



WOMEN'S BUREAU  
U.S. DEPARTMENT OF LABOR

# ISSUE BRIEF

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## EQUAL PAY IN THE UNITED STATES SALARY HISTORY BANS

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**Having promoted equal pay since its founding in 1920, the Women's Bureau contributed to the major legislative breakthrough in the 1960s with the passage of the Equal Pay Act of 1963. To this day, addressing pay inequity and promoting equal pay through policy, research, and outreach remains core to the Women's Bureau's work. Equal pay and policies that help to close gender and racial wage gaps not only advance equity for all workers, but are also beneficial to employers and are a paramount component of a strong economy.**

**In the spirit of this mission, this brief provides further information on the history of equal pay legislation and policymaking in the United States, an overview of the benefits of salary history bans, and principles for designing salary history bans and other policies that close the gender wage gap.**

In the United States, on average, women are paid less than men. In 2021, women working full-time and year-round made approximately 84 cents compared to each dollar earned by men working full-time and year-round.<sup>1</sup> Black women, Hispanic women, and Asian women made 67 cents, 57 cents, and 92 cents, respectively, when compared to the earnings of white, non-Hispanic men.<sup>2</sup> The gender wage gap also varies considerably at the state level. In Vermont, for example, women working full-time and year-round in 2021 made 93% of what men working full-time and year-round were earning, whereas in Wyoming, women made 68% of men's earnings.<sup>3</sup>

These figures reflect many notable differences between working women and men and are useful markers to help identify a distinct pattern of lower pay, but only a portion of this wage gap—about 30%—can be explained through measurable differences between workers, such as age, education, work history, industry, occupation, or work hours.<sup>4</sup> The unexplained majority of the gap between men and women's wages could be attributed to discrimination and other unmeasured characteristics that may not be captured in existing data sources.<sup>5</sup>

Due to these longstanding inequities in pay for men and women in the labor force, reliance on an employee's prior salary to set current pay, in conjunction with other employer policies and practices, can exacerbate pay disparities for any worker who has faced discrimination in the labor market by anchoring pay to past wages. Studies indicate that this practice is prevalent in the hiring process. For instance, in a survey of U.S. workers, about half reported that their employers had learned about their past pay before making the offer that led to their current job.<sup>6</sup>

Using salary history to determine pay contributes to and reinforces the persistent gender wage gap at every job transition for working women, and particularly women of color, over the course of their working lives, including by affecting women's subsequent raises, bonuses, and retirement savings.<sup>7</sup>

Implementing equal pay protections, including salary history bans, can help to close the gender wage gap by breaking the cycle of pay inequity.<sup>8</sup>



## Salary History Bans At A Glance

Salary history bans are policies that prohibit employers from asking about and/or relying on a job applicant's prior salary in hiring and compensation decisions. These bans have varying levels of protection and scope. As of January 2023, 16 states and Puerto Rico, and a variety of cities and counties, have implemented salary history bans that apply to all employers.<sup>9</sup> Several other states, counties, and cities have enacted salary history bans for state and city agencies.<sup>10</sup> Additionally, in March 2022, President Biden issued Executive Order (E.O.) 14069 indicating that the Office of Personnel Management anticipates issuing a proposed rule that will address the use of salary history in the hiring and pay-setting process for Federal employees, consistent with E.O. 14035 of June 2021.<sup>11</sup> E.O. 14069 also directs the Federal Acquisition Regulatory Council, in consultation with the Secretary of Labor, to consider issuing regulations to advance economy, efficiency, and effectiveness in Federal procurement by promoting pay equity and transparency for job applicants and employees of Federal contractors and subcontractors, and specifically, consider whether to limit or prohibit the use of an applicant's or employee's prior salary or compensation history.

## EQUAL PAY LEGISLATION AND POLICYMAKING IN THE UNITED STATES

Since the 1960s, several pieces of legislation have been signed into law to help equalize pay in the United States (see Appendix A). The Equal Pay Act of 1963 (EPA) requires that men and women in the same workplace be given equal pay for equal work.<sup>12</sup> While their work does not need to be identical, it must be substantially equal based on the content of the job. All forms of pay are covered by this law.<sup>13</sup> Under the EPA, pay differentials are only permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex.<sup>14</sup> The Department of Labor enforced the EPA until 1979, when enforcement authority was transferred to the U.S. Equal Employment Opportunity Commission (EEOC). Between Fiscal Year (FY) 2017 and FY2021, 91.7% of the total EPA charges were filed by women.<sup>15</sup> During this same time, the EEOC recovered \$65.3 million for individuals filing EPA charges.<sup>16,17</sup> However, industrial and occupational segregation contribute substantially to the gender wage gap, and these disparities are not addressed by the EPA.<sup>18</sup> Discrimination in hiring, promotions, access to assignments, and advancement opportunities, which also affect compensation, are not addressed by the EPA, but are instead prohibited by Title VII of the Civil Rights Act (Title VII).

The Lilly Ledbetter Fair Pay Act of 2009 was the first piece of legislation signed into law by the Obama Administration. It codified into law that each discriminatory paycheck a worker receives is a wrong actionable under Federal statutes regardless of when the discrimination began, thereby extending the window of time that a worker can file a pay discrimination claim.<sup>19</sup> This law is integral to promoting and protecting equal pay by ensuring that employers are held accountable for pervasive and repeated discriminatory pay practices.<sup>20, 21</sup>

In addition to the EPA, Federal laws that prohibit pay discrimination because of an employee's or applicant's protected status include Title VII of the Civil Rights Act, Title I of the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), Section 503 of the Rehabilitation Act (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).



- Title VII applies to employers with 15 or more employees and prohibits pay discrimination against an employee or applicant because of that person's race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), or national origin.<sup>22</sup>
- The ADA, which also applies to employers with 15 or more employees, prohibits pay discrimination because of an individual's disability.<sup>23</sup>
- The ADEA applies to employers with 20 or more employees and prohibits pay discrimination against an employee or applicant because that person is 40 years old or older.<sup>24</sup>
- Section 503 and VEVRAA apply to covered Federal contractors and subcontractors and prohibit discrimination against individuals with disabilities and covered veterans, respectively, in rates of pay or any other form of compensation.<sup>25</sup>

All of these laws are more broadly applicable than the EPA as they do not require the job positions being compared to be substantially equal,<sup>26</sup> nor are the complainant and comparator employee required to work at the same establishment.<sup>27</sup> Title VII, however, does require comparisons of employees who are similarly situated.

Executive Order 11246, as amended, also prohibits covered Federal contractors from discriminating in compensation on the basis of race, color, religion, sex, sexual orientation, gender identity, and national origin. Contractors are further prohibited from discriminating against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others.<sup>28</sup>

Additionally, under Section 7 of the National Labor Relations Act (NLRA), eligible employees have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from these activities.<sup>29</sup> The NLRA gives employees the right to communicate with other employees at their workplace about their wages; however, only certain employees are covered.

In June 2021, President Biden signed Executive Order 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, which directs OPM to consider whether to prohibit Federal agencies from "seeking or relying on an applicant's salary history during the hiring process to set pay or when setting pay for a current employee."<sup>30</sup> Additionally, on March 15, 2022, President Biden issued Executive Order 14069 on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency, which indicates that OPM anticipates issuing a proposed rule that will address the use of salary history in the hiring and pay-setting processes for Federal employees. E.O. 14069 also directs the Federal Acquisition Regulatory Council, in consultation with the Secretary of Labor, to consider issuing regulations to advance economy, efficiency, and effectiveness in Federal contracting by improving pay equity and transparency for job applicants and employees of Federal contractors and subcontractors, and specifically, consider whether to limit or prohibit the use of an applicant's or employee's prior salary or compensation history.<sup>31</sup>

State equal pay laws vary in scope and strength. While workers covered by the Federal Equal Pay Act and other Federal anti-discrimination laws benefit from those protections regardless of the state in which they work, many states include additional protections in their equal pay laws to prevent discriminatory and unequal pay practices that persist in today's working world. For example, California's equal pay law explicitly prohibits the use of prior salary to justify pay disparity and Connecticut law explicitly prohibits employers from inquiring or directing a third party to inquire about an applicant's prior wage and salary history.<sup>32, 33</sup>



## HIGHLIGHTING THE BENEFITS OF SALARY HISTORY BANS

The body of research on salary history bans demonstrates that they can be a useful tool to reduce pay gaps for women, workers of color, and workers who enter the labor market during recessions or downturns. Evidence also supports that salary history bans are beneficial to employers and the economy as a whole.<sup>34</sup>

Research shows that salary history bans can narrow the gender wage gap, largely by increasing women's earnings.<sup>35</sup> One study found that after the passage of salary history bans, women's hourly wages increased and led to a 4.2 percentage point reduction in the hourly wage gap.<sup>36</sup> Another found that workers who changed jobs to an employer under a salary history ban saw their pay increase 5% more than comparable workers who changed jobs to an employer not under a ban.<sup>37</sup>

Relying on previous salaries to set current pay can perpetuate the systemic undervaluing of women's work, especially for women of color who have faced historic discrimination and occupational segregation that has led to many inequities in the labor market, including lower wages.<sup>38</sup> Research suggests that the implementation of salary history bans leads to higher pay for workers of color. One study found that minority workers who changed jobs saw a 7.9% increase in their wages after the passage of salary history bans, accounting for a 68% reduction in the pay gap between white workers who changed jobs and non-white workers who changed jobs.<sup>39</sup>

Additionally, because caregiving responsibilities disproportionately fall to women, they are more likely than men to reduce their hours or leave the workforce to provide care, in turn, impacting their salary history. The pandemic exacerbated this pattern—caregiving responsibilities pulled women away from jobs as the care infrastructure retracted.<sup>40</sup> Using salary history can negatively impact any worker who reenters the workforce after a period of time outside of the labor force since their previous salary would not include wage growth due to inflation, changes to the labor market over time or any additional qualifications earned between jobs.<sup>41</sup>

The adoption of state and local salary history bans is a growing trend in the United States. Certain employers are even opting to voluntarily stop inquiry and reliance on previous salaries—indicating their recognition of the positive benefits of the bans.<sup>42</sup> In addition, job postings were more likely to include pay information in the posting itself after salary history bans went in effect.<sup>43</sup>



## The Case of *Rizo v. Yovino* - 950 F.3d 1217 (9th Cir. 2020)<sup>44</sup>

*Rizo v. Yovino*, a case decided by the United States Court of Appeals for the Ninth Circuit in February 2020, is just one case that illustrates how relying on past salary can result in women being paid less for the same work.<sup>45</sup> Behind this decision is a math teacher who did not accept that her salary was lower than her colleagues simply because she was paid less at her prior place of employment.

When the Fresno County Office of Education (FCOE) hired Aileen Rizo in 2009, it set her starting salary by adding five percent to the salary at her previous job (with a small bonus for having a master's degree), following the County's Standard Operating Procedure.<sup>46</sup>

Three years later, while at lunch with colleagues, Rizo learned that a newly hired man would start at a salary significantly higher than what she was earning after three years of experience. When she brought the matter to human resources, she was told that starting salaries were based on the Standard Operating Procedure (i.e., the use of prior salary) and that the policy was applied equally to all employees.<sup>47</sup>

Ms. Rizo decided to pursue legal action under the Federal Equal Pay Act, Title VII, and the California Fair Employment and Housing Act, embarking on a six-year journey through the courts. In the end, the Ninth Circuit agreed that prior pay cannot be used to justify a pay differential for equal work, joining the Tenth and Eleventh Circuits in holding that the Equal Pay Act precludes an employer from relying solely on prior salary to justify pay disparity.<sup>48</sup> The court concluded that "[b]ecause prior pay may carry with it the effects of sex-based pay discrimination, and because sex-based pay discrimination was the precise target of the EPA, an employer may not rely on prior pay to meet its burden of showing that sex played no part in its pay decision."<sup>49</sup>

While some circuit courts take the same approach as *Rizo v. Yovino*, other circuit courts have held the opposite, that prior salary can be used as a basis other than sex to explain a pay differential. Given these contradicting decisions, policy and/or legislative interventions are necessary.

## IMPLEMENTING SALARY HISTORY BANS AND OTHER POLICIES TO CLOSE THE GENDER WAGE GAP

As this brief has discussed, salary history bans are an effective tool that states and localities are using to address wage discrimination and unequal pay; however, there is considerable variation among salary history bans in terms of which employers are affected, the use of information disclosed voluntarily, requirements to post salary ranges, and other aspects. Smart design is critical to the effectiveness of salary-related policies and legislation.

The following are principles to incorporate into salary history bans to help ensure that these policies have the intended effect of prohibiting reliance on current or prior salary and will in turn assist with closing the gender wage gap in states, localities, and companies throughout the United States.



### **Prohibit Reliance on Salary History:**

The main component of a salary history ban is the provision that prohibits employers from relying upon, asking for, or considering prior salary when evaluating an applicant for employment or setting pay for prospective employees. The following are examples of effective principles that prohibit reliance on salary history:

- Prohibit employers from asking for salary history from applicants or other sources.
- Prohibit employers from relying on the salary history of an applicant in considering the applicant for employment.
- Prohibit employers from using salary history to determine the wages the applicant will be paid should they be hired even if the applicant voluntarily provides it.<sup>50</sup>

### **Include Anti-Retaliation Protection:**

Protecting applicants and employees who decline to disclose their previous compensation is an integral component of an effective salary history ban.

- Prohibit an employer from retaliating against or refusing to interview, hire, promote, or employ an applicant for not providing salary history.

### **Include Salary Ranges in Job Announcements:**

Not only should employers refrain from relying on salary history to set pay, but employers can also provide a realistic pay range for a job at some point in the application process automatically or upon request.<sup>51</sup> Promoting pay transparency policies, such as disclosing salary ranges and not penalizing employees who disclose or discuss pay, alongside salary history bans encourages employees and employers to communicate openly about compensation in an equitable and unbiased manner.

Providing salary ranges during pay negotiations is an effective approach that decreases the gender wage gap and prevents reliance on salary history.<sup>52</sup> Basing pay negotiations on a disclosed pay range for the position helps to ensure that inequities or discrimination from previous positions are not implicitly or explicitly factored into determining current compensation.

- Require employers to be transparent about salary ranges and provide salary and/or wage scales in job postings and negotiations.

The following are additional measures to reduce pay discrimination that can effectively complement salary history bans and salary range transparency to ensure equitable compensation practices.

### **Protect Employees Who Discuss Pay Voluntarily:**

- Expand existing protections by enacting robust policies that cover all workers and explicitly prohibit employers from retaliating against employees or applicants for discussing their pay.<sup>53</sup>

### **Internal Measurement and Accountability Systems:**

- Encourage employers to conduct self-audits that review compensation systems to determine if there are gender-, race- or ethnicity-based disparities, particularly considering disparities across job titles, job categories, and promotion paths.<sup>54</sup>



## **Inclusive and Equitable Protections:**

- To promote a comprehensive pay equality framework that mirrors the protections provided under Federal law, include provisions that protect against discrimination because of race, color, religion, national origin, disability, and age in addition to sex (which includes pregnancy, sexual orientation, and gender identity), as well as discrimination occurring at the intersection of these bases.

## **Enforcement:**

- Name a state or municipal agency responsible for providing guidance and enforcement of salary history bans that has the authority to require employers to provide individual remedies, including back pay and salary adjustments.
- Increase agency funding as appropriate.

For more information about current Federal and state-level equal pay protections, coverage, and available remedies, visit the Women's Bureau's Equal Pay and Pay Transparency Protections webpage at <https://www.dol.gov/agencies/wb/equal-pay-protections>.



## APPENDIX A:

### U.S. Legislation, Executive Orders, and Administrative Guidance on Pay Equity and Transparency

- The Equal Pay Act, signed into law by President John F. Kennedy on June 10, 1963, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.<sup>55</sup>
- The Civil Rights Act of 1964 created the U.S. Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing Federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), and national origin.<sup>56</sup>
  - The EEOC is the lead Federal agency responsible for enforcing Federal laws prohibiting job discrimination and harassment.<sup>57</sup>
  - Other bases protected by anti-discrimination legislation and over which the EEOC has enforcement authority are age (40 or older) (Age Discrimination in Employment Act),<sup>58</sup> disability (Americans with Disabilities Act or Rehabilitation Act),<sup>59</sup> and genetic information (Genetic Information Nondiscrimination Act).<sup>60</sup>
- The Lilly Ledbetter Fair Pay Act of 2009 states that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began.<sup>61</sup>
- Executive Order 11246, as amended in 2014 by Executive Order 13665, prohibits discrimination in employment by government contractors and subcontractors, including pay discrimination, and also prohibits Federal contractors from discriminating against employees who inquire about, discuss or disclose their compensation, subject to certain limitations.<sup>62</sup>
  - Pursuant to EO 13665, DOL's Office of Federal Contract Compliance Programs issued a final rule in September 2015 implementing this pay transparency provision.<sup>63</sup>
- Under Section 7 of the National Labor Relations Act (NLRA), eligible employees have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all such activities.<sup>64</sup> Under the NLRA, employees have the right to communicate with other employees at their workplace about their wages.<sup>65</sup> However, there are limitations to this legislation that still allow employers to enact pay secrecy policies that penalize workers. For example, the NLRA only protects a narrow group of workers—supervisors, public sector workers, domestic workers, agricultural workers, and railroad and airline workers are not protected.<sup>66</sup>
- In 2014, the Office of Personnel Management (OPM) began working with Federal agencies to require disclosure of salary information in job postings after the Obama Administration directed OPM to focus on the Federal government's own pay practices.<sup>67</sup> Before this, agencies were only required to post starting salaries in job postings for General Schedule jobs in the Federal government.<sup>68</sup>
- In 2015, OPM directed Federal agencies to limit the use of salary history when setting an applicant's pay.<sup>69</sup>



- In June 2021, President Biden signed Executive Order 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce that included a component requiring OPM to consider whether to prohibit agencies from “seeking or relying on an applicant’s salary history during the hiring process to set pay or when setting pay for a current employee, unless salary history is raised, without prompting, by the applicant or employee.”<sup>70</sup>
- On March 15, 2022, President Biden issued Executive Order 14069 on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency which indicates that OPM anticipates issuing a proposed rule that will address the use of salary history in the hiring and pay-setting processes for Federal employees. It also directs the Federal Acquisition Regulatory Council, in consultation with the Secretary of Labor and others, to consider issuing proposed rules to enhance pay equity and transparency for job applicants and employees of Federal contractors and subcontractors, and more specifically, consider whether to limit or prohibit the use of an applicant’s or employee’s prior salary or compensation history.<sup>71</sup>
- Salary history bans are also present in two pieces of proposed legislation: 1) the Paycheck Fairness Act, H.R. 7, 117th Cong. § 9 (2021),<sup>72</sup> and 2) the Pay Equity for All Act of 2021, H.R. 2242, 117th Cong. § 2 (2021),<sup>73</sup> which both include provisions that prohibit employers from seeking salary history and/or relying on salary history in considering the applicant for employment or determining wages for the applicant.
  - President Biden continues to urge Congress to pass the Paycheck Fairness Act, “which would help mitigate sex-based pay discrimination while ensuring greater transparency and reporting of disparities in wages.”<sup>74</sup>



<sup>1</sup> Jessica Semega and Melissa Kollar. "Income in the United States: 2021," *U.S. Census Bureau, Current Population Reports*. Issued September 2022. Table A-7 <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-276.pdf>

<sup>2</sup> Calculations using data from <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html> (Separate tables for the sex/race groups age 15+ using the full-time, 50-82 weeks past year medians.)

<sup>3</sup> "The Wage Gap, State by State." 2022. *National Women's Law Center*. <https://nwc.org/resource/wage-gap-state-by-state/>

<sup>4</sup> Foster, Thomas B., Marta Murray-Close, Liana Christin Landivar, and Mark DeWolf. 2020. "An evaluation of the gender wage gap using linked survey and administrative data." *U.S. Census Bureau, Center for Economic Studies*. <https://www.census.gov/library/working-papers/2020/adrm/CES-WP-20-34.html>.

<sup>5</sup> Foster, Thomas B., Marta Murray-Close, Liana Christin Landivar, and Mark DeWolf. 2020. "An evaluation of the gender wage gap using linked survey and administrative data: Executive Summary." <https://www.dol.gov/sites/dolgov/files/WB/media/Evaluation-Gender-Wage-Gap-Executive-Summary.pdf>

<sup>6</sup> Hall, Robert E., and Alan B. Krueger. 2012 "Evidence on the Incidence of Wage Posting, Wage Bargaining, and On-the-Job Search." *American Economic Journal: Macroeconomics*, 4 (4): 56-67. 2012

<sup>7</sup> "Equal Pay and Pay Transparency Protections." *U.S. Department of Labor, Women's Bureau*. <https://www.dol.gov/agencies/wb/equal-pay-protections>

<sup>8</sup> Bessen, James E., Chen Meng, and Erich Denk. 2020. "Perpetuating Inequality: What Salary History Bans Reveal About Wages." [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3628729](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729); Hansen, Benjamin and Drew McNichols. 2020. "Information and the Persistence of the Gender Wage Gap: Early Evidence from California's Salary History Ban." NBER Working Paper No. 27054.; Sinha, Sourav. 2019. "Salary History Ban: Gender Pay Gap and Spillover Effects." [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3458194&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3458194&download=yes); Sockin, Jason and Michael Sockin. 2021. "A Pay Scale of Their Own: Gender Differences in Variable Pay." [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3512598](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3512598)

<sup>9</sup> "Progress in the States for Equal Pay." October 2022. *National Women's Law Center*. <https://nwc.org/wp-content/uploads/2022/10/Equal-Pay-Progress-in-the-States-10.28.22v2.pdf>

<sup>10</sup> As of January 2023, the states and territories that prohibit employers from seeking applicants' salary history include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Puerto Rico. There are additional states, cities, and counties that have passed policies that prohibit state or city agencies from seeking job applicants' salary history that are not included in this count. See <https://nwc.org/wp-content/uploads/2020/12/Asking-for-Salary-History-2022.pdf>

<sup>11</sup> "Executive Order on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency." March 15, 2022. *The White House*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/15/executive-order-on-advancing-economy-efficiency-and-effectiveness-in-federal-contracting-by-promoting-pay-equity-and-transparency/>

<sup>12</sup> "The Equal Pay Act of 1963." *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/statutes/equal-pay-act-1963>

<sup>13</sup> This includes salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. See <https://www.eeoc.gov/equal-paycompensation-discrimination>

<sup>14</sup> 29 U.S.C. § 206(d)(1); In *Rizo v. Yovino*, the Ninth Circuit held that salary history cannot justify a pay disparity under the Federal Equal Pay Act. *Rizo v. Yovino*, 950 F.3d 1217, 1232 (9th Cir. 2020). The Ninth Circuit also held that the "any factor other than sex" justification for a pay disparity "comprises only job-related factors, not sex," and that, as a matter of law, salary history is not a job-related factor. *Id.* at 1224, 1227-28. In so ruling, the court concluded that "[t]he equal-pay-for-equal-work mandate would mean little if employers were free to justify paying an employee of one sex less than an employee of the opposite sex for reasons unrelated to their jobs." *Id.* at 1226.

<sup>15</sup> "The Continuing Impact of Pay Discrimination in the United States." Office of Enterprise Data and Analytics (OEDA) Data Highlight No. 1. *U.S. Equal Employment Opportunity Commission (EEOC)*. Issued March 2022. <https://www.eeoc.gov/sites/default/files/2022-03/Equal-Pay-Day-Data-Highlight.pdf>

<sup>16</sup> *Ibid.*

<sup>17</sup> In 2016, the EEOC added pay data collection to the EEO-1 form for the first time, known as "Component 2," after a recommendation from the National Equal Pay Enforcement Taskforce in 2010 and an extensive, multiyear, public process to garner public input about collecting the data. The EEOC collected 2017 and 2018 pay data from private employers and certain Federal contractors with 100 or more employees through the EEO-1 Component 2 between July 2019 and February 2020. In 2019, the EEOC voted, with White House approval, to discontinue the EEO-1 Component 2 pay data collection in the future.

A 2022 report from the National Academies of Sciences, Engineering, and Medicine that evaluated the collection of the EEO-1 Component 2 data found that the data EEOC collected may be used effectively by the agency to help focus its resources to identify pay discrimination. Additionally, the report found that Federal pay data collection is a necessary tool to find and fight pay discrimination effectively. The report also offers short-term and long-term recommendations for improving pay data collection by the agency if undertaken in the future.

<sup>18</sup> Foster, Murray-Close, Landivar, DeWolf. 2020. <https://www2.census.gov/ces/wp/2020/CES-WP-20-34.pdf>

<sup>19</sup> "Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009." *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009>

<sup>20</sup> "Presidential Memorandum—Advancing Pay Equality in the Federal Government and Learning from Success Practices." May 10, 2013. *The White House*. <https://obamawhitehouse.archives.gov/the-press-office/2013/05/10/presidential-memorandum-advancing-pay-equality-federal-government-and-le>

<sup>21</sup> "Governmentwide Strategy on Advancing Pay Equality in the Federal Government." April 2014. *United States Office of Personnel Management*. <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-government.pdf>

<sup>22</sup> 42 U.S.C. §§ 200e(b), 2000e-2.



<sup>23</sup> 42 U.S.C. § 12112(a)–(b).

<sup>24</sup> 29 U.S.C. §§ 623(a), 630(b), 631.

<sup>25</sup> 29 U.S.C. § 793; 38 U.S.C. § 4212; 41 C.F.R. § 60-300.20(c); 41 C.F.R. § 60-741.20(c)

<sup>26</sup> While these laws do not require that the jobs be substantially equal, similarly situated comparators (which can include comparators in the same job or performing the same job functions) can be used as evidence to establish that an individual's protected characteristic(s) motivated an employer's discriminatory action.

<sup>27</sup> "Facts About Equal Pay and Compensation Discrimination." 1997. *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/laws/guidance/facts-about-equal-pay-and-compensation-discrimination>

<sup>28</sup> "Executive Order 11246, As Amended." *U.S. Department of Labor, Office of Federal Contract Compliance Programs*. <https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>; The Department of Labor, in its enforcement of E.O. 11246, follows Title VII, not EPA, discrimination standards. *OFCCP v. Greenwood Mills, Inc.*, Nos. 00-044, 01-089, 2002 WL 31932547, at \*4 (ARB Final Decision & Order Dec. 20, 2022).

<sup>29</sup> "Interfering with employee rights (Section 7 & 8(a)(1))." *National Labor Relations Board*. <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1>

<sup>30</sup> "Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce." June 25, 2021. *The White House*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/>

<sup>31</sup> "Executive Order on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency." March 15, 2022. *The White House*. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/15/executive-order-on-advancing-economy-efficiency-and-effectiveness-in-federal-contracting-by-promoting-pay-equity-and-transparency/>

<sup>32</sup> Cal. Lab. Code § 1197.5(a)(4).

<sup>33</sup> Conn. Gen. Stat. § 31-40z(b)(5).

<sup>34</sup> "Asking for Salary History Perpetuates Pay Discrimination from Job to Job." March 2022. *National Women's Law Center*. <https://nwlc.org/wp-content/uploads/2020/12/Asking-for-Salary-History-2022.pdf>; "Why Salary History Bans Matter to Securing Equal Pay." March 2021. *Center for American Progress*. <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>; Lamb, Natasha, and Will Klein. "A Proactive Approach to Wage Equality is Good for Business." July 16, 2015. *Wiley Online Library*. <https://doi.org/10.1002/ert.21495>

<sup>35</sup> Bessen, Denk, and Meng. 2020.; Hansen and McNichols. 2020.; Sinha. 2019.; Sockin and Sockin. 2021.

<sup>36</sup> Sinha, Sourav. 2019.

<sup>37</sup> Bessen, Denk, and Meng. 2020.

<sup>38</sup> Glynn, Sarah Jane, and Diana Boesch. "Bearing the Cost: How Overrepresentation in Undervalued Jobs Disadvantaged Women During the Pandemic." March 15, 2022. *U.S. Department of Labor*. <https://www.dol.gov/sites/dolgov/files/WB/media/BearingTheCostReport.pdf>

<sup>39</sup> Bessen, Denk, and Meng. 2020.

<sup>40</sup> Glynn and Boesch. 2022.

<sup>41</sup> "Asking for Salary History Perpetuates Pay Discrimination from Job to Job." 2022. <https://nwlc.org/wp-content/uploads/2020/12/Asking-for-Salary-History-2022.pdf>

<sup>42</sup> Bessen, James, Erich Denk, and James Kossuth. "Stop Asking Job Candidates for Their Salary History." July 14, 2020. *Harvard Business Review*. <https://hbr.org/2020/07/stop-asking-job-candidates-for-their-salary-history>; Bessen, Meng, and Denk. 2020.; Hansen and McNichols. 2020.

<sup>43</sup> Sran, Gurpal, Felix Vetter, and Matthew Walsh. 2020. "Employer Responses to Pay History Inquiry Bans." [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3587736&download=yes](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587736&download=yes)

<sup>44</sup> See, e.g., *Wernsing v. Dep't of Human Servs., State of Ill.*, 427 F.3d 466, 468 (7th Cir. 2005); *Spencer v. Va. State Univ.*, 919 F.3d 199, 206 (4th Cir. 2019). Given these contradicting decisions, policy and/or legislation is necessary.

<sup>45</sup> *Rizo*, 950 F.3d 1217. This case also overruled prior Ninth Circuit precedent, *Kouba v. Allstate Insurance Co.*, a case that held prior salary could be used to justify a pay disparity if it was considered to advance an acceptable business reason. *Id.* at 1229 (discussing *Kouba*, 691 F.2d 873 (9th Cir. 1982)).

<sup>46</sup> *Id.* at 1220.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 1229; see, e.g., *Angove v. Williams-Sonoma, Inc.*, 70 Fed.Appx. 500, 508 (10th Cir. 2003); *Irby v. Bittick*, 44 F.3d 949, 955 (11th Cir. 1995).

<sup>49</sup> 950 F.3d at 1229.

<sup>50</sup> While salary history bans prevent employers from asking workers about previous pay, they do not prevent workers from voluntarily offering this information. Some state salary history ban laws do prevent employers from relying on voluntarily disclosed salary history in setting pay, however the majority do not. Studies suggest that allowing employers to consider voluntary salary disclosures could undermine the effectiveness of salary history bans.

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- <sup>51</sup> “Salary Range Transparency Reduces the Wage Gap.” January 2020. *National Women’s Law Center*. <https://nwlc.org/wp-content/uploads/2018/06/Salary-Range-and-Transparency-FS-2020-1.17.2020-v2.pdf>; Roussille, Nina. “The Central Role of the Ask Gap in Gender Pay Inequality.” July 2022. [https://ninaroussille.github.io/files/Roussille\\_askgap.pdf](https://ninaroussille.github.io/files/Roussille_askgap.pdf); Biasi, Barbara, and Heather Sarsons. “Flexible Wages, Bargaining, and the Gender Gap.” October 2020. [https://www.nber.org/system/files/working\\_papers/w27894/w27894.pdf](https://www.nber.org/system/files/working_papers/w27894/w27894.pdf)
- <sup>52</sup> “Salary Range Transparency Reduces the Wage Gap.” 2020. <https://nwlc.org/wp-content/uploads/2018/06/Salary-Range-and-Transparency-FS-2020-1.17.2020-v2.pdf>
- <sup>53</sup> While some employees are protected under the NLRA and E.O. 11246, these laws have limitations. The protections of the NLRA and E.O. 11246 aside, many employers are able to implement pay secrecy policies or practices that penalize workers.
- <sup>54</sup> Executive Order 11246 requires covered Federal contractors to conduct self-audits that review compensation systems to determine whether there are gender-, race-, or ethnicity-based disparities.
- <sup>55</sup> “The Equal Pay Act of 1963.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/statutes/equal-pay-act-1963>
- <sup>56</sup> “Overview.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/overview>
- <sup>57</sup> “Laws Enforced by EEOC.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/statutes/laws-enforced-eeoc>
- <sup>58</sup> “Age Discrimination.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/age-discrimination>
- <sup>59</sup> “Disability Discrimination and Employment Decisions.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/disability-discrimination-and-employment-decisions>
- <sup>60</sup> “Genetic Information Discrimination.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/genetic-information-discrimination>
- <sup>61</sup> “Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009.” *U.S. Equal Employment Opportunity Commission*. <https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009>
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- <sup>63</sup> “Equal Pay: Banning Salary History Inquiries and Requiring Transparency in Job Posting Salary Ranges for Federal Contractors.” November 2020. *National Women’s Law Center*. [https://nwlc.org/wp-content/uploads/2021/05/NWLC.NA\\_GFI-SalaryHistory\\_SalaryRanges-public.pdf](https://nwlc.org/wp-content/uploads/2021/05/NWLC.NA_GFI-SalaryHistory_SalaryRanges-public.pdf)
- <sup>64</sup> “Interfering with employee rights (Section 7 & 8(a)(1)).” *National Labor Relations Board*. <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1>
- <sup>65</sup> “Your Right to Discuss Wages.” *National Labor Relations Board*. <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/your-rights-to-discuss-wages>
- <sup>66</sup> “Combating Punitive Pay Secrecy Policies.” February 2019. *National Women’s Law Center*. <https://nwlc.org/wp-content/uploads/2019/02/Combating-Punitive-Pay-Secrecy-Policies.pdf>
- <sup>67</sup> “Governmentwide Strategy on Advancing Pay Equality in the Federal Government.” 2014.; “Presidential Memorandum—Advancing Pay Equality in the Federal Government and Learning from Successful Practices.” 2013.
- <sup>68</sup> “Equal Pay: Banning Salary History Inquiries and Requiring Transparency in Job Posting Salary Ranges for Federal Contractors.” 2020.
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- <sup>71</sup> “Executive Order on Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency.” 2022.
- <sup>72</sup> “Paycheck Fairness Act.” H.R. 7. 117th Congress. <https://www.congress.gov/bill/117th-congress/house-bill/7/text>
- <sup>73</sup> “Pay Equity for All Act of 2021.” H.R. 2242. 117th Congress. <https://www.congress.gov/bill/117th-congress/house-bill/2242/text>
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