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## courts rule on salary history bans

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*MSK Client Alert*

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Last week, the United States District Court for the Eastern District of Pennsylvania partially enjoined an ordinance adopted by the Philadelphia City Council which banned employers from making salary history inquiries. The court held that the portion of the ordinance prohibiting employers from asking about an applicant's previous salary violates the First Amendment. It also held that the portion of the law barring employers from relying on past salary is allowed.

The Eastern District of Pennsylvania's ruling came on the heels of a decision by an 11-judge en banc panel of the U.S. Court of Appeals for the Ninth Circuit in *Rizo v. Yovino*, in which the Court ruled unanimously that prior salary history cannot be used at all, even in combination with other factors, to justify paying women less than men under the federal Equal Pay Act ("EPA"). The EPA prohibits employers from paying male and female employees a different wage for substantially equal work unless the employer can demonstrate that any pay differential is based on a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or "*any other factor other than sex.*" 29 U.S.C. § 206(d)(1) (emphasis added).

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