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THIRD READING

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Bill No: AB 168  
Author: Eggman (D), et al.  
Amended: 9/8/17 in Senate  
Vote: 21

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SENATE LABOR & IND. REL. COMMITTEE: 4-1, 6/14/17  
AYES: Bradford, Atkins, Jackson, Mitchell  
NOES: Stone

SENATE PUBLIC EMP. & RET. COMMITTEE: 3-2, 7/10/17  
AYES: Pan, Leyva, Portantino  
NOES: Morrell, Moorlach

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 60-9, 5/22/17 - See last page for vote

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**SUBJECT:** Employers: salary information

**SOURCE:** Author

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**DIGEST:** This bill prohibits all employers, including the Legislature, the state, and local governments, from seeking salary history information about an applicant for employment and requires an employer to provide the pay scale for a position to an applicant upon reasonable request.

*Senate Floor Amendments of 9/8/17* (1) prohibit an employer from relying on the salary history information of an applicant as a factor in determining whether to offer employment or what salary to offer; (2) specify that nothing in this bill prohibits an applicant from voluntarily, and without prompting, disclosing salary history information to a prospective employer, and if an applicant does, allows the employer to consider that information in determining the salary for that applicant; and (3) specify that consistent with Labor Code §1197.5, nothing in this bill shall

be construed to allow prior salary, by itself, to justify any disparity in compensation.

**ANALYSIS:**

Existing law:

- 1) Bars an employer from requiring an employee to refrain from disclosing the amount of his or her wages, requiring an employee to sign a waiver or other document that denies the employee the right to disclose the amount of his or her wages or discharge, or formally disciplining, or otherwise discriminating against an employee who discloses the amount of his or her wages. (Labor Code §232)
- 2) Prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. (Labor Code §1197.5(a))
- 3) Prohibits an employer from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work. (Labor Code §1197.5(b))
- 4) Establishes exceptions to this prohibition where the employer demonstrates the payment is made pursuant to:
  - a) a seniority system;
  - b) a merit system;
  - c) a system which measures earnings by quantity or quality of production;
  - d) a bona fide factor other than sex, such as education, training, or experience which applies only if the employer demonstrates the factor is not based on or derived from a sex-based differential in compensation, is job related, and is consistent with a business necessity, as defined. (Labor Code §1197.5)
- 5) Specifies that prior salary cannot, by itself, justify any disparity in compensation. (Labor Code §1197.5)
- 6) Specifies that an employer who violates these provisions is liable to the affected employee in the amount of the wages, and interest thereon, and an additional equal amount as liquidated damages, administered and enforced by the Division

of Labor Standards Enforcement (DLSE) which may supervise the payment of wages owed. (Labor Code §1197.5(c) and (d))

- 7) Authorizes any employee to file a complaint with the DLSE of wages owed, and authorizes the Department of Industrial Relations or the DLSE to commence and prosecute a civil action on behalf of the employee and on behalf of similarly affected group of employees to recover unpaid wages, liquidated damages, and costs of the suit. (Labor Code §1197.5(g))
- 8) Makes it a misdemeanor, punishable by a fine of up to \$10,000 and/or by imprisonment, or both, for an employer or other person acting either individually or as an officer, agent, or employee of another person to pay or cause to be paid to any employee a wage less than the rate paid to an employee of the opposite sex, or who reduces the wages of any employee in order to comply with wage protections for an employee of the opposite sex per Section 1197.5. (Labor Code §1199.5)

This bill:

- 1) Prohibits an employer, orally or in writing, personally or through an agent, from seeking salary history information, including compensation and benefits, about an applicant for employment.
- 2) Prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.
- 3) Requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment.
- 4) Specifies that these provisions apply to all employers, including the state and local government employers and the Legislature.
- 5) Specifies that a violation of these provisions would not be subject to a misdemeanor.
- 6) Specifies that nothing in this bill prohibits an applicant from voluntarily, and without prompting, disclosing salary history information to a prospective employer.

- 7) Specifies that if an applicant voluntarily, and without prompting, discloses salary history information to a prospective employer, nothing in this bill prohibits that employer from considering or relying on that information in determining the salary for that applicant.
- 8) Specifies that consistent with Labor Code §1197.5, nothing in this bill shall be construed to allow prior salary, by itself, to justify any disparity in compensation.
- 9) Specifies that these provisions do not apply to salary history information that is disclosable to the public pursuant to specified federal and state law.

## **Background**

### *Research on Gender Pay Disparity*

There have been numerous studies dedicated to calculating disparities in earnings between men and women in the workplace over the last fifty years. In 1963, women who worked full-time year-round made 59 cents on average for every dollar earned by a man according to the American Association of University Women (AAUW). Today, women working full-time in the United States typically are paid just 80 percent of what men are paid, a gap of 20 cents. (*The Simple Truth about the Gender Pay Gap*, 2017 Edition, AAUW)

The wage gap is even larger for women of color. According to the National Partnership for Women & Families, among women who hold full-time, year-round jobs in the United States, Black women are typically paid 63 cents for every dollar paid to white men, while Latinas are paid just 54 cents for every dollar. Asian women are paid 85 cents for every dollar paid to white men, although some ethnic subgroups of Asian women fare much worse. (*America's Women and the Wage Gap*, National Partnership for Women & Families, April 2017)

Research finds that the gender pay gap has lifelong financial effects including contributing to women's poverty. Additionally, the pay gap follows women even after they leave the workforce where you will see the impact in lower retirement benefits as well as lower benefits for other programs based on earnings. The wage gap has narrowed since the 1960s largely due to women's progress in education and participation in the workforce and to men's wages rising at a slower rate. However, that slow progress has stalled in recent years and at this rate women will not reach pay equity with men until 2152.

*Need for this bill?*

The persistent gender pay gap has resulted in significant state efforts to curb wage discrimination. In 1949, California enacted the California Equal Pay Act, which targeted wage discrimination against women by prohibiting an employer from paying an employee a wage rate that is less than the rate of an employee of the opposite sex who does comparable work. SB 358 (Jackson, Chapter 546, Statutes of 2015) proposed a number of procedural and substantive changes to the California Equal Pay Act in order to make it easier for a victim of wage discrimination to identify an unlawful wage disparity and seek remedy.

Additionally, in 2016, AB 1676 (Campos) was enacted which specifies that prior salary cannot, by itself, justify any disparity in compensation under the bona fide factor exception in the existing Equal Pay Act law. Existing law, however, does not prohibit employers from inquiring about prior salary information. According to the author, gender wage discrimination is destructive not only for female workers but for our entire economy and closing the wage gap starts with barring employers from asking questions about salary history so that previous salary discrimination is not perpetuated. This bill prohibits an employer from seeking salary history information about an applicant for employment.

**Related/Prior Legislation**

AB 1209 (Gonzalez Fletcher, 2017) requires employers with 500 or more employees to submit to the Secretary of State's Office information on gender pay differentials for online posting.

AB 46 (Cooper, 2017) specifies that the Equal Pay Act provisions which prohibit employers from paying a lower wage rate to employees on the basis of gender, race, or ethnicity apply to both public and private employers.

AB 1676 (Campos, Chapter 856, Statutes of 2016) specified that prior salary cannot, by itself, justify any disparity in compensation under the bona fide factor exception in the existing Equal Pay Act law.

SB 1063 (Hall, Chapter 866, Statutes of 2016) expanded the prohibitions in the Equal Pay Act to include discrimination based on race or ethnicity.

SB 358 (Jackson, Chapter 546, Statutes of 2015) required that men and women doing substantially similar work under similar working conditions be paid equally, unless the pay differential is based on certain enumerated factors, as specified.

AB 1017 (Campos, 2015) would have prohibited an employer from seeking salary history information about an applicant for employment, except as otherwise provided. AB 1017 was very similar to this bill (AB 168); however, it did not include the pay scale provision and applied only to private employers. AB 1017 was vetoed by the Governor.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 9/8/17)

California Federation of Teachers  
California Legislative Women's Caucus  
Consumer Attorneys of California  
Consumer Federation of California  
Equal Rights Advocates  
National Association of Social Workers – California Chapter

**OPPOSITION:** (Verified 9/8/17)

American Insurance Association  
Association of California School Administrators  
California Ambulance Association  
California Association for Health Services at Home  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Employment Law Council  
California Farm Bureau Federation  
California Grocers Association  
California Hotel and Lodging Association  
California Landscape Contractors Association  
California League of Food Processors  
California Manufacturers and Technology Association  
California Professional Association of Specialty Contractors  
California Restaurant Association  
California Retailers Association  
California State Association of Counties  
California Travel Association  
Chambers of Commerce Alliance Ventura & Santa Barbara Counties  
Civil Justice Association of California  
Greater Irvine Chamber of Commerce

League of California Cities`  
National Federation of Independent Business  
Rural County Representatives of California  
San Jose Unified School District  
Vacaville Chamber of Commerce  
Western Electrical Contractors Association  
Western Growers Association  
Western States Trucking Association  
Wine Institute

**ARGUMENTS IN SUPPORT:** According to proponents, the wage gap is present regardless of industry, occupation or education level and the disparity is even larger for women of color. The author argues that wage discrimination is destructive not only for female workers but for our entire economy. According to the author, in California alone, women who are employed full-time would earn \$39 billion more per year if they were paid equal to their male colleagues. These lost wages mean families have less money to spend on goods and services that help drive economic growth. This bill ensures that job applicants, who have historically been victims of lower wages, will not continue to be plagued by unequal wages throughout their career.

**ARGUMENTS IN OPPOSITION:** Opponents of this bill argue that this bill exposes all employers to unnecessary litigation, creates hurdles in the hiring process and is already addressed by existing law. They note that last year the business community negotiated language on a similar proposal (AB 1676, Campos) to ensure that employers could not base compensation solely on prior salary; they believe this new law should be allowed to have an impact before banning any inquiry into an applicant's salary history. Additionally, opponents argue that there are several legitimate, non-discriminatory reasons why employers seek this information including that employers do not necessarily have accurate wage information on what the current market is for all potential positions.

Opponents are also concerned with the pay scale provision arguing that a pay scale could artificially limit an applicant's interest in a position. They argue that the appropriate wage and salary to pay an applicant is based upon various factors and employers may feel compelled to enlarge the pay scale in order to create sufficient room to adjust that rate depending on these factors and varied candidates for the job. Such a broad pay scale will not assist an applicant in negotiations.

Additionally, opponents argue that as part of the Labor Code, this bill exposes employers to costly litigation under the Private Attorneys General Act even when the employer pays an applicant equal wages as other employees. Overall, opponents argue that this bill effectively eliminates an employer's ability to negotiate wages and creates a new reason to sue.

ASSEMBLY FLOOR: 60-9, 5/22/17

AYES: Acosta, Aguiar-Curry, Arambula, Baker, Berman, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Cunningham, Dababneh, Dahle, Eggman, Flora, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Grayson, Holden, Jones-Sawyer, Kalra, Lackey, Levine, Limón, Low, Maienschein, Mathis, McCarty, Mullin, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NOES: Travis Allen, Brough, Choi, Gallagher, Gray, Harper, Melendez, Obernolte, Patterson

NO VOTE RECORDED: Bigelow, Chen, Daly, Fong, Irwin, Kiley, Mayes, Medina, Muratsuchi, Nazarian, O'Donnell

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9/9/17 16:06:26

\*\*\*\* END \*\*\*\*