



CLIENT ALERT EMPLOYMENT & LABOR

Wage History Questions Now Illegal in Philadelphia

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If you are interviewing prospective employees with the intention of hiring them to work in the City of Philadelphia, you may no longer inquire about or use a prospective employee's wage history in determining their wages. On February 6, 2020, the United States Court of Appeals for the Third Circuit overturned a lower court's injunction prohibiting part of the new law from taking effect. See [*Greater Philadelphia Chamber of Commerce, et al. v. City of Philadelphia, et al.*](#) Moving forward, employers in Philadelphia may not:

1. Inquire about a prospective employee's wage history;
2. Require disclosure of wage history;
3. Condition employment or consideration for an interview on disclosure of wage history;
4. Retaliate against a prospective employee for failing to comply with any wage history inquiry; or
5. Rely on the wage history of a prospective employee in determining their wages unless they "knowingly and willingly" disclosed their wage history to the employer.

The law applies to any employer "who employs one or more employees exclusive of parents, spouse or children, including any public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the city, its department, boards and commissions." Violation of the law can lead to both civil money penalties and up to 90 days' incarceration.

There are several grey areas here that are likely to be litigated in the future. For example: what are the boundaries of the term 'inquiry;' is an 'inquiry' directed at a former employer a violation; is a current employee who is considered for a promotion or new position a 'prospective employee' (requiring the employer to ignore its own knowledge of the employee's wage

history); what is “knowingly and willingly;” and are wage histories deduced from information requested from the employee a violation of the law?

To be safe, employers should immediately review, and change if necessary, any job applications or onboarding forms which ask about salary history and avoid any discussion of wage history with employees and prospective employees. We can expect both applicants and the City to vigorously pursue enforcement of the law. Instead, employers should utilize industry and public resources to determine market rates for wages, document their wage determination process, and ensure they have a well-written policy on the matter with proof of training for hiring managers and HR.

If you have any questions or concerns about this new rule for employers, the employment attorneys at Wisler Pearlstine are [here to help you](#).

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About the Authors:

[Rhonda K. Grubbs](#) counsels public and private employers in day-to-day labor and employment matters and is experienced in drafting a variety of employment-related policies. Ms. Grubbs helps employers find practical solutions to their employment-related issues at a reasonable rate. She frequently acts as the de facto human resources department for small and medium-sized employers who do not have the means to allocate resources to a full-time professional in this area. Ms. Grubbs brings to this work a unique combination of knowledge and skills in both labor and employment and employee benefits law.

[Michael D. Kristofco](#) is Chair of Wisler Pearlstine’s [Employment and Labor practice group](#). In addition to counseling employers on day-to-day employment matters, Mr. Kristofco represents employers in employment-related litigation matters in both state and federal courts as well as before administrative agencies and tribunals. Mr. Kristofco is also a member of the firm’s Education Law practice group, providing both employment and general school law advice to the firm’s public school district and private school clients. Mr. Kristofco represents the firm’s clients in sophisticated civil rights and commercial litigation matters.

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