

Management Alert



Salary History Bans Hit the Midwest: Cincinnati Passes Salary History Ban and Requires Disclosure of a Pay Scale

By Christine Hendrickson and Michael Childers

Seyfarth Synopsis: On March 13, 2019, the City of Cincinnati passed a salary history ban ordinance. The law will also require that employers provide some job applicants the “pay scale” associated with the job for which they are applying.

After a short lull in the passage of salary history ban laws, Cincinnati became the fifteenth jurisdiction, and the first in the Midwest, to pass a salary history ban. Like the salary history bans past in several other jurisdictions, the new law prohibits employers from seeking prior pay information from applicants for employment;¹ however, Cincinnati took its law a step further and became only the second jurisdiction to require that employers provide the “pay scale” for the job for some applicants.

What Does Cincinnati’s Salary History Ban Prohibit?

The new [Chapter 804](#) of the Cincinnati Municipal Code forbids:

- Inquiring about the salary history of an applicant for employment;
- Screening job applicants based on their salary history;
- Requiring that salary history meets minimum or maximum criteria;
- Relying on the salary history of an applicant in deciding whether to offer employment to an applicant;
- Determining the compensation at any stage of the hiring process (up to and including contract negotiations), unless the salary history is disclosed voluntarily and unprompted; and
- Refusing to hire or otherwise disfavoring an applicant for not disclosing his or her salary history to an employer.

These prohibitions only apply to job seekers in the City of Cincinnati and do not apply to applicants for internal transfer or promotion with their current employer. They also do not apply to any actions taken in accordance with federal, state, or local law that specifically authorizes the reliance on salary history to determine an employee’s compensation.

¹ Currently seven states (California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, and Vermont, six other cities or counties (San Francisco, CA, New York City, NY, Albany County, NY, Suffolk County, NY, eff. 6/30/2019, Westchester County, NY and Philadelphia, PA) and one Territory (Puerto Rico) have passed salary history bans.

Three Cincinnati Twists & Pay Scale Disclosure Requirement

There are a few twists found in the Cincinnati Ordinance, making it one of the most unique salary history ban laws in the country.

Twist #1: Deferred Compensation and Unvested Equity

First, while the Cincinnati Ordinance, like other salary history bans, permits employers to freely discuss salary expectations, Cincinnati is only the third jurisdiction (following [New York City](#) and [San Francisco](#)²) to permit employers to ask an applicant whether he or she will have to forfeit deferred compensation or unvested equity upon resignation from his or her current employer as part of the discussion around compensation expectations.

Twist #2: Carve-Out for Re-Hires

Second, Cincinnati's Ordinance, like several other salary history bans, does not apply to current employees applying for internal transfer or promotion. The Cincinnati Ordinance is the first to extend this carve-out for current employees to allow an employer to consider the applicant's prior salary if the employer re-hires the applicant within five years of his or her most recent date of termination and the employer already has past salary history data regarding the applicant from their previous employment.

Twist #3: Safe Harbor

Another first! Cincinnati created a first-of-its-kind "safe harbor" for employers who, within the previous three years, and before a lawsuit is filed against the employer, have received an external certification, which is then made publicly available, that their practices do not include salary history in the hiring process. Details of what this certification process will entail are not outlined in the Ordinance but we expect more information on this front from the Salary History Implementation Working Group established by the Ordinance.

Bonus Twist: Pay Scale Disclosure Requirements

Cincinnati will become only the second jurisdiction, [after California](#), to require employers to provide applicants with the pay scale for the position upon "reasonable request." However, unlike the California law, which requires that the pay scale be made available after the first interview, the Cincinnati law, more sensibly, requires that the pay scale be provided, if requested, when the applicant has been provided a conditional offer of employment.

Remedies for Non-Compliance

The Ordinance creates a private cause of action and provides for compensatory damages, reasonable attorney's fees, the costs of the action, and legal and equitable relief with a two-year statute of limitations on such damages and relief.

² There is no such carve-out, however, under California law, blunting the impact of this San Francisco carve-out.

What Does this Mean for Employers

The Cincinnati law will go into effect in March, 2020 so employers with operations in Cincinnati should be prepared. Pay equity laws are still coming and employers should remain vigilant as more and more salary history bans are passed.

We hope you will join Seyfarth's Pay Equity Group on Equal Pay Day, April 2, 2019, for a joint presentation of Seyfarth's Pay Equity and Complex Discrimination Litigation Groups, as we share our updated Annual 50-State Survey and Trends and Developments in Pay Equity Litigation reports and more information on this law. You can [register here](#) for this Webinar.

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