

## NEWS & INSIGHTS

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# Philadelphia Prohibits Past Pay Inquiries

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Recently, the City of Philadelphia became the first major U.S. city to make it unlawful to ask applicants about their salary history during the hiring process. Under the new law, employers may not ask about a prospective employee's past wage rates and fringe benefits, or rely on such information in establishing current compensation and benefits.

Specifically, the new Ordinance prohibits several practices, including: (1) questioning or requiring disclosure of an applicant's salary history; (2) conditioning employment on disclosure of wage history; (3) basing any hiring decision on wage history to establish wages for the new hire; and (4) retaliating against an applicant for failing to comply with a past wage inquiry. The Ordinance also has a posting requirement.

The only exceptions to the new prohibitions are where federal, state or local law allows disclosure or verification of wage history for employment purposes or under a situation where a prospective employee “knowingly and willingly” divulges the wage information. However, voluntary disclosures should be documented in the event there ever becomes a question as to whether a violation occurred.

The new law will take effect on May 23, 2017, so employers need to review immediately their hiring practices and procedures, including, but not limited to applications, prospective hire forms and the interview process to ensure compliance with the new Ordinance. In addition, all individuals involved in the hiring process should be trained on these new requirements. Because a private right of action is available under the Ordinance, employers face an increased threat of litigation in the event that they fail to comply.

While the Ordinance only applies to employers who operate within the City, it is possible that similar measures could be introduced throughout the Commonwealth.

UPDATE: Despite the fact that Philadelphia only recently passed the Ordinance, the Pennsylvania Senate has already passed a bill (SB 241) that would preempt Philadelphia’s new ordinance. In contrast to the Philadelphia ordinance, this bill would not prohibit employers from inquiring into prospective employee’s wage histories. Believing that wage equity is a statewide issue and should not be decided by individual municipalities, the bill provides further that “[t]he provisions of this act shall preempt and supersede any local ordinance or rule concerning the subject matter of this Act.” The bill will be sent for House consideration and ultimately to the Governor’s desk. We will provide further updates when they occur.

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