


MEMORANDUM

March 1, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 4-19, Personnel – Merit System - Requesting Salary History - Prohibited

PURPOSE: Introduction – no Council votes required

Bill 4-19, Personnel – Merit System - Requesting Salary History - Prohibited, sponsored by Lead Sponsor Councilmember Glass and Co-Sponsors Council President Navarro, Council Vice-President Katz, Councilmembers Friedson, Jawando, Rice, Hucker, Riemer and Albornoz, is scheduled to be introduced on March 5, 2019. A public hearing is tentatively scheduled for March 26, 2019 at 1:30 p.m.¹

Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

Background

Title VII of the Civil Rights Act of 1964 prohibited employment discrimination based on race, color, religion, sex, or national origin. Although this landmark legislation took effect on July 2, 1964 for the private sector, State and local government employees were included by amendment in 1972.²

The landmark Civil Rights Act of 1964 was a direct result of a long campaign against institutional race discrimination against African-Americans. The addition of "sex" to the Act was a late amendment introduced by an opponent of the Bill, Representative Howard Smith of Virginia.³

¹#MoCoEqualPay

Other search terms: equal pay, salary history, wage gap and pay disparities

² Congress did not extend these protections to their own staffs until 1991.

³ As described in a 2014 article by Louis Menand in *The New Yorker*, some historians believe Mr. Smith introduced this amendment to kill the Bill, but there is also evidence that Mr. Smith was a long-time supporter of women's rights and a personal friend of women's rights activist Alice Paul. See: <https://www.newyorker.com/magazine/2014/07/21/sex-amendment>

As pointed out in Councilmember Glass's memorandum at ©5-6, the existence of Federal, State, and County laws prohibiting discrimination based on gender for at least 55 years have not resulted in wage equity between male and female workers in the County, State, or Nation.

Each County merit position has a grade with a minimum and a maximum salary. An employee is eligible for a pre-determined percentage increase each year called a service increment. With few exceptions, a merit system employee must work herself up the salary range, absent a promotion to a higher graded position, through these incremental steps. However, all new hires do not start at the minimum salary for the grade. County Personnel Regulation, COMCOR §33.07.01.10-5 states in relevant part:

- (b) *Salary on appointment and reappointment for employees on the General Salary Schedule and Management Leadership Service Salary Schedule. A department director must set the base salary of a newly appointed or reappointed employee within the applicable pay grade or pay band under these Regulations and guidance established by the OHR Director and CAO.*
 - (1) *Departments and agencies have the authority to negotiate and determine salaries for candidates equal to or less than the midpoint of the salary range or pay band.*
 - (2) *A department director may submit a request to the OHR Director for approval to hire a candidate at a salary that is above the midpoint of the salary range or pay band. The director should include in the memorandum:*
 - (A) *the reason the candidate should be hired above the midpoint of the salary range;*
 - (B) *a copy of the candidate's resume;*
 - (C) *proof of the candidate's prior or current salary (i.e. most recent pay slip, W-2, 1099 or other wage documentation); and*
 - (D) *the names of other incumbents in the same class in the department with their salaries.*

Therefore, an employee's starting salary can have a long term effect on that employee's salary in the same grade. Since wages for women generally lag behind wages for men, and wages for women of color lag even further behind wages of white men, basing a starting salary on a person's current salary is likely to result in an adverse impact on the future wages of women employees. Bill 4-19 is an attempt to eliminate this possible reason for wage inequity between the genders.

This packet contains:

Bill 4-19
Legislative Request Report
Councilmember Glass Memorandum

Circle #

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Bill No. 4-19
Concerning: Personnel – Merit System -
Requesting Salary History - Prohibited
Revised: February 27, 2019 Draft No. 7
Introduced: March 5, 2019
Expires: September 5, 2020
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Glass
Co-Sponsors: Council President Navarro, Council Vice-President Katz, Councilmembers Friedson,
Jawando, Rice, Hucker, Riemer and Albornoz

AN ACT to:

- (1) prohibit the County from requesting salary history from an applicant for County employment;
- (2) prohibit the County from relying on salary history to determine an applicant's starting salary; and
- (3) amending the law governing the County merit system.

By adding

Montgomery County Code
Chapter 33. Personnel and Human Resources
Article II. Merit System
Section 33-25

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 33- 25 is added as follows:**

2 **33-25. [Reserved] County Pay Equity Act.**

3 (a) Definitions. As used in this section:

4 Applicant means a person seeking a merit system position with the
 5 County. Applicant does not include a County merit system
 6 employee seeking a new position with the County.

7 Salary means an applicant's financial compensation in exchange
 8 for labor, including wages, commissions, and bonuses.

9 Salary history means an applicant's current and past salary in the
 10 applicant's current or prior position with another employer.

11 (b) Requesting salary history prohibited.

12 (1) The County must not consider or rely on an applicant's salary
 13 history as a factor in determining whether to offer employment to
 14 an applicant or determining pay.

15 (2) The County must not seek an applicant's salary history.

16 (3) The County must not refuse to hire or retaliate against an applicant
 17 for refusing to disclose the applicant's salary history.

18 (4) This Section does not prohibit:

19 (A) an applicant from voluntarily, and without prompting,
 20 disclosing the applicant's salary history, provided the
 21 County does not rely on that voluntary disclosure to
 22 determine an initial offer of starting salary for the applicant;

23 (B) the County from discussing an applicant's expectations with
 24 respect to salary without inquiring about salary history; and

25 (C) the County from verifying non-salary information disclosed
 26 by an applicant or received from a background check,
 27 provided that any salary history disclosed by a background

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check is not used to refuse to hire or determine an applicant's salary.

(D) the County from relying on salary history voluntarily provided by the applicant to pay the applicant a higher wage than initially offered, if reliance on salary history does not result in unequal pay for equal work based on gender.

Sec. 2. Report.

The Executive must:

- (1) study the effect of laws in other jurisdictions prohibiting an employer from considering an applicant's salary history on pay disparity based on gender and submit a report to the Council on this analysis on or before July 1, 2020; and
- (2) provide the Council with a report on gender pay equity among County employees every 2 years beginning on or before July 1, 2022.

Approved:

Nancy Navarro, President, County Council Date

Approved:

Marc Elrich, County Executive Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 4-19

Personnel – Merit System - Requesting Salary History - Prohibited

DESCRIPTION: Bill 4-19 would prohibit the County from requesting salary history from an applicant for County employment and prohibit the County from relying on salary history to determine an applicant's starting salary.

PROBLEM: Wage inequity between the genders in County employment can partially be explained by differences in starting salaries calculated based on salary history.

GOALS AND OBJECTIVES: To eliminate this reason for wage inequity between genders.

COORDINATION: OHR, County Attorney

FISCAL IMPACT: To be provided

ECONOMIC IMPACT: To be provided

EVALUATION: To be provided

EXPERIENCE ELSEWHERE: At least 12 States and 10 local governments have similar laws.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

EVAN GLASS
COUNCILMEMBER
AT-LARGE

MEMORANDUM

TO: Councilmembers
FROM: Evan Glass
DATE: February 5, 2019
SUBJECT: Introduction of legislation to prohibit the County from requesting the salary history of an applicant during the hiring process of a County merit system employee.

On March 5th, I will be introducing Bill xx-19, Personnel – Merit System - Requesting Salary History - Prohibited, also referred to as the **Montgomery County Pay Equity Act**. This legislation would prohibit the County from relying on an applicant's salary history in hiring or determining the starting salary for a County merit system employee. The bill would also require the Executive to study the effect of this type of law on the private sector in other jurisdictions and provide a report to the Council.

- (1) prohibit the County from requesting salary history from an applicant for County employment;
- (2) prohibit the County from relying on salary history to determine an applicant's starting salary; and
- (3) amending the law governing the County merit system.

On average, women earn 79 cents for every dollar their male counterparts make; and for women of color the gap is starker. Black women earn 60 cents and Hispanic/Latina women earn just 55 cents relative to white men.

Studies show that the gender pay gap starts early in a career and that female job applicants, particularly women of color, carry lower earnings from job to job. In Maryland, the gender gap reflects the national trend. The median annual pay for a woman who works full-time is \$50,635 compared to \$60,591 for her male counterpart. For Maryland women of color holding full-time jobs, this translates to 69 cents for Black women, 47 cents for Latinas, and 83 cents for Asian women. Women are, in general, less likely to negotiate higher salaries, and to start their careers with lower wages.

Montgomery County would be joining a growing list of over twelve states and ten local jurisdictions that have implemented laws banning employers from requesting a prospective employee's salary history. These include Massachusetts, California, New York, Delaware, Oregon, Puerto Rico, Connecticut, Hawaii, Vermont, Illinois, Michigan, New Jersey, Pennsylvania, New Orleans, Chicago, the District of Columbia, Salt Lake City, Kansas City, Louisville, New York City, Pittsburgh, San Francisco, and Westchester and Albany counties.

It is my goal that by eliminating the reliance on salary history in the hiring process, candidates, regardless of gender, will be paid based on experience and the responsibilities within the position, rather than past earning history. This is what I hope will be the first step in helping Montgomery County move towards systematically eliminating gender pay discrepancies.

If you have any questions or would like to cosponsor the Montgomery County Pay Equity Act, please contact Valeria Carranza in my office.

Thank you.



Evan Glass
Councilmember At-Large
Montgomery County Council