California Fair Hiring Legislation: Frequently Asked Questions

Two new California laws, Assembly Bill (AB) 1008 and AB 168, will go into effect on January 1, 2018. These new laws impact current hiring practices and steps are being taken to ensure the university is ready to comply by January 1, 2018.

Background Checks - AB 1008

1. **What is AB 1008?**
   
   AB 1008, also referred to as “Ban the Box,” prohibits California employers from inquiring about or considering a job applicant’s conviction history prior to a conditional offer of employment, and sets requirements for consideration of conviction history in employment decisions.

2. **What are the key changes that I should be aware of that affects the recruitment process?**

   The key changes you can expect with AB 1008 are as follows:
   
   - Job applications will no longer include questions requesting an applicant’s criminal history.
   - We cannot inquire into or consider an applicant’s conviction history until the applicant has received a conditional employment offer.
   - Background checks can only be initiated after a written conditional offer of employment has been made.

3. **When can I initiate a background check on a candidate?**

   A background check can only be initiated after a written conditional job offer is made. Updated offer letters can be found in the HR Manager Toolkit. Hiring managers, work with your local Human Resources office to ensure a written offer letter is provided to the candidate before initiating a background check.

4. **Does this new law apply to Live Scan background checks?**

   Yes, the new law also applies to Live Scan background checks for new hires or current employees being hired into a position that requires Live Scan. If a Live Scan background check is required for the position, it can only be requested after a written conditional job offer is made to the candidate. To determine whether the position may require a Live Scan background check, visit the Protection of Minors web page or contact Employee & Labor Relations.

5. **Does AB 1008 apply to temporary or casual employees?**

   Yes, written conditional job offers must be made to temporary or casual employees before a background check can be initiated. If a former temporary or casual employee has had a break in service of more than one year, a new written conditional job offer must be provided before a background check is initiated and the employee is rehired. A customizable template letter can be found in the HR Manager Toolkit. Hiring managers, contact your local Human Resources office for assistance.
6. If an employee voluntarily provides criminal record information before a conditional offer is made, what are we permitted to do with that information?

You cannot consider criminal record information until after a written conditional job offer is made. Contact Employee & Labor Relations for assistance.

7. Does AB 1008 apply to volunteers?

No, the new law does not apply to volunteers.

8. Can I initiate background checks on multiple finalists?

Unfortunately, because a background check cannot be initiated until after a written conditional job offer is made, background checks cannot be initiated on multiple finalists. This would cause complications if more than one finalist passes the background check and only one position is being offered.

9. Does this mean I can no longer ask candidates to fill out an employment application form in Taleo or on our paper employment application form?

No, please continue to use our candidate application forms as always. Questions about past criminal offenses have been removed from online and paper applications. You should be sure not to use any previous hiring forms that were released prior to December 1, 2017, or which ask about criminal offenses. If you see such a form still in use, please send it to fairhiring@stanford.edu and we will advise you on next steps.

10. I have some candidates in process for an open requisition who have already disclosed past criminal offenses, with an explanation. What should I do with that information during candidate selection?

You cannot consider criminal record information disclosed on applications submitted prior to January 1, 2018 until after a written conditional job offer is made. Contact Employee & Labor Relations for assistance.

Salary History – AB 168

11. What is AB 168?

AB 168 prohibits employers in California from seeking the salary history information of a prospective applicant.

12. What are the key changes that I should be aware of that affect the recruitment process?

The key changes you can expect with AB 168 are as follows:

- Job applications will no longer include questions requesting an applicant’s salary history.
- We can no longer ask about an applicant’s salary history.
- We cannot rely on salary history when determining whether to offer employment or what salary to offer to an applicant (unless voluntarily provided).
- If an applicant voluntarily discloses salary history without prompting, we may consider that information to determine the salary for that applicant. However, it cannot be the sole factor.
- Upon request, we must provide the pay scale for the position to which an applicant applied.
13. Can I ask candidates for their salary history at any point during the hiring process?

No, the new law prohibits this.

14. Can I ask candidates for their salary expectations?

Yes, candidates may continue to be asked for their salary expectations or desired salary ranges.

15. If the candidate provides their salary expectations, can I ask if the expectations are the same as or different than their current salary?

No, the new law prohibits this.

16. Does this mean I can no longer ask candidates to fill out an employment application form in Taleo or our paper employment application form?

No, please continue to use our candidate application forms as always. Questions about salary earned in prior positions have been removed from online and paper applications. Do not use hiring forms released prior to December 1, 2017 that may ask for salary history in prior jobs. If you see such a form still in use, please send it to fairhiring@stanford.edu and we will advise you on next steps.

17. I have candidates in process for an open requisition who have already disclosed past salary history on their applications. How may I use that information during candidate selection?

You cannot use salary history previously disclosed on applications submitted prior to January 1, 2018 when determining offers of employment and/or salary for candidates after January 1, 2018.

18. Is there a script available to help me respond appropriately to candidate inquiries regarding pay?

Yes, please view salary history script and tips available to guide your response.

19. How does this affect the hiring process if I use external recruitment services?

Be sure your contact with the external recruiting agency or vendor is aware of the new requirements under AB 168 and that their communications with candidates do not include requests for salary history information. Requests for the position’s pay scale or salary range should be in accordance with the guidance below.

Candidate for Non-Academic, Non-Bargaining Unit Jobs

20. How do I respond to a candidate who asks for the position’s pay scale or salary range?

You should provide the minimum and maximum for the job’s pay grade by referring to the Salary Structure located in Cardinal at Work on the Staff Compensation page. In addition, you should advise candidates that individual salary placement in the pay grade’s salary range is based on:

- Relationship to salaries of other employees with similar experience and skills who perform similar work
- Unit, department, school or VP area funding
- External market pay for comparable jobs
- Stanford average pay for similar jobs
Specifics regarding pay can be discussed during the job offer process. Contact your local Human Resources office for assistance.

Candidate for Bargaining Unit Jobs

21. How do I respond to a candidate who asks for the salary range for a job in the bargaining unit?

You should inform the candidate that compensation for bargaining unit staff is administered by the respective collective bargaining agreement. The collective bargaining agreements are available on Cardinal at Work on the Labor Relations & Collective Bargaining page. Contact your local Human Resources office for assistance.

Candidate for Temporary or Casual Jobs

22. How do I respond to a candidate who asks for the salary range for temporary or casual positions?

You should inform the candidate of the in-hire pay range for the classification group and level of responsibility of the job. Your local Human Resources office can provide you with the in-hire pay range.

Candidate for Academic Staff-Research Jobs

23. How do I respond to a candidate who asks for the salary range for an Academic Staff-Research job?

Due to the unique nature of each job and the many factors that come into play when setting an AS-R salary, schools are provided University-wide, average Stanford salary data for each classification of AS-R. You should advise candidates that individual salary placement is based on the nature of each research role, the years of experience since their degree as well as unit, department, school or VP area funding.

Internal Candidate for Non-Academic, Non-Bargaining Unit Jobs

24. Can I ask an internal candidate for their salary history?

No, the new law prohibits this. However, if you have access to an internal candidate’s salary information, it cannot be the sole factor for the salary offer.

25. If a Stanford employee volunteers their salary history, can I consider the information in making the offer?

Yes, however, salary information should not be the sole factor for the salary offer. The factors to consider are:

- Relationship to salaries of other employees with similar experience and skills who perform similar work
- Unit, department, school or VP area funding
- External market pay for comparable jobs
- Stanford average pay for similar jobs

26. Can I ask an internal candidate for their salary expectations?

Depending on the situation, it would be appropriate to ask for their salary expectations. If the job is a promotion (defined as a move from a job in a lower grade to a job in a higher grade), this typically results in a pay increase and it would be appropriate to ask the employee for their salary expectations.
If, however, the job the employee is being considered for is a lateral move (defined as the same job code and job title), there would be no change in pay unless there is an internal equity issue within the hiring unit (e.g., the employee is paid significantly lower than the current staff in the same job with comparable experience and skills).

Questions?

Please contact your local Human Resources office for assistance, or email fairhiring@stanford.edu.