

Publications

Labor and Employment Alert: Cincinnati, Ohio, Prohibits Pre-Employment Salary Inquiries

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On March 13, 2019, the City of Cincinnati joined a growing number of states and municipalities that have passed laws prohibiting employers from inquiring into a job applicant's salary history. Twelve states (California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico and Vermont) and 11 cities¹ have passed bans of some form. Such measures are aimed at combating pay disparities between men and women. Because an applicant's prior salary history may have been shaped by gender bias, the reasoning goes, state and municipal legislatures have seen fit to step in and prohibit employers from asking about or relying on an applicant's salary history when making an employment decision or setting that applicant's salary.

Cincinnati's ordinance applies to all employers located within the city that have 15 or more employees. The law applies to both employers and their agents. An "applicant" is a person applying for employment that will be performed within the city's geographic boundaries and whose application will be considered in whole or in part in Cincinnati. Under this new law, it is an "unlawful discriminatory practice" for an employer to:

- inquire about an applicant's salary history;
- screen applicants based on current or prior wages, benefits, compensation, or salary history;
- rely on an applicant's salary history when deciding whether to extend an offer of employment or when deciding an applicant's salary, benefits, or other compensation; and
- refuse to hire or otherwise retaliate against an applicant who does not disclose his or her salary history.

Employers may still ask applicants about their salary and compensation expectations.

The law does not apply if another federal or state law specifically authorizes reliance on salary history for a particular position. Nor does it apply to internal transfers or promotions with a current employer, voluntary disclosures by the applicant, positions for which salary or compensation are set by collective bargaining, and for applicants who are re-hired by an employer within five years after leaving the employer.

The law takes effect on March 13, 2020. Once effective, failure to comply with its prohibitions will give an applicant a private right of action against the employer. If successful, the applicant will be entitled to compensatory damages, costs, and attorneys' fees. Contact your Vorys lawyer if you have questions about pay equity laws, salary bans, or other pre-employment inquiries.

¹ Albany County, NY; Atlanta, GA; Chicago, IL; Kansas City, MO; Louisville, KY; New Orleans, LA; New York, NY; Pittsburgh, PA; Philadelphia, PA (Philadelphia's law is currently stayed due to litigation); San Francisco, CA; Suffolk County, NY; and Westchester County, NY.