

Philadelphia Employers, Beware: Dont Ask About Salary History

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A three-year court battle concerning a controversial Philadelphia ordinance related to a prospective employee's salary history hit an important point Friday, and employers in the country's sixth-largest city need to be aware of it.

A three-judge panel of the U.S. Court of Appeals for the Third Circuit last week overturned a previous lower court decision that had allowed Philadelphia employers to continue to ask prospective employees about their salary history. Under the latest ruling, employers in the city can no longer ask a potential employee about their salary history.

This latest decision comes in the [midst of a nationwide trend to move away from asking salary history questions](#) because many groups believe it perpetuates the gender pay gap since women historically have earned less than men.

The Philadelphia ordinance enacted in January 2017 prohibited city employers from asking about a candidate's previous wage history or requiring a candidate to disclose wage history. In addition, Philadelphia employers, under the ordinance, were prohibited from relying on salary history in setting compensation for employees.

The Greater Philadelphia Chamber of Commerce immediately challenged the statute on First Amendment free speech grounds. In an order dated April 30, 2018, a federal judge in the Eastern District of Pennsylvania issued an injunction, blocking only the provision of the ordinance that prohibited employers from inquiring about an applicant's pay history. The ruling upheld the portion of the ordinance that prohibited employers from relying on salary history in making hiring decisions.

The federal appeals panel on Thursday overturned the lower court order and reinstated the restriction on Philadelphia employers inquiring about an applicant's wage history. That leaves city employers prohibited from asking a job candidate about previous wage history or using that history to set their wages should they be hired.

The ordinance is an amendment to Philadelphia's "Regulation of Businesses, Trades and Professions," which is Title 9 of The Philadelphia Code. If your business is covered by that code, then it is also covered under the new ordinance.

Not only do equality groups and some lawmakers believe the salary history question perpetuates the gender pay gap, but that it also could fuel an unconscious bias to pay women less than men. Approximately 17 states and local jurisdictions have passed some form of a ban on the use of salary history information in the hiring process. New Jersey's ban took effect January 1, and New York's ban took effect January 6. Delaware's ban has been in effect since 2017. In Pennsylvania, Gov. Tom Wolf signed an executive order in 2018 prohibiting state agencies from soliciting salary history information from prospective employees.

It currently is unclear whether the Greater Philadelphia Chamber of Commerce will seek reconsideration of the

decision. For now, employers in Philadelphia should take measures to ensure that they are in full compliance with the ordinance.

If you have questions on the Philadelphia ordinance or the recent court actions upholding it, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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