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Employment Law

# Businesses Will No Longer Be Able to Ask Applicants About Prior Salary

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The city of Philadelphia may soon be delivering a Christmas present to its workers who are the victims of unequal pay. On Dec. 8, Philadelphia City Council unanimously passed the "wage equity ordinance" (Bill No. 160840, as amended Nov. 22). Mayor Jim Kenney has publicly championed his approval of the ordinance that he will eventually sign into law. Once passed, the bill will amend the Philadelphia Fair Practices ordinance and go into effect within 120 days of passage. The bill is being lauded for making it unlawful for an employer or employment agency to ask an applicant about his wage history or require disclosure of such information, including what he earns at his - current employer.

The findings expressed in the introduction to the new ordinance offer some insight as to why the legislation is needed. According to a U.S. Census Bureau 2015 report, in Pennsylvania alone, women are paid 79 cents for every dollar a man makes. Women of color are paid even less. African-American women are paid only 68 cents to the dollar to that of a man, Latinas are paid only 56 cents to the dollar paid to men, and Asian women are paid 81 cents to the dollar.

The findings go on to conclude that since women are paid on average lower wages than men, basing wages upon a worker's wage at a previous job only serves to perpetuate gender wage inequalities and leave families with less money to spend on food, housing, and other essential goods and services.

Despite the existence of the federal Equal Pay Act since 1963, which was intended to prohibit wage discrimination based on gender, the gender wage gap has narrowed by less than one-half a penny per year in the United States, according to the National Committee on Pay Equity. As a result, some municipalities and states have sought to address this marked wage gap by introducing equal pay laws prohibiting employers from asking applicants about their salary history.

As noted in the findings of the Philadelphia wage equity ordinance, in August 2016, Massachusetts became the first state to enact a law prohibiting employers from seeking or requiring a prospective employee's wage history. Soon, Philadelphia will become the first city to pass wage equity

legislation.

So what exactly does the new law prohibit? Under the wage equity ordinance, it is an unlawful employment practice for an employer, employment agency or employee/agent of an employer/agency to: inquire about or require disclosure of an applicant's wage history; condition employment or consideration for an interview or employment on disclosure of wage history; retaliate against an applicant for failing to disclose his wage history; or rely on an applicant's wage history from a current or former employer to determine the wages for that individual at any stage in the employment process, including the negotiation or drafting of any employment contract.

The only noted exceptions in the wage equity ordinance are where an applicant knowingly and willingly discloses his wage history to the employer or where a federal, state or local law specifically authorizes the disclosure or verification of wage history for employment purposes.

It is safe to assume that the trend toward narrowing the wage gap is not limited to the Philadelphia ordinance or the Massachusetts state law. Similar legislation has been introduced in the Pennsylvania State House, as well as in Maryland, New York and California. In Maryland and California pay equity laws mandate equal pay for "comparable work." The California law has even gone so far as to place the burden on the employer to prove that men and women are paid equally for "substantially similar" work. There has also been a federal bill introduced in the U.S. House of Representatives seeking to revise the Fair Labor Standards Act to prohibit employers from discussing prospective employees' salary and benefit history.

Many private employers have also taken up arms in voluntarily combating gender pay equality. Some, including PepsiCo, American Airlines and The Gap More, signed on to an "Equal Pay Pledge" initiated by the White House in which the businesses agreed to conduct annual audits of their pay by gender across all job categories. Not all businesses agree, however, that the government should be dictating what they can and cannot do in the hiring process. For example, the Greater Philadelphia Chamber of Commerce argued in testimony before Philadelphia City Council that obtaining salary history gives employers a better understanding of whether a candidate is "worth pursuing." Businesses also expressed concerns about potential lawsuits and the interference of the government in human resource issues.

To that, employee-advocates counter that government often instructs businesses on what is just, right and proper when hiring employees. Current quasi-human resource laws serve many functions, such as precluding an employer from asking a candidate his or her age; or from inquiring about medical conditions or disabilities; or setting the minimum wage or overtime restrictions, etc. Government intrusion into the employment relationship is far from new to the American economy.

Suffice to say the wage equity ordinance will come with some compliance issues and will require Philadelphia employers to take some proactive steps to adjust to the new law. Excuse the pun, but that will be a small price to pay toward ensuring some measure of wage equality. •

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