

Philadelphia Joins Trend of Jurisdictions Prohibiting Inquiries on Wage History

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On January 23, 2017, Philadelphia Mayor Jim Kenney signed the [Wage Equity Law](#) (“Law”), which prohibits Philadelphia employers from asking prospective employees about their wage history, among other things. The Law will become effective on May 23, 2017.

The enactment of the Law is part of a growing trend by legislatures to improve pay equity by banning inquiries into wage history on the theory that such questions perpetuate the wage gap. In other words, to the extent that women and other historically underpaid groups have experienced pay inequity in the past, basing their current pay on past wage history will serve to compound those past wrongs. After a similar provision was cut from California’s Assembly Law 1676 in September 2016,¹ Massachusetts became the first state to enact this type of law,² and Philadelphia is now the first city. Similar legislation has been introduced at the federal level, as well as in Connecticut, New Jersey, New York City, Pennsylvania, Texas, and Washington, D.C.

The Law is an amendment to the Philadelphia Fair Practices Ordinance and applies to all employers, both private and public, of any size, that conduct business in Philadelphia.

Prohibited Practices

Under the Law, employers are prohibited from inquiring about a prospective employee’s wage history or requiring disclosure of wage history. Importantly, “wages” are defined broadly³ and include “all earnings of an employee,” such as fringe benefits and

¹ California introduced legislation similar to the Law as part of the original version of California Assembly Law 1676; however, as enacted in September 2016, the California law prohibits employers from solely using a prospective employee’s pay history information to justify wage differences between men and women but does not broadly prohibit inquiries into wage history.

² More information about the Massachusetts law can be found in the August 15, 2016, edition of Epstein Becker Green’s *Employment Law This Week*[®] series, available [here](#).

³ “Wages” is defined as “all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation and including fringe benefits, wage supplements, or

“amounts withheld from the employee’s pay by the employer.” Further, employers cannot condition employment or consideration for an interview for employment on disclosure of wage history. The Law also prohibits retaliation against prospective employees who refuse to respond to wage history inquiries or otherwise oppose an act made unlawful by the Law. Finally, the Law bans employers from relying on wage history in determining the wages for the individual at any stage during the employment process, *unless the prospective employee knowingly and willingly discloses such wage history*. Thus, while a prospective employee can volunteer to provide wage history knowingly and willingly, employers are still prohibited from eliciting such information. If wage history has been knowingly and willingly disclosed, the Law does not prohibit employers from considering this information when determining compensation.

Exceptions

The Law provides an exception for any actions taken pursuant to any federal, state, or local law that specifically authorizes the required disclosure or verification of wage history for employment purposes.

Remedies

As with any alleged violation of the Philadelphia Fair Practices Ordinance, employees or prospective employees who believe that the employer has violated the Law may file a complaint with the Philadelphia Human Relations Commission (“Commission”) within 300 days of the alleged unlawful conduct. Complainants may also pursue a private right of action once obtaining a notice from the Commission that the case has been closed, or if it is still pending after one year. Private actions must be filed within two years after receiving the notice from the Commission. If the complainant prevails, potential remedies include injunctive relief, compensatory damages, punitive damages, and reasonable attorneys’ fees and costs. Additionally, employers that are willful or repeat violators may be subject to penalties imposed by the Commission of up to \$2,000 per violation, up to 90 days imprisonment, or both.

What Philadelphia Employers Should Do Now

In anticipation of the Law becoming effective on May 23, 2017, Philadelphia employers should do the following:

- Remove questions about wage history from employment applications and any other applicable forms or policies used during the hiring process.
- Unless a prospective employee has voluntarily disclosed wage history information, and to the extent that any employment verification will be performed prior to making an offer of employment at a particular level of pay, do not seek wage history during the employment verification process, and remove any such

other compensation whether payable by the employer from employer funds or from amounts withheld from the employee’s pay by the employer.”

references from employment verification forms to ensure that such information is not used in determining wages.

- Coordinate with any outside vendors that conduct employment verifications to ensure that they are complying with the Law.
- Train human resources staff, hiring managers, and any other individuals involved in the hiring process (i.e., those conducting interviews or setting compensation levels at the organization) on the requirements of the Law.
- For interviewers who would like to know about a prospective employee's compensation expectations for the role in question, any discussion must make clear that the inquiry pertains to the applicant's compensation expectations for the given role and does not relate to his or her current or past wages.
- Ensure that any disclosure of wage history is done on a purely voluntary basis. If a prospective employee voluntarily discloses wage history at any point during the hiring process, create a "memo to file" (or other internal documentation) noting that the employee voluntarily disclosed this information and the circumstances surrounding such disclosure.

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