

Philadelphia Bars Salary History Inquiries

Last year, Massachusetts enacted the country’s first ban on salary history inquiries, aimed at narrowing the gender pay gap. This week, Philadelphia became the first US city to prohibit salary history inquiries during the hiring process. On January 23, Mayor Jim Kenney signed the so-called wage equity law, barring both public and private employers from asking about, or requiring disclosure of, prospective hires’ wage history. The new restrictions are slated to take effect May 23. Employers should review their applicant screening and hiring protocols, and make any needed changes, to ensure compliance.

Background

In 2012, Philadelphia amended Title 9 of The Philadelphia Code to make it unlawful for employers to ask about criminal backgrounds during the job application process and restricted how a person’s criminal history could be used in making employment decisions. Since then, Philadelphia has amended its ban-the-box law to expand restrictions on criminal inquiries and on rescinding conditional offers of employment. (See our [April 8, 2016 For Your Information](#).) Last year, Philadelphia amended its Fair Practices Ordinance to restrict the use of an applicant’s or employee’s credit information in hiring and other employment decisions.

Last month, the Philadelphia City Council unanimously passed an ordinance ([Bill No. 160840](#)) that would further limit employer inquiries during the hiring process. The measure, aimed at narrowing the gender pay gap, prohibits most employers and employment agencies from asking about a potential hire’s wage and fringe benefits history, or conditioning job interviews or employment on its disclosure. Philadelphia Mayor Jim Kenney signed the so-called wage equity law on January 23, which will take effect on May 23.

The new law reflects the recent trend toward states and cities expanding pay equity protections in the absence of federal action targeting the gender pay gap. As Philadelphia’s City Council found, last year Massachusetts enacted the country’s first statewide prohibition on employers requesting or requiring a job seeker’s wage history, effectively preventing the use of salary information to screen applicants or formulate a job offer. (See our [August 3, 2016 FYI Alert](#).)



Shortly thereafter, California enacted a law precluding employers from using prior salary history to justify a wage disparity between employees performing similar work. (See our [October 7, 2016 For Your Information](#).)

New Employer Restrictions

Philadelphia's new law amends the city's Fair Practices Ordinance, adding a chapter on wage equity that prohibits employer inquiries into, and required disclosures of, a potential hire's salary and benefits history.

Who's Covered?

The law covers applicants and prospective hires, defined as "any person considered for, or who requests to be considered for, employment by an employer." It applies to both public and private employers and employment agencies, regardless of size.

For these purposes, "employer" is broadly defined 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 any public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the City, its departments, boards and commissions." "Employment agency" is defined as "any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employees."

Comment. Given this broad definition of employer, coverage would likely extend to entities seeking to hire employees to work at the employer's physical location or remotely within the city limits.

Prohibited Practices

With certain narrow exceptions, the new law makes it an unlawful employment practice for an employer, employment agency or their employees and agents to:

- Inquire about or require disclosure of a prospective employee's wage history
- Condition employment or consideration for an interview or employment on disclosure of wage history
- Retaliate against a prospective employee for failing to disclose wage history, or for opposing unlawful conduct under the ordinance
- Rely, at any stage in the employment process, on wage history provided by a prospective employee's current or former employer in making a wage rate determination including negotiating or drafting of an employment contract unless the applicant knowingly and willingly disclosed his or her wage history

Like the term "employer," "wages" is defined broadly and includes compensation as well as fringe benefits. Thus, the wage equity law bars inquiries into "all earnings of an employee, regardless of whether determined on a time, task, piece, commission or other method of calculation and including fringe benefits, wage supplements or other compensation whether payable by the employer from employer funds or from amounts withheld from the employee's pay by the employer." However, the prohibition would not apply where a federal, state or local law authorizes disclosure or verification of wage history for employment purposes.

Comment. In light of the new restrictions, employers will have to review and revise as necessary employment applications, employee handbooks and policy manuals as well as forms used during

employment verification and reference check processes to ensure that prospective hires are not asked for their wage and benefits history or required to provide it.

Posting Requirement

The law requires employers to post and prominently display in all places of business in the city any fair practices notices prepared and made available by the Philadelphia Commission on Human Relations (Commission) that it designates for posting.

Comment. Employers with employees working remotely in Philadelphia may want to consider adding the content of any such poster to an employee handbook, or providing an electronic or paper copy to those workers.

Enforcement

Individuals aggrieved by an alleged violation would be able to file a complaint with the Commission, which will be tasked with enforcing the new restrictions. Potential remedies include equitable relief, compensatory damages, punitive damages, attorneys' fees and costs. Penalties of up to \$2,000 per violation may be levied for repeat and/or willful violations, and criminal penalties are available in extreme cases.

The new law also provides a private right of action. An aggrieved individual may file an action in the Philadelphia County Court of Common Pleas after the complaint has been pending with the Commission for one year, or within two years after the Commission closes the case.

In Closing

Philadelphia employers should make any needed changes in their applicant screening and hiring practices, and train HR and other staff involved in the hiring process on the new restrictions, to ensure compliance.

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