

Date: February 22, 2019

To: Councilmember Tamaya Dennard

From: Paula Boggs Muething, City Solicitor

Subject: **Ordinance – Banning Inquiry and Use of Salary History Information – D
Version**

201900399

Transmitted herewith is an ordinance captioned as follows:

ORDAINING new Chapter 804, “Prohibited Salary History Inquiry and Use;” of the Cincinnati Municipal Code to create new legislation to ensure that Cincinnati residents’ rights are protected and that job applicants in Cincinnati are offered employment positions and subsequently compensated based on their job responsibilities and level of experience, rather than on prior salary histories, which actions can serve to perpetuate existing discrimination against women in the workforce.

PBM/AKS/(ps)
Attachment
266064-6

City of Cincinnati

AKS/D *KBM*

An Ordinance No. 83

- 2019

ORDAINING new Chapter 804, "Prohibited Salary History Inquiry and Use," of the Cincinnati Municipal Code to create new legislation to ensure that Cincinnati residents' rights are protected and that job applicants in Cincinnati are offered employment positions and subsequently compensated based on their job responsibilities and level of experience, rather than on prior salary histories, which actions can serve to perpetuate existing discrimination against women in the workforce.

WHEREAS, women in the United States are paid 80 cents for every dollar paid to men, losing out on a combined total of more than \$840 billion annually; and

WHEREAS, among women who hold full-time, year-round jobs in the United States, African American women are typically paid 63 cents, Hispanic women are paid 54 cents, and Asian women are paid 85 cents for every dollar paid to white, non-Hispanic men; and

WHEREAS, more than 15 million family households in the United States are headed by women, 29 percent of which fall below the poverty line, and eliminating the wage gap would provide income to women whose wages sustain their households; and

WHEREAS, persons who identify as LGBTQ, especially LGBTQ persons of color, are commonly exposed to harassment and discrimination at work and are found to be more likely than their Cisgender counterparts to be unemployed, marginally employed, or severely limited in their choice of jobs, especially in rural areas; and

WHEREAS, basing a worker's salary offer on a wage from a previous job can perpetuate the current wage inequity; and

WHEREAS, wages should be based on job responsibilities and level of experience of the applicant rather than wages earned from prior employment; and

WHEREAS, City Council encourages private companies to create policies matching those of the City of Cincinnati, and to lead by example in their efforts to eliminate the gender pay gap; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Chapter 804, entitled "Prohibited Salary History Inquiry and Use,"

is hereby ordained as follows:

Chapter 804 – Prohibited Salary History Inquiry and Use.

804-01. - Definitions.

- (a) For the purposes of this chapter, words and phrases shall have their ordinary meaning unless defined herein.
- (b) “Applicant” means any person applying for employment to be performed within the geographic boundaries of the City of Cincinnati, and whose application, in whole or in part, will be solicited, received, processed, or considered in the City of Cincinnati, regardless of whether the applicant is interviewed.
- (c) “Employer” means any individual, corporation, limited liability company, firm, partnership, labor organization, voluntary association, joint stock association, and any public corporation, or an agent thereof, located within the City of Cincinnati and using the services of fifteen or more employees for pay within the City of Cincinnati. “Employer” includes job placement and referral agencies and other employment agencies. “Employer” does not include any unit of local, state, or federal government, except that it does include the City of Cincinnati.
- (d) “Employment” means any occupation, vocation, job, or work, including but not limited to temporary and seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency for which the applicant is to receive wages or a salary. Employment does not include work as an independent contractor.
- (e) “Inquire” means to communicate any question or statement to an applicant, an applicant’s current or prior employers, or a current or former employee or agent of the applicant’s current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant’s salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant’s salary history, but does not include informing the applicant in writing or otherwise about the position’s proposed or anticipated salary or salary range.
- (f) “Salary history” includes the applicant’s current or prior wage, benefits, or other compensation. “Salary history” does not include any objective measure of the applicant’s productivity such as revenue, sales, or other production reports.

804-03. – Prohibition on Inquiring About or Use of Salary History.

- (a) Except as otherwise provided in this subdivision, it is an unlawful discriminatory practice for an employer or its agent to:
 - (1) Inquire about the salary history of an applicant for employment; or

- (2) Screen job applicants based on their current or prior wages, benefits, other compensation, or salary histories, including requiring that an applicant's prior wages, benefits, other compensation or salary history satisfy minimum or maximum criteria; or
 - (3) Rely on the salary history of an applicant in deciding whether to offer employment to an applicant, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; or
 - (4) Refuse to hire or otherwise disfavor, injure, or retaliate against an applicant for not disclosing his or her salary history to an employer.
- (b) Notwithstanding paragraph (a) of this subdivision, an employer or its agent may, without inquiring about salary history, engage in discussion with the applicant about their expectations with respect to salary, benefits, and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.
- (c) An employer, upon reasonable request, shall provide the pay scale for a position to an applicant applying for employment, for which the applicant has been provided a conditional offer of employment by the employer.
- (d) The prohibitions contained in this section shall not apply to:
- (1) Any actions taken by an employer or its agent pursuant to any federal, state, or local law that specifically authorizes the reliance on salary history to determine an employee's compensation;
 - (2) Applicants for internal transfer or promotion with their current employer;
 - (3) A voluntary and unprompted disclosure of salary history information by an Applicant;
 - (4) Any attempt by an employer to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant's salary history, such disclosure shall not be relied upon for purposes of determining the salary, benefits, or other compensation of such applicant during the hiring process, including the negotiation of a contract;
 - (5) Applicants who are re-hired by the employer within five years of the Applicant's most recent date of termination from employment by the Employer, provided that the employer already has past salary history data regarding the Applicant from the previous employment of Applicant;

- (6) Employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining;
- (7) Any employer who, within the previous three years and before the action is filed against it, has received an external review and certification, and made the certification publicly available, that the employer's practices do not include salary history in the hiring process; and
- (8) Federal, state, and local political subdivisions, other than the City of Cincinnati.

804-05. - Remedies for Non-Compliance.

If an employer, employment agency, or employee or agent thereof fails to comply with any provision of this chapter, the applicant shall have a private cause of action to enforce the provisions of this chapter against the employer, employment agency, or employee or agent thereof for compensatory damages, reasonable attorney's fees, the costs of the action, and such legal and equitable relief as the court deems just and proper. An action for violation of this Chapter shall be commenced within two years after the cause of action accrued.

804-07. - Severability.

If any provision or section of this chapter or the enforcement of any such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision or section of this chapter. To this end, each of the provisions and sections of this chapter are severable.

804-09. - Effective Date.

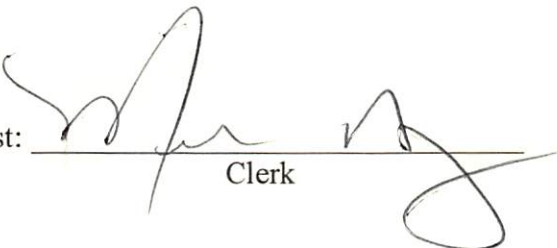
This Chapter shall take effect 365 days after it becomes law.

Section 2. That Council shall establish a Salary History implementation working group ("Working Group"), as further described below, whose purpose is to assist and advise Cincinnati employers on the impact and implementation of this ordinance. The Working Group shall be chaired by the City Manager or his or her designee, and the City Manager may also appoint a Vice Chair. Two members shall be appointed by the Mayor and the remaining three members shall be appointed by the Equity, Inclusion, Youth & The Arts committee or its successor committee. The Working Group shall consist of five community stakeholders from a diverse and

relevant range of sectors such as employment law, pay equity certification, human resources, legal and compliance, labor unions, and private business, among others at the discretion of the Mayor or Council committee making the appointment. The public is invited to submit resumes to be considered for appointment to the Working Group. Each appointed member of the Working Group shall serve a two-year term and may serve no more than two consecutive two-year terms. Each member shall hold such position from the date of appointment until the end of the term for which the member is appointed, provided that members shall continue as a member of the Working Group subsequent to the expiration date of their term until their successor takes office. Members may be appointed to fill a vacancy occurring before the expiration of a member's term, and any member so appointed shall hold office for the remainder of the unexpired term. Council will evaluate the effectiveness and whether to continue this Working Group no later than October 2020.

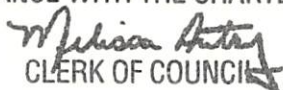
Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: March 13, 2019

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE No. 83-2019
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 3-26-2019


CLERK OF COUNCIL