

## **Guidelines for the Application of AB 168 and SB 1162: California Pay Transparency and Applicant Inquiry Restrictions for Academic Recruitments**

As of January 1, 2023, AB 168 and SB 1162 add and amend [Labor Code Section 432.3](#).

### **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 increase the transparency about salaries in 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.”

### **What is SB 1162?**

Effective January 1, 2023, California Senate Bill 1162 requires employers to disclose pay scales on all job postings and to current employees upon request.

The requirements include the following:

- Pay scales must be included in all job postings and information must be provided to all third parties who are engaged to assist with job postings
- A pay scale must also be provided for a current employee's position at the employee's request.
- Employers must maintain records of job titles and wage rate histories for the duration of an employee's employment and three years after termination of employment.

### **Why is the University complying with AB 168 and SB 1162? What is the purpose of these laws?**

These laws expand pay equity and pay transparency by requiring California employers to disclose pay scales and prohibit the employer from seeking or relying on applicants' salary history information, including compensation and benefits, in the recruitment process. These laws further safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status, and they are intended to address inequity in pay practices based on gender, race, color, religion, sex, national origin, disability, age, protected veteran status, gender identity, or sexual orientation.

Based on its legal standing and constitutional status, the University may be exempt from these laws. However, given the University's institutional values and commitment to diversity and ensuring equal pay, the University has aligned policies and practices with the provisions in these new laws.

## Job Postings (SB 1162)

### Since we must disclose the pay scale to an applicant, should the full range be listed in the job posting?

The intent of SB 1162 is to assist applicants in the application process to ensure they are aware of the salary that the location can offer before they submit an application.

The law requires that the university's job advertisements include the pay scale for the position. Pay Scale is defined as the salary or hourly wage range that the University reasonably expects to pay for the position in accordance with local procedures. To best meet location's business and budgetary needs, locations may choose to post pay scales and/or full salary ranges.

Following are examples to meet the pay scale posting requirement:

- Post a pay scale, a budgetary range that falls within the full salary range.
- Post the full salary range from minimum to maximum.
- Post a pay scale and the full salary range from minimum to maximum.

Locations should include language in the position description about what the location expects to pay such as one of the following examples. Consult with your local Academic Personnel Office if your hiring unit proposes different language.

For print ads with character limits and without the ability to include hyperlinks, we encourage including a sentence about the range:

A reasonable estimate for this position is \$[Insert]-\$[Insert].

OR

The current base pay range is \$[Insert]-\$[Insert]. Other components of pay are offered when necessary to meet competitive conditions.

Senate (if the range is pre-determined):

The [posted UC salary scales](#) set the minimum pay determined by rank and/or step at appointment. See Table(s) [Insert] for the salary range. "Off-scale salaries" and other components of pay, i.e. a salary that is higher than the published system-wide salary at the designated rank and step, are offered when necessary to meet competitive conditions. A reasonable estimated salary range for this position is \$[Insert]-\$[Insert], inclusive of the salary scale and off-scale salary components. [Optional language: See campus compensation page for additional information.]

Senate (if a range is too broad or unpredictable):

The [posted UC salary scales](#) set the minimum pay determined by rank and/or step at appointment. See Table(s) [Insert] for the salary range(s). "Off-scale salaries" and other components of pay, i.e., a salary that is higher than the published system-wide salary at the designated rank and step, are offered when necessary to meet competitive conditions. [Optional language: See campus compensation page for additional information.]

Senate and non-Senate (health sciences comp plan):

The [posted UC salary scales](#) set the minimum pay determined by rank and step at appointment. See Table(s) [Insert] for the salary range. This position [includes/may include]

membership in the health sciences compensation plan [insert link], which provides for eligibility for additional compensation. [Optional language: See campus compensation page for additional information.]

All other academic personnel (if pay is eligible for negotiation):

The [posted UC salary scales](#) set the minimum pay determined by rank and step at appointment. See Table [Insert] for the salary range. “Off-scale salaries”, i.e. a salary that is higher than the published system-wide salary at the designated rank and step, are offered when necessary to meet competitive conditions.

All other academic personnel (if set range):

See [Table \[Insert\]](#) for the salary range for this position. A reasonable estimate for this position is \$[Insert]-\$[Insert].

Please be mindful of hyperlinks, particularly when copying language from previous recruitments. For print ads where a hyperlink is not possible, be sure to explain the salary range (e.g., *The current minimum pay range is \$[Insert]-\$[Insert], as defined in Table [Insert] of the UC salary scales.*).

**Are we limited to the salary range in the job posting when making a job offer?**

By using the sample language provided, the hiring authority has the flexibility under APM to offer negotiated salary components above the minimum pay posted in the UC salary scales.

## Salary History (AB 168)

### 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.
- **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 consider salary history information even if the candidate provided it voluntarily. 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)	--

<p>Hiring chair wants to know salary history in order to put together a competitive offer.</p>	<p><i>What compensation package would I need to put together to get you to join our department?</i></p>	<p><i>I can't ask you what you're making, but you can volunteer it so that we can be competitive.</i></p> <p><i>Or: We will match or exceed your current salary if you tell us what it is.</i></p> <p><i>(Considered prompting)</i></p>
<p>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.</p>	<p>--</p>	<p>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.</p>
<p>The dean wants to present UC benefits package as a positive comparison to applicant's current institution.</p>	<p>Describe UC benefits and privileges: health, welfare, and retirement plans; campus housing; MOP loans; faculty recruitment allowance; etc. Let the applicant volunteer comparisons.</p>	<p>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>

<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></p> <p><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.)</i></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>

As of January 1, 2023, AB 168 and SB 1162 add and amend [Labor Code Section 432.3](#) 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) (1) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment.

(2) An employer, upon request, shall provide an employee the pay scale for the position in which the employee is currently employed.

(3) An employer with 15 or more employees shall include the pay scale for a position in any job posting.

(4) An employer shall maintain records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment in order for the Labor Commissioner to determine if there is still a pattern of wage discrepancy. These records shall be open to inspection by the Labor Commissioner.

(5) An employer with 15 or more employees that engages a third party to announce, post, publish, or otherwise make known a job posting shall provide the pay scale to the third party. The third party shall include the pay scale in the job posting.

(d) (1) A person who claims to be aggrieved by a violation of this section may file a written complaint with the Labor Commissioner within one year after the date the person learned of the violation. The complaint shall state the name and address of the employer and shall provide a detailed account of the alleged violation, as may be required by the Labor Commissioner.

(2) A person who claims to be aggrieved by a violation of this section may also bring a civil action for injunctive relief and any other relief that the court deems appropriate.

(3) The Labor Commissioner shall promptly investigate complaints alleging violation of this section.

(4) Upon finding that an employer has violated this section, the Labor Commissioner may order the employer to pay a civil penalty of no less than one hundred dollars (\$100) and no more than ten thousand dollars (\$10,000) per violation. The Labor Commissioner shall determine the amount of the penalty based on the totality of the circumstances, including, but not limited to, whether the employer has previously violated this section. For a first violation of subdivision (c), no penalty shall be assessed upon demonstration by the employer that all job postings for open positions have been updated to include the pay scale as required by this section.

(5) If an employer fails to keep records in violation of this section, there shall be a rebuttable presumption in favor of the employee's claim.

(e) Section 433 does not apply to this section. [This means that violation of Section 432.3 is not a misdemeanor.]

(f) This section does not apply to salary history information disclosable to the public pursuant to federal or state law, including the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) or the federal Freedom of Information Act (Section 552 of Title 5 of the United States Code).

(g) This section applies to all employers, including state and local government employers and the Legislature.

(h) Nothing in this section shall prohibit an applicant from voluntarily and without prompting disclosing salary history information to a prospective employer.

(i) 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.

(j) Nothing in this section shall prohibit an employer from asking an applicant about the applicant's salary expectation for the position being applied for.

(k) Consistent with Section 1197.5 [California's Fair Pay Act], nothing in this section shall be construed to allow prior salary to justify any disparity in compensation.

(l) All civil penalties collected pursuant to this section shall be deposited into the Labor Enforcement and Compliance Fund for distribution to the Division of Labor Standards Enforcement. Upon appropriation by the Legislature, these funds may be expended by the division to cover reasonable ongoing costs of administering and enforcing this section.

(m) For purposes of this section, all of the following shall apply:

(1) "Pay scale" means the salary or hourly wage range that the employer reasonably expects to pay for the position.

(2) "Applicant" or "applicant for employment" means an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.

Note: Bracketed text added for clarity.

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