

Uncertainty Surrounds Philadelphia's Salary History Inquiry Ban

By: Tanya Salgado
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Philadelphia's new salary history inquiry ban ordinance has survived a preliminary legal challenge brought by the Philadelphia Chamber of Commerce, but the Chamber was given an opportunity to file an amended complaint. It remains to be seen how the Chamber will respond, and whether or not the stay of the effective date of the ordinance will continue.

Mayor Kenney signed the ordinance in January 2017, and it was set to become effective on May 23, 2017. As reported in our alert, Philadelphia City Council Agrees to Salary History Inquiry Ban, the ordinance added a chapter to the City's Fair Practices Ordinance and made it unlawful for employers to inquire about an applicant's wage history, or rely on wage history in determining wages. The Chamber filed a lawsuit in federal court in April, seeking a preliminary injunction to prevent the City of Philadelphia and the Philadelphia Commission on Human Relations from enforcing the new ordinance. The parties to the lawsuit agreed to a temporary stay of the effective date of the ordinance, pending resolution of the Chamber's motion for a preliminary injunction. As a practical matter, this meant that employers were not required to comply with the new ordinance until the court ruled on the motion.

In its lawsuit, the Chamber argued, among other things, that the ordinance violated the First Amendment, the Due Process Clause, and the Commerce Clause of the U.S. Constitution. The Chamber's lawsuit claimed that the ordinance is invalid, and sought an injunction against its enforcement. The City responded by filing a motion to dismiss, arguing that the Chamber did not have standing to bring the lawsuit, since it did not identify a member company that has or will be injured by the ordinance. In an order dated May 30, 2017, the court granted the City's Motion to Dismiss, without prejudice. The court held that the Chamber failed to meet its burden to show standing, since it did not identify a member who will suffer specific harm as a result of the ordinance. The court provided the Chamber the opportunity to file an amended complaint, which must be filed within 14 days of the date of the order. The court did not address any of the Chamber's constitutional arguments. If the Chamber opts to file an amended complaint, then it seems likely that the stay of enforcement would continue. In the meantime, affected employers should be prepared to promptly comply with the new ordinance, in the event that the Chamber does not file an amended complaint.

If you have questions or would like more information, please contact Tanya Salgado (salgadot@whiteandwilliams.com; 215.864.6368) or another member of our Labor and Employment Group.

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