



KEYSTONE EMPLOYMENT LAW BLOG

MIND THE (PAY) GAP: PHILADELPHIA EMPLOYERS SOON WILL BE PROHIBITED FROM INQUIRING ABOUT WAGE HISTORY DURING HIRING PROCESS

DEC. 30, 2016 BY BENJAMIN MANN

Philadelphia will soon be the first city in the United States to have a law prohibiting employers from inquiring about a prospective employee's wage history at any point during the hiring process. Philadelphia Bill No. 160840, the "wage equity ordinance," which was read and passed by the City Council on December 8, 2016, will take effect 120 days from the date it is signed into law. Philadelphia Mayor Jim Kenney has already expressed support for the wage equity ordinance, therefore, it's a question of *when*, not *if*, this Bill becomes law in the city.

WHAT DOES THIS NEW LAW PROHIBIT?

The wage equity ordinance will add a section to the Philadelphia Fair Practices Ordinance, which is a city ordinance that provides employees' and prospective employees' protections against discrimination consistent with and in addition to the protections afforded those groups under federal and state law. Specifically, the wage equity ordinance makes it unlawful for an employer to: (1) inquire about a prospective employee's wage history; (2) require disclosure of wage history; (3) condition employment or consideration for an interview on disclosure of wage history; or (4) retaliate against

a prospective employee for failing to comply with any wage history inquiry. Further, this new law prohibits employers from relying on the wage history of a prospective employee in determining the wages for that individual unless that individual “knowingly and willingly” disclosed his or her wage history to the employer.

WHY WAS THIS LAW PASSED?

This law is the latest in a series of measures taken by governments and administrative agencies across the country in an effort to narrow the wage gap between men and women. In Bill No. 160840, the Philadelphia City Council noted specifically that, in Pennsylvania, women are paid 79 cents for every dollar a man makes, and that women of color are paid even less than that (Notably, African American women are paid only 68 cents to the dollar paid to men, and Latina women are paid only 56 cents to the dollar paid to men). The City Council found that basing wages upon a worker’s wages at a previous job only perpetuates pre-existing wage inequalities, particularly gender-based wage gaps. The City Council noted that compensation offers should be forward-focused on the position sought, and not backward-focused on prior wages.

HOW SHOULD EMPLOYERS PREPARE FOR THE CHANGE?

First and foremost, Philadelphia employers should immediately make aware of this wage equity ordinance all their human resources personnel and other personnel involved in interviewing candidates. Of the two primary prohibitions under this new law, the easier one with which to comply is not asking about wage history during the interview process. The prohibition against using wage history information in determining the compensation offered to the candidate is a bit trickier. This information may be used only if the candidate “knowingly and willingly” disclosed the information. If, however, the employer came upon the wage history information by other means, it cannot be considered. For employers operating outside of Philadelphia, keep a close watch on how this new ordinance is received in Philadelphia because similar measures could be proposed in other parts of the state or country very soon.

A link to Bill No. 160840 in its entirety can be found on the Philadelphia City Council website:

<https://phila.legistar.com/LegislationDetail.aspx?ID=2849975&GUID=239C1DF9-8FDF-4D32-BACC-296B6EBF726C>

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