

Stradley Ronon Stevens & Young, LLP  
2005 Market Street  
Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York  
New Jersey  
Illinois  
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 175 law offices in 80 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2017  
Stradley Ronon Stevens & Young, LLP  
All rights reserved.

## A Challenge in Philadelphia, a Ban in New York City: The Trend Toward Prohibiting Wage History Inquiries

Philadelphia recently banned (<http://www.stradley.com/insights/publications/2017/01/employment-newsflash-january-24-2017>) employers from inquiring about applicant salary history. The Philadelphia Chamber of Commerce has now filed a lawsuit challenging the legality of the Philadelphia ban and seeking an injunction to prevent the ban from going into effect on May 23, 2017 as planned. This new legal challenge comes on the heels of proposed legislative action at the state level to preempt the Philadelphia Ordinance, which also remains pending. The new legal challenge is captioned *The Chamber of Commerce for Greater Philadelphia v. City of Philadelphia and Pennsylvania Human Relations Commission*, No. 17-01548 (E.D. Pa. April 6, 2017).

Also this week, New York City became the latest jurisdiction to prohibit employers from inquiring about prospective employee salary histories. Once signed by the mayor, the law will take effect in 180 days, absent a successful legal challenge. Specifically, the New York City law renders it an unlawful discriminatory employment practice for an employer, employment agency, or employee or agent thereof to:

- Inquire about an applicant's salary history, which includes the applicant's current or prior wage, benefits or other compensation, but does not include any objective measure of the applicant's productivity such as revenue, sales or other production reports. "Inquire" is broadly defined as: "to communicate any question or statement to an applicant, an applicant's current or prior employer, or a current or former employee or agent of the applicant's current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant's salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant's salary history." Informing the applicant in writing or otherwise about the position's proposed or anticipated salary or salary range is not a prohibited inquiry under the new law.
- Rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract.
- **Important Exception:** If the applicant voluntarily and without prompting discloses salary history, the employer may rely on such information and verify the accuracy of the prior salary history disclosed by the applicant.

The New York City law makes clear that it remains lawful, without inquiring about salary history, to engage in discussion with the applicant about expectations with respect to salary, benefits and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.

The new New York City law does not apply to:

- Any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee's compensation;
- Applicants for internal transfer or promotion with their current employer;
- Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant's salary history, such disclosure shall not be relied upon for purposes of determining the salary, benefits or other compensation of such applicant during the hiring

- process, including the negotiation of a contract; and
- Public employee positions for which salary, benefits or other compensation are determined pursuant to procedures established by collective bargaining.

The New York City law applies to all entities and individuals subject to the New York City Human Rights Law. The New York City Commission on Human Rights is the agency responsible for enforcing the law.

Whether the trend toward banning salary history inquiries will be thwarted by legal action remains to be seen. However, in light of the recent flurry of legislative activity in this area, restrictions on inquiries into wage history (and laws addressing pay inequities in general) are likely to continue to be introduced by lawmakers. Prudent employers should assess their hiring and compensation practices to stay ahead of the curve.

## Stradley Ronon's Employment & Labor Practice Group

Jonathan F. Bloom, Chair .....	215.564.8065 .....	jbloom@stradley.com
Danielle Banks .....	215.564.8116 .....	dbanks@stradley.com
Chelsea Biemiller .....	215.564.8550 .....	cbiemiller@stradley.com
Adam D. Brown .....	215.564.8729 .....	abrown@stradley.com
Andrew Esler .....	215.564.8704 .....	aesler@stradley.com
Samantha Kats .....	484.323.1354 .....	skats@stradley.com
William E. Mahoney Jr. ....	215.564.8059 .....	wmahoney@stradley.com
Francis X. Manning .....	856.321.2403 .....	fmanning@stradley.com
John J. Murphy III.....	215.564.8019 .....	jmurphy@stradley.com
Corey S. D. Norcross .....	215.564.8742 .....	cnorcross@stradley.com
Michael D. O'Mara.....	215.564.8121 .....	momara@stradley.com
James F. Podheiser .....	215.564.8111 .....	jpodheiser@stradley.com
Ellen Rosen Rogoff.....	215.564.8058 .....	erogoff@stradley.com
Amy E. Sparrow.....	484.323.1353 .....	asparrow@stradley.com
A. Nicole Stover.....	856.321.2418 .....	wmahoney@stradley.com