

## Bill barring questions on previous pay gains steam

### Salary

#### CALIFORNIA

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You apply for a new job, and a prospective employer asks for your previous salary.

Intrusive? Harmless? No matter — the question soon could be illegal in California.

And its demise would be applauded by many women who say that basing salaries on prior compensation means discrimination can follow them from job to job.

“Women are paid less than men, even when they are doing the same work,” said California Assembly member Susan Talamantes Eggman, D-Stockton, author of a bill to bar employers from seeking applicants’ salary history.

“Women negotiating a salary shouldn’t have to wrestle an entire history of wage disparity. This bill gives women the power

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to determine for themselves where they start negotiating.”

The legislation, Assembly Bill 168, applies to both men and women, but it is aimed at narrowing the gender pay gap. According to the U.S. Census, California women earn 84 cents for every dollar a man is paid, slightly more than the U.S. average of 79 cents.

The measure passed the Assembly 60 to 9 in May and is expected to be voted upon by the Senate next week.

Whether Gov. Jerry Brown would sign it is unclear. He vetoed a similar bill two years ago, after opposition from business groups, saying it would prevent employers “from obtaining relevant information with little evidence that this would assure more equitable wages.”

Chamber of Commerce, a force in Sacramento, has marshaled a broad coalition, including trade associations of builders, farmers, grocers, hotels, insurers, restaurants and retailers, along with the California State Association of Counties, the League of California Cities and local chambers in Irvine and Riverside.

“The bill exposes all employers to unnecessary litigation, creates hurdles in the hiring process and is already addressed by existing law,” the groups wrote in a July letter of opposition.

“There are actually several legitimate, nondiscriminatory reasons why employers seek information regarding prior compensation of an applicant. Employers do not necessarily have accurate wage information on what the current market is for all potential job positions.”

Despite the business push, just a single Assembly member, Matthew Harper, R-Huntington Beach, spoke against the bill during the May floor debate. “All this bill simply does is reduce transparency and reduce information in terms of what employers need to make good hiring decisions,” he said. Meanwhile,

## National push

Since then, however, the movement for salary privacy has gathered strength across the country. Three states — Massachusetts, Oregon and Delaware — have enacted laws to stop employers from asking the question. Twentyfive states considered bills this year. Illinois and New Jersey legislatures are considering whether to override gubernatorial vetoes.

Cities are also jumping into the fray, with San Francisco, New York, Philadelphia and Pittsburgh passing ordinances forbidding past salary inquiries.

And now, the momentum in California is boosted by bipartisan support. Whereas the measure vetoed by Brown in 2015 failed to garner a single GOP vote, this year's legislation was co-authored by two Republicans and passed the Assembly with 10 GOP votes.

“As a business owner, I know the value of a job in my business,” said co-author Marie Waldron, R-Escondido, whose district spans parts of Riverside and San Diego Counties and who co-owns a small screen-printing company.

“A job is worth what it is worth. It should not be used as a moving target to pay qualified women less, due to their past history.”

The bill would also require employers to furnish applicants, upon request, the pay scale for a position.

## Federal loopholes

Gender pay discrimination has been illegal since 1963, when women earned 59 cents on the dollar compared to men and President John F. Kennedy signed the federal Equal Pay Act.

But while the gap has narrowed, loopholes in the law have allowed discrimination “even between men and women in the same fields and with the same levels of education,” Eggman said.

“The systematic undercompensation of women is compounded by the use of historic salary history in determining the basis of negotiation for women seeking new work.”

Two years ago, Gov. Jerry Brown signed the

as California seems poised to enact a salary privacy measure, a landmark federal lawsuit over the same issue is coming to a head.

Last month, the full Ninth Circuit Court of Appeals agreed to hear the case of a mathematics consultant for Fresno public schools who discovered she was paid less than male colleagues based purely on her prior salary.

## Cause celebre

In 2009, Aileen Rizo, who had two master's degrees in mathematics and technology, was hired at the minimum starting pay for a Fresno educator in her category: \$62,733. Three years later, she learned by chance that a newly hired male colleague was earning thousands of dollars more, although she had started with more education and more experience. Asking around, she found two other male colleagues who had also started at higher salaries.

Rizo, whose expertise was training instructors in new ways of teaching math, confronted her bosses. But they refused to raise her pay, saying it was legitimately based on the salary she had earned at a previous job in Arizona.

Rizo sued, arguing that the federal Equal Pay Act outlaws paying men and women different salaries for the same job. The Fresno school system has fought back, maintaining that basing pay on prior salary is gender-neutral.

In April, a 9th Circuit panel overturned a district court decision favoring Rizo. But her lawyers persuaded the full court to reconsider, arguing that basing pay solely on prior salary “perpetuates the history of gender bias in American society, contrary to the explicit purpose of the Equal Pay Act.”

Rizo's case has become a cause célèbre. She was interviewed on NBC by Maria Shriver. National unions, women's groups and civil rights organizations have filed amicus briefs on her behalf.

“I couldn't educate myself out of being paid less,” Rizo testified at a California Senate hearing in June. “I couldn't get more experience to break the cycle because low wages follow you wherever you go, as

California Fair Pay Act, a sweeping law requiring employers to pay men and women equal salaries for “substantially similar” work. A subsequent measure has made it illegal to base compensation solely on that worker’s past salary.

But equal pay advocates view laws preventing an employer from even asking about past salary as a new tool to “stop discrimination before it happens,” said Kate Nielson, state policy analyst for the American Association of University Women.

“Other laws require someone who is discriminated against to take (legal) action. That takes time and money that many don’t have,” Nielson said.

Even with federal and state laws banning wage discrimination, a study by the Institute for Women’s Policy Research suggests that at the current pace of change the gender wage gap in the United States will not close until 2058.

Supporters of AB 168 include the California Federation of Teachers, the Consumer Federation of California, the California chapter of the National Association of Social Workers and the Service Employees International Union, among others.

Although backers have focused on gender disparities, the legislation could also affect the hiring people of color who may have experienced wage discrimination in earlier jobs. Younger workers who settled for low-paying positions during the recession, despite their qualifications for higher salaries, could also benefit.

### **Business opposition**

However, the groups opposing the salary privacy measure are powerful. The California

long as someone keeps asking you what you were paid.”

More than 50 years have passed since the Equal Pay Act was signed, she noted, “and we’ve been waiting for the discriminatory wage gap to close ... Haven’t we been waiting long enough?”

**“I couldn’t educate myself out of being paid less, I couldn’t get more experience to break the cycle because low wages follow you wherever you go, as long as someone keeps asking you what you were paid.”**

— *Aileen Rizzo, Professor at Pacific University*



Aileen Rizo’s lawsuit over her salary in Fresno has gained national attention.

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Assemblywoman Susan Talamantes Eggman is the author of AB 168.

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