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## Philadelphia Becomes the First City to Prohibit Employers from Asking Applicants About Salary History

Employers who just last year revised their application forms to eliminate initial questions about past arrests and convictions, now have to revise them again to remove questions regarding current and past salary. On Jan. 23, 2017, Philadelphia's mayor signed a wage equity ordinance (the Ordinance) which prohibits, among other things, employers from asking job applicants about prior wages or wage history. The goal of the law is to address the gender pay gap, as the Ordinance asserts that women workers in Pennsylvania earn 79 cents for every dollar a man earns. Although Massachusetts has passed similar legislation that prohibits inquiries into a job applicant's wage history, Philadelphia is the first city to do so. The law is slated to go into effect on May 23, 2017.

### The Wage Equity Law

#### Prohibitions and Definitions

The Ordinance, which amends Philadelphia's Fair Practice Ordinance, principally prohibits employers from relying on an applicant's wage history to determine "the wages for such individual of any stage in the employment process." It defines "employer" as "any person who does business in the City of Philadelphia through employees or who employs one or more employees exclusive of parents, spouse, life partner or children, including public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the City, its departments, boards and commissions." To "inquire" means "to ask a job applicant in writing or otherwise." The term "wages" is broadly defined to include wages, commissions, and fringe benefits.

The Ordinance also prohibits:

- > requiring applicants to disclose their wage history;
- > conditioning employment or consideration for an interview on the disclosure of wage history;
- > retaliating against a job applicant for failing to disclose his or her wage history or “any wage history inquiry”;
- > relying on a job applicant’s wage history from a current or former employer to determine the wages for that individual at any stage of the employment process.

An employer in Philadelphia may rely on an applicant’s wage history only if the applicant knowingly and willingly discloses it to the employer. However, “knowingly and willingly” is not defined in the Ordinance.

### **Safe Harbor**

The Ordinance contains a safe harbor provision for any action taken by an employer or employment agency or its employees or agents “pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of wage history for employment purposes.”

### **Posting Requirement**

The Ordinance requires employers to post in every place of business in Philadelphia all fair practices notices prepared and made available by the Philadelphia Commission on Human Relations (PCHR).

### **Enforcement/Penalties**

Job applicants who believe that the Ordinance has been violated can file a complaint within 300 days of the violation with the PCHR. The Commission has the authority to fine employers \$2,000 per violation, order injunctive relief, and award compensatory and punitive damages, plus attorneys’ fees and costs. There is also a private right of action to file a complaint in the Philadelphia Court of Common Pleas either: (1) upon dismissal of the complaint or if it has been pending with the PCHR for one year, or (2) within two years from the date on which the PCHR closes the case.

### **Implementation**

Although the Ordinance is likely to face legal challenges by some in the business community, Philadelphia employers should begin to prepare for the Ordinance’s implementation. Specifically, employers should consider: (1) informing all managers, supervisors, and other employees with hiring authority about the new Ordinance and its prohibitions and training them to comply; (2) revising interview scripts to eliminate questions about an applicant’s current salary or pay history; and (3) revising employment applications to avoid questions related to providing wage history unless the employee “knowingly and voluntarily” agrees to provide it.

Employers are encouraged to consult with employment counsel in order to ensure compliance with the Ordinance.

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