

# One Minute Memo®



## UPDATE: Philadelphia Enacts Law Prohibiting Inquiry Into a Prospective Employee's Wage History

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**Seyfarth Synopsis:** Philadelphia is the next jurisdiction to prohibit employers from inquiring into job applicants' wage history during the employment application process.

**UPDATE:** The Ordinance will become effective on May 23, 2017.

### The Ordinance

The Philadelphia City Council recently passed [Bill No. 160840](#), amending Title 9 of The Philadelphia Code by adding wage equity measures to Philadelphia's Fair Practices Ordinance, which was initially passed in 2011 to prohibit employers from inquiring as to non-conviction arrests and has since been expanded to include ban the box restrictions and mandatory poster requirements (see our prior coverage [here](#) and [here](#)). The amended Ordinance prohibits employers (and employment agencies) from inquiring about a prospective employee's wage history. Retaliation against a prospective employee for refusing to respond to such an inquiry is also prohibited, as long as no federal, state, or local law specifically authorizes the disclosure of wage history in connection with employment.

In what is becoming a trend on the East Coast, Philadelphia joins Massachusetts in prohibiting inquiries into salary history. We may see this trend continue into New York City. Mayor Bill de Blasio recently signed Executive Order 21, which prohibits New York City agencies from inquiring about an applicant's salary history before extending a conditional offer of employment, and there is pending legislation in New York City that would prevent both public and private employers from inquiring about potential employees' salary histories. However, at least for now, the salary history prohibition march down the East Coast will skip New Jersey. A similar prohibition proposed in New Jersey recently failed to override a veto by Governor Chris Christie.

Perhaps surprisingly, these legislative and executive actions are more restrictive than what we currently see coming out of the West Coast. While changes to the California Fair Pay Act prohibit employers from relying on prior salary as the sole justification for wage differences, the Act does not completely forbid employers from making such inquiries.

The Philadelphia Ordinance makes it unlawful for an employer or employment agency to:

- Inquire about a prospective employee's wage history (in writing or otherwise);

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- Require disclosure of wage history;
- Condition employment or consideration for an interview on disclosure of wage history;
- Rely on the wage history of a prospective employee from any current or former employer in determining the wages for that individual at any state in the employment process, including negotiating or drafting of an employment contract (unless the applicant “knowingly and willingly” disclosed his or her wage history); or
- Retaliate against a prospective employee for failing to comply with any wage history inquiry.

“Wages” are broadly defined as all earnings, 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 other lawful deductions.

The Ordinance will take effect on May 23, 2017 (120 days from January 23, 2017, the date it was signed by Mayor Jim Kenney). Notably, aggrieved individuals must file a complaint within 300 days of an alleged violation with the Philadelphia Commission on Human Relations (“Commission”) and, if the Commission fails to conclude its investigation within a one year period, may sue in court within two years of the Commission’s dismissal. Potential remedies include equitable relief, compensatory and punitive damages, attorneys’ fees, and costs.

## Employer Outlook

Employers in Philadelphia should begin to review their applications and other hiring documents to remove any inquiry pertaining to wage history and advise recruiters and hiring managers to avoid making any similar inquiry. Moreover, expect to see a growing wave of similar legislation arise in other jurisdictions at various levels of government, ranging from state-wide to municipal ordinances, to address wage equity issues (e.g., Pennsylvania, New Jersey, and New York City).

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