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## Law Prohibiting Philadelphia Employers from Inquiring About Wage History of Job Applicants Now in Effect

On September 1, 2020, the Philadelphia City Council announced it would begin enforcing the Philadelphia Wage Equity Law, Phila. Code §9-1131. The Philadelphia Wage Equity Law, an amendment to the Philadelphia Fair Practices Ordinance, was enacted by the City of Philadelphia in 2017. It was frozen in the courts on a constitutionality challenge until earlier this year when the Third Circuit Court of Appeals upheld the law as constitutional. The law prohibits Philadelphia 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 Philadelphia Wage Equity Law applies to employers who do business in the City of Philadelphia. The law applies when an employer interviews an applicant for a position in Philadelphia County regardless of where or how the interview is conducted and the employer's headquarters location. The law applies to employers, employment agencies, and their agents. The law does not apply to applicants for internal transfer or promotion within their current place of work. For the Wage Equity Law, wages are defined as "all earnings," including but not limited to salary, fringe benefits, bonuses, overtime pay, insurance, commissions, retirement benefits, and stock options.

Employers may ask applicants about competing offers and his/her salary expectations, so long as the candidates are not asked whether the expectation is tied to a salary history at other places of employment. Applicants may choose to disclose his/her wage history voluntarily. If this occurs, the voluntary disclosure must be done "knowingly and willingly," meaning the action was taken with an understanding of the nature and quality of the act. A wage history disclosure is without prompting if a reasonable applicant would not think that the employer encouraged the disclosure based on the overall context and the employer/interviewer's words or actions. Thus, an applicant knowingly and willingly discloses salary history if the employer has not made an inquiry prohibited under the Philadelphia Wage Equity Law.

The Philadelphia Commission on Human Relations is responsible for enforcing the law and investigating complaints of violations filed by individual job applicants. An aggrieved individual may file a private lawsuit in the Philadelphia County Court of Common Pleas after the Commission closes the case. The remedies available for violation of the Wage Equity Law include compensatory damages, punitive damages, reasonable attorney's fees and hearing costs. Penalties for repeat and/or willful violations include a fine of up to \$2,000 per violation.

**Comment:** It is illegal for Philadelphia employers to ask job applicants about or require them to disclose wage history or to use the information to determine an applicant's wages. If you are an employer in the City of Philadelphia or an employer who interviews job applicants for positions located in Philadelphia County, now is the time to review and update your hiring policies and practices, job applications, and screening procedures for compliance with this law. It is also essential to train human resources professionals, recruiters, and managers involved in the hiring process to ensure compliance with the Philadelphia Wage Equity Law.