

Maine and Cincinnati (Ohio) Join the Growing List of Jurisdictions Banning Salary History Inquiries

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Maine and Cincinnati have joined other jurisdictions, such as [New York City](#), [California](#), Connecticut, Delaware, [Massachusetts](#) and Oregon, that prohibit employers from making salary history inquiries of potential employees in an effort to stop the perpetuation of wage gaps from job to job. The newly enacted legislation for Maine and Cincinnati is discussed in turn below.

Maine

On April 12, 2019, Maine's governor, Janet Mills, signed into law "An Act Regarding Pay Equality," which takes effect on September 17, 2019. The new law prohibits employers from using, inquiring about or confirming an applicant's compensation history until after an offer of employment has been negotiated and made, and the offer must include all terms of compensation.

There are some exceptions. For example, an employer may confirm an applicant's compensation history if the applicant discloses it voluntarily. Further, the salary history ban does not apply to an employer who inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.

Notably, even a single incident of an employer's direct or indirect inquiry about the compensation history of a prospective employee is evidence of unlawful employment discrimination under the Maine Human Rights Act and the Maine Equal Pay Law, and provides grounds for the affected applicant or Maine's Department of Labor to file a civil action. The new law also provides for monetary penalties between \$100 and \$500 per violation.

Finally, as we have seen with equal pay laws in other states and cities, Maine's new law includes a wage transparency provision that bars employers from prohibiting employees from discussing their wages, or wages of their co-workers.

Cincinnati (Ohio)

On March 13, 2019, Cincinnati adopted Ordinance [No. 83-2019](#), which becomes effective next year on March 13, 2020 and will apply to employers within Cincinnati with 15 or more employees.

The Ordinance prohibits employers from:

- Asking for information about an applicant's current or prior wages, benefits, or other compensation;
- Screening job applicants based on their current or prior wages, benefits, other compensation, or salary histories;
- Relying on an applicant's salary history when deciding whether to make an offer of employment or determining the amount of salary, benefits, or other compensation during the hiring process; or
- Refusing to hire or retaliating against applicants for not disclosing their salary to the employer.

The Ordinance also provides applicants the right to bring a private cause of action against an employer that violates the salary history ban. The applicant has two years from the date of the violation to bring a lawsuit, and can seek damages, reasonable attorneys' fees and costs.

Takeaways

Prior to the effective dates of Maine's Law and Cincinnati's Ordinance, employers operating in Maine and Cincinnati should consider the following proactive measures.

- Review job applications and hiring policies and practices to ensure that salary information is not unlawfully solicited from applicants or prior employers unless a statutory exemption applies.
- Train recruiters and any personnel interviewing or interacting with applicants on the respective law's prohibitions.
- Review compensation practices and pay for comparable positions when setting compensation for new hires for purposes of compliance with newly enacted equal pay laws, as well as existing federal, state and local anti-discrimination laws that generally apply to pay practices.

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