

**Testimony of
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**In SUPPORT of HB 634-Labor and Employment—Wage History and Wage Range
Before the Maryland House Economic Matters Committee**

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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights and opportunities, and to help women and families achieve economic security. Equal pay is a vital concern for Maryland's working families, who depend on women's wages to achieve economic security. Yet, pay discrimination remains a persistent barrier to women's economic success in Maryland, particularly for Maryland women of color who face some of the largest wage gaps in the country.

Maryland made important strides in strengthening its equal pay laws by passing the Equal Pay for Equal Work Act in 2016, but there are a number of employer practices that aren't clearly prohibited by law that are causing gender and racial pay disparities to be perpetuated throughout Marylanders' careers, Maryland businesses, and the Maryland economy. HB 634 gets at the heart of those practices by prohibiting employers from relying on job applicants' salary history in the hiring process and by requiring employers to provide the salary range for a position to which an applicant is applying upon request. We urge a favorable report for this simple, common sense, yet high-impact legislation for closing the wage gap.

I. Relying on Salary History Perpetuates Gender and Racial Wage Gaps

Employers' use of salary history in the hiring and salary setting process can be harmful to many types of job applicants, but it has a disproportionately negative impact on women and people of color, who face conscious and unconscious bias in the workplace and are typically paid less than white, non-Hispanic men.

In Maryland, women overall are typically paid 86 cents for every dollar paid to men. Black women and Native women are paid only 69 cents and 65 cents, respectively, for every dollar paid to white, non-Hispanic men. And the gap is even larger for Maryland's Latinas, who make only 47 cents for every dollar made by white, non-Hispanic men—the fifth largest wage gap for Latinas in the country.¹ These gaps start early in women's careers. Just one year after college graduation, women are paid just 82 percent of what their similarly educated and experienced male peers are paid.² Because women systematically are paid less than men, employers who rely on salary history to select job

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applicants and to set new hires' pay will tend to perpetuate gender- and race-based disparities in their workforce, condemning Maryland women to perpetually depressed salaries throughout their career.

There are several reasons why women will typically be responding to the dreaded “What is your salary history” question with lower prior salaries than men. And they have nothing to do with women’s skill, knowledge, experience, negotiation abilities, or fit for the job.

First, it is well-documented that women, and especially women of color, face overt discrimination and unconscious biases in the workplace, including in pay. A study conducted by labor economists Francine Blau and Lawrence Kahn found that 38 percent of the gender wage gap remains unexplained even when accounting for factors like race, region, unionization status, education, occupation, industry, and work experience.³ Data make clear that discrimination is a major cause of this unexplained gap. For example, in a recent experiment where scientists were presented with identical resumes—one with the name John and the other with the name Jennifer—the scientists offered the male applicant for a lab manager position a salary of nearly \$4,000 more.⁴ By using a person’s salary history to evaluate her suitability for a position or to set her salary, new employers allow past discrimination to drive hiring and pay decisions. Moving to a new job can be the best opportunity women have to increase their pay, but employers’ reliance on salary history forces women to carry pay discrimination with them from job to job.

Second, women are more likely to have worked in lower paid, female-dominated professions that pay low wages *simply because* women are the majority of workers in the occupation and “women’s work” is valued less.⁵ Relying on applicants’ salary histories to set starting salaries perpetuates the systemic undervaluing of women’s work, even where women are entering male-dominated or mixed-gender industries. We regularly hear about women who are doing the same work as their male counterparts and have comparable experience, but are being paid less because, for instance, the women’s past experience was in the non-profit or government sector, whereas the men’s was in the higher-paying private sector.

Third, women still shoulder the majority of caregiving responsibilities and are more likely than men to have to reduce their hours or leave the workforce to care for children and other family members.⁶ Asking about salary history harms women seeking to reenter the workforce or increase their hours, since their last salary may no longer reflect current market conditions or their current qualifications. In fact, in 2015, the federal Office of Personnel Management (OPM) issued a new policy discouraging government agencies from relying primarily on candidates’ prior salary in setting their pay, explaining that “[r]eliance on existing salary to set pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from his or her career or for whom an existing rate of pay is not reflective of the candidate’s current qualifications or existing labor market conditions.”⁷

Relying on salary history in the pay setting process compounds the negotiation disadvantages that women and people of color experience. Research has documented that women who negotiate their salaries are already at a disadvantage because they are perceived as greedy,

demanding, not nice, and less desirable candidates, leading to lower starting pay.⁸ And when a new employer requests a candidate's prior salary information, they are likely to anchor salary negotiations around the prior salary, with only small room for adjustment,⁹ thereby further entrenching, even if unwittingly, gender and racial disparities in the candidate's new salary.

Reliance on salary history not only disadvantages women and people of color in negotiation and setting pay, it also negatively impacts subsequent raises, bonuses, and promotions that are tied to the employee's initial salary. Over time, those lower salaries add up to huge losses that affect an employee's and her family's financial well-being and ultimately her retirement. The class action law suit *Beck v. Boeing*,¹⁰ settled in 2004 for \$72.5 million, is a poignant example of this destructive dynamic. Boeing set the salaries of newly hired employees as their immediate past pay plus a hiring bonus which was set as a percent of their past salary. Raises were also set as a percentage of an employee's salary. Boeing claimed it set pay based on a neutral policy, but since women had lower average prior salaries than men, these pay practices led to significant gender disparities in earnings that compounded over time and could not be justified by performance differences or other objective criteria.

Relying on salary history to screen out or compare job applicants can perpetuate gender and racial disparities in hiring. Some employers automatically disqualify or compare applicants based on the assumption that an applicant with a lower salary is of lower quality than an applicant with a higher salary.¹¹ But salary is not a neutral, objective factor that accurately reflects a candidate's qualifications. Several courts have rejected employers' arguments that basing pay on salary history alone is a neutral "factor other than sex" justifying paying women less and lawful under the Equal Pay Act.¹² These courts point to the fact that salary histories reflect historical discriminatory market forces.¹³ When women and people of color typically experience lower wages compared to white, non-Hispanic men, relying on salary history in this way serves to perpetuate the underrepresentation of women and people of color in many workplaces and positions.

Given the role that relying on salary history plays in perpetuating and institutionalizing gender and racial disparities, it is not surprising that the Equal Employment Opportunity Commission (EEOC) has instructed since 2000 that reliance on prior salary alone cannot justify an otherwise unlawful compensation disparity.¹⁴ The EEOC explains that "permitting prior salary alone as a justification for a compensation disparity 'would swallow up the rule and inequality in compensation among genders would be perpetuated.'"¹⁵ Nevertheless, many employers continue to rely on salary history in setting pay and some courts have broken with the EEOC's position on salary history, and have permitted employers to rely on employees' salary history to justify paying women less for the same work.¹⁶ This makes it all the more important to enact legislation clearly banning the harmful use of salary history in the hiring process.

Lastly, employers who use salary history to screen applicants unfairly block many other types of qualified applicants from much-needed employment opportunities. Relying on salary history can lead to depressed wages for individuals who have previously worked in the public sector or in nonprofits and are moving into the private sector. And it can deprive older individuals with higher salaries who are

looking to change jobs or re-enter the workforce the opportunity to be considered for lower paying jobs they might seek.¹⁷

II. Not Providing Applicants Salary Range Information Perpetuates Gender and Racial Wage Gaps

When an employer asks a job applicant what his or her salary expectations are without providing the applicant any information about the pay for the position, women and people of color lose out. Studies show that women often ask for less when they negotiate than men, even when the women applicants are otherwise equally qualified.¹⁸ That may be because it is a common practice for job applicants to ask for an amount that is a 10 to 20 percent increase over their prior salary.¹⁹ Given that women and people of color are typically paid less than white, non-Hispanic men, they would have to request a particularly large percentage increase over their current pay for their request to be on par with their white, non-Hispanic male counterparts.

Many employers, especially in the private sector, are not transparent about pay ranges for positions even though, according to a study by payscale.com, 85 percent of employers use pay ranges to structure compensation programs.²⁰ Even if they don't have established pay ranges, all employers must budget an amount for the position for which they are hiring. But when employers hold all of the salary information, they are at a significant advantage in negotiating the lowest possible salary and women and people of color lose out.

Fortunately, studies show that when job applicants are clearly informed about the context for negotiations, including the types of compensation, benefits, or conditions that are negotiable, or the typical pay for the position, women are more willing to negotiate, more successful in negotiating, and the gender wage gap narrows.²¹ Since employers tend to anchor salary negotiations, consciously or subconsciously, on the job applicant's first request, providing applicants with a salary range that the employer is willing to pay helps level the negotiating playing field and reduces gender and racial wage gaps.

III. HB 634 is Crucial to Closing Persistent Gender and Racial Wage Gaps

HB 634 would play an important role in breaking the cycle of wage discrimination and closing the wage gap in Maryland.

A. Ending the detrimental reliance on salary history

Under the bill, an employer is prohibited from relying on the prior salary of a job applicant in screening or considering the applicant for employment or in determining his or her wages. Nor can an employer seek the salary history from an applicant or from an applicant's former employer. These provisions will help ensure that job applicants are evaluated and compensated based on their skills for the jobs to which they have applied, not their gender or race, nor their apparent value to a previous

employer or other factors unrelated to an applicant's fit for the job. In other words, the bill ensures that employers pay employees for their new job, not their old one.

The bill does provide, however, that an applicant may voluntarily provide their salary history and the employer may rely on that information to support paying a higher wage than that offered by the employer. Moreover, nothing in this bill prevents an employer from asking applicants for their salary requirements or expectations.

B. Requiring disclosure of the salary range for a position, upon request

HB 634 would also require employers to provide a job applicant the wage range for a position to which they are applying upon request. Employers know the range they are willing to pay for a position based on their budget. This bill simply requires employers to be transparent about that range for a particular position if an applicant requests it.

The bill will help level the playing field for negotiating pay to ensure that women and people of color are paid a fair salary based on what the job is worth. This provision builds on Maryland's commitment to pay transparency and is a crucial addition to the pay transparency protections Maryland enacted two years ago ensuring that employees can discuss their pay with each other free from fear of retaliation.

IV. Many Employers Already Recognize that Relying on Salary History is Neither a Necessary Nor a Good Business Practice

HB 634 would not only benefit working people in Maryland, it would put an end to business practices that, while common, are neither necessary nor good for employers' bottom line. Asking for a job applicant's past salary is not an effective way to determine an applicant's worth or "market value." As discussed above, salary is not a neutral, objective factor; it can often be misleading and influenced by discriminatory forces. Employers are better served by evaluating job applicants' experience, skills, accomplishments, track record, and the responsibilities they will be assuming to determine their value.²²

Nor is a job applicant's prior salary an efficient or accurate measure of a job's market value. Moreover, many companies keep detailed information about pay ranges for a variety of jobs in a variety of geographic regions, and have access to online salary data, salary surveys, and association data.²³ And according to a study by payscale.com, 85 percent of employers already use salary ranges to structure compensation programs.²⁴

Employers also often contend that they need to ask job applicants for their prior salary so as to not "waste time" interviewing someone who would not accept the position because the salary is too low. But employers can achieve the same efficiency goals by providing job applicants the salary range for a position early in the hiring process and ask for the applicant's desired salary without the introducing information into the hiring process that perpetuates gender and racial wage gaps.

In addition, the discriminatory impact of screening out job applicants based on their prior salary reduces the pool of diverse talent available to an employer undermining employer efforts to diversify their workforce. But a diverse workforce and equitable employment practices can confer a wide array of benefits on a company, including decreased risk of liability, access to the best talent, increased employee satisfaction and productivity, increased innovation, an expanded consumer base, and stronger financial performance.²⁵

Likewise, eliminating pay practices that many employees recognize as deeply unfair and increasing transparency around pay for a position benefits employers' bottom line because it increases the likelihood that employees will believe they are paid fairly, which in turn promotes employee engagement and productivity.²⁶ Moreover, since reliance on salary history unjustifiably perpetuates gender and racial wage gaps within a workplace, ending the practice will help employers decrease their exposure to costly pay discrimination litigation.

Recognizing these benefits and the unfairness of relying on salary history—and the increasing number of states banning this practice—companies like Amazon, American Express, Bank of America, Cisco Systems, Facebook, Google, GoDaddy, Progressive, Starbucks, and Wells Fargo, have recently foregone the practice of relying on salary history.²⁷ And some companies are also making salary information available to both employees and the general public.²⁸ One of these, GoDaddy, includes salary level and range for a given position on each employee's pay statement.

V. By Passing HB 634, Maryland Would Finally Join the Movement of States Seeking to Ban Reliance on Salary History

Since 2016, there has been a groundswell of support across the country for legislation prohibiting reliance on salary history. Legislation has passed in Massachusetts, Connecticut, Delaware, Vermont, Oregon, Hawaii, and California—all with bipartisan support—and in many localities, including Kansas City, Missouri; Louisville, Kentucky; New York City, Pittsburgh, and San Francisco.²⁹ Additionally, Governors in Pennsylvania, New Jersey, New York, Illinois, and Michigan have issued Executive Orders banning the use of salary history in setting pay for state employees and Washington, D.C. has prohibited reliance on salary history by District agencies.³⁰

States are also increasingly considering provisions requiring employers to provide the salary range for a position, and in 2017, California enacted such a provision as part of a bill banning employers from relying on salary history.³¹

VI. Conclusion

Stopping employers from relying on salary history and requiring them to provide applicants with the salary range for a position upon request are important steps to close the wage gap. And since the wage gap has barely budged in more than a decade, we need to take action now. We urge the members of this Committee to once again stand up for working people in Maryland by supporting HB 634.

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- ¹ NAT'L WOMEN'S LAW CTR (NWLC). THE WAGE GAP, STATE BY STATE, <http://nwlc.org/resources/wage-gap-state-state/>.
- ² AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW), GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE 9 (2012), available at www.aauw.org/research/graduating-to-a-pay-gap/.
- ³ Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends and Explanations*, NATIONAL BUREAU OF ECONOMIC RESEARCH (Jan. 2016), <http://www.nber.org/papers/w21913.pdf>.
- ⁴ Corrine A. Moss-Racusin et al., *Science Faculty's Subtle Gender Biases Favor Male Students*, Proceedings of the National Academy of Science of the United States of America (Aug. 2012), <http://www.pnas.org/content/109/41/16474.abstract#aff-1>.
- ⁵ Philip N. Cohen, *Devaluing and Revaluing Women's Work*, Huffington Post (April 3, 2010), http://www.huffingtonpost.com/philip-ncohen/devaluing-and-revaluing-w_b_444215.html.
- ⁶ PEW RESEARCH CENTER, WOMEN MORE THAN MEN ADJUST THEIR CAREERS FOR FAMILY LIFE (Oct. 1, 2015), <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/>.
- ⁷ July 30, 2015, Letter from Beth F. Cobert, Acting Director, U.S. Office of Personnel Management, <https://www.chcoc.gov/content/additional-guidance-advancing-pay-equality-federal-government>.
- ⁸ See HANNAH RILEY BOWLES, LINDA BABCOCK & LEI LAI, SOCIAL INCENTIVES FOR GENDER DIFFERENCES IN THE PROPENSITY TO INITIATE NEGOTIATIONS: SOMETIMES IT DOES HURT TO ASK, 103 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 84 (2007).
- ⁹ See Bourree Lam, *The Government Thinks that Interview Questions about Salary History are Holding Women Back*, THE ATLANTIC (Aug. 10, 2015), <http://www.theatlantic.com/business/archive/2015/08/hiring-interview-gender-gap-pay-salary-history-opm/400835/>; TODD J. THORSTEINSON, INITIATING SALARY DISCUSSIONS WITH AN EXTREME REQUEST: ANCHORING EFFECTS ON INITIAL SALARY OFFERS, JOURNAL OF APPLIED SOCIAL PSYCHOLOGY (2011), <http://onlinelibrary.wiley.com/doi/10.1111/j.1559-1816.2011.00779.x/abstract>.
- ¹⁰ *Beck v. Boeing*, Court-Approved Consent Decree 30, 35-36 (W. D. WA. (Oct. 8, 2004)), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1072&context=condec>; see also Institute for Women's Policy Research, *Ending Sex and Race Discrimination in the Workplace: Legal Interventions That Push the Envelope* 72-83 (March 2011).
- ¹¹ June Bell, *He Earned, She Earned: California Bill Would Limit Use of Salary Information*, SHRM.ORG. August 29, 2016, <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/california-salary-history.aspx> ("salary history 'is one component businesses look at to see if candidates are equally qualified."); Jena McGregor, *The Worst Question You Could Ask Women in a Job Interview*, WASHINGTON POST (April 14, 2015), <https://www.washingtonpost.com/news/on-leadership/wp/2015/04/14/the-worst-question-you-could-ask-women-in-a-job-interview/> ("Higher salaries also have what's known as a 'branding' impact. Just as consumers think pricier products are better quality, recruiters and managers can have the same reaction when a job candidate has a higher past salary, Anderson explained. 'It may trigger a conviction that one hire is lower quality than another, even if that isn't the reality.'").
- ¹² See, e.g., *Cole v. N. Am. Breweries*, No. 1:13-cl-236, 2015 WL 248026, at *10 (S.D. Ohio Jan. 20, 2015) (citing *Irby v. Bittick*, 44 F.3d 949, 955 (11th Cir. 1995) (finding that that a beer distributor improperly used a female hire's previous salary to set her pay significantly lower than that of her male predecessor, her male successor, and other male employees performing the same job); *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1571 (11th Cir. 1988) (prior salary alone cannot justify a pay disparity); *Faust v. Hilton Hotels Corp.*, 1990 WL 120615, at *5 (E.D. La. 1990) (reliance on prior salary as a factor other than sex would "allow employer to pay one employee more than an employee of the opposite sex because that employer or a previous employer discriminated against the lower paid employee"); *Angove v. Williams-Sonoma, Inc.*, 70 F. App'x 500, 508 (10th Cir. 2003) (citing *Irby* to find that the EPA "precludes an employer from relying solely upon a prior salary to justify pay disparity").
- ¹³ See, e.g., *Glenn v. General Motors Corp.*, 841 F.2d 1567 at 1570; *Faust v. Hilton Hotels Corp.*, 1990 WL 120615, at *5, n. 12; *Angove v. Williams-Sonoma, Inc.*, 70 F. App'x 500 at 507-508.
- ¹⁴ EQUAL EMPLOYMENT OPPORTUNITY COMM'N, COMPLIANCE MANUAL, No. 915.003 § 10-IV.F.2.g (Dec. 2000), available at <https://www.eeoc.gov/policy/docs/compensation.html>.
- ¹⁵ *Id.* (citing *Irby v. Bittick*, 44 F.3d 949, 955 (11th Cir. 1995); *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1571 (11th Cir. 1988) (prior salary alone cannot justify a pay disparity); *Faust v. Hilton Hotels Corp.*, 1990 WL 120615, at *5 (E.D. La. 1990) (reliance on prior salary as a factor other than sex would "allow employer to pay one employee more than an employee of the opposite sex because that employer or a previous employer discriminated against the lower paid employee").
- ¹⁶ *Rizo v. Yovino*, 887 F.3d 453, 457 (9th Cir. 2018), petition for certiorari filed Sept. 4, 2018.
- ¹⁷ See Katie Donovan, *Five Reasons Salary History Hurts Your Hiring Goals*, HUFFINGTON POST, Sept. 8, 2015, http://www.huffingtonpost.com/katie-donovan/five-reasons-salary-histo_b_8105182.html.
- ¹⁸ See Linda Babcock & Sara Laschever, WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE (2003); Jenny Save-Soderbergh, *Are Women Asking for Low Wages? Gender Differences in Wage Bargaining Strategies and Ensuring Bargaining*

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¹⁹ See Jacquelyn Smith, *How Much Money to Ask for in a Salary Negotiation* (May 22, 2015), <http://www.businessinsider.com/how-much-money-to-ask-for-in-a-salary-negotiation-2015-5>; Melissa Phips, *Interview Questions about Your Salary Expectations* (Nov. 11, 2016), <https://www.thebalance.com/interview-questions-about-your-salary-expectations-2061235>.

²⁰ PAYSACLE.COM, *Attack of the Out-of-Date Comp Plan 13* (2015), available at <http://resources.payscale.com/hr-2015-compensation-practices-report.html>.

²¹ See, e.g., Hannah Riley Bowles, Linda Babcock & Kathleen L. McGinn, *Constraints and Triggers: Situational Mechanics of Gender in Negotiations*, 89 J. PERSONALITY & SOC. PSYCH. 951, 955-56 (2005).

²² Alison Green, *Massachusetts Makes Asking about Salary History a Thing of the Past*, U.S. NEWS & WORLD REPORT, (Aug. 5, 2016), <http://money.usnews.com/money/blogs/outside-voices-careers/articles/2016-08-05/massachusetts-makes-asking-about-salary-history-a-thing-of-the-past>.

²³ McGregor, *The Worst Question*, *supra* note 11.

²⁴ PAYSACLE.COM, *supra* note 20.

²⁵ Hunt, V., Layton, D. & Prince, S., *Diversity Matters* 9-13, MCKINSEY & CO. (Feb. 2015) (finding diverse workforces correlate with better financial performance, because diversity helps to recruit the best talent, enhance the company's image, increase employee satisfaction, and improve decision making, including fostering innovation); Hewlitt, S.A., Marshall, M. & Sherbin, L., *How Diversity Can Drive Innovation*, HARVARD BUS. REV. (Dec. 2013), available at <https://hbr.org/2013/12/how-diversity-can-drive-innovation>.

²⁶ See Deborah Thompson Eisenberg, *Money, Sex and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. STATE L.J. 951, 1001-15 (2011); LAMB, N. & KLEIN, W., *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Summer 2015), available at <http://arjuna-capital.com/news/a-proactive-approach-to-wage-equality-is-good-for-business/>.

²⁷ McGregor, *The Worst Question*, *supra* note 11; Jena McGregor, *Bank of America is the latest company to ban this dreaded job-interview question*, WASHINGTON POST (January 29, 2018) https://www.washingtonpost.com/news/on-leadership/wp/2018/01/29/bank-of-america-is-the-latest-company-to-ban-this-dreaded-job-interview-question/?utm_term=.0cd01451eda2

²⁸ NAT'L WOMEN'S LAW CTR, *EMPLOYER LEADERSHIP TO ADVANCE EQUAL PAY: EXAMPLES OF PROMISING PRACTICES* (Mar. 1 2017), <https://nwlc.org/resources/employer-leadership-to-advance-equal-pay-examples-of-promising-practices/>

²⁹ M.G.L. ch. 149 § 105A; Cal. Lab. Code § 432.3; Del. Code Ann. tit. 19 § 709B; Or. Rev. Stat. §§ 652.210, 652.220, 652.230, 659A.820, 659A.870, 659A.875, 659A.885; Conn. Gen. Stat. Ann. § 31-40z; Haw. S.B. No. 2351 (Jan. 1, 2019); 21 V.S.A. § 495m; Kansas Cty. Comm. Substitute for Res. No. 180519 (Jul. 26, 2018); Louisville Ordinance No. 066 (May 17, 2018); N.Y.C. Ordinance No. 1253-2016 (May 4, 2017); Pittsburgh Ordinance No. 2017-1121 (Jan. 30, 2017); S.F. Ordinance No. 142-17 (Jul. 1, 2018).

³⁰ IL Exec. Order No. 2019-02 (Jan. 15, 2019); MI. Exec. Order No. 2019-10 (Jan. 8, 2019); N.Y. Exec. Order No. 161 (Jan. 9, 2017); PA. Exec. Order No. 2018-18-03 (Sept. 4, 2018); N.J. Exec. Order No. 1 (Feb. 1, 2018).

³¹ Cal. Lab. Code § 432.3.