

Insights, News & Events

## PAST PAY NOW PRIVATE IN PHILADELPHIA: EMPLOYERS CAN'T MAKE WAGE HISTORY INQUIRIES DURING HIRING

Insights  
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Philadelphia has become the first city in the United States to prohibit employers from inquiring about a prospective employee's wage history during the hiring process. Philadelphia Bill No. 160840, also known as the "wage equity ordinance," was passed by the City Council on December 8, 2016 and signed by Mayor Jim Kenney late yesterday. It will take effect on May 23, 2017 (120 days from the date of signing).

Philadelphia employers will want to immediately familiarize themselves with the new law and take action steps to ensure compliance.

### What Does The Law Prohibit?

Once in effect, the wage equity ordinance will prohibit Philadelphia employers from taking any of the following steps:

1. inquiring about a prospective employee's wage history;
2. requiring disclosure of wage history;
3. conditioning employment or consideration for an interview on disclosure of wage history; and

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4. retaliating against a prospective employee for failing to comply with any wage history inquiry.

Further, this new law will prohibit Philadelphia employers from relying on the wage history of a prospective employee in determining the wages for that individual unless that individual “knowingly and willingly” disclosed their wage history to the employer.

The wage equity ordinance will be added to the [Philadelphia Fair Practices Ordinance](#), a city ordinance that prohibits discrimination against employees and applicants in a manner similar to federal and state law.

### **Why Was This Law Passed?**

This law is the latest in a series of measures taken by governments and administrative agencies across the county in an effort to narrow the wage gap between men and women. The Philadelphia City Council specifically noted in the text of the bill that women in Pennsylvania are paid 79 cents for every dollar a man makes, and that women of color are paid even less. Notably, the bill’s findings state that African-American women are paid only 68 cents to the dollar compared to men, and Latina women are paid only 56 cents to the dollar.

The City Council concluded that determining wages based upon a worker’s previous earnings only perpetuates preexisting wage inequalities, particularly those based on gender. The City Council noted that compensation offers should be forward-focused on the position sought, and not backward-focused on prior wages.

### **How Should Philadelphia Employers Prepare For This Change?**

The new law will take effect on May 23, 2017, so you will want to start the process of reviewing your policies and practices right away to ensure you are in compliance by the effective date.

First and foremost, you should immediately make all of your human resources personnel and others involved in interviewing candidates aware of this wage equity ordinance. It will be fairly easy to comply with the new prohibition barring them from inquiring about wage history during the interview process.

However, the prohibition against using wage history information in determining the amount of compensation to be offered to the candidate is a bit trickier to navigate. Under the new law, you may only use this information if the candidate “knowingly and willingly” disclosed the information to you. If, however, you came upon the wage history information by other means, you cannot consider it. It will be important for you to document any voluntary disclosures clearly and contemporaneously in the event you are questioned about the situation at a later point.

If you operate outside of the city, you should keep a close watch on this new ordinance. We expect that similar measures could be proposed in other parts of the state very soon depending on how the bill is received in Philadelphia.

For more information about how these changes will affect your workplace, contact any attorney in our [Philadelphia](#) office at 610.230.2150, or your regular Fisher Phillips attorney.

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*This Legal Alert provides information about a specific city law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*