

## Assembly Bill 168 Staff FAQs

These FAQ's are intended to serve as a resource to assist University of California locations in navigating AB 168 in support of our commitment to pay equity and the elimination of gender, race, color, religion, sex, national origin, disability, age, protected veteran status, gender identity, or sexual orientation, as a basis for determining compensation. This document is not intended to address all implementation questions or unique circumstances specific to your location and is designated for staff recruitments. It is recommended that you contact your location's central Human Resources and/or Academic Personnel office for guidance.

These FAQs are designated for SMG, MSP, PSS, Union, and Non-Union Staff. If you have questions related to academic personnel please contact your local Academic Personnel Office for guidance.

These FAQs were put together by Systemwide HR/Talent Management and a working group consisting of 13 HR professionals from various locations across the system.

This document will be updated as more policy decisions are finalized.

### FAQ Category Law

#### 1. What is AB 168?

On October 12, 2017, Governor Brown signed into law Assembly Bill 168, which prohibits employers from inquiring into an applicant's salary history, effective January 1, 2018. The legislation is intended to address inequity in pay practices based on gender and other protected class designations such as race, age and disability. The regulations include the following:

- Prohibit an employer from relying on salary history information of an applicant for employment as a factor in determining whether to offer employment or what salary to offer
- Prohibit 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.
- An employer must provide the pay scale for a position to an applicant applying for employment upon reasonable request.

## 2. Why is the University complying with AB 168? What's the purpose of this law?

This law continues the expansion of equal pay protection in California by prohibiting employers from asking salary history questions in the hiring process and basing pay on an applicant's past salary. The California legislature intends to lessen pay disparities for protected class individuals. From a legal standpoint, it is possible that the University, based on its constitutional status, could be exempt from this particular statute. However, given the University's institutional values and commitment to ensuring equal pay, the University is taking steps, including these FAQs, to align our practices with the provisions in this new law.

### **FAQ Category: UC Implementation**

## 3. Does AB 168 apply to all staff, academic and faculty appointments?

Yes. This law does not differentiate between the groups, therefore it applies to all staff, academic, and faculty for any position. The University is in the process of reviewing and considering changes to applicable University policies as a result of AB 168. For more information and guidance, contact your location's Central Human Resources office or Academic Personnel office.

This set of FAQs is designated for SMG, MSP, PSS, Union and Non-Union staff. For information about how AB 168 applies to academic personnel, please contact your local Academic Personnel Office for guidance.

## 4. If it is discovered that a question regarding salary history information is asked, what should we do?

This is similar to any violations of discrimination laws prohibiting illegal questions about race, color, religion, sex, national origin, age, disabilities, and sexual orientation being asked of applicants.

The information should be reported to an appropriate campus office for follow-up. The Human Resources office, Equal Employment office, or the Whistleblower hotline can address complaints and investigate possible policy violations.

## 5. If salary information is available on internal applicants, am I allowed to look it up?

This law applies to all employers, including state and local government employers. The law states this shall not apply to salary history information disclosable to the public pursuant to federal or state law, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United States Code). Although salary information may be found, or available, it should not be relied upon to make hiring decisions or to set salaries.

6. Are contracted search firms required to comply with AB 168?

Yes. Search firms that are acting as agents of the University are covered by AB168 and the expectation is they will comply with the law, UC Policies and Guidance related to AB168 (including these FAQs).

**FAQ Category: Guidance on What to Ask or Say**

7. I understand that AB 168 prohibits me from asking questions related to salary history information. Does the law prohibit any other questions from being asked?

Yes. The law also prohibits asking questions about the applicant's benefits and other forms of compensation. This includes bonuses, retirement benefits, health plans, paid time off, etc.

8. Is there a difference between asking salary history information verbally versus in writing?

No. The same limitations apply to verbal or written communications.

9. What questions can I ask applicants related to this?

Examples of questions that may be asked are:

- What are your salary requirements?
- What do you expect to make in this position?
- Is the salary range for this position within your acceptable range?

10. If an applicant volunteers their salary history information, what am I supposed to do?

The bill states: "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."

To ensure UC continues to advance and ensure equal pay rights, it is recommended that hiring managers do not rely on volunteered salary history information when making hiring decisions or setting salaries.

## **FAQ Category: Policy**

This section refers to University-wide personnel policies, which apply to non-represented employees.

### **11. How does this interact with existing University policies?**

The University is in the process of reviewing and considering changes to applicable University policies as a result of AB 168.

Effective December 2018, PPSM 30 (Compensation) has been updated to remove the annual limit section of the policy, which formerly stated a limit on an employee's total salary increase in a single fiscal year. This policy was updated to support the University's commitment to pay equity and in the spirit of AB 168.

## **FAQ Category: Compensation**

### **12. When considering applicants from other UC locations, can their salary history be shared?**

For internal UC applicants, locations are encouraged to wait until the end of the hiring process (i.e. immediately prior to making a salary offer) to check an applicant's current salary for potential compliance with PPSM 30.III.B.4. [PPSM 30 \(pdf\)](#)

### **13. Does this influence how we share our salary range information?**

AB168 encourages employers to share pay scales (salary grades) with applicants. Upon request, locations must share position, salary, grade and range information with an applicant. However, the guidance from Systemwide Human Resources is to use a current salary range like those derived from Career Tracks to set a budgetary-driven target range of pay for each open position. This budgeted target range should fall within the broader Career Tracks/other pay grade range.

Locations retain the same ability and options to determine whether to share salary range information in the job posting. Locations may want to review how they currently share salary range information to better assist applicants in determining if they want to apply for the job.

14. Since we have to disclose the salary range to an applicant if asked, should the full range be listed in the job posting?

To best meet their location's business and budgetary needs, locations may choose to post full or part salary ranges, or no salary ranges. Posting a salary range may assist in the hiring process to ensure that applicants are aware of the salary range that the location can offer before they submit an application.

Following are examples of salary range posting options:

- No salary range posted. Posting includes language similar to "Salary commensurate with experience."
- Post the salary range from minimum to the maximum that the existing budget allows within the range.
- Post the salary range from minimum to 25%, minimum to midpoint, or minimum to 75%.
- Post the full salary range.
- Post a budgetary range that falls within the full salary range.

#### Posting Salary Range Considerations

##### Pros:

- May assist the applicant to better determine whether they want to apply for the position with the posted salary range, thus reducing numbers of applicants who expect a salary outside of the available range.
- Posting partial salary range up to the maximum available due to current budget provides clearer and more transparent salary guidance for applicants to better manage their expectations and may enhance their hiring process experience.
- Posting full range allows the applicant to easily reference the full range of potential salary growth for the job.

##### Cons:

- Posting the full or part of the salary range may set up an unrealistic salary expectation for the applicant who may assume that they are eligible for the top of the salary range, and/or that the location can or will pay for the top of the range.
- Locations may receive many applications from applicants who expect the top of the posted salary range and who would not proceed in the process if the top salary was not available, possibly resulting in frustration over wasted effort and time for both the applicant and hiring manager.

15. What if there isn't budget to pay above the first quartile or mid-point and yet the full salary range has been posted?

While AB 168 obligates all employers to disclose the salary range of the position to an applicant if they inquire, when a position is subject to such budgetary limitations applicants may be informed either in the job posting or verbally, that the position is budgeted "up to (first quartile or midpoint), which is (state the amount)".

16. How are we able to determine what an offer of employment should be since we can no longer base it on their current or most recent salary?

The intent of AB 168 is to address inequity in pay practices based on gender and other protected group designations. Relying solely on an applicant's previous salary to determine future salary could result in pay disparities. Therefore, determining a salary within the established salary ranges should be based on the education, experience, skills, knowledge and abilities of the finalist.

Once an offer is made, it is also highly recommended to invite the finalist to utilize the Total Compensation Estimator provided on the UCnet Compensation & Benefits website to assist them in estimating their total compensation as a prospective UC employee.

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