



PHILADELPHIA'S WAGE EQUITY ORDINANCE



What is the Philadelphia Wage Equity Ordinance?

The Philadelphia Wage Equity Ordinance is a law that makes it illegal for employers, employment agencies, or their agents to ask you about your current or prior salary history during the application or hiring process. The Wage Equity Ordinance is one part of the City's antidiscrimination law called the Fair Practices Ordinance.

What is the definition of a covered employer?

The Fair Practices Ordinance, which includes the Wage Equity Ordinance, covers employers, employment agencies, or their agents.

An **employer** is defined as any person who does business in the City of Philadelphia through employees or who employs one or more employees exclusive of parents, spouse, Life Partner or children, including any public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the City, its departments, boards and commissions.

An **employment agency** is defined as any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employee(s).

What is the definition of a prospective employee?

A prospective employee is an individual (such as a job applicant) who is seeking a position with a new Employer, and whom the Employer is considering hiring for a position located within the City.

Does the Wage Equity Ordinance apply to jobs outside of Philadelphia?

No. The Ordinance only applies when an employer is interviewing a prospective employee with the intention of considering them for a position located in Philadelphia. If the job position is located in Philadelphia, the Ordinance applies; it does not matter where the employer is headquartered or where the interview occurs.

Jobs that require employees to work within the city, such as at offices, worksites, or facilities within city limits, are examples of jobs that are covered by the Ordinance. However, there is no bright-line test for determining whether a job is located in Philadelphia. A job that does

not require an employee to spend all of their working hours in Philadelphia can still be covered by the Ordinance depending on the job's overall ties to Philadelphia. Relevant factors may include, among many others, how much time the employee will spend in the city, whether the employee will maintain an office or workstation in the city, or the extent of the employee's contacts with the city, such as the location of customers, projects, or transactions.

Does the Ordinance apply to applicants for internal transfer or promotion with their current employer?

No. If an individual seeks a new position with their current employer, such as transfer or promotion, the law does not apply to their wage or salary history with their current employer. However, the law still prohibits their current employer from inquiring about or relying on their wage or salary history with prior employers as part of transfer or promotion process.

Will an employer be liable if it unintentionally stumbles on information about an applicant's salary history?

No. However, the employer may not rely on the salary history information in determining what to offer the applicant in salary, benefits, and other compensation.

Can an employer rely on market data for salaries?

Yes. The Ordinance does not prohibit employers from obtaining and using market salary information from other sources, such as aggregate studies or surveys that cannot be used to ascertain the specific salary histories of individual job applicants.

What does it mean for an applicant's voluntary disclosure of salary history to happen "knowingly and willingly"?

"Knowingly and willingly" means an action taken voluntarily, with an understanding of the nature and quality of the act. For example, in the context of an employment interview, a job applicant "knowingly and willingly" discloses salary history if the employer has not made an inquiry prohibited under the Wage Equity Ordinance and the job applicant has voluntarily disclosed their salary history without prompting from the interviewer. A disclosure of salary history is without prompting if a reasonable job applicant would not think that the employer encouraged the disclosure based on the overall context and the employer/interviewer's words or actions. For example, a federal court of appeals has interpreted the Ordinance to mean that "applicants can voluntarily provide salary history *if they feel it is in their best interest*" and that an employer cannot "goad or cajole an employee into disclosing prior wages or salary." There is no bright-line test for determining when unlawful prompting occurs.

Can an employer ask a job applicant how much they want to get paid?

Yes. Generally, asking for salary expectations is permissible. Generally permissible examples of questions regarding salary expectations include:

- “How much would you like to be paid for the job that you applied for?”
- “This job pays \$ ___ per hour. Is that acceptable to you?”
- A job application may contain a field or question asking for “salary requirements” or “salary expectations.”

However, an employer should refrain from asking a candidate if their salary “expectation” is tied to their current or prior salary history.

An employer may ask a job applicant other relevant questions, such as questions about the applicant’s skills, education, experience, or objective measures of productivity that do not require disclosure of salary history—like revenue, sales, production reports, or profits generated.

May employers use job applications that request salary history but that instruct applicants not to complete that portion of the application for positions that are governed by the Wage Equity Ordinance?

No. Employers may not use job applications, such as those that are intended to be used across multiple jurisdictions, which request information about salary history, even if they include disclaimers or other language indicating that applicants should not respond to such questions when applying for a position that is in Philadelphia or governed by the Wage Equity Ordinance.

Can a prospective employer ask an applicant about the value of competing offers from other prospective employers?

Yes, a prospective employer can ask an applicant about competing offers and counter offers that the applicant has received and the value of those offers.

What best practices can employers implement to comply with the Wage Equity Ordinance?

- During the application and interview process, focus questions on the applicants’ salary demands, experience, skills, and qualifications.
- Establish salary ranges or pay scales for open positions
- Create or modify written policies to reflect compliance with the Wage Equity Ordinance.

- Train interviewers, hiring staff, and other applicable staff regarding compliance with the Wage Equity Ordinance.
- Refrain from seeking prior salary history from other sources, such as asking the applicant’s current or former place of employment about their salary history or searching public records for information about the job applicant’s salary history.
- If the employer uses a background reporting agency, instruct its background reporting agency to exclude any information found regarding the job applicant’s salary history.
- Develop protocols for discarding or isolating salary information that employers receive inadvertently but are prohibited from considering.

The above best practices are suggestions only and are not required by the Ordinance.

May a company seeking to acquire another company obtain salary information about the employees of the target company as part of the due diligence process?

Yes. In the context of an acquisition, the employees of the target company generally are not “Prospective Employees” for the purposes of the Wage Equity Ordinance. The exchange of aggregate employee salary information is often necessary so that the acquiring company can evaluate the financial realities of assuming the target company’s workforce.

May a company seeking to acquire another company use salary information in setting the salaries of the employees from the target company?

It depends on how the acquiring company intends to use the data. In the context of an acquisition, acquiring companies may rely on salary history information when retaining employees from the target company and making compensation and structural decisions on a non-individualized basis. However, if employees of the target company are being asked to apply or reapply for positions located in Philadelphia with the acquiring company, the Wage Equity Ordinance applies. The parties may wish at the outset of negotiations to establish how salary history data can be lawfully used and identify who can securely review the data in connection with the transaction. The parties should also consider whether it is feasible to limit hiring managers or other persons making decisions about individualized compensation from receiving access to individualized salary information from the target company during the application or reapplication process.

Given the potential complexities, it is recommended that employers seek the advice of legal counsel to ensure compliance with all applicable laws.

What can job applicants do if they are asked about their salary histories?

Job applicants may report violations of the Wage Equity Ordinance to the Philadelphia Commission on Human Relations, including filing a formal complaint. If the job applicant follows the proper procedures and the Commission finds that an employer violated the law,

the Commission may award the job applicant compensatory damages, punitive damages, reasonable attorneys' fee, costs, injunctive relief, or other appropriate relief. More information can be found here Philadelphia Commission on Human Relations, 601 Walnut St., Suite 300, Philadelphia, PA 19116. 215-686-4670 or phila.gov/humanrelations.

The Ordinance specifically prohibits an employer from retaliating against a job applicant for refusing to provide their salary history. However, if a job applicant is asked an impermissible question, whether on a job application or in an interview, it may be difficult to decide what to do in the moment. The job applicant may not want to confront the employer or interviewer about potential violations of the Wage Equity Ordinance out of fear of losing the job opportunity. If you are a job applicant and faced with an impermissible question about your salary history, here are some examples of helpful ways you might respond:

- You can reframe the issue and answer by stating your salary expectations for the job, without disclosing your salary history.
- State that you would like to discuss your compensation based on the requirements and responsibilities of the job that you are applying for.
- Reframe the question to focus on the specific credentials that establish your value as a potential employee, including education, experience, achievements, or references, rather than on what you made previously.

When does the Wage Equity Ordinance go into effect?

The Commission will begin enforcing the Ordinance on September 1, 2020. This means that the Wage Equity Ordinance will apply to all interviews, applications, and hiring decisions made on or after September 1, 2020.

While the bill was signed into law on January 23, 2017, enforcement of the Ordinance was put on hold due to litigation.

Additional questions? Contact us:

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