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City of Cincinnati Passes Ordinance Prohibiting Salary Inquiry and Use

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The City of Cincinnati has become the latest jurisdiction to adopt an ordinance prohibiting employers from asking about or relying on the prior salary history of prospective employees in setting starting pay.

The new law, adopted on March 13, 2019, aims to “ensure that Cincinnati residents’ rights are protected and that job applicants in Cincinnati are offered employment positions and subsequently compensation based on their job responsibilities and level of experience, rather than on prior salary histories, which actions can serve to perpetuate existing discrimination against women in the workforce.”

The salary history ban goes into effect 365 days after the Ordinance becomes law.

Key Provisions

Under the “Prohibited Salary History Inquiry and Use” Ordinance, an employer, employment agency, or labor organization, and any agent thereof, located in the City of Cincinnati and employing at least 15 employees within the City, may not:

- Inquire about an applicant’s 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 an applicant about the applicant’s salary or compensation expectations, so long as the employer does not inquire about salary history. The Ordinance defines “applicants” to include any person applying for employment to be performed within the City of Cincinnati, and whose application will be solicited, received, processed, or considered in the City. The term “salary history” means 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.

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In addition to the salary inquiry ban, upon reasonable request from an applicant who has received a conditional offer of employment, an employer must provide the pay scale for the position offered. The Ordinance does not define the terms “reasonable request” or “pay scale.”

The prohibitions of the Ordinance do not apply to:

- Actions taken pursuant to a law that specifically authorizes reliance on salary history to determine compensation;
- Applicants for internal transfer or promotion with their current employer;
- A voluntary, unprompted disclosure of salary history by an applicant;
- Background checks or verification of non-salary-related information that may reveal salary history, so long as such salary history information is not used to determine compensation or negotiate a contract;
- Applicants rehired by an employer within five years of separation, provided the employer already has the applicant’s salary history for the prior period of employment;
- Positions for which compensation is determined pursuant to procedures established by collective bargaining;
- Any employer who, within three years prior to an action 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 political subdivisions, other than the City of Cincinnati.

Private Right of Action

The Ordinance provides applicants the right to bring a claim against an employer in court within two years after the cause of action accrued. Employers may be liable for compensatory damages, reasonable attorney’s fees, costs, and possibly other legal and equitable relief for violating the Ordinance.

Next Steps

Nonprofit employers in Cincinnati should take steps now to review and update their employment applications and hiring practices to comply with the new law. Reviewing how and why you set starting pay is critical to preventing future pay equity challenges.

If you are a PBPO client and would like to discuss your organization’s particular situation or if you have questions regarding the salary history ban, please contact us at info@pbpohio.org.

If you are not a client but would like to apply, please contact us at info@pbpohio.org.

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