



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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Chairman Lefor and Members of the House Committee on Industry, Business, & Labor:

I write in support of HB 1434, which would protect workers from being forced to disclose their prior wage and compensation history on a job application or during a job interview. This bill would protect workers' privacy and could lead to higher wages for all workers.

This issue is personal to me. When I applied for my current job with a North Dakota county, I had to fill out the county's standard employment application. Among other questions, the application asked me to list my prior jobs and the salary I earned at each. I had never seen that information requested on a job application before. Why did the prospective employer need to know this? How was it relevant to my qualifications for the job? And what if my prior salaries were too low? Or too high? Could I leave it blank altogether? How would what I listed affect whether I got an offer or even an interview?

This experience led me to look deeper into the issue. What I learned is that many other job applicants face this same dilemma, with as many as half of all workers reporting their employers learned how much they had made at earlier jobs before making the offer leading to their current job.¹ **But I also learned that many states and cities already have passed laws to protect workers from this reality, with laws on the books in jurisdictions ranging from Alabama to Illinois.** I introduced HB 1434 to add North Dakota to this list and to recognize it is no one's business how much anybody made at their former jobs and that no one should be forced to disclose that information on a job application or in a job interview.

Importantly, this proposal doesn't just protect workers against a mere annoyance. Rather, **being forced to disclose compensation history can lead to artificially low wages for workers.** At some level, this is a commonsense conclusion. When a hiring employer knows an applicant's compensation history, the employer holds all the cards in salary negotiations. By knowing exactly how much an employee makes at a current job (and has made at recent prior jobs), an employer knows exactly how much that applicant is willing to work for and only needs to offer a slight raise to compel an applicant to accept an offer.

This creates a "how low can you go" negotiating posture, potentially driving a worker's starting salary lower than the amount the employer has budgeted for a given position. Before advertising job openings, businesses already know (or should know) what the prevailing wages are for similar work in their market, and they certainly know how much they can afford to pay for the work they need done. **Our North Dakota businesses are diligent and prudent in their budgeting**, so they do not take lightly their obligation to know how much they

¹ See Hall, Robert E. & Alan B. Krueger, "Evidence on the Incidence of Wage Posting, Wage Bargaining, and On-the-Job Search," *American Economic Journal: Macroeconomics*, Vol. 4, No. 4 (Oct. 2012), available at <https://www.aeaweb.org/articles?id=10.1257/mac.4.4.56>.

HB 1434 - Relating to Workers' Wage and Compensation History
 Testimony of Representative Zac Ista, District 43, in Support
 February 2, 2021

can afford to pay workers. Thus, inquiring about compensation history only serves to give employers an unfair edge in negotiating pay. HB 1434 would remedy this imbalance while still allowing businesses not to extend compensation offers beyond their own financial means.

Research supports this conclusion, too. According to one study, when employers could not see salary histories of applicants, they did more individualized research into applicants, resulting in applicants being better able to bargain for—and receive—higher starting compensation as compared to applicants who had to reveal prior pay history.² Another study showed that, in states that have enacted protections against compensation history disclosure, **earnings for all workers changing jobs grew by an average of 5% more** than in states without such protections.³

These gains are even bigger for women. We all know that there exists in this country a persistent pay gap that results in women being paid less than men. Sadly, **North Dakota ranks as the fifth-worst state for this gender pay gap.**⁴ According to recent data from the U.S. Bureau of Labor Statistics, the median North Dakota woman only earns 73.9% of the weekly wages of the median North Dakota man.⁵

Having to provide compensation history only worsens this pay gap. Already **in their first jobs out of college, women earn 6.6% less than men** even after controlling for a variety of factors other than gender.⁶ This initial wage gap can follow a woman throughout her career if future employers use prior compensation to set future earnings, essentially baking in a lower rate of pay based on someone else's prior devaluation of the same worker. It can be even worse for women who re-enter the workforce after a prolonged absence—like time away to raise a family—since their compensation history likely reflects pay that might have been at market rates years earlier but has since grown stale during their time away from the workforce.

Research has confirmed the positive impact compensation history laws like HB 1434 can have for women, concluding that “[s]alary history appears to account for much of the persistence of residual wage gaps.”⁷ As compared to neighboring jurisdictions without such protections, **women saw 8% higher wages** when living in states with a compensation history law.⁸ At a \$50,000 per year job, that can mean a woman is leaving as much

² See Barach, Moshe A. & John J. Horton, “How Do Employers Use Compensation History?: Evidence from a Field Experiment,” October 2019, *available at* <http://john-joseph-horton.com/papers/WageHistory.pdf>.

³ See Bessen, James E., Chen Meng, & Erich Denk, “Perpetuating Inequality: What Salary History Bans Reveal About Wages,” Boston University School of Law Technology & Policy Research Initiative (June 2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729.

⁴ See Johnson Hess, Abigail, “This map shows which states have the biggest gender pay gaps,” CNBC (May 7, 2019), *available at* <https://www.cnbc.com/2019/05/02/zipia-this-map-shows-which-states-have-the-biggest-gender-pay-gaps.html>.

⁵ Darnay, Keith, “The pay gap between ND women and men widened 4 percent in 2018,” KXNet.com (Jan. 16, 2020), *available at* <https://www.kxnet.com/news/state-news/the-pay-gap-between-nd-women-and-men-widened-4-percent-in-2018/>. In terms of real dollars, that means \$789/week in median weekly earnings for ND women and \$1,013/week in median wages for ND men—or a difference of \$224 per week. *Id.* Nationwide, the gender earnings ratio is 81.1%, or a \$184 difference in weekly wages. *Id.*

⁶ See Corbette, Christianne & Catherine Hill, “Graduating to a Pay Gap: The Earnings of Women and Men One Year After College Graduation,” American Ass’n of Univ. Women (Oct. 2012), *available at* <https://ww3.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.

⁷ See Bessen et al., *supra* note 3.

⁸ See Beseen, James, Erich Denk, & James Kossuth, “Stop Asking Job Candidates for Their Salary History,” *Harvard Business Review* (July 2020), *available at* <https://hbr.org/2020/07/stop-asking-job-candidates-for-their-salary-history>. Notably, the same study concluded that **compensation history protection laws also lead to 13% higher wages for minority jobseekers.**

as \$4,000 on the table each year simply because she had to disclose her compensation history during the hiring process. Those are meaningful extra dollars for North Dakota's working families.

The benefits of this bill become even clearer when you realize how little it asks of employers. Complying with salary history protections requires, quite literally, nothing from an employer. **It's simple: do not ask for compensation history on a job application and do not ask about compensation history in a job interview. That's it.** That's all an employer must do to comply with the worker protections in HB 1434. For those businesses who already do not inquire about compensation history, nothing will change. For those who do, it could be as simple as blacking out a question on an application and instructing hiring managers not to ask one specific question. These compliance costs are minimal. That's why at least one study shows that any fears of compliance costs are overblown, as businesses who had already enacted compensation history rules were significantly likelier to report implementation was "very or extremely simple" as compared to speculation about the difficulty of implementation from businesses who had yet to adopt such policies.⁹

It should be no surprise, then, that many of the country's leading employers already have policies against asking job applicants about their compensation history. Major businesses like **Amazon, American Express, Bank of America, Facebook, Google, Starbucks, and Wells Fargo have all stopped using an applicant's prior pay to set future compensation.** Likewise, when similar legislation came before lawmakers in Massachusetts in 2016, the Greater Boston Chamber of Commerce supported the measure.¹⁰ Businesses and trade groups who advocate for the business community know how important it is to recruit and retain the highest quality workforce possible, and these entities have decided this simple reform helps. As one executive at a recruiting firm has observed, "If employers want employee trust, and if they want to retain people, they must engage with those employees in meaningful ways. Nothing is more meaningful than pay in employer/employee relations."¹¹

In that regard, it is important to note what this bill does *not* do. These **important exceptions** are noted beginning at Page 2, Line 19. First, it does not stop an applicant from voluntarily disclosing his or her compensation history to a prospective employer. In that instance, an employer and applicant could then freely discuss the compensation history, and the employer could take any steps it likes to verify such history. Second, it also does not require an employer to turn a blind-eye to internal compensation history if an employee is seeking a different position within the same company. Third, it does not prohibit an employer and applicant from engaging in free-flowing conversations about how much a job pays and/or how much an employee expects to earn at a job. Employers would remain free to advertise a specific salary or salary range for any position, and they could ask an applicant what his or her compensation expectations are. Together, all the things the bill does and does not do are simply ends to the same means: fairness and transparency in employee compensation.

That's why the bill contemplates only a nominal enforcement mechanism. Rather than creating any new layers of state bureaucracy or regulation, the bill instead would allow workers who believe an employer violates any of its provisions to commence a private lawsuit in state district court. The maximum damages for a first or second offense would only be \$1,000 to \$5,000 unless the worker could prove greater actual damages. However,

⁹ World at Work, "Quick Survey on Salary History Bans (U.S.)," *available at* <https://www.worldatwork.org/dA/9abc8ad414/salary-history-bans.PDF>.

¹⁰ See <https://www.bostonchamber.com/about-us/media-center/state-house-news-service-pay-equity-boosters-look-back-on-long-road-to-legislative-success/>.

¹¹ Sammer, Joanne, "Employers Adjust to Salary-History Bans," Society for Human Resource Management (June 5, 2019), *available at* <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/employers-adjust-to-salary-history-bans.aspx>.

HB 1434 - Relating to Workers' Wage and Compensation History
Testimony of Representative Zac Ista, District 43, in Support
February 2, 2021

proving any such greater damages likely would be exceptionally difficult for a would-be plaintiff, meaning that a claim under this bill would not be a particularly attractive endeavor for any attorney seeking a new case. But I do not believe tough enforcement mechanisms are necessary. **Our businesses in North Dakota abide by the rules and policies we set for them. And they want to do right by their workers.** That's why I believe businesses ultimately can be trusted to comply with any new requirements enacted by this measure.

In sum, HB 1434 is a modest proposal that seeks to make modest, but important, improvements in workers' wages. By asking very little of employers, we have a chance to put real dollars in our workers' wallets across the board. We can also chip away at the persistent wage gap women have faced for generations. And all of this only requires us to follow the lead of some of America's biggest, most prestigious companies. If protecting workers from disclosing compensation history is good enough for these blue-chip leaders of industry, then I think it is good enough for the people of North Dakota, too. That's why I urge the Committee to recommend **DO PASS on HB 1434.**

Thank you, and I stand ready to answer any questions.