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Guide for Minnesota State Law on Salary Inquiries

# Overview and Background

A new law passed in the 2023 legislative session, [Minn. Stat. Sec. 363A.08 Subd. 8](https://www.revisor.mn.gov/statutes/cite/363A.08), prohibits employers from inquiring into the pay history of applicants for any position. This law is effective January 1, 2024. Under the law, employers are prohibited from inquiring into, considering, or requiring disclosure from any source the pay history of an applicant for employment to determine wages, salary, earnings, benefits, or other compensation.

# Key Requirements and Considerations

1. It is unlawful to ask an internal or external applicant what they are currently earning. Pay must be determined using other factors including available market data, the experience, education, and competencies of the candidate, and the salary range for the position.
2. It is unlawful to look up an internal applicant's current salary (for example, in PeopleSoft) for purposes of determining a salary offer, or for purposes of ensuring that the offer reflects a minimum increase of 4% for a promotion.
3. The applicant may voluntarily disclose their current salary to aid their negotiations for an incoming salary, or for purposes of being offered a minimum 4% increase for an internal promotion, but may not be asked to do so.
4. Once an applicant accepts an offer and is employed in the new job, they are no longer an applicant. At that point, their previous salary should be compared with the offered salary to ensure compliance with applicable University policies, rules or collective bargaining agreements regarding the minimum increase for a promotion.
5. It is acceptable to ask an applicant about the salary they are seeking, but the applicant cannot be required to answer.
6. It is acceptable to disclose the salary range in the job posting or during the interview.
7. It is acceptable to look up the salaries of non-applicants in the work unit for the purpose of offering a salary to an applicant that aligns with current employee salaries, but it is unlawful to look up the salary history or current salary of the applicant, whether or not such data is considered “public information,” or include such data in any report generated for this purpose.
8. Although this new law excludes labor represented employees with contracts currently in effect, the exclusion is temporary and will last only until new agreements are negotiated. For purposes of consistency and to avoid confusion as to who is covered and who isn’t, the University is treating all employee groups as if they are covered under this law effective January 1, 2024.

# Roles and Responsibilities

Below are the roles and responsibilities of OHR, local HR, union, employee, and supervisors.

| **Entity** | **Roles and Responsibilities** |
| --- | --- |
| **Oﬃce of Human Resources (OHR)** | Provide guidance on offer management |
| **Local Human Resources (HR)** | Ensure that the hiring managers are aware of the new pay disclosure law and do not ask unlawful questions about applicants’ current or past wage or salary.  Aid the hiring manager is determining an offer amount based on the candidate’s experience, education, competencies and the established wage or salary range. |
| **Supervisors and Managers** | Must not engage in conversations about current or past pay with the candidate, unless the candidate brings this up on their own initiative. |

# FAQ

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## **How do I determine a salary for a candidate?**

Salary can be determined by factors including available market data, the experience, education, and competencies of the candidate, the salary range for the position, and salaries paid to current staff in the work unit. For more information, talk to your local HR office or reach out to your TA Consultant or Specialists.

## **For internal candidates, can I use the salary data housed in PeopleSoft to determine a salary offer?**

No.

## **What about positions where promotional increases must be at least 4% according to a policy, labor contract or Civil Service Rule?**

Under this new law, it is unlawful to ask for or look up the current wage for purposes of deciding on the new wage you will offer. You need to determine the new wage using other information as described above. However, the employee may voluntarily counter your offer and cite the 4% rule and their current wage, which you can then use to increase your original offer. Moreover, once the applicant has accepted the offer and is employed in the position, they are no longer an applicant and therefore, you should review their salary to ensure compliance with the 4% rule.

## **What if the candidate discloses their current salary during the interview or job offer negotiations?**

This is acceptable. The candidate may voluntarily disclose their current salary in which case you can consider it in deciding what to offer.

## **Is it acceptable to consider a current employee’s compensation to determine a new rate of pay when they are not an applicant for a new job, such as when they are reclassified, or the unit is considering an internal equity adjustment?**

Yes, this is acceptable. The new law applies to applicants for employment, including an internal applicant for a new job, not to employees who remain in the same job. Seeking reclassification or an internal equity review is not the same as applying for a new job.

## **What if I already know the applicant’s salary because they work for me, and have applied for a new job that I supervise?**

Even though you know the applicant’s current salary, you cannot consider it in deciding what to offer for the new role, unless the employee voluntarily brings it up and asks you to do so.

# Additional Questions or Clariﬁcation

Call or email the OHR Contact Center: 612-624-8647 or 800-756-2363 or [ohr@umn.edu](mailto:ohr@umn.edu) or reach out to your TA Consultant or Specialist.

# Links and Resources

[Minnesota Statutes 2023, Section 363A.08, Subd. 8](https://www.revisor.mn.gov/statutes/cite/363A.08)