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Pennsylvania Chamber of Business and Industry

## Business EXPERTise

*Recognized and respected issue experts from PA Chamber member companies answer businesses' most frequently asked questions about HR, Tax, Communications and Environmental concerns, compliance and best practices.*

### HR

#### **I have heard that new pay equity rules mean that I can't ask job candidates what they are currently making when I am interviewing candidates for a job. Is this true in Pennsylvania?**

The short answer is maybe. While employers throughout Pennsylvania typically ask job applicants how much they are making, how much they made in their last jobs or request wage and salary information as part of job history inquiries on written and online job applications, that practice may soon come to an end in Philadelphia and Pittsburgh if “wage equity” ordinances are permitted to stand. The forefront of these was Philadelphia’s “wage equity” ordinance signed by Philadelphia Mayor Kenney in January 2017. The ordinance makes it unlawful for an employer in Philadelphia to inquire about a prospective employee’s wage history, require disclosure of wage history or condition of employment for consideration for an interview. The ordinance also prohibits retaliation against a prospective employee if they fail to respond to any wage history inquiry, and prohibits an employer from relying on the wage history of a prospective employee in determining the wages for that individual. The ordinance provides job applicants with the freedom to disclose wage history information if they “knowingly and willingly” choose to do so; or, when federal, state or local law specifically

authorizes the disclosure or verification of wage history for employment purposes.

The express purpose for “wage equity” ordinances are to combat the gender wage gap reported to exist in Pennsylvania. The belief is that decisions regarding compensation for a job should be based on job responsibilities and a candidate’s skills, not on what someone was making in a previous job.

Not everyone in Pennsylvania is on board with Philadelphia’s wage history inquiry ban. The Greater Philadelphia Chamber of Commerce is currently embattled in litigation against the City of Philadelphia arguing that the ordinance violates employers’ free speech and due process rights and is not narrowly tailored to achieve its intended goal of addressing the gender wage gap. Opponents of the ordinance argue that there is no evidence that asking for salary information perpetuates wage discrimination. In light of the lawsuit, Philadelphia has agreed to hold implementation of the ordinance, which was originally scheduled to take effect on May 23, 2017, in abeyance while the federal court makes decisions in the case.

Philadelphia’s ordinance has also attracted the attention of Pennsylvania’s state legislature. The Pennsylvania Senate passed a bill earlier this year to amend the Commonwealth’s Equal Pay Law to include a preemption clause, prohibiting local ordinances, like those in Philadelphia and



**Ronda O'Donnell**  
Marshall Dennehey Warner  
Coleman & Goggin

Pittsburgh, which are more restrictive than the Commonwealth’s Equal Pay Law.

As it now stands, what employers in Philadelphia and Pittsburgh can ask potential job candidates about their salary histories is in a state of flux. If the wage history inquiry bans remain viable, they will create challenges for Pennsylvania employers who have multiple locations both inside and outside of these cities. It may ultimately mean that employers might have to rely on wage surveys reported for job titles in various industries, rather than on past salaries, in making compensation decisions for new hires. ■

■ **Ronda O'Donnell** chairs the Employment Law Practice Group in the Philadelphia office of Marshall Dennehey Warner Coleman & Goggin.