

Support HB 18-1377

Prohibit Seeking Salary History for Job Applicants

*Sponsored by Representatives Coleman and Pettersen
Senators Donovan and Moreno*

The Problem

- Historical pay discrimination is perpetuated when past pay sets future pay. Employers who base a worker's salary on a previously undervalued and underpaid position, are perpetuating those gender and racial inequities.
- Asking about previous pay history particularly disadvantages certain employees such as women who take time off to raise children. They should not be penalized with wages based on their previous employment.
- The Equal Employment Opportunity Coalition listed setting starting salaries that eliminate discriminatory pay gaps on the basis of prior salary or salary negotiations as an important step that employers can take to ensure equal pay for equal work.
- Existing law already prohibits employers from asking certain questions of job applicants, such as marital status, religion or medical history, that are not relevant and open the door to discriminatory hiring. Salary information is one more such question.
- HB 1377 ensures that employees are not tied to prior salaries that may well have been discriminatory and creates a more unbiased structure for negotiating pay.

What HB 1377 Proposes

The bill makes it a **discriminatory or unfair employment practice for an employer to seek salary history information**, including information about prior compensation and benefits, from an applicant for employment **unless an employer has provided a salary range for the open position or the applicant voluntarily agreed to discuss his or her salary** with the employer.

The policies set forth in HB 18-1377 are supported by a recent decision by the 9th Circuit Court of Appeals:

The Ninth Circuit Court of Appealsⁱ ruled this week (April 12, 2018) that employers may not justify pay differences between women and men by relying on prior salary.ⁱⁱ The *Rizo v. Yovino* decision concerned the Equal Pay Act, which prohibits employers from paying male and female employees different wages for substantially equal work,ⁱⁱⁱ unless the wage difference is the result of (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality; or (4) a differential based on “any factor other than sex.”

In *Rizo*, the court held that consideration of an employee's past salary—whether considered alone or together with other factors—is not a permissible *factor other than sex* that can justify a difference in pay.^{iv} As a result, the court held that the employer's (the Fresno County Office of Education) reliance

on operating procedures that looked to past salary to set a new hire's salary did not excuse the pay gap between women's and men's salaries.^v

Lily's Story

When Lily Griego, was hired as a zoning inspector for Jefferson County she was asked her previous salary history and was compensated accordingly. It wasn't long after she started working there that a local paper published the salaries of her work team due to regulations around government transparency. It was only through this publication that Lily discovered that she was the lowest paid of all four workers, and that the two male inspectors made significantly more than the women. After seeing this in the paper, Lily tried to do everything in her power to advocate for her situation:

She went directly to her supervisor and asked: "Aren't we all doing the same work? With the same job title and same job description?" Lily asked for and received extra training. She received three additional certifications, documented training that her colleagues did not have and asked for additional duties and opportunities at every turn. Despite these efforts, Lily remained the lowest paid employee on her team and was paid approximately \$20,000 under market value per year.

Lily feels strongly that having to disclose her previous salary history set her up to be paid less than her male counterparts. HB 18-1377, the Prohibit Seeking Salary History for Job Applicants bill, would begin to address one of the factors that contributes to women being paid less for equal work.

ⁱ The Ninth Circuit Court of Appeals, the largest of the U.S. courts of appeals, hears appeals from federal courts in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands.

ⁱⁱ *Rizo v. Yovino*, --- F.3d ---, 2018 WL 1702982, (9th Cir. Apr. 9, 2018).

ⁱⁱⁱ 29 U.S.C. § 206(d)(1). The Equal Pay Act applies to all employers, regardless of size.

^{iv} According to the court, reliance on pay history would perpetuate the very sex-based wage disparities that the Equal Pay Act prohibits. *Rizo*, 2018 WL 1702982.

^v *Rizo*, 2018 WL 1702982.