



Legislation Text

File #: O-173-19, **Version:** 1

Council Members Komives and Harper

Enacting a new Toledo Municipal Code Chapter 768, Pay Equity Act to Prohibit the Inquiry and Use of Salary History in Hiring Practices in the City of Toledo.

SUMMARY & BACKGROUND:

Women in the United States are paid 80 cents for every dollar paid to men, losing out on a combined total of more than \$840 billion annually. Among women who hold full-time, year round jobs in the United States, African American women are typically paid 63 cents, Hispanic women are paid 54 cents, and Asian women are paid 85 cents for every dollar paid to white, non-Hispanic men. Studies show that basing a worker's salary offer on a wage from a previous job can perpetuate the current wage inequity. Toledo City Council has determined that in order to reduce pay inequity for all, wages should be based on job responsibilities and level of experience of the applicant rather than wages earned from prior employment.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That a new Chapter 768 of the Toledo Municipal Code is hereby enacted as follows:

Chapter 768. Pay Equity Act.

768.01 Definitions.

- (a) For the purposes of this chapter, words and phrases shall have their ordinary meaning unless defined here.
- (b) "Applicant" means any person applying for Employment to be performed within the geographic boundaries of the City of Toledo, and whose application, in whole or in part, will be solicited, received, processed, or considered in the City of Toledo, regardless of whether the applicant is interviewed.
- (c) "Employer" means any individual, corporation, limited liability company, firm, partnership, labor organization, voluntary association, joint stock association, and any public corporation, or an agent thereof, located within the City of Toledo and using the services of fifteen or more employees for pay within the City of Toledo. "Employer" includes job placement and referral agencies and other employment agencies. "Employer" does not include any unit of local, state, or federal government, except that it does include the City of Toledo.
- (d) "Employment" means any occupation, vocation, job, or work, including but not limited to temporary

and seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency for which the applicant is to receive wages or a salary. Employment does not include work as an independent contractor.

- (e) “Inquire” means to communicate any question or statement to an Applicant, an Applicant’s current or prior Employers, 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, but does not include informing the Applicant in writing or otherwise about the position’s proposed or anticipated salary or salary range.
- (f) “Salary History” includes the Applicant’s current or prior wage, benefits, or other compensation. “Salary History” does not include any objective measure of the Applicant’s productivity such as revenue, sales, or other production reports.

768.02 Prohibition on Inquiring About or Use of Salary History.

- (a) Except as otherwise provided in this subdivision, it is an unlawful discriminatory practice for an Employer to:
 - (1) Inquire about the Salary History of an Applicant for Employment; or
 - (2) Screen job Applicants based on their current or prior wages, benefits, other compensation, or Salary Histories, including requiring that an Applicant’s prior wages, benefits, other compensation or Salary History satisfy minimum or maximum criteria; or
 - (3) Rely on the Salary History of an Applicant in deciding whether to offer Employment to an Applicant, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; or
 - (4) Refuse to hire or otherwise disfavor, injure, or retaliate against an Applicant for not disclosing his or her Salary history to an Employer.
- (b) Notwithstanding paragraph (a) of this subdivision, an Employer may, without inquiring about Salary History, engage in discussions with the Applicant about their 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.

- (c) An Employer, upon reasonable request, shall provide the pay scale for a position to an Applicant applying for Employment, for which the Applicant has been provided a conditional offer of Employment by the Employer.

- (d) The prohibitions contained in this section shall not apply to:
 - (1) Any actions taken by an Employer pursuant to any federal, state or local law that specifically authorizes the reliance on Salary History to determine an employee's compensation;
 - (2) Applicants for internal transfer or promotion with their current Employer;
 - (3) A voluntary and unprompted disclosure of Salary History information by an Applicant;
 - (4) Any attempt by an Employer 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.
 - (5) Applicants who are re-hired by the Employer within five years of the Applicant's most recent date of termination from Employment by the Employer, provided that the Employer already has past Salary History data regarding the Applicant from the previous Employment of Applicant;
 - (6) Employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining;
 - (7) Federal, state and local political subdivisions, other than the City of Toledo.

768.03 Remedies for Non-Compliance.

If an Employer fails to comply with any provision of this chapter, the Applicant shall have a private cause of action to enforce the provisions of this chapter against the Employer for compensatory damages, reasonable attorney's fees, the costs of the action, and such legal and equitable relief as the court deems just and proper. An action for violation of this chapter shall be commenced within two years after the cause of action accrued.

768.04 Severability.

If any provision or section of this chapter or the enforcement of any such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision or section of this chapter. To this end, each of the provisions and sections of this chapter are severable.

768.05 Effective Date.

This Chapter shall take effect 365 days after it becomes law.

SECTION 2. That the Human Relations Commission shall establish a committee to educate, assist and advise Toledo employers on the impact and implementation of this ordinance.

SECTION 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council