

The Chamber recently advocated on behalf of members at City Hall on legislation that would prohibit an employer from inquiring about a prospective candidate's salary history during the hiring process.

The following activities would be prohibited under the ordinance:

- a. Inquiring about the salary history of a prospective candidate;
- b. Screening prospective candidates based on their prior compensation;
- c. Relying on a candidate's prior compensation in determining to offer the candidate a position or in determining the compensation package for a candidate; and
- d. Refusing to hire or disfavoring a candidate for not disclosing their prior compensation

The proposed ordinance applies to all employers in the City of Cincinnati with 15 employees or more but includes the following limited exemptions:

- a. Internal transfers or promotions;
- b. Public employees whose compensation is collectively bargained; and
- c. Federal, state and local political subdivisions (excluding the City of Cincinnati)

The penalties for failure to comply with the proposed ordinance are giving the applicant private cause of action against the employer for compensatory damages, attorney's fees, cost of the action and legal and equitable relief granted by the court.

After multiple conversations and meetings, the Chamber was able to ensure most of our amendments were accepted. These include:

- e. Addition of a safeguard for employers if an applicant offers a voluntary and unprompted disclosure of salary history information
- f. Addition of a protection for employers if an applicant is re-hired by an employer within 5 years
- g. Addition of a safe harbor protection for employers that will include a complete defense for any employer, who, within the previous 3 years and before the action is filed against it, has received an external review and certification, and made the certification publicly available, that the employer's practices do not include salary history in the hiring process
- h. Edited the offering of pay scale information to be made only to applicants who receive a conditional offer of employment
- i. Raised the employee limit from 10 to 15 to match federal law

The Chamber supports wage equity and policy changes to achieve it. Though many of the Chamber's amendments were included, the Chamber offered public comment in opposition to the ordinance as it relates to a nearly identical ordinance in Philadelphia. The district court struck down a portion of the ordinance as an unconstitutional violation of business' First Amendment free speech protection. We remain concerned about the constitutionality of the ordinance and do not think this ordinance is the best approach to tackle a complex problem.

Based on the legal concerns raised in our public comments, committee members decided to delay moving the ordinance for two weeks. During time they hope to find a study that directly correlates the prohibition in the ordinance with increased wage equity – the lack of such correlation was central to the Philadelphia case and based on the committee hearing the general understanding is that this type of research does not currently exist anywhere.

We expect the committee to revisit the legislation in the near future.

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