

Guidelines for the Application of AB 168: Salary History to Academic Recruitments

What is AB 168?

AB 168, effective January 1, 2018, prohibits employers in California, including state and local government employers and the Legislature, from inquiring about or relying upon salary history as a factor in determining salary or whether to offer employment.

The intent of this statute is to prevent the perpetuation of pay inequities that arise when employment offers are based on previous pay that may have been based on discriminatory decisions. The statute seeks to narrow pay gaps due to gender, race, or ethnicity by focusing the prospective employer on the current competencies of the applicant and not on previous work as reflected in past pay.

From a legal standpoint, there may be justifiable arguments that the University, based on its constitutional status, may be exempt from this particular statute. However, given our institutional values and commitment to equity, the University is taking steps to eliminate questions about prior salary history from the recruitment process. The guidance provided here is designed for positions covered by academic personnel policies. In these guidelines, the term “University” is used to denote “prospective employer.”

The statute prohibits inquiries directed to applicants, current/former employers, and agents such as search firms or employment agencies. AB 168 adds Section 432.3 to the California Labor Code and further strengthens protections afforded under the California Equal Pay Act and Fair Pay Act.

Other Provisions

- Applicants can voluntarily and without prompting provide their salary history to the University, and the University is not prohibited from relying upon such information in determining salary for that applicant.
- The University may review and consider salary history information that is publicly available pursuant to federal or state law, including the California Public Records Act. While permitted under the statute, it is advised that salary history information for applicants not be considered except where required for internal UC candidates.
- However, in all cases **the University must still comply with California’s Fair Pay Act – salary history alone cannot justify any disparity in compensation** for substantially similar work.
- Salary history information includes both compensation and benefits. Although no guidance has been provided in the statute regarding benefits, this may reasonably include tangible personal salary benefits such as bonuses, summer research salary, or employer retirement contributions.
- The University is required to provide applicants with the pay scale for a position upon request. Due to the prevalence of off-scale salary for academic appointees, the hiring unit may wish to provide the range of salaries in the unit in addition to the salary scale for the position.

Specific Situations

- **Retention actions.** In a retention situation, the individual seeking a retention offer is currently employed by the University and therefore is not an applicant for a position. The University is not prohibited from inquiring about or relying on salary history in a retention action.
- **Inter- and intra-campus recruitments.** The campus Academic Personnel Office should be alerted as soon as possible to any potential intercampus transfers of Senate faculty in order to provide notice as required by policy and to verify the applicant’s current rank, step, and salary. APM-510: Intercampus Transfers defines the salary limit that can be offered in these situations. However, due consideration must be given regarding equity in the hiring unit within the limit provided in APM-510.

- **Visiting academic appointments.** Although a visitor is appointed only temporarily, the University should not inquire about their salary history at their home institution. APM-230 will be revised to reflect this.
- **Reviewing and deciding entities.** The Senate Committee on Academic Personnel or other reviewing entities and faculty administrators (e.g., dean, vice provost, CP/EVC, chancellor) cannot be provided with salary history information unless the candidate provided it voluntarily. In any case, such reviewing or deciding entities must still comply with California’s Fair Pay Act and cannot justify any disparity in compensation due to salary history.
- **Search firms.** Search firms are agents of the University. Search firms with master agreements through UCOP have been made aware of the statute; others will need to be informed.

Hypothetical Situations

Below are examples of situations and conversations that may occur in the course of an academic recruitment.

Situations	Allowable	Not Allowable
Search committee or department faculty member asks applicant:	<i>What are your salary expectations for this position?</i>	<i>What is your current salary?</i>
UC professor receives a job offer from another institution, and the department chair asks:	<i>What salary and benefits are you being offered?</i> (Retention action)	--
Dean’s office wants to contact current employer to confirm salary history.	<i>[NAME] has stated their current salary is [\$]. Can you please confirm their current salary?</i> (Only allowed if the information was provided voluntarily by the candidate without prompting.)	Not allowed if the applicant was improperly asked for their salary history.
Hiring chair wants to know salary history in order to put together a competitive offer.	<i>What compensation package would I need to put together to get you to join our department?</i>	<i>I can’t ask you what you’re making, but you can volunteer it so that we can be competitive.</i> <i>Or: We will match or exceed your current salary if you tell us what it is.</i> (Considered prompting)
Applicant volunteers her salary history and based on this data an offer is made, but it turns out that she will earn less than her male peers for similar work.	--	Even though salary history was volunteered, the University must still comply with California’s Fair Pay Act. Salary history alone cannot justify any disparity in compensation for substantially similar work.
The dean wants to present UC benefits package as a positive comparison to applicant’s current institution.	Describe UC benefits and privileges: health, welfare, and retirement plans; campus housing; MOP loans; faculty recruitment allowance; etc. Let the applicant volunteer comparisons.	AB 168 specifically prohibits inquiring about or relying on “benefits” as well as salary history information. No guidance is provided in AB 168 as to what constitutes “benefits.”

<p>Hiring chair is speaking with references and after confirming that the candidate is a stellar scholar asks:</p>	<p><i>[NAME] has stated their current salary is [\$]. I want to confirm with you that their salary is _____.</i> (In most cases, the chair should not pursue such a question. The query is only allowed if salary history is already volunteered or otherwise publicly disclosable. Consult with your Academic Personnel Office.)</p>	<p><i>What is her/his current salary?</i></p>
<p>A search firm hired for a dean search presents the search committee with salary information that they asked the candidates to provide.</p>	<p>--</p>	<p>Even though the search committee did not ask for the salary history information, the search firm serves as an agent of the University and cannot ask candidates for salary history.</p>

AB 168, approved by Governor Jerry Brown on October 12, 2017, adds Section 432.3 to the California Labor Code to read:

- (a) An employer shall not rely 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.
- (b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.
- (c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.
- (d) Section 433 does not apply to this section. [This means that violation of Section 432.3 is not a misdemeanor.]
- (e) This section shall not apply to salary history information disclosable to the public pursuant to federal or state law, including the California Public Records Act or the federal Freedom of Information Act.
- (f) This section applies to all employers, including state and local government employers and the Legislature.
- (g) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.
- (h) If an applicant voluntarily and without prompting discloses salary history information to a prospective employer, nothing in this section shall prohibit that employer from considering or relying on that voluntarily disclosed salary history information in determining the salary for that applicant.
- (i) Consistent with Section 1197.5 [California’s Fair Pay Act], nothing in this section shall be construed to allow prior salary, by itself, to justify any disparity in compensation.

Note: Bracketed text added for clarity.

Please contact your campus Academic Personnel Office for assistance or with any questions.