



April 18, 2017

The Honorable Susan Eggman  
California State Assembly  
State Capitol, Room 4117  
Sacramento, CA 95814

**SUBJECT: AB 168 (EGGMAN) EMPLOYERS: SALARY INFORMATION  
OPPOSE**

Dear Assembly Member Eggman:

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE** your **AB 168 (Eggman)**, as it exposes all employers to unnecessary litigation, creates hurdles in the hiring process and is already addressed by existing law.

**AB 1676 Just Went into Effect on January 1, 2017 and Should Be Given Time to Work:**

**AB 168** seeks to preclude employers from “seeking” salary history information about an applicant. Last year, the business community negotiated language on a similar proposal (AB 1676 – Campos) to ensure that an employer could not base an applicant or employee’s compensation solely on prior salary. AB 1676 (Campos) was signed and became effective January 1, 2017. The Legislature should allow this new law to have an impact before banning any inquiry into an applicant’s salary history.

### **Employers Utilize Salary Data for Legitimate, Non-Discriminatory Reasons:**

There are actually several legitimate, non-discriminatory reasons why employers seek information regarding prior compensation of an applicant. Employers do not necessarily have accurate wage information on what the current market is for all potential job positions. In fact, employers in competitive industries do not advertise salaries in order to utilize their pay structure as a way in which to lure talented employees from their competition. By requesting salary information, employers can adjust any unrealistic expectations or salary ranges to match the current market rate for the advertised job position. This has worked to the benefit of the applicant/employee.

Additionally, it can be utilized as a reference regarding whether the employee's expectations of compensation far exceed what the employer can realistically offer. Requiring both the applicant and employer to waste time on the interview process which, for highly compensated employees, could be lengthy, to then ultimately learn at the end of the process that the employee would never consider taking the compensation offered is unnecessary. While **AB 168** allows an employee to request a pay scale for the specific position, that mandate raises concerns as well.

As set forth above, an employer may assume a pay scale accurately captures the current market for a specific position, yet could be wrong. Disclosing a pay scale could artificially limit an applicant's interest in a position. Employers determine the appropriate wage and salary to pay an applicant based upon various factors, including skill, education, prior experience, as well as the funding available for the job. Employers may feel compelled to enlarge the pay scale in order to create sufficient room to adjust that rate depending on the various factors and varied candidates for the job. Such a broad pay scale will not assist an applicant in negotiations.

Disclosure of wage rates or pay scales has not been proven to address gender equity pay. In a *Sacramento Bee* article dated March 28, 2015, it detailed findings that, despite disclosing actual compensation of all employees, women staff in the California Legislature make less than male staff.

### **Current Protections Exist to Address Pay Disparity:**

In addition to AB 1676 (Campos) that was just enacted last year and precludes an employer from basing an applicant's or employee's compensation solely on prior salary, Labor Code Section 1197.5 was just amended by SB 358 (Jackson) in 2015 to mandate an employer provide equal wages for substantially similar work. Labor Code Section 232 precludes an employer from preventing an employee from disclosing his or her wages. The Fair Employment and Housing Act (FEHA) precludes any discrimination in the workplace based upon various protected classifications, including gender.

### **AB 168 Creates an Additional Avenue of Litigation When There Is No Harm:**

As a part of the Labor Code, **AB 168** exposes employers to costly litigation under the Labor Code Private Attorneys General Act (PAGA), Labor Code Sections 2698, *et seq.* Exposing employers to additional threats of litigation, even when the employer pays an applicant equal wages as other employees, is simply unfair. For example, under **AB 168**, if an employer asks an employee about his or her prior salary, yet ultimately pays the applicant a higher salary than any of the applicant's male colleagues, that employer could still be sued under PAGA for penalties and attorney's fees. It is unfair to expose employers to this costly litigation, especially when no harm has occurred to the individual applicant or employee.

For these reasons, we are **OPPOSED** to your **AB 168**.

Sincerely,

California Chamber of Commerce  
American Insurance Association  
California Ambulance Association

California Association for Health Services at Home  
California Building Industry Association  
California Employment Law Council  
California Farm Bureau Federation  
California Grocers Association  
California Hotel and Lodging Association  
California League of Food Processors  
California Manufacturers and Technology Association  
California Professional Association of Specialty Contractors  
California Restaurant Association  
California Retailers Association  
California State Association of Counties  
California Travel Association  
Chambers of Commerce Alliance Ventura & Santa Barbara Counties  
League of California Cities  
National Federation of Independent Business  
Western Electrical Contractors Association  
Western Growers Association  
Wine Institute

cc: Camille Wagner, Office of the Governor  
District Office, The Honorable Susan Eggman