

## PHILADELPHIA COMMISSION ON HUMAN RELATIONS

### AMENDED REGULATION NO. 7

#### WAGE EQUITY ORDINANCE

**7.0. Scope.** This Regulation, promulgated by the Commission pursuant to its authority under Sections 4-700 and 4-701 of the Home Rule Charter and Section 9-1111 of the Fair Practices Ordinance, sets forth additional definitions and directions pertaining to the Wage Equity Ordinance, Section 9-1131.

**7.1. Employer.** Section 9-1102(1)(h) of the Fair Practices Ordinance defines Employer as: any person who does business in the City of Philadelphia through employees or who employs one or more employees exclusive of parents, spouse or children, including any public agency or authority; any agency, authority or other instrumentality of the Commonwealth; and the city, its department, boards and commissions.

a. For purposes of Section 9-1131, an “Employer,” in addition to the requirements of Section 9-1102(1)(h), must be a person who engages in the process of interviewing a Prospective Employee with the intention of considering such Prospective Employee for a position located within the City.

**7.2 Prospective Employee.** An individual who is seeking a position with a new Employer, and whom the Employer is considering hiring for a position located within the City.

a. If an individual seeks a new position (also within the City) with the individual’s current employer, the prohibitions of Section 9-1131(2) shall apply with respect to the employee’s wage history from any previous employer.

**7.3. Knowingly and willingly.** As used in Section 9-1131(2)(b), “knowingly and willingly” means an action taken voluntarily, with an understanding of the nature and quality of the act. For example, a Prospective Employee “knowingly and willingly” discloses salary history in the context of an employment interview if the Employer has not made a prohibited inquiry under Section 9-1131(2) and the Prospective Employee voluntarily discloses salary history without prompting from the employer.<sup>1</sup> A disclosure of salary history is without prompting if the Employer has not encouraged the disclosure based on the overall context and the Employer’s words or actions.

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<sup>1</sup> See *Greater Phila. Chamber of Commerce vs. City of Phila.*, 949 F.3d 116, 155 n. 290 (3d Cir. 2020) (noting that under the Ordinance “applicants can voluntarily provide salary history if *they feel it is in their best interest*” but that “[t]his, of course, does not suggest that an employer can goad or cajole an employee into disclosing prior wages or salary”) (emphasis in original).

#### **7.4 Inquiries prohibited or allowed under § 1131(2)(a).**

a. An Employer shall not include a question on paper or electronic employment applications asking Prospective Employees to provide their salary history at any current or previous position, even if the Employer notifies Prospective Employees that they need not answer the question.

b. An Employer may ask a Prospective Employee other questions relevant to the setting of a future salary, such as questions about: the applicant's salary requirements or expectations; skill level; objective measures of productivity that do not require disclosure of salary history, such as revenue, sales, production reports, or profits generated; or experience relative to the position for which the applicant is being considered.

#### **7.5 Evidence before the Commission.**

a. A Prospective Employee must prove a violation of the Wage Equity Ordinance by a preponderance of the evidence consistent with the burden of proof in the Fair Practices Ordinance.

b. In determining whether an Employer violated Section 9-1131(2), the Commission will consider relevant evidence, including but not limited to facts regarding the interaction(s) between the Employer and Prospective Employee, the overall context of the interaction(s), and other conduct relating to the Employer's compliance with the Wage Equity Ordinance.

#### **7.6 Enforcement Date.**

a. The Commission will begin enforcing the Wage Equity Ordinance on September 1, 2020 (the "Enforcement Date").

b. All interviews, applications, hiring decisions, and policies for Prospective Employees must comply with the Wage Equity Ordinance beginning on the Enforcement Date.