs until 1991.

The landmark Civil Rights Act of 1964 was a direct result of a long campaign against institutional race discrimination against African-Americans. The addition of “sex” to the Act was a late amendment introduced by an opponent of the Bill, Representative Howard Smith of Virginia.<sup>3</sup>

As pointed out in Councilmember Glass’s memorandum at ©5-6, the existence of Federal, State, and County laws prohibiting discrimination based on gender for at least 55 years have not resulted in wage equity between male and female workers in the County, State, or Nation.

Each County merit position has a grade with a minimum and a maximum salary. An employee is eligible for a pre-determined percentage increase each year called a service increment. With few exceptions, a merit system employee must work herself up the salary range, absent a promotion to a higher graded position, through these incremental steps. However, all new hires do not start at the minimum salary for the grade. County Personnel Regulation, COMCOR §33.07.01.10-5 states in relevant part:

- (b) *Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule. A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.*
  - (1) *Departments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band.*
  - (2) *A department director may submit a request to the OHR Director for approval to hire a candidate at a salary that is above the midpoint of the salary range or pay band. The director should include in the memorandum:*
    - (A) *the reason the candidate should be hired above the midpoint of the salary range;*
    - (B) *a copy of the candidate’s resume;*
    - (C) *proof of the candidate’s prior or current salary (i.e. most recent pay slip, W-2, 1099 or other wage documentation); and*
    - (D) *the names of other incumbents in the same class in the department with their salaries.*

Therefore, an employee’s starting salary can have a long term effect on that employee’s salary in the same grade. Since wages for women generally lag behind wages for men, and wages for women of color lag even further behind wages of white men, basing a starting salary on a person’s current salary is likely to result in an adverse impact on the future wages of women employees. Bill 4-19 is an attempt to eliminate this possible reason for wage inequity between the genders.

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<sup>3</sup> As described in a 2014 article by Louis Menand in *The New Yorker*, some historians believe Mr. Smith introduced this amendment to kill the Bill, but there is also evidence that Mr. Smith was a long-time supporter of women’s rights and a friend of women’s rights activist Alice Paul. See: <https://www.newyorker.com/magazine/2014/07/21/sex-amendment>

OMB estimated that the Bill would have no fiscal impact and Finance estimated no economic impact. See the FEIS at ©7-10. The County Attorney's Office found no legal issues with the Bill. See, ©11.

### **Public Hearing**

All 6 witnesses at the public hearing supported the Bill. Karen Plucinski, Acting Director of the Office of Human Resources, speaking on behalf of the Executive, supported the Bill. See, ©12-13. Ms. Plucinski agreed with the premise of the Bill that relying on salary history has disadvantaged women, especially Black and Latino women. Ms. Plucinski testified that the Personnel Regulation, COMCOR §33.07.01.10-5, would need to be revised to eliminate the reliance on salary history to justify a starting salary above the mid-point of a grade. Ms. Plucinski testified that managers would instead need to stress experience, education, and internal consistency with incumbents to justify a starting salary above the mid-point for the grade. Jeffrey Slavin, Mayor of the Town of Somerset (©14), Lisette Engel, Community Action Board (©15-16), Molly Hauck (©17-18), and Andrea Johnson, representing the National Women's Law Center (©19-25), also supported the Bill. Ms. Johnson stressed that relying on salary history perpetuates gender and racial disparities without fairly evaluating qualifications. Ms. Johnson also cited similar laws in 3 other Counties, 11 cities, and 7 States.

### **GO Committee Worksession**

Councilmember Glass, Acting OHR Director Karen Plucinski, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the purpose of the Bill. Ms. Plucinski stated that OHR supports the Bill and is ready to implement it. The Committee recommended (3-0) approval of the Bill as introduced.

### **Discussion**

The Bill would prohibit the County from considering or relying on an applicant's salary history as a factor in determining whether to offer employment to an applicant or determining pay. It would apply only to applicants to County merit positions but exclude a current County merit system employee seeking a transfer or a promotion. Ms. Johnson of the National Women's Law Center questioned the exception for a current County merit system employee at the public hearing. This exclusion was included in the Bill because the starting salary for a current County merit system employee who is transferred or promoted is established in the Personnel regulations without negotiation. Ms. Johnson also suggested that the prohibition on considering salary history should include history of benefits to ensure that new hires do not receive less benefits. This clarification is unnecessary because County merit system employee benefits, such as leave, health insurance, and retirement pensions, are established in law or in collective bargaining agreements and not negotiated individually.

The Bill would prohibit the County from seeking an applicant's salary history or refusing to hire or retaliate against an applicant for refusing to disclose his or her salary history. The Bill would not prohibit:

- (1) an applicant from voluntarily, and without prompting, disclosing the applicant's salary history, provided the County does not rely on that voluntary disclosure to determine an initial offer of starting salary for the applicant;
- (2) the County from discussing an applicant's expectations with respect to salary without inquiring about salary history;
- (3) the County from verifying non-salary information disclosed by an applicant or received from a background check, provided that any salary history disclosed by a background check is not used to refuse to hire or determine an applicant's salary; and
- (4) the County from relying on salary history voluntarily provided by the applicant to pay the applicant a higher wage than initially offered, if reliance on salary history does not result in unequal pay for equal work based on gender.

The Bill would also require the Executive to study the effect of similar laws in other jurisdictions on gender pay disparity and report back to the Council on or before July 1, 2020. Finally, the Bill would require the Executive to report on gender pay equity among County employees every 2 years beginning on July 1, 2022.

Considering the general wage inequity between the genders throughout the Nation, relying on salary history to determine a new employee's starting salary can become a facially neutral personnel policy that has an adverse impact on women. **Committee recommendation (3-0):** enact the Bill as introduced.

This packet contains:	<u>Circle #</u>
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Bill No. 4-19  
Concerning: Personnel – Merit System -  
Requesting Salary History - Prohibited  
Revised: April 1, 2019 Draft No. 9  
Introduced: March 5, 2019  
Expires: September 5, 2020  
Enacted: [date]  
Executive: [date signed]  
Effective: [date takes effect]  
Sunset Date: None  
Ch. [#], Laws of Mont. Co. [year]

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Glass  
Co-Sponsors: Council President Navarro, Council Vice-President Katz, Councilmembers Friedson,  
Jawando, Rice, Hucker, Riemer and Albornoz

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**AN ACT** to:

- (1) prohibit the County from requesting salary history from an applicant for County employment;
- (2) prohibit the County from relying on salary history to determine an applicant's starting salary; and
- (3) amending the law governing the County merit system.

By adding

Montgomery County Code  
Chapter 33. Personnel and Human Resources  
Article II. Merit System  
Section 33-25

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 33-25 is added as follows:**

2   **33-25. [Reserved] County Pay Equity Act.**

3           (a)   Definitions. As used in this section:

4                           Applicant means a person seeking a merit system position with the  
 5                           County. Applicant does not include a County merit system  
 6                           employee seeking a new position with the County.

7                           Salary means an applicant's financial compensation in exchange  
 8                           for labor, including wages, commissions, and bonuses.

9                           Salary history means an applicant's current and past salary in the  
 10                           applicant's current or prior position with another employer.

11           (b)   Requesting salary history prohibited.

12                           (1)   The County must not consider or rely on an applicant's salary  
 13                           history as a factor in determining whether to offer employment to  
 14                           an applicant or determining pay.

15                           (2)   The County must not seek an applicant's salary history.

16                           (3)   The County must not refuse to hire or retaliate against an applicant  
 17                           for refusing to disclose the applicant's salary history.

18                           (4)   This Section does not prohibit:

19                                   (A)   an applicant from voluntarily, and without prompting,  
 20                                   disclosing the applicant's salary history, provided the  
 21                                   County does not rely on that voluntary disclosure to  
 22                                   determine an initial offer of starting salary for the applicant;

23                                   (B)   the County from discussing an applicant's expectations with  
 24                                   respect to salary without inquiring about salary history;

25   [[and]]

26                                   (C)   the County from verifying non-salary information disclosed  
 27                                   by an applicant or received from a background check,

28 provided that any salary history disclosed by a background  
29 check is not used to refuse to hire or determine an  
30 applicant's salary [(.)]; and

31 (D) the County from relying on salary history voluntarily  
32 provided by the applicant to pay the applicant a higher wage  
33 than initially offered, if reliance on salary history does not  
34 result in unequal pay for equal work based on gender.

35 **Sec. 2. Report.**

36 The Executive must:

- 37 (a) study the effect of laws in other jurisdictions prohibiting an employer
- 38 from considering an applicant's salary history on pay disparity based on
- 39 gender and submit a report to the Council on this analysis on or before
- 40 July 1, 2020; and
- 41 (b) provide the Council with a report on gender pay equity among County
- 42 employees every 2 years beginning on or before July 1, 2022.

43 *Approved:*

44 \_\_\_\_\_  
Nancy Navarro, President, County Council

Date

45 *Approved:*

46 \_\_\_\_\_  
Marc Elrich, County Executive

Date

47 *This is a correct copy of Council action.*

48 \_\_\_\_\_  
Megan Davey Limarzi, Esq., Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 4-19

*Personnel – Merit System - Requesting Salary History - Prohibited*

**DESCRIPTION:** Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

**PROBLEM:** Wage inequity between the genders in County employment can partially be explained by differences in starting salaries calculated based on salary history.

**GOALS AND OBJECTIVES:** To eliminate this reason for wage inequity between genders.

**COORDINATION:** OHR, County Attorney

**FISCAL IMPACT:** To be provided

**ECONOMIC IMPACT:** To be provided

**EVALUATION:** To be provided

**EXPERIENCE ELSEWHERE:** At least 12 States and 10 local governments have similar laws.

**SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney

**APPLICATION WITHIN MUNICIPALITIES:** N/A

**PENALTIES:** N/A



**MONTGOMERY COUNTY COUNCIL**  
ROCKVILLE, MARYLAND

EVAN GLASS  
COUNCILMEMBER  
AT-LARGE

**MEMORANDUM**

**TO:** Councilmembers  
**FROM:** Evan Glass  
**DATE:** February 5, 2019  
**SUBJECT:** Introduction of legislation to prohibit the County from requesting the salary history of an applicant during the hiring process of a County merit system employee.

On March 5<sup>th</sup>, I will be introducing Bill xx-19, Personnel – Merit System - Requesting Salary History - Prohibited, also referred to as the **Montgomery County Pay Equity Act**. This legislation would prohibit the County from relying on an applicant's salary history in hiring or determining the starting salary for a County merit system employee. The bill would also require the Executive to study the effect of this type of law on the private sector in other jurisdictions and provide a report to the Council.

- (1) prohibit the County from requesting salary history from an applicant for County employment;
- (2) prohibit the County from relying on salary history to determine an applicant's starting salary; and
- (3) amending the law governing the County merit system.

On average, women earn 79 cents for every dollar their male counterparts make; and for women of color the gap is starker. Black women earn 60 cents and Hispanic/Latina women earn just 55 cents relative to white men.

Studies show that the gender pay gap starts early in a career and that female job applicants, particularly women of color, carry lower earnings from job to job. In Maryland, the gender gap reflects the national trend. The median annual pay for a woman who works full-time is \$50,635 compared to \$60,591 for her male counterpart. For Maryland women of color holding full-time jobs, this translates to 69 cents for Black women, 47 cents for Latinas, and 83 cents for Asian women. Women are, in general, less likely to negotiate higher salaries, and to start their careers with lower wages.

Montgomery County would be joining a growing list of over twelve states and ten local jurisdictions that have implemented laws banning employers from requesting a prospective employee's salary history. These include Massachusetts, California, New York, Delaware, Oregon, Puerto Rico, Connecticut, Hawaii, Vermont, Illinois, Michigan, New Jersey, Pennsylvania, New Orleans, Chicago, the District of Columbia, Salt Lake City, Kansas City, Louisville, New York City, Pittsburgh, San Francisco, and Westchester and Albany counties.

It is my goal that by eliminating the reliance on salary history in the hiring process, candidates, regardless of gender, will be paid based on experience and the responsibilities within the position, rather than past earning history. This is what I hope will be the first step in helping Montgomery County move towards systematically eliminating gender pay discrepancies.

If you have any questions or would like to cosponsor the Montgomery County Pay Equity Act, please contact Valeria Carranza in my office.

Thank you.



Evan Glass  
Councilmember At-Large  
Montgomery County Council



ROCKVILLE, MARYLAND

**MEMORANDUM**

March 25, 2019

**TO:** Nancy Navarro, President, County Council

**FROM:** Richard S. Madaleto, <sup>RSM</sup> Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance <sup>AE</sup>

**SUBJECT:** Economic and Fiscal Impact Statement for Bill 4-19, Personnel – Merit System – Requesting Salary History – Prohibited

Please find attached the Economic and Fiscal Impact Statement for Bill 4-19, Personnel – Merit System – Requesting Salary History – Prohibited

RSM:cm

cc: Andrew Kleine, Chief Administrative Officer  
Debbie Spielberg, Special Assistant to the County Executive  
Dale Tibbitts, Special Assistant to the County Executive  
Lisa Austin, Office of the County Executive  
Fariba Kassiri, Deputy Chief Administrative Officer  
Ohene Gyapong, Acting Director, Public Information Office  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Monika Coble, Office of Management and Budget  
Chrissy Mireles, Office of Management and Budget  
Corey Orlosky, Office of Management and Budget

**Fiscal Impact Statement**  
**Expedited Bill 4-19 Personnel – Merit System – Requesting Salary History - Prohibited**

**1. Legislative Summary.**

Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The bill is not estimated to have a fiscal impact as no change in salary offers is anticipated. The Bill may reduce personnel costs as an applicant's salary history can be used as a justification for offering a salary above the midpoint in the relevant pay band for an applicant with advanced skills and/or experience.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

See #2.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

**6. An estimate of the staff time needed to implement the bill.**

Minimal staff time will be needed to ensure language in hiring documentation reflects the changes in the bill.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

There is no anticipation any language clean up would affect other responsibilities.

**8. An estimate of costs when an additional appropriation is needed.**

See #2.

**9. A description of any variable that could affect revenue and cost estimates.**

Any unanticipated changes in overall hiring behavior could result in either increased or decreased costs. Increased costs would be expected if the average hiring salaries for positions unexpectedly rises as a result of this bill, while decreased costs may result if the inability to use salary history to justify a salary above the midpoint consistently results in positions being vacant as potential candidates cannot achieve a desired salary.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

See #9.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

The bill is likely to have no fiscal impact because it is not anticipated to change the overall average starting salaries offered to applicants.

**12. Other fiscal impacts or comments.**

Not applicable.

**13. The following contributed to and concurred with this analysis:**

Corey Orlosky, Office of Management and Budget

*Richard S Madaleno*

Richard S Madaleno, Director  
Office of Management and Budget

*March 25, 2019*

Date

**Economic Impact Statement**  
**Bill 4-19, Personnel – Merit System – Requesting Salary History - Prohibited**

**Background:**

This legislation would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

**1. The sources of information, assumptions, and methodologies used.**

The Department of Finance did not make assumptions or develop and use methodologies in the preparation of the economic impact statement.

**2. A description of any variable that could affect the economic impact estimates.**

The variables that could affect the economic impact estimates on banning wage salary history are the wage gaps based on wage differentials by gender and race, occupation, and education.

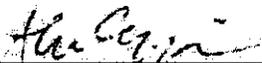
**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

It is uncertain if Bill 4-19 could have a positive or negative effect without detailed data on the variables discussed in paragraph 2.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see paragraph 3.

**5. The following contributed to or concurred with this analysis: David Platt, Mary Casciotti, and Rob Hagedoorn, Finance;**

  
\_\_\_\_\_  
Alexandre Espinosa, Director  
Department of Finance

3/22/2019  
\_\_\_\_\_  
Date



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Karen Plucinski, Acting Director  
Office of Human Resources

VIA: Edward B. Lattner, Chief *EBL*  
Division of Government Operations

FROM: Silvia Kinch, Chief *SK/EBL*  
Division of Human Resources

DATE: March 24, 2019

RE: **Bill 04-19, Personnel - Merit System - Requesting Salary History - Prohibited**

Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary. If this bill were to pass, the County would need to amend MCPR § 10-5(2)(C) on salary setting policies as it requires the appointing authority to submit proof of a candidate's prior or current salary for any employment offer above mid-point. County employment applications do not ask for prior salary.

The Maryland General Assembly is currently considering House Bill 0634 / Senate Bill 0738 (2019), which similarly prohibit questions about prior or current salary. Both bills were introduced in their respective chambers in early February, but neither appears to have progressed since introduction. Thus, there are no preemption or conflict issues at this time. With that said, the state bills, as introduced, allow an employer to verify voluntarily provided salary history, whereas the County's bill would not permit such verification.

cc: Robert H. Drummer, Senior Legislative Analyst  
Dale Tibbitts, Special Assistant to the County Executive  
Marc P. Hansen, County Attorney  
Lisa Austin, Office of the County Executive  
Tammy J. Seymour, Office of the County Attorney

19-001952

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH  
ON BILL 4-19, PERSONNEL – MERIT SYSTEM - REQUESTING SALARY  
HISTORY - PROHIBITED**

**March 26, 2019**

Good afternoon Council President and Councilmembers, my name is Karen Plucinski and I am Acting Director of the Office of Human Resources. It is a pleasure for me to appear before you on behalf of the County Executive to extend his support of Bill 4-19, which amends Chapter 33 – Personnel and Human Resources of the Montgomery County Code.

The proposed Bill amends the Personnel law to prohibit the County from requesting salary history from applicants and from relying on salary history to determine an applicant's starting salary. In addition, the County Executive would report to the Council by July 1, 2020 with an analysis from a study of other jurisdictions related to pay disparity based on gender where the consideration of salary history was prohibited, and also provide a bi-annual report to the Council on gender pay equity.

The Bill makes the following changes to County Code Section 33-25: (a) prohibits the County from seeking or relying on an applicant's salary history when offering employment to an applicant; (b) prohibits the County from refusing to hire or retaliating against an applicant who did not provide their salary history; (c) continues to allow an applicant to voluntarily provide salary history but does not allow the County to rely on this information; d) continues to allow the County to discuss an applicant's salary expectations with them; and e) continues to allow the County to receive and verify non-salary information such as background checks.

The Bill provides a means of insuring greater protections for applicants who seek to work where the requirements of the position and their qualifications and ability to do the work are the primary considerations and, on that basis, should be supported. Evidence from both public and private sector employment demonstrates that reliance on prior salary history has

disadvantaged women, and especially disadvantaged Black and Latino women, in seeking employment and gaining pay equity.

The Office of Human Resources has used salary history to justify approval of a salary above the mid-point (which normally represents the median of the market); however, passing Bill 4-19 ensures that the determination of an applicant's salary is commensurate with the relevant years of experience, education and the market. The County's employment applications do not ask for prior salary. The County would discontinue requesting salary history to justify approval for a salary above the mid-point and consider relevant experience, education and internal equity for incumbents in similar jobs and with similar experience and education. In this regard, Section 10-5(b)(2)(C) of the Montgomery County Personnel Regulations would need to be amended with the passage of the new law.

We look forward to working with the Council on this legislation. Thank you and I am pleased to answer any questions you may have.



**Jeffrey Z. Slavin**  
*Mayor*

**TOWN OF  
SOMERSET**

45110 Cumberland Avenue  
Chevy Chase, MD 20815  
301-657-3211  
ttown@townofsomerset.com



**Rich Charnovich**  
*Town Manager/Clerk-Treasurer*

Testimony of Mayor Jeffrey Slavin

Bill 4-19, Personnel - Merit System - Requesting Salary History - Prohibited

March 26, 2019

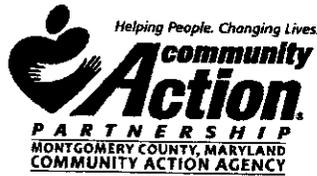
Good afternoon.

As a lifetime feminist and Montgomery County resident, I strongly support Councilmember Glass's important Bill 4-19 which, if passed, will begin to remedy longstanding disparities between men and women in our County.

On a Council where women are vastly underrepresented, I congratulate all the co-sponsors for their foresight and hope that each one of them will explore the additional introduction of legislation during this term so that these unfortunate disparities can be erased forever.

I view this type of legislation as "economic development", too, especially given the high percentage of women in our workforce. Montgomery County needs to be a leader in this area and I trust the Council will take swift action to pass this measure

Thank you.



Montgomery County Community Action Board Testimony  
Bill 4-19 – Personnel – Merit System – Requesting Salary History – Prohibited  
Tuesday, March 26, 2019

Lisette Engel  
Community Action Board Member

Good afternoon. My name is Lisette Engel and I am a member of the Community Action Board's Executive Committee.

As advocates for the low-income community, the Community Action Board strongly supports Bill 4 – 19. Our Board's role is to advocate for policies and programs that will promote equity and help County residents move towards self-sufficiency. By prohibiting the use of salary history to determine pay for County merit staff positions, those who have faced previous discrimination based on gender and/or race, will be in a better position to improve their situations.

Despite the fact that Montgomery County is one of the wealthiest counties in the country, the gender pay gap exists for men and women at every level of educational attainment. In addition to median incomes for men being significantly higher than for women, the poverty rate for female-headed households is significantly higher. While the poverty rate for all families in the County is 7.1%, the poverty rate for female-headed households with children under 18 is 22.6%.<sup>1</sup>

Our Board has been a longtime advocate for the Self-Sufficiency Standard, which provides a more accurate measure of the true cost of living in a given geographic area for a specific family type. The gender pay gap is quite pronounced when looking at the Standard. Countywide, 31%

<sup>1</sup> American Community Survey [census.gov](https://www.census.gov)

of female householders are below the Self-Sufficiency Standard, while only 25% of male householders are below the Standard. This difference is even more extensive in certain parts of the County, such as Germantown and Montgomery Village, where I live. In this area, the difference between female and male householders living below the Standard is 10%.<sup>2</sup>

This bill would also address pay equity issues that disproportionately impact racial minorities. Structural racism continues to prevent many people from getting ahead, and certain hiring practices, such as asking for salary histories and basing salary offers on that history, only perpetuate the problem. The impact of such practices, in addition to other structural barriers that may prevent people from having the same opportunities to “get ahead” is quite clear. While 14% of white householders are below the Self-Sufficiency Standard, 44% of black or African American householders and 54% of Hispanic or Latino householders are not earning wages at the Standard.

Bill 4-19 is an important step in addressing pay equity in the County. The Community Action Board encourages the Council to explore additional policies that can help residents move towards self-sufficiency, including increasing wages and work supports, expanding affordable housing options, increasing child care options for lower-income families, and continuing to support a strong Working Families Income Supplement.

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<sup>2</sup> Montgomery County Interactive Self-Sufficiency Standard [montgomerycountymd.gov/communityaction](http://montgomerycountymd.gov/communityaction)

March 26, 2019

**Testimony for Evan Glass' Montgomery County Pay Equity**

My name is Molly Hauck and I am testifying in favor of Evan Glass' Pay Equity Act. I became a social activist in 1992 when Maryland had a referendum on whether we would be a pro-choice state. I worked on it for most of the year and got this sweatshirt that says, "Behind every successful woman is herself" from NOW then. Since then, I have focused on other social justice issues, but I am still a feminist and always will be one.

I am testifying for the Pay Equity Act, which stop employers from asking applicants what salary they made in their previous jobs. I appreciate you for introducing this bill, Evan, and I appreciate the almost all male Council, Marc Elrich, and several unions and civic organizations for supporting it. Sometimes, inequity is not intentional, just the result of a long history of inequity which is unintentionally perpetuated. I am glad that you researched it and want to change it.

One of the important aspects of this bill is that you have done research which shows that a large pay gap exists in many Montgomery County government program manager positions, and that it persists in recent hires. In Health and Human Service Program Manager I positions the gap between the highest paid man and the lowest paid woman is 33% (\$94,557 vs. \$63,240) In the Montgomery County Dept. of Transportation Manager III positions the woman makes \$110,583, while the three male employees make \$119,000-\$138,790, a pay gap ranging from \$8417 to \$28,207. The men are paid 9% to 80% more, even though the woman has worked there a year longer than them.

**Why should women be paid less than men for doing the same job?**

This is unfair and discriminatory. The women's movement started in the late 60s, more than 50 years ago, yet little has changed. In 1961 women made 59% for every dollar that a man made. In the past 56 years (since 1961) the pay disparity has only narrowed from 59 cents to 80.5 cents, a difference of only 21.5 cents, and the increase doesn't account for inflation. (See footnote for changes by decade.)

**Why should white women be paid more than women of color for doing the same job?** Women of color earn even less than white women: 69 cents for black women, and 47 cents for Latinas. Only Asian women make more than white women (83 cents compared with what men make.)

**Why do these differences persist?** Laws to redress pay inequity were passed starting in 1963 and are enforced by the EEOC. But clearly they haven't solved the problem.

After working at Goodyear Tire and Rubber for 21 years (1979-1998) Lily Ledbetter found out that she was being paid much less than men who held the same job. She sued but was told that she hadn't filed within 180 days of the discrimination occurring. She said that she had just found out that she was being paid less so couldn't have filed a claim earlier. The Supreme Court didn't uphold her claim because she had not filed within 180 days. Ruth Bader Ginsberg dissented. So Lily Ledbetter took it to Congress and finally won when Congress passed the Lilly Ledbetter Fair Pay Act of 2009, which restarted the 180-day clock every time a discriminatory paycheck was issued.

Evidently, men don't consider women to be equals in the workplace, even when they are doing the same or comparable jobs. Men hold power and they don't want to share it with women to redress this obvious discrimination. One would think that they would want to change it for their grandmothers, mothers, aunts, wives, daughters, and granddaughters, but they clearly don't or there would have been much more change. And racism persists. Otherwise, women of color would be paid as much as white women. Neither of these situations is fair and both need to be redressed ASAP.

Evan Glass' bill attempts to chip away at this inequity. Please join the other states that have prohibited state agencies from seeking salary history from job applicants. These include: Illinois, Michigan, New Jersey, New York and Pennsylvania. Join other cities which have prohibited this practice: Chicago, New Orleans, Salt Lake City and the District of Columbia.

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Footnotes:

Pay increases since the 1960s:

Women only made 59 cents for every dollar that men made from 1961 to 1981.

By 1991 women made only 10% more (69.9 cents for every dollar that a man made).

By 2001 it had only increased to 76.3%.

Nothing changed during the next decade (2001-2011).

The increase between 2011 and 2017 was only 3.5%, from 77 to 80.5 cents.

So between 1991 and 2017 (16 years) the increase in the amount women were paid was only about 10%, up from 69.6% in 1991 to 80.5% in 2017.

Laws to protect women's pay:

The Equal Pay Act of 1963 (EPA)

Title VII of the Civil Rights Act of 1964 (Title VII)

The Age Discrimination in Employment Act of 1967 (ADEA)

The Pregnancy Discrimination Act of 1978

Sections 102 and 103 of the Civil Rights Act of 1991

The Lilly Ledbetter Fair Pay Act of 2009

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**Testimony of  
Andrea Johnson, Senior Counsel for State Policy, National Women's Law Center  
In SUPPORT of Bill 4-19, Personnel - Merit System - Requesting Salary History - Prohibited  
Before the Montgomery County Council**

**March 26, 2019**

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights and opportunities, and to help women and families achieve economic security. Equal pay is a vital concern for Maryland's working families, who depend on women's wages to achieve economic security. Yet, pay discrimination remains a persistent barrier to women's economic success in Maryland, particularly for Maryland women of color who face some of the largest wage gaps in the country.

Maryland made important strides in strengthening its equal pay laws by passing the Equal Pay for Equal Work Act in 2016, but there are a number of employer practices that aren't clearly prohibited by law that are causing gender and racial pay disparities to be perpetuated throughout Marylanders' careers, Maryland businesses, and the Maryland economy. Bill 4-19 takes an important step at getting at the heart of those practices by prohibiting the County government from relying on job applicants' salary history in the hiring process. We urge you swift action in passing this simple, common sense, yet high-impact legislation. Women and families cannot afford to wait any longer for the wage gap to close.

**I. Relying on Salary History Perpetuates Gender and Racial Wage Gaps**

Employers' use of salary history in the hiring and salary setting process can be harmful to many types of job applicants, but it has a disproportionately negative impact on women and people of color, who face conscious and unconscious bias in the workplace and are typically paid less than white, non-Hispanic men.

In Maryland, women overall are typically paid 86 cents for every dollar paid to men. Black women and Native women are paid only 69 cents and 65 cents, respectively, for every dollar paid to white, non-Hispanic men. And the gap is even larger for Latinas in Maryland, who make only 46 cents for every dollar made by white, non-Hispanic men—the fourth largest wage gap for Latinas in the country.<sup>1</sup> These gaps start early in women's careers. Just one year after college graduation, women are paid just 82 percent of what their similarly educated and experienced male peers are paid.<sup>2</sup> Because women systematically are paid less than men, employers who rely on salary history to select job applicants and to set new hires' pay will tend to perpetuate gender- and race-based disparities in their workforce, condemning Maryland women to perpetually depressed salaries throughout their career.

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**There are several reasons why women will typically be responding to the dreaded “What is your salary history” question with lower prior salaries than men. And they have nothing to do with women’s skill, knowledge, experience, negotiation abilities, or fit for the job.**

**First**, it is well-documented that women, and especially women of color, face overt discrimination and unconscious biases in the workplace, including in pay. A study conducted by labor economists Francine Blau and Lawrence Kahn found that 38 percent of the gender wage gap remains unexplained even when accounting for factors like race, region, unionization status, education, occupation, industry, and work experience.<sup>3</sup> Data make clear that discrimination is a major cause of this unexplained gap. For example, in a recent experiment where scientists were presented with identical resumes—one with the name John and the other with the name Jennifer—the scientists offered the male applicant for a lab manager position a salary of nearly \$4,000 more.<sup>4</sup> By using a person’s salary history to evaluate her suitability for a position or to set her salary, new employers allow past discrimination to drive hiring and pay decisions. Moving to a new job can be the best opportunity women have to increase their pay, but employers’ reliance on salary history forces women to carry pay discrimination from job to job.

**Second**, women are more likely to have worked in lower paid, female-dominated professions that pay low wages *simply because* women are the majority of workers in the occupation and “women’s work” is valued less.<sup>5</sup> Relying on applicants’ salary histories to set starting salaries perpetuates the systemic undervaluing of women’s work, even where women are entering male-dominated or mixed-gender industries. We regularly hear about women who are doing the same work as their male counterparts and have comparable experience, but are being paid less because, for instance, the women’s past experience was in the non-profit or government sector, whereas the men’s was in the higher-paying private sector.

**Third**, women still shoulder the majority of caregiving responsibilities and are more likely than men to have to reduce their hours or leave the workforce to care for children and other family members.<sup>6</sup> Asking about salary history harms women seeking to reenter the workforce or increase their hours, since their last salary may no longer reflect current market conditions or their current qualifications. In fact, in 2015, the federal Office of Personnel Management (OPM) issued a new policy discouraging government agencies from relying primarily on candidates’ prior salary in setting their pay, explaining that “[r]eliance 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.”<sup>7</sup>

**Relying on salary history in the pay setting process compounds the negotiation disadvantages that women and people of color experience.** Research has documented that women who negotiate their salaries are already at a disadvantage because they are perceived as greedy, demanding, not nice, and less desirable candidates, leading to lower starting pay.<sup>8</sup> When a new employer requests a candidate’s prior salary information, they are likely to anchor salary negotiations around the

prior salary, with only small room for adjustment,<sup>9</sup> thereby further entrenching, even if unwittingly, gender and racial disparities in the candidate's new salary.

**Reliance on salary history not only disadvantages women and people of color in negotiation and setting pay, it also negatively impacts subsequent raises, bonuses, and promotions that are tied to the employee's initial salary.** Over time, those lower salaries add up to huge losses that affect an employee's and her family's financial well-being and ultimately her retirement. The class action law suit *Beck v. Boeing*,<sup>10</sup> settled in 2004 for \$72.5 million, is a poignant example of this destructive dynamic. Boeing set the salaries of newly hired employees as their immediate past pay plus a hiring bonus which was set as a percent of their past salary. Raises were also set as a percentage of an employee's salary. Boeing claimed it set pay based on a neutral policy, but since women had lower average prior salaries than men, these pay practices led to significant gender disparities in earnings that compounded over time and could not be justified by performance differences or other objective criteria.

**Relying on salary history to screen out or compare job applicants can perpetuate gender and racial disparities in hiring.** Some employers automatically disqualify or compare applicants based on the assumption that an applicant with a lower salary is of lower quality than an applicant with a higher salary.<sup>11</sup> But salary is not a neutral, objective factor that accurately reflects a candidate's qualifications. Several courts have rejected employers' arguments that basing pay on salary history alone is a neutral "factor other than sex" justifying paying women less and lawful under the Equal Pay Act.<sup>12</sup> These courts point to the fact that salary histories reflect historical discriminatory market forces.<sup>13</sup> When women and people of color typically experience lower wages compared to white, non-Hispanic men, relying on salary history to evaluate job applicants serves to perpetuate the underrepresentation of women and people of color in many workplaces and positions.

Given the role that relying on salary history plays in perpetuating and institutionalizing gender and racial disparities, it is not surprising that the Equal Employment Opportunity Commission (EEOC) has instructed since 2000 that reliance on prior salary alone cannot justify an otherwise unlawful compensation disparity.<sup>14</sup> The EEOC explains that "permitting prior salary alone as a justification for a compensation disparity 'would swallow up the rule and inequality in compensation among genders would be perpetuated.'"<sup>15</sup> Nevertheless, many employers continue to rely on salary history in setting pay and some courts have broken with the EEOC's position on salary history, and have permitted employers to rely on employees' salary history to justify paying women less for the same work.<sup>16</sup> This makes it all the more important to enact legislation clearly banning the harmful use of salary history in the hiring process.

## **II. Relying on Salary History is an Unnecessary and Harmful Hiring Practice**

Salary history is not an effective way of evaluating any job applicant or determining their pay because it is not an accurate, objective, or neutral indicator of an applicant's qualifications, suitability, interest in a position, or their market value or worth. It is a factor that reflects gender wage inequities, past employers' and the market's discriminatory biases, what someone else was able to pay the

applicant, what someone was willing to accept, and other factors that have nothing to do with an applicant's skill, knowledge, experience, negotiation abilities, or fit for the job.

As a result, relying on salary history can not only harm women and people of color by perpetuating gender and racial wage gaps, it is an ineffective hiring practice that harms many other employees and the employer. For example, relying on salary history can lead to depressed wages for individuals who have previously worked in the public sector or in nonprofits and are moving into the private sector. And it can deprive older individuals with higher salaries who are looking to change jobs or re-enter the workforce the opportunity to be considered for lower paying jobs they might seek.<sup>17</sup>

Relying on salary history also hurts employers' operations. As a human resources professional stated in Forbes, the practice of seeking salary history from job applicants is "intrusive and heavy-handed . . . It's a Worst Practice . . . It hurts an employer's brand and drives the best candidates away."<sup>18</sup> Moreover, relying on information that unjustifiably perpetuates gender and racial wage gaps within a workplace exposes an employer to costly pay discrimination litigation. Conversely, eliminating pay practices that many employees recognize as deeply unfair benefits employers' bottom line because it increases the likelihood that employees will believe they are paid fairly, which in turn promotes employee engagement and productivity.<sup>19</sup>

Employers are better served by evaluating job applicants' experience, skills, accomplishments, track record, and the responsibilities they will be assuming to determine their value and set pay.<sup>20</sup>

### **III. Bill 4-19 Will Help Ensure All County Government Employees are Being Paid Fairly**

Bill 4-19 would play an important role in breaking the cycle of wage discrimination and closing the wage gap in Montgomery County government. Under the bill, the County is prohibited from seeking and relying on the salary history of a job applicant in considering the applicant for employment or in determining his or her wages. These provisions will help ensure that job applicants are evaluated and compensated based on their skills for the jobs to which they have applied, not their gender or race, nor their apparent value to a previous employer or other factors unrelated to an applicant's fit for the job. In other words, the bill ensures that employers pay employees for their new job, not their old one.

The bill does provide, however, that an applicant may voluntarily provide their salary history and the County may rely on that information to support paying a higher wage than that offered by the County. Moreover, the bill makes clear that the County may still ask applicants their salary expectations.

**We encourage the Council to further clarify and strengthen the bill in the following ways:**

- **Clarify that internal hires are covered by the law.** The bill provides that "applicant" does not include a "County merit system employee seeking a *new position* with the County." "New Position" is a broad term that we are concerned could be interpreted to exclude from the law's protections County employees who are not just being internally transferred or promoted, but applying, much like a traditional applicant, for a new position. Of the jurisdictions that have

included similar exemptions in their salary history laws for current government employees, they have limited the exemption to “internal transfers and promotions.”

- **Clarify that “salary” includes benefits.** Discrimination does not just impact wages; we also see discrimination in the provision of benefits. Clarifying that salary includes “benefits” in addition to wages, commissions, and bonuses will help ensure that disparities in an applicant’s benefits do not follow her into her new job.

Extending these crucial protections to County employees is an important first step. But no Montgomery County resident, regardless of who they work for, should be forced to carry lower earnings and pay discrimination from job to job by employers who rely on salary history. We urge the Council to consider extending these protections to all employees who work in Montgomery County in due course.

**IV. By Passing Bill 4-19, Montgomery County Would Lead the State in Stopping Reliance on Salary History and Would Join the Nationwide Movement of Counties, Cities, and States Stopping this Harmful Practice**

Since 2016, there has been a groundswell of support across the country for legislation prohibiting reliance on salary history. Legislation barring all employers from relying on salary history has passed in many counties and municipalities, including Westchester, Suffolk, and Albany counties in New York; Kansas City, Missouri; Cincinnati, Ohio; Louisville, Kentucky; New York City, and San Francisco.<sup>21</sup> And New Orleans, Chicago, Atlanta, Pittsburgh, New York City, and Salt Lake City have prohibited city agencies from seeking salary history from job applicants.<sup>22</sup>

Additionally, Governors in Pennsylvania, New Jersey, New York, Illinois, and Michigan have issued Executive Orders banning the use of salary history in setting pay for state employees and the District of Columbia Department of Human Resources prohibits reliance on salary history by District agencies.<sup>23</sup> Finally, seven states—Massachusetts, Connecticut, Delaware, Vermont, Oregon, Hawaii, and California—have enacted legislation, all with bipartisan support, to prohibit *all* employers from relying on salary history to set pay.<sup>24</sup>

Despite efforts to pass legislation at the state level prohibiting all Maryland employers from relying on salary history, that legislation has yet to pass both chambers. By passing Bill 4-19, Montgomery Country Government would become the first jurisdiction in Maryland to prohibit this harmful practice and will help set the course for the rest of the state to do the same.

**VI. Conclusion**

Stopping reliance on salary history is an important step to closing the wage gap. And since the wage gap has barely budged in more than a decade, we need to take action now. We urge the Council to stand up for those who work for Montgomery County by passing Bill 4-19.

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- <sup>1</sup> NAT'L WOMEN'S LAW CTR (NWLC). THE WAGE GAP, STATE BY STATE, <http://nwlc.org/resources/wage-gap-state-state/>.
- <sup>2</sup> AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW), GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE 9 (2012), available at [www.aauw.org/research/graduating-to-a-pay-gap/](http://www.aauw.org/research/graduating-to-a-pay-gap/).
- <sup>3</sup> Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends and Explanations*, NATIONAL BUREAU OF ECONOMIC RESEARCH (Jan. 2016), <http://www.nber.org/papers/w21913.pdf>.
- <sup>4</sup> Corrine A. Moss-Racusin et al., *Science Faculty's Subtle Gender Biases Favor Male Students*, Proceedings of the National Academy of Science of the United States of America (Aug. 2012), <http://www.pnas.org/content/109/41/16474.abstract#aff-1>.
- <sup>5</sup> Philip N. Cohen, *Devaluing and Revaluing Women's Work*, Huffington Post (April 3, 2010), [http://www.huffingtonpost.com/philip-ncohen/devaluing-and-revaluing-w\\_b\\_444215.html](http://www.huffingtonpost.com/philip-ncohen/devaluing-and-revaluing-w_b_444215.html).
- <sup>6</sup> PEW RESEARCH CENTER, WOMEN MORE THAN MEN ADJUST THEIR CAREERS FOR FAMILY LIFE (Oct. 1, 2015), <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/>.
- <sup>7</sup> July 30, 2015, Letter from Beth F. Cobert, Acting Director, U.S. Office of Personnel Management, <https://www.chcoc.gov/content/additional-guidance-advancing-pay-equality-federal-government>.
- <sup>8</sup> See HANNAH RILEY BOWLES, LINDA BABCOCK & LEI LAI, SOCIAL INCENTIVES FOR GENDER DIFFERENCES IN THE PROPENSITY TO INITIATE NEGOTIATIONS: SOMETIMES IT DOES HURT TO ASK, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84 (2007).
- <sup>9</sup> See Bourree Lam, *The Government Thinks that Interview Questions about Salary History are Holding Women Back*, THE ATLANTIC (Aug. 10, 2015), <http://www.theatlantic.com/business/archive/2015/08/hiring-interview-gender-gap-pay-salary-history-opm/400835/>; TODD J. THORSTEINSON, INITIATING SALARY DISCUSSIONS WITH AN EXTREME REQUEST: ANCHORING EFFECTS ON INITIAL SALARY OFFERS, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY (2011), <http://onlinelibrary.wiley.com/doi/10.1111/j.1559-1816.2011.00779.x/abstract>.
- <sup>10</sup> *Beck v. Boeing*, Court-Approved Consent Decree 30, 35-36 (W. D. WA. (Oct. 8, 2004)), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1072&context=condec>; see also Institute for Women's Policy Research, *Ending Sex and Race Discrimination in the Workplace: Legal Interventions That Push the Envelope* 72-83 (March 2011).
- <sup>11</sup> June Bell, *He Earned, She Earned: California Bill Would Limit Use of Salary Information*, SHRM.ORG. August 29, 2016, <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/california-salary-history.aspx> ("salary history 'is one component businesses look at to see if candidates are equally qualified.'"); Jena McGregor, *The Worst Question You Could Ask Women in a Job Interview*, WASHINGTON POST (April 14, 2015), <https://www.washingtonpost.com/news/on-leadership/wp/2015/04/14/the-worst-question-you-could-ask-women-in-a-job-interview/> ("Higher salaries also have what's known as a 'branding' impact. Just as consumers think pricier products are better quality, recruiters and managers can have the same reaction when a job candidate has a higher past salary, Anderson explained. 'It may trigger a conviction that one hire is lower quality than another, even if that isn't the reality.'").
- <sup>12</sup> See, e.g., *Cole v. N. Am. Breweries*, No. 1:13-cl-236, 2015 WL 248026, at \*10 (S.D. Ohio Jan. 20, 2015) (citing *Irby v. Bittick*, 44 F.3d 949, 955 (11th Cir. 1995) (finding that that a beer distributor improperly used a female hire's previous salary to set her pay significantly lower than that of her male predecessor, her male successor, and other male employees performing the same job); *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1571 (11th Cir. 1988) (prior salary alone cannot justify a pay disparity); *Faust v. Hilton Hotels Corp.*, 1990 WL 120615, at \*5 (E.D. La. 1990) (reliance on prior salary as a factor other than sex would "allow employer to pay one employee more than an employee of the opposite sex because that employer or a previous employer discriminated against the lower paid employee"); *Angove v. Williams-Sonoma, Inc.*, 70 F. App'x 500, 508 (10th Cir. 2003) (citing *Irby* to find that the EPA "precludes an employer from relying solely upon a prior salary to justify pay disparity").
- <sup>13</sup> See, e.g., *Glenn*, 841 F.2d at 1570; *Faust*, 1990 WL 120615 at \*5, n. 12; *Angove*, 70 F. App'x at 507-508.
- <sup>14</sup> EQUAL EMPLOYMENT OPPORTUNITY COMM'N, COMPLIANCE MANUAL, No. 915.003 § 10-IV.F.2.g (Dec. 2000), available at <https://www.eeoc.gov/policy/docs/compensation.html>.
- <sup>15</sup> *Id.* (citing *Irby v. Bittick*, 44 F.3d 949, 955 (11th Cir. 1995); *Glenn*, 841 F.2d at 1571 (prior salary alone cannot justify a pay disparity); *Faust*, 1990 WL 120615 at \*5 (reliance on prior salary as a factor other than sex would "allow employer to pay one employee more than an employee of the opposite sex because that employer or a previous employer discriminated against the lower paid employee").
- <sup>16</sup> See, e.g., *Lauderdale v. Ill. Dep't of Human Servs.*, 876 F.3d 904 (7th Cir. Nov. 30, 2017); *Sparrock v. NYP Holdings, Inc.*, No. 06 Civ. 1776(SHS), 2008 WL 744733 (S.D.N.Y. Mar. 4, 2008).
- <sup>17</sup> See Katie Donovan, *Five Reasons Salary History Hurts Your Hiring Goals*, HUFFINGTON POST, Sept. 8, 2015, [http://www.huffingtonpost.com/katie-donovan/five-reasons-salary-histo\\_b\\_8105182.html](http://www.huffingtonpost.com/katie-donovan/five-reasons-salary-histo_b_8105182.html).
- <sup>18</sup> Liz Ryan, *When Someone Demands Your Salary History, Give Your Salary Requirements Instead*, FORBES (Jan. 16, 2017), <https://www.forbes.com/sites/lizryan/2017/01/16/when-they-demand-your-salary-history-give-your-salary-requirement-instead/#944ba255a8bb>.

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<sup>19</sup> See Deborah Thompson Eisenberg, *Money, Sex and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. STATE L.J. 951, 1001-15 (2011); LAMB, N. & KLEIN, W., *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Summer 2015), available at <http://arjuna-capital.com/news/a-proactive-approach-to-wage-equality-is-good-for-business/>.

<sup>20</sup> Alison Green, *Massachusetts Makes Asking about Salary History a Thing of the Past*, U.S. NEWS & WORLD REPORT, (Aug. 5, 2016), <http://money.usnews.com/money/blogs/outside-voices-careers/articles/2016-08-05/massachusetts-makes-asking-about-salary-history-a-thing-of-the-past>.

<sup>21</sup> Kansas Cty. Comm. Substitute for Res. No. 180519 (Jul. 26, 2018); Louisville Ordinance No. 066 (May 17, 2018); N.Y.C. Ordinance No. 1253-2016 (May 4, 2017); S.F. Ordinance No. 142-17 (Jul. 1, 2018); Cincinnati, OH, Ordinance 83 (March 13, 2019); Albany Cty. Loc. L. No. P for 2016 (Dec. 17, 2017); Westchester Cty. Res. No. 28-2018 (Jul. 9, 2018); Suffolk Cty. Loc. L. No. 25-2018 (No. 20, 2018).

<sup>22</sup> N.Y.C. Exec. Order No. 21 (Nov. 4, 2016); New Orleans Exec. Order No. mjl 17-01 (Jan. 25, 2017); Chi. Exec. Order No. 2018-1 (Apr. 10, 2018); Pittsburgh Ordinance No. 2017-1121 (Jan. 30, 2017); Mayor Biskupski signs Gender Pay Equity policy on first day of Women's History Month, slc.gov, (Mar. 8, 2018) <https://www.slc.gov/blog/2018/03/01/mayor-biskupski-signs-gender-pay-equity-policy-on-first-day-of-womens-history-month/>; Mayor Keisha Lance Bottoms Bans "Salary History Box" Requirement on City of Atlanta Applications (Feb. 18, 2019), <https://www.atlantaga.gov/Home/Components/News/News/11942/672>.

<sup>23</sup> IL Exec. Order No. 2019-02 (Jan. 15, 2019); MI. Exec. Order No. 2019-10 (Jan. 8, 2019); N.Y. Exec. Order No. 161 (Jan. 9, 2017); PA. Exec. Order No. 2018-18-03 (Sept. 4, 2018); N.J. Exec. Order No. 1 (Feb. 1, 2018); D.C. Dep't of Hum. Res., District Personnel Instruction No. 11-92, (Nov. 17, 2017)

[https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm\\_11B\\_92\\_salary\\_history\\_instruction.pdf](https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/edpm_11B_92_salary_history_instruction.pdf).

<sup>24</sup> M.G.L. ch. 149 § 105A; Cal. Lab. Code § 432.3; Del. Code Ann. tit. 19 § 709B; Or. Rev. Stat. §§ 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875, 659A.885; Conn. Gen. Stat. Ann. § 31-40z; Haw. S.B. No. 2351 (Jan. 1, 2019); 21 V.S.A. § 495m.