

# Salary History – Time to Update Job Applications, Again

## Labor & Employment Law Update

on February 6, 2017

By now, employers should well know that they may not make unlawful inquiries of applicants based on protected classes (e.g., age, religion), as well as arrest history. In the past few years, we've seen an increase in legislation (and litigation) that impact employers' ability to gather information and check an applicant or employees' background, such as state and local "ban the box" laws, which generally prohibit employers from asking about criminal convictions until an applicant is made a conditional offer of employment. And, even when and where checking an applicant or employee's background is permissible, employers are required to comply with the Federal Fair Credit Reporting Act and other applicable federal, state and local laws which limit and set strict requirements that must be complied with when doing background checks.

### What's New?

On January 23, 2017, Philadelphia's newest restriction was signed into law, restricting an employer's ability to ask applicants about their wage and salary history, effective May 23, 2017. Philadelphia Bill No. 160840, amending Chapter 9-1100 of the Philadelphia Code. Except as specifically authorized by another law permitting disclosure or verification of wage history or "knowingly and willingly" disclosed by an applicant, this ordinance makes it unlawful for an employer to: inquire into or require disclosure of an applicant's wage history, condition employment or an interview based on such disclosure, or even use information gained from the former employer at any stage of the employment process, including negotiating an employment agreement!!

### This Is Significant!

First, Philadelphia has been on the forefront of employment regulations, and is often followed by other cities, so employers should be prepared for the possibility that their state, county, or city may adopt or implement similar rules.

Second, laws precluding inquiry into salary and wage history substantially inhibits salary negotiation, and may even encourage applicant dishonesty. An employer would be unable to verify an applicant or employee's statement of their prior wages (for example, by reviewing a recent W2 or paystub from a prior

employer) in reviewing and determining what salary or wage should be offered in order to meet-or-beat an applicant's current compensation.

Third, as the ordinance makes it unlawful to "condition employment" on such wage history, the discovery of falsified information later on may not be a valid basis to protest unemployment or cut off damages in a civil matter – unlike in states where falsification of application and employment documents may be considered misconduct that could subject the employee to discipline up to and including termination (like Illinois).

### What To Do About This

The new Philadelphia ordinance will require that Philadelphia employers make changes to their job applications and other onboarding materials and practices to limit inquiries into wage/salary history. Additionally, it serves as a reminder to all employers, no matter where they are located, of the importance in regularly reviewing their job applications and other onboarding materials and practices to ensure that they comply with the most current labor and employment laws on a federal, state, and local level, including but not limited to laws limiting employer inquiries into statuses protected by law such as wage/salary history, age, marital, housing status, military statuses, and credit/criminal conviction history. Competent employment counsel should be consulted for an audit of employment forms, policies and practices to ensure that the company is doing "it" right.

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