

## Law Prohibiting Philadelphia Employers From Inquiring About Wage History of Job Applicants is Upheld as Constitutional

The Philadelphia Wage Equity Law, which was signed into law two years ago and frozen in the courts on a constitutionality challenge, has now been upheld as constitutional by the Third Circuit Court of Appeals. Philadelphia employers must comply with the law, which bans inquiry and use of wage history in the hiring process.

On January 23, 2017, the City of Philadelphia enacted the Wage Equity Law, which was an amendment to the Philadelphia Fair Practices Ordinance (PFPO). It applies to employers who do business in the City of Philadelphia. The law prohibits employers from asking job applicants to provide their salary history, from relying upon wage history in determining wages, and from retaliating against a prospective employee for failing to comply with any wage history inquiry. The Chamber of Commerce challenged the constitutionality of the Wage Equity Law, and the U.S. District Court for the Eastern District of Pennsylvania held that it violated the free speech clause of the First Amendment. A preliminary injunction was issued.

On February 6, 2020, the U.S. Court of Appeals for the Third Circuit overruled the district court. In *Chamber of Commerce for the Greater Philadelphia v. City of Philadelphia, Nos. 18-2175 & 18-2176 (3d Cir. 2020)*, the Third Circuit held that the wage inquiry provision was enacted in an attempt to address wage disparity and that the record was clearly sufficient to withstand a First Amendment challenge. The Third Circuit found that wage disparity was a persistent problem. Data obtained by a 2015 census in Pennsylvania, determined the following statistics: (1) In general, women earned 79 cents for every dollar earned by similarly situated men; (2) Black women earn 68 cents for every dollar paid to similarly situated men, and Latina women earn 56 cents for every dollar paid to similarly situated men; (3) In the first year after college, full-time working women earn, on average, 82% of what their male peers earn; (4) Women under the age of 35 receive 88-91% of what their male peers earn; and (5) Women aged 35 and over receive only 77-81% of what male peers earn.

The Philadelphia Commission on Human Relations will be responsible for enforcing the law and investigating any complaints of violations filed by individual job applicants.

**Comment:** If you are an employer in the City of Philadelphia, you should review your hiring policies and practices, job applications, and screening procedures to implement the changes necessary to comply with the law. It is also essential to train human resources professionals, recruiters, and managers involved in the hiring process to ensure compliance with the Wage Equity Law.

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