

Philadelphia’s Ban on Salary History Inquiries on Hold

When Mayor Jim Kenney signed the so-called wage equity ordinance earlier this year, Philadelphia became the first city in the country to prohibit salary history inquiries during the hiring process. The ordinance, which bans employers from asking about, or requiring disclosure of, prospective hires’ wage history, was slated to take effect May 23. Following a legal challenge, a federal judge temporarily blocked enforcement, pending resolution of a preliminary injunction motion. Employers will want to monitor developments closely.

Background

In January 2017, Philadelphia Mayor Jim Kenney signed into law an ordinance ([Bill No. 160840](#)) to prohibit 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. Aimed at narrowing the gender pay gap, the ordinance amends the city’s Fair Practices Ordinance by adding a new chapter on wage equity that prohibits such inquiries and disclosures during the hiring process. The so-called wage equity ordinance was to take effect on May 23. (See our [January 27, 2017 For Your Information.](#))

Legal Challenge Filed

On April 6, the Chamber of Commerce for Greater Philadelphia filed [suit](#) in the Eastern District of Pennsylvania to block the city and its Commission on Human Relations from implementing and enforcing the wage equity ordinance. The suit asks the court to declare the ordinance unconstitutional and to permanently enjoin any action to enforce it. The Chamber also sought expedited relief, filing a [motion](#) for a preliminary injunction to prevent the ordinance from taking effect on May 23 and during the pendency of the lawsuit.

The seven-count complaint In *The Chamber of Commerce for Greater Philadelphia v. City of Philadelphia and Philadelphia Commission on Human Relations* asserts that the ordinance will not alleviate gender-based wage disparities, but it will “significantly disadvantage Philadelphia businesses.” It argues that the ordinance is unlawful because it infringes on federal constitutional guarantees and violates state law by regulating activity outside the city.



Specifically, the complaint alleges that the ordinance violates: employers' free speech rights under the First Amendment by prohibiting them from asking about an applicant's wage history; the Due Process Clause of the Fourteenth Amendment by subjecting employers to severe penalties for violating vague provisions; the Commerce Clause by controlling conduct outside the state; and the Pennsylvania Constitution and Home Rule Act by regulating activity outside the city limits and individuals who neither live nor work in the city.

Comment. Jurisdictions such as Massachusetts and New York City have passed laws that prohibit employer inquiries into applicants' salary history, but they have not yet taken effect. (See our *For Your Information* publications from [August 3, 2016](#) and [April 12, 2017](#).) Because the decision in this case may have broader implications, employers beyond Philadelphia will want to watch developments closely.

Court Temporarily Stays Enforcement

Last week, the city agreed to delay implementation of the new ordinance until the motion for a preliminary injunction is resolved. On April 19, Judge Mitchell S. Goldberg issued an [order](#) that temporarily stays the May 23 effective date, pending resolution of that motion. The judge also ordered the parties to address whether the Chamber has legal standing to bring suit, and set a briefing schedule on that issue that extends until mid-May. If the case proceeds after resolution of the standing issue, the Court will set a briefing schedule for the preliminary injunction motion.

Comment. A measure that is currently pending in the Pennsylvania legislature may impact the course of this litigation. On February 8, the state Senate passed [Senate Bill No. 241](#) that would preempt and supersede any local ordinance or rule concerning equal pay – including Philadelphia's. The bill is awaiting consideration in the House.

In Closing

While this lawsuit bears close watching, there is no guarantee it will be successful. Employers will want to monitor developments and be ready to comply should the court lift the temporary stay or deny the requested injunction.

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