

PUBLICATION

Philly Follows Massachusetts and Prohibits Inquiries About Applicants' Salary Histories [Ober|Kaler]

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On December 8, 2016, the Philadelphia City Council passed an Ordinance prohibiting employers from inquiring about applicants' salary histories. The Mayor is expected to sign the Ordinance, which would take effect 120 days from enactment. In August 2016, Massachusetts became the first state to enact a law that bans employers from seeking salary history. Similar legislation has been introduced in New York City, and at the state level in Pennsylvania and New Jersey.

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Bill No. 160840 would make it unlawful for an "employer, employment agency, employee or agent thereof" to:

- Inquire about a prospective employee's wage history;
- Require wage disclosure of wage history;
- Condition employment, or consideration for an interview or employment, on disclosure of wage history;
- Rely on the wage history of a prospective employee from any current or former employer of that prospective employee in determining the wages for that individual at any stage in the employment process, including negotiating or drafting of an employment contract, unless the applicant "knowingly and willing" disclosed his or her wage history to the employer, employment agency or agent thereof; or
- Retaliate against a prospective employee for failing to comply with any wage history inquiry or opposing an employer's alleged violation of the Ordinance.

Under the Ordinance, "inquire" means to ask a job applicant in writing or otherwise. "Wages" is defined as all earnings of the prospective employee, 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," such as 401(k) deductions. As such, the Ordinance prohibits employers from inquiring about benefits or bonuses that are typically a part of an applicant's total compensation package.

In anticipation of the Ordinance's enactment, employers in Philadelphia should begin the process of modifying their hiring practices, including their paper and online application forms, and train Human Resources and hiring managers about the Ordinance's prohibitions.