

# DOJ GEN | DOJABA | DOJ BIG | JUNAA | DOJ AHEAD | DOJ Pride

August 19, 2020

Lee J. Lofthus

Assistant Attorney General for Administration, Justice Management Division

[LLofthus@jmd.usdoj.gov](mailto:LLofthus@jmd.usdoj.gov)

Dear Assistant Attorney General Lofthus,

The DOJ Gender Equality Network, Department of Justice Association of Black Attorneys, Blacks in Government (Edward Woods Jr., DOJ Chapter), DOJ Native American Association, DOJ Association of Hispanic Employees for Advancement and Development, and DOJ Pride,<sup>1</sup> which represent thousands of Justice Department employees collectively, write to discuss inequitable pay disparities at the agency and to recommend simple ways to reduce them.

Addressing inequitable pay disparities is a priority for our organizations, and one that some of us have studied. Currently, many postings for Justice Department jobs solicit salary information from candidates. (*See, e.g.*, Attachment B for a February, 2020 Trial Attorney application in the Criminal Division.) This stands in contrast to 19 states/territories, over 20 more municipalities,<sup>2</sup> and a large number of major American companies that have banned consideration of past salary information due to its discriminatory impact on women and people of color. We urge the Department to follow suit.

We have heard from many Department employees who started between approximately 2012 and 2018—when salary history was often a required field in USA Jobs (*see, e.g.*, Attachment B)—that the Department’s use of their salary history, including salaries based on prior federal service (*e.g.* information derived from the Form SF-50), resulted in inequitable pay disparities. Our members have shared many experiences of being paid lower salaries than their similarly situated male and/or white counterparts upon entry and throughout their time at the Department.

Even facially neutral policies that rely on salary history can contribute to pay inequities. An example of an employee currently working in the Department is illustrative. A female attorney in the Civil Division completed two federal clerkships and took a pay cut to work for a prestigious public interest organization prior to joining the Department. Her public interest job was in the same substantive area as the position she eventually received with DOJ. Coincidentally, her male counterpart in the same section with the same position completed the identical two clerkships but joined the Department immediately after their completion. Despite having *two more years* of relevant legal experience, the Department only permitted the female attorney to start at a GS-14-1, whereas it allowed the male attorney to start at a GS-14-5. A human resources official explained to

---

<sup>1</sup> A description of each organization can be found in Attachment A.

<sup>2</sup> A compilation of the laws is available here: <https://www.hrdiv.com/news/salary-history-ban-states-list/516662/>. These laws have already withstood judicial review. In *Greater Philadelphia Chamber of Commerce v. City of Philadelphia*, the Third Circuit upheld Philadelphia’s ordinance prohibiting employers from: (1) asking for an applicant’s wage history, and (2) determining an individual’s salary based on previous wages. 949 F.3d 116, 121 (3d Cir. 2020). The Court noted that “prior wages of women and minorities is [sic] more indicative of compounded discrimination than an accurate assessment of the individual’s value to their prior employer. Thus, information obtained to assess the applicant’s market value only perpetuates wage disparity.” *Id.* at 131.

the female attorney that the Department decided to pay her less because of her lower salary at the public interest organization. Only by luck did she learn about the pay difference and had she not successfully challenged this decision through the EEO process, the disparity would have continued throughout her employment in the Department and could have had a compounding economic effect throughout her career.

To avoid these unfair, demoralizing, and possibly unlawful situations, we request that the Department: (1) eliminate the salary history field, even in its optional form, from all USA Jobs employment applications;<sup>3</sup> (2) state in all postings that resumes should not include current or previous salary information; and (3) not permit any Department official to view or take into account an individual's current or previous salary, GS level or step (including those reflected in the SF-50) when setting salaries. We believe the Department's current practices are not only bad policy, but that they may violate federal antidiscrimination law.<sup>4</sup> Therefore, when setting GS level and step, the Department should consider only substantive qualifications, like relevant work experience. We also urge the Department to be more transparent about how it makes salary determinations and to include such information in its publicly available materials.

We appreciate your prompt attention to this matter, particularly since many components are currently hiring, and we stand ready to assist you. By implementing these straightforward measures, the Department will join the growing number of companies, states, and localities that prohibit the use of salary history information. This will help the Department to become a more equitable workplace, enhance employee morale, increase transparency, and improve recruitment and retention of highly qualified employees.

Respectfully,

DOJ Gender Equality Network  
Department of Justice Association of Black Attorneys  
Blacks in Government, Edward Woods Jr., DOJ Chapter  
DOJ Native American Association  
DOJ Association of Hispanic Employees for Advancement and Development  
DOJ Pride

cc: [MWilkinson@jmd.usdoj.gov](mailto:MWilkinson@jmd.usdoj.gov)

---

<sup>3</sup> If our requests for changes to the USA Jobs applications are not feasible, we recommend that the Department redact all salary information contained in a candidate's job application, whether attached or manually entered into the USA Jobs website, and ensure that the salary history information is not disclosed to hiring officials at any point.

<sup>4</sup> See *Rizo v. Yovino*, 950 F.3d 1217, 1229 (9th Cir. 2020) (holding that Fresno County's use of a new employee's previous pay to determine appropriate level/step was not a "factor other than sex" that could be used to defeat an employee's prima facie claim under the Equal Pay Act); cf. *EEOC v. Maryland Ins. Admin.*, 879 F.3d 114 (4th Cir. 2018); *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520 (2d Cir. 1992); *Riser v. QEP Energy*, 776 F.3d 1191 (10th Cir. 2015); but see *Fallon v. State of Ill.*, 882 F.2d 1206 (7th Cir. 1989).

## Attachment A

**The DOJ Gender Equality Network (DOJ GEN)** is an employee-run advocacy and resource organization with approximately 600 members across the Department. DOJ GEN works to promote the equal and supportive treatment of Department employees and contractors regardless of gender. To that end, DOJ GEN strives to eradicate pay inequities and sexual harassment, while encouraging the Department to increase diversity, enhance workplace flexibility, and promote family-friendly policies.

**The DOJ Association of Black Attorneys (DOJABA)** is a group of attorneys organized since 1989 for the purpose of enhancing the professional environment of Black attorneys at the Department and providing outreach and community support to those interested in the pursuit of law. DOJABA members include attorneys in the Offices, Boards and Divisions of the Department as well as various United States Attorneys' Offices. There are approximately 200 DOJABA members throughout the country.

**Blacks in Government, Edward Woods Jr., DOJ Chapter** is a local chapter of the National organization that serves as an advocate of equal opportunity to address practices of racial discrimination against Blacks in government and promotes professional development for all employees at the Local, State and Federal government levels. BIG is comprised of over 5700 members nationwide.

**The Justice Native American Association (JUNAA)** is an association of the Department of Justice that is dedicated to improving the work environment of Native American employees at the Department. This includes identifying, addressing, and assisting in developing effective policies and practices to increase the number of Native Americans working in the Department of Justice workforce. This is of critical importance given the large presence the Department has in Indian country working on Native issues.

**The DOJ Association of Hispanic Employees (DOJ AHEAD)** is an organization open to all employees of the Department of Justice (DOJ). Its primary goals are to: assist DOJ in promoting equitable participation and full utilization of its Hispanic employees; assist DOJ in increasing the numbers of qualified Hispanics in its workforce; speak on issues affecting DOJ AHEAD members and Hispanic employees; develop and maintain meaningful relationships with the greater DOJ community, including management and develop and maintain meaningful relationships with Hispanic employees and the greater Hispanic community.

**DOJ Pride** serves as the Department of Justice's recognized organization for LGBTQ+ employees and allies. Since 1994, DOJ Pride has worked with agency leadership to identify and address key issues and areas affecting the Department's LGBTQ+ employees.

# Attachment B

## February 2020 attorney job posting for the the Criminal Division

The image shows a screenshot of the USAJOBS website's Resume Builder interface. The browser address bar shows the URL: [usajobs.gov/Applicant/Application/557522500/Resumes/](https://usajobs.gov/Applicant/Application/557522500/Resumes/). The page title is "USAJOBS".

The main heading of the form is "Resume Builder". Below this, the section is titled "Work Experience" with a help icon. A note states: "All fields are required unless otherwise noted".

The form contains the following fields and options:

- Employer Name**: Text input field.
- Formal Job Title**: Text input field.
- Employer Address 1**: Text input field.
- Start Date**: Dropdown menu with "--Select--".
- Start Year**: Dropdown menu with "--Select--".
- Employer Address 2 (optional)**: Text input field.
- End Date**: Dropdown menu with "--Select--".
- End Year**: Dropdown menu with "--Select--".
- Country**: Dropdown menu with "United States" selected.
- Salary (optional)**: Text input field.
- Currency**: Dropdown menu with "USD" selected.
- Salary Rate**: Dropdown menu with "Bi-weekly" selected.
- Postal Code**: Text input field.
- Average Hours per week**: Text input field.
- City/Town**: Text input field.
- May we contact your supervisor?**: Radio buttons for "Yes", "No" (selected), and "Contact me first".
- Is this a Federal Civilian position?**: Radio buttons for "Yes" and "No" (selected).
- State/Territory/Province**: Dropdown menu with "--Select--".

Below the form fields is a section titled "Duties, Accomplishments, and Related Skills" with a text area and a character count "(5000 characters remaining)". A note below the text area reads: "Problems with formatting when pasting from Microsoft Word?".

At the bottom of the form are two buttons: "Cancel" (red) and "Save Work Experience" (blue).

## Attachment C

### Excerpt from June 2014 Attorney Job positing in the Civil Rights Division

6/22/2014

USAJOBS - Search Jobs

Your résumé, curriculum vitae, or any other written format you choose to describe your job-related qualifications can be submitted electronically using the document upload process or fax. **Please be sure to include all of the following information in your résumé:**

**Job Information:**

- Vacancy Identification Number, title, grade and location for which you are applying.

**Personal Information:**

- Full name, mailing address (with zip code) and day/evening telephone numbers (with area code).
- Country of Citizenship.
- If ever employed by the Federal Government, please show the highest Federal civilian grade held, job series, and dates of employment in grade.

**Education:**

- Colleges and/or Universities attended, city, state and zip code.
- Major field(s) of study.
- Type and year of degree(s) received. If no degree received, show total credit hours received in semester or quarter hours.

Work Experience for each paid or non-paid position held related to the job for which you are applying (do not provide copies of job descriptions):

- Job title.
- Duties and accomplishments.
- Number of hours per week.
- Employer's name and address.
- Supervisor's name and phone number.
- Starting and ending dates of employment (month and year).
- **Salary.**
- Indicate if your current supervisor may be contacted.

**Other Qualifications:**

- Job-related training courses (title and year).
- Job-related skills (e.g., other languages, computer software/hardware, tools, machinery, typing speed, etc.).
- Job-related certificates and licenses.
- Job-related honors, awards, and special accomplishments (e.g., publications, memberships in professional or honor societies, leadership activities, public speaking, performance awards, etc.). Do not send copies of documents unless specifically requested.

**AGENCY CONTACT INFO:**

**Harry Vickers**  
Phone: (202)514-3934  
Email: [HARRY.VICKERS@USDOL.GOV](mailto:HARRY.VICKERS@USDOL.GOV)

**Agency Information:**  
US Department of Justice Civil  
Rights Division  
Human Resources Office  
950 Pennsylvania Avenue NW  
Suite 3200 Bicentennial Building  
Washington, DC  
20530

**WHAT TO EXPECT NEXT:**

Once the online questionnaire is received you will receive an acknowledgement email that your submission was successful. After a review of your complete application is made you will be notified of your rating and/or referral to the hiring official. If further evaluation or interviews are required you will be contacted.

We will notify you of the outcome after each step of the recruitment process has been completed. After making a tentative job offer, we will conduct a suitability/security background investigation. We expect to make a final job offer within 120 days after the closing date of the announcement.

**Instructions for answering the questions in the Occupational Questionnaire:** If you are applying to this announcement by completing the OPM 1203-FX form instead of using the Online Application method, please use the following step-by-step instructions as a guide to filling out the required questionnaire. You will need to print the vacancy announcement and refer to it as you answer the questions. You may omit any optional information; however, you must provide responses to all required questions. Be sure to double check your application before submission.

[View Occupational Questionnaire](#)

[Back to top](#)