



Cincinnati Joins Growing Number of Jurisdictions Banning Salary History Queries

Insights

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Cincinnati City Council has passed Ordinance No. 0083-2019 barring employers from asking applicants for their salary history. The city becomes the latest of a growing number of jurisdictions to adopt a salary history ban on employers. In addition to Cincinnati, salary history bans exist in the cities of Chicago, Kansas City, Louisville, New Orleans, New York City, Philadelphia, Pittsburgh, and San Francisco. Several counties have also passed similar bans.

Cincinnati's ordinance, titled "Prohibited Salary History Inquiry and Use," (the Ordinance) prohibits employers from asking about or relying on the prior salary history of prospective employees in setting starting pay. The purpose of this ordinance is to "ensure that Cincinnati residents' rights are protected and that job applicants in Cincinnati are offered employment positions and subsequently compensated based on their job responsibilities and level of experience, rather than on prior work histories, which actions can serve to perpetuate existing discrimination against women in the workforce."

The ordinance will take effect in March 2020 and applies to employers located within the City of Cincinnati that have 15 or more employees located within the city limits.

What Does the Salary History Inquiry and Use Ordinance Prohibit?

Under the Prohibited Salary History Inquiry and Use ordinance, employers cannot:

- inquire about an applicant's salary history or request reports or other information to determine or verify salary history;
- screen job applicants based on their current or prior compensation or their salary history;
- rely on salary history when deciding to offer employment, when determining salary or other compensation, or when negotiating an employment contract; or
- refuse to hire, otherwise disfavor, or retaliate against an applicant for not disclosing their salary history.

Notwithstanding these prohibitions, an employer may engage in discussions with the applicant about their expectations with respect to salary, benefits, and other compensation. The ordinance defines "applicant" as any person applying for employment to be performed within the geographic boundaries of the City of Cincinnati and whose application will be solicited, received, processed, or

boundaries of the City of Cincinnati and whose application will be solicited, received, processed, or considered in the City of Cincinnati. The term “salary history” is defined as current or prior wages, benefits, or other compensation, but does not include any objective measure of productivity such as revenue, sales, or other production reports.

What Does the Salary History Inquiry and Use Ordinance Permit?

The ordinance does not apply to:

- actions taken by an employer pursuant to a law that authorizes the reliance on salary history to determine compensation;
- applicants for internal transfer or promotion with their current employer;
- a voluntary and unprompted disclosure of salary history information by an applicant;
- an attempt by an employer to verify an applicant’s disclosure of non-salary related information in which may reveal salary history information, so long as such salary history information is not used to determine compensation or negotiations of a contract;
- applicants who are rehired by the employer within five years of the applicant’s most recent date of termination from employment by the employer, so long as the employer already has past salary history for the prior period of employment;
- employee positions for which compensation is determined pursuant to procedures established by collective bargaining;
- any employer who, within the previous three years and before the action is filed against it, received and made publicly available an external review and certification that the employer’s practices do not include salary history in the hiring process; and
- federal, state, and local subdivisions, other than the City of Cincinnati.

Remedies for Non-Compliance

The ordinance creates a private cause of action and provides applicants the right to bring a claim against an employer in court within two years after the cause of action accrued. If found in violation of this ordinance, employers may be liable for compensatory damages, reasonable attorney’s fees, the costs of the action, and legal and equitable relief.

What Does this Mean for Employers?

The trend of jurisdictions adopting ordinances that prohibit employers from asking about salary history does not appear to be slowing down. Therefore, employers—especially those with multistate operations—should consider whether it makes sense to employ a patchwork system of asking for salary history where it is permitted (and refraining from doing so where it is not), or simply eliminating the inquiry altogether for ease of compliance and administration.

Although the ordinance doesn’t go into effect until one year from now, employers with operations in Cincinnati should take steps now to ensure compliance. For example, employers are encouraged to amend their employment applications now or within the near future. This will help to lessen the

risk of liability for considering an application with salary information that was completed before March 2020 as part of a process that occurs or continues past the deadline. Employers also should update their procedures for conducting reference and background checks to ensure they do not request salary history. Additionally, all human resources personnel as well as any other employees involved in the interviewing and hiring process must be educated and trained on the new law to avoid violations.

If you have questions about compliance with this new ordinance, please contact your Fisher Phillips attorney or any attorney in our [Cleveland](#) or [Columbus](#) offices.

The authors would like to thank Joseph Nelson for his contributions to this legal alert.

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

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