

Does the Ban on Salary History Inquiries Violate the First Amendment? Ruling on Philadelphia Bill May Impact New York

Insights

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On May 4, 2017, New York City joined the Commonwealth of Massachusetts and the City of Philadelphia when the Mayor signed legislation that bans employers from inquiring about the salary history of job applicants. These laws, which have the stated aim of reducing pay inequity along racial and gender lines, could have a wide-ranging influence on the way companies do business. The New York law is set to go into effect on October 31, 2017, although there is a possibility that the law's implementation will be challenged, as the similar law has been in Philadelphia.

On April 6, the Philadelphia Chamber of Commerce filed a federal lawsuit alleging that the Philadelphia ordinance violates the freedom of speech of impacted businesses. The Chamber is also seeking injunctive relief to prevent the city from enforcing the law during the pendency of the litigation. In support of its motion for an injunction, the Chamber argued that the ordinance "violates the First Amendment by prohibiting employers from inquiring about, or relying on, an individual's wage history and thereby communicating the message that wage history is important to the job-application process." On April 18, the district court judge issued an order staying the ordinance's effective date until after ruling on the preliminary injunction. Obtaining a preliminary injunction requires, among other things, a showing by the Chamber that there is a likelihood of the action's success on the merits.

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