

Philadelphia to Restrict Wage History in Hiring Decisions

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A new Philadelphia ordinance restricting the use of wage history in hiring decisions has passed the City Council. Mayor Jim Kenney is expected to sign the bill into law soon. The ordinance will prohibit employers from inquiring about and considering prospective employees' wage histories, subject to limited exceptions.

On December 8, 2016, Philadelphia City Council passed a bill prohibiting employers from inquiring about the wage history of prospective employees (the "Wage History Ordinance"). The Ordinance will amend the "Fair Practices Ordinance" (Chapter 9-1100 of The Philadelphia Code) by adding to the broad protections already afforded to employees.

The Wage History Ordinance makes it an unlawful employment practice "for an employer, employment agency, or employee or agent thereof" to "inquire about a prospective employee's wage history, require disclosure of wage history, or condition employment or consideration for an interview or employment on disclosure of wage history."

Within the meaning of the Ordinance, "to inquire" is defined as "to ask a job applicant in writing or otherwise." Likewise, the term "wages" is defined broadly to include "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 other compensation whether payable by the employer from employer funds or from amounts withheld from the employee's pay by the employer."

The Ordinance also includes an anti-retaliation provision, prohibiting employers from taking adverse action against an applicant or employee who does not comply with a wage history inquiry.

In addition, the Ordinance further prohibits employers from relying on the wage history of a prospective employee provided by current or former employers of the prospective employee "in determining the wages for such individual at any stage in the employment process ... unless such applicant knowingly and willingly disclosed his or her wage history" to the prospective employer.

The Ordinance, however, provides an exception: allowing inquiries into wage history where "any federal, state or local law ... specifically authorizes the disclosure or verification of wage history for employment purposes." This exception is significant, as it applies not only where such inquiries are required, but wherever disclosure or verification is "authorized."

A prospective employee claiming to be aggrieved by a violation of the Ordinance may file a complaint with the Philadelphia Commission on Human Relations. Any such complaint must be filed within 300 days of the alleged discriminatory act. Once the administrative remedies have been exhausted, the prospect may pursue a private civil action in court. Remedies available to a successful litigant include compensatory and punitive damages, attorneys' fees, court costs, and injunctive relief. Employers found in violation also may be subject to administrative penalties.

Implications for Employers

The Ordinance will add to the already significant anti-discrimination protections afforded under the Fair Practices Ordinance. The Ordinance is slated to take effect 120 days after Mayor Kenney signs the bill into law, meaning the expected effective date will be sometime in April 2017.

Employers in Philadelphia should become familiar with the new obligations associated with compliance and potential penalties under the bill. Employers should review existing policies and practices to ensure they are compliant with the Ordinance.

Jackson Lewis is available to assist in reviewing employer policies and practices. Please contact us with any questions on this and other workplace developments.

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