



Why Salary History Bans Matter To Securing Equal Pay

By Robin Bleiweis March 24, 2021

Employers' reliance on salary history in hiring and compensation decisions is a textbook example of structural bias. While the common practice of asking a job applicant about their prior salary may seem innocuous on the surface, it can have unintended, harmful consequences, including barring qualified candidates from job opportunities and systematically relegating women and workers of color—particularly women of color—to lower pay that may have been set lower because of discrimination.

Many employers use salary history as a metric to screen, evaluate, or compare applicants; set compensation; or negotiate salaries. However, the practice relies on false assumptions and biases about the relationships among salary, worker value, and market value, rendering it ineffective as well as harmful. In addition to perpetuating wage disparities, reliance on prior salary is unnecessary given other available, less bias-informed factors that employers could use to gauge a candidate's value. Moreover, salary history can provide a convenient rationale for employers who seek to justify pay disparities or depress wages. Limiting employer reliance on salary history in hiring and compensation decisions would help eliminate a form of structural bias and is therefore an important component of a broader, comprehensive effort to narrow the gender wage gap and secure equal pay for working women. This issue brief details the connections among salary history, equal pay, and the gender wage gap; examines the legislative landscape at the local, state, and federal levels; and recommends the Paycheck Fairness Act as a federal policy solution.

How employers' reliance on salary history can perpetuate the gender wage gap and undermine equal pay

While the gender wage gap has narrowed over time, progress has stalled for the past decade, leaving a sizable disparity. Based on the most recent available data from 2019, women working full time, year-round earned, on average, 82 cents for every \$1 earned by their male counterparts—and the gaps were significantly wider for most

women of color.¹ Compared with white, non-Hispanic men, Black women earned 63 cents, American Indian and Alaska Native women earned 60 cents, and Latinas earned 55 cents. While Asian American or Pacific Islander (AAPI) women earned 85 cents on average, there were much wider gaps for many AAPI subpopulations.²

A host of complex and interrelated factors drive the gender wage gap,³ including but not limited to longstanding gender biases and inequalities that contribute to the segregation of women, particularly women of color, into low-wage occupations; other differences in jobs worked, hours worked, and years of experience; women's disproportionate caregiving responsibilities and the lack of strong policy supports such as paid leave and affordable child care; and gender- and race-based discrimination.

Because earnings may reflect any combination of these factors, salary history is often not an objective measure of a worker's value, and employers should not treat it as such. For example, a job applicant's prior salary may not reflect existing labor market conditions or their current qualifications or capacity to perform work if they:

- Have experienced pay discrimination or other forms of workplace discrimination
- Have needed to work fewer hours to accommodate caregiving responsibilities
- Had to leave the workforce altogether to accommodate caregiving responsibilities
- Were laid off
- Previously worked in a women-dominated occupation that has lower wages by virtue of being considered so-called women's work

These are all scenarios in which women's labor is undervalued and the persistent gender wage gap is preserved. And research on employers who conduct pay equity audits has found the use of salary history to be a key driver of gender wage gaps within a given workforce.⁴ Furthermore, in some instances, these wage gaps could be a direct reflection of pay discrimination based on unfair, harmful biases about women workers. The above scenarios have also been sustained and exacerbated by the coronavirus crisis, which has led to women disproportionately losing jobs and many being pushed out of the labor force altogether.⁵ Setting starting pay based on prior salary is not just a one-time decision: It affects a worker's subsequent raises, bonuses, promotions, and retirement savings, as well as any other factors that may be tied to their starting salary. It preserves a status quo in which women and workers of color earn less money between and within jobs. These lower earnings can translate into difficulty making ends meet, difficulty staying afloat during crises such as the current pandemic, and difficulty building wealth for the future.⁶

Whether consciously or unconsciously, employers often anchor pay negotiations to an applicant's prior salary and provide only narrow room for adjustment. This practice holds back women and workers of color: Research documents that when women and people of color negotiate their salaries, they are less successful in large part due to biased perceptions and double standards.⁷ Furthermore, the use of prior salary to screen candidates is often based on the flawed assumption that an applicant earning a lower salary is of lower quality than an applicant with a higher salary or that an applicant with a higher salary would not accept a lower offer. These assumptions may block qualified candidates from job opportunities. Therefore, reliance on salary history when making a hiring or selection decision represents a structural practice that can both perpetuate lower earnings for women and workers of color and maintain the status quo of less diverse workforces. Given that employers have relied on and may continue to rely on salary history as a tool despite these harmful, potentially discriminatory effects, the case for its restriction is clear and urgent.

Why salary history bans are critical

In the absence of congressional action, many states and localities have enacted their own measures to combat this structural bias and help narrow the gender wage gap for their constituents. One such measure is the salary history ban, which has surged in popularity since 2017.⁸ A salary history ban is, most often, a policy that limits or forbids employers from asking about and relying on a job applicant's prior salary in hiring and compensation decisions.

As of December 2020, 19 states—as well as Washington, D.C., Puerto Rico, and 20 localities—all had some version of a salary history ban in place.⁹ Alabama¹⁰ has a narrow law that prohibits employers from declining to hire an applicant because of their refusal to disclose prior salary, whereas Colorado¹¹ has a more comprehensive law that prohibits employers from asking about prior salary, retaliating against applicants who do not disclose prior salary, and relying on prior salary in hiring and compensation decisions. Some state and local salary history laws differ in their approaches to situations where candidates voluntarily disclose their prior salary. For example, while the Columbia, South Carolina,¹² salary history law permits employer reliance on voluntarily disclosed prior salary, the Salt Lake City, Utah,¹³ law prohibits this practice. While many salary history bans apply to all employers in a given state or locality, some laws are narrower in scope, such as the law in Toledo, Ohio,¹⁴ which only applies to employers with 15 or more employees, and the law in North Carolina,¹⁵ which only applies to state agencies. In drafting and enacting salary history bans, policymakers must ensure that workers can use protections and obtain relevant information from an employer—such as a position's suggested salary floor or salary range—and that the law covers as many employers as possible.

Salary history bans benefit women, workers of color, and employers

Emerging research on existing salary history bans indicates that these policies have had the intended effect of helping narrow the gender wage gap in their respective regions. A California study published in April 2020 found that when employers were prohibited from seeking or relying on a job candidate's prior salary, the overall gender wage gap narrowed as a result, primarily due to increased earnings for women.¹⁶ Women older than 35 saw the greatest earnings increase—particularly women who were married and had children older than age 5—which likely highlights the existing wage penalty for caregivers with young children.¹⁷ A study published in June 2020 from researchers at Boston University's School of Law found that, following the implementation of salary history bans, workers who changed jobs saw their pay increase by 5 percent more than comparable workers who changed jobs in the absence of a ban, with even larger benefits for women and African Americans.¹⁸

Other research has shown that teams that hire and retain women see increased productivity and innovation and that consumer-facing companies risk brand erosion and loss of business if they fail to meet the moment by enacting diversity and pay equity measures.¹⁹ Major companies—including Bank of America, Cisco Systems, Lands' End, Starbucks, and more—have already pledged to limit their use of salary history as a measure to address gender and racial equity in the workplace.²⁰

Instead of relying on salary history, employers should base hiring and compensation decisions on the references and demonstrated skills of a given applicant, the value of the position to the organization, competition, and other bona fide business factors. While some human resources professionals have taken to recommending the use of “salary expectations” instead of salary history, this practice should also be limited given that economic and other societal biases that devalue women and their work likely inform women's expectations and may effectively present the same structural barrier to equal pay as questions about prior salary.²¹ Additionally, without access to salary history, it is important that employers do not instead use salary expectations as a rationale to depress wages or engage in other discriminatory practices. With this in mind, some states—including California²² and Maryland²³—have included provisions in their salary history laws requiring employers to provide starting salaries or salary ranges for a given position to job candidates upon request in order to shore up workers' rights in salary conversations.

Since the start of the 2020-2021 legislative session, dozens of state legislators have introduced a wide range of salary history bills, including in several conservative-majority state Legislatures such as Florida, West Virginia, and Kentucky.²⁴ It is essential to build on this momentum with strong federal legislation to ensure that workers are protected regardless of where they live or work.

Passage of the Paycheck Fairness Act would build on existing progress

Since 2000, the U.S. Equal Employment Opportunity Commission has taken the position that salary history does not, by itself, legally justify a gendered pay disparity—and as recently as last year, many courts have agreed.²⁵ However, a few courts have broken with this view.²⁶ Given these differing interpretations, as well as variance in laws among states and localities, an important next step is to clarify the standard through federal equal pay legislation.

Banning employer reliance on salary history when making hiring or compensation decisions is an important step in the fight for equal pay and will help combat a significant structural barrier for women, particularly women of color. However, this one measure will not narrow the gender wage gap on its own. Instead, it must be a key piece of a more robust and comprehensive equal pay effort. Congress must pass the Paycheck Fairness Act, which was reintroduced in the House of Representatives in January 2021.²⁷ The bill would not only prohibit employers nationwide from seeking or relying on salary history but would also promote pay transparency, protect workers from retaliation, strengthen existing equal pay protections, and do much more to secure equal pay and narrow the wage gap for women and workers of color at the federal level.

Conclusion

By tearing down a form of structural bias, salary history bans can help break the cycle of wage discrimination that can follow women and workers of color from job to job. Recent evidence shows that these bans are an important and effective starting point in the fight for equal pay, but more is needed to close the stubborn gender wage gap. Policymakers must pursue a robust, comprehensive effort to combat pay discrimination and ensure economic security for women.

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Endnotes

- 1 The gender wage gap was calculated by finding the ratio of women's median earnings to men's median earnings for full-time, year-round workers. Author's calculations are based on Sarah Flood and others, "Integrated Public Use Microdata Series, 2020 Current Population Survey Data for Social, Economic, and Health Research: Version 8.0 (dataset), Annual Social and Economic Supplement" (Minneapolis: Minnesota Population Center, 2021), available at <https://cps.ipums.org/cps/>.
- 2 Wage gaps for women of color were calculated by finding the ratio of each group of women's median earnings to white, non-Hispanic men's median earnings for full-time, year-round workers. Author's calculations are based on Sarah Flood and others, "Integrated Public Use Microdata Series, 2020 Current Population Survey Data for Social, Economic, and Health Research: Version 8.0 (dataset), Annual Social and Economic Supplement" (Minneapolis: Minnesota Population Center, 2021), available at <https://cps.ipums.org/cps/>. See also Robin Bleiweis, "The Economic Status of Asian American and Pacific Islander Women" (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/issues/women/reports/2021/03/04/496703/economic-status-asian-american-pacific-islander-women/>.
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- 8 National Women's Law Center, "Asking for Salary History Perpetuates Pay Discrimination from Job to Job" (Washington: 2020), available at <https://nwlc.org/resources/asking-for-salary-history-perpetuates-pay-discrimination-from-job-to-job/>.
- 9 *Ibid.* Author's 19-state count includes Alabama, which has a law protecting candidates against retaliation if they choose not to disclose their salary history rather than a law that prohibits employer reliance on salary history altogether. While the National Women's Law Center mentions Alabama in their fact sheet, it is not grouped with the other states.
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- 12 City of Columbia, South Carolina, "Ordinance No.: 2019-022," available at https://d12v9rtnomnebu.cloudfront.net/diveimages/Attachment-7494_3.pdf (last accessed March 2021).
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