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Title: To enact Chapter 2335; to amend sections 139.02 and 2301.05; and to repeal existing sections 139.02 and 2301.05 of Columbus City Codes, to promote pay equity in Columbus.

Sponsors: Lourdes Barroso De Padilla

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Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
3/16/2023	1	ACTING CITY CLERK	Attest	
3/15/2023	1	MAYOR	Signed	
3/13/2023	1	COUNCIL PRESIDENT	Signed	
3/13/2023	1	Columbus City Council	Approved	Pass
3/6/2023	1	Columbus City Council	Read for the First Time	

This ordinance enacts a new chapter of city code to promote pay equity by prohibiting the inquiry into and use of salary history information in the hiring process for job applicants. This ordinance also amends sections of City Code related to the enforcement of these provisions by the Community Relations Commission.

Requesting a job applicant's previous salary or earnings is a historically common practice that employers have used in the hiring practice to make determinations about hire and job offers. This practice has the unfortunate propensity to perpetuate historical inequities that women, especially women of color, face in the job market. Asking a worker about their salary history and relying upon that information when making a job offer can perpetuate any previous disadvantages that worker experienced in the market.

As of 2022, women who work full-time and year-round make \$0.84 for every dollar that men make. For Black women, that number is \$0.64. For Latina women, it is a staggering \$0.46. On average, women lose out on over \$400,000 over the course of a 40-year career due to the pay gap. For Black and Latina women, that number is closer to \$1,000,000. This means that the lack of pay equity contributes to both the wage gap and the wealth gap. Issues of pay equity are the result of both personal discrimination and systemic discrimination. Eliminating questions about salary history helps to address the systemic discrimination that women face.

The existing wage gap can be perpetuated when a historically underpaid worker is asked questions about her salary history and a subsequent job offer relies upon that information. A prohibition on salary history inquiries prevents employers from considering factors that unfairly contributed to a women's inequitable pay, rather than a job applicant's qualifications and capability for the role.

This ordinance establishes prohibitions on salary history inquiries for Columbus employers, placing enforcement of these provisions with the Community Relations Commission under its charge to eliminate discrimination and remove the effects of historical discrimination.

FISCAL IMPACT: No funding is required for this legislation.

To enact Chapter 2335; to amend sections 139.02 and 2301.05; and to repeal existing sections 139.02 and 2301.05 of Columbus City Codes, to promote pay equity in Columbus.

WHEREAS, women in Columbus face systemic challenges and discrimination in the job market including a wage gap; and

WHEREAS, women in 2022 made 84 cents for every dollar that a man made, and that number is much lower for Black and Latina women; and

WHEREAS, the wage gap contributes to the wealth gap, so that women lose out on hundreds of thousands of dollars over the course of their career as a result of systemic discrimination; and

WHEREAS, inquiries into a job applicant's salary history can perpetuate previous personal or systemic discrimination that the applicant experienced; and

WHEREAS, prohibitions on salary history inquiries have been shown to increase wages for all workers by as much as six percent in an area; and

WHEREAS, Columbus City Council seeks to promote pathways out of poverty and equitable systems for all residents of Columbus; **NOW, THEREFORE,**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 2335 of the Columbus City Codes is hereby enacted to read as follows:

Chapter 2335 - PROHIBITED SALARY HISTORY INQUIRY AND USE

2335.01 - Definitions

(A) "Applicant" means any person applying for employment to be performed within the geographic boundaries of the City of Columbus, and whose application, in whole or in part, will be solicited, received, processed, or considered in the City of Columbus, regardless of whether the applicant is interviewed.

(B) "Employer" means an individual, firm, limited liability company, partnership, association, labor organization, corporation, or any other entity whether or not organized for profit, that employs fifteen (15) or more persons on a qualifying wage, commission, or other compensation basis within the City of Columbus. "Employer" includes job placement and referral agencies and other employment agencies when such agencies operate on behalf of an entity that otherwise meets the definition of "Employer". "Employer" does not include any unit of local, state, or federal government, except the City of Columbus.

(C) "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.

(D) "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 employers, 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.

(E) "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.

2335.02 - Purpose

The purpose and intent of this chapter is to elevate the best practices for hiring that promote pay equity. The practices addressed in this chapter can, if used, perpetuate issues of systemic discrimination related to the wage gap and wealth gap

for women, especially women of color. To promote pay equity across the workforce in the City of Columbus, the following prohibitions are established.

2335.03 - Unlawful discriminatory practices regarding the use of salary history.

(A) Except as otherwise provided in division (B) of this section, an employer shall not do any of the following:

- (1) Inquire about the salary history of an applicant for employment;
- (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;
- (3) Rely solely on the salary history of an applicant, except as provided in division (C) of this section, 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;
- (4) Refuse to hire or otherwise disfavor, injure, or retaliate against an applicant for not disclosing salary history to an employer.

(B) Notwithstanding division (A) of this section, an employer may, without inquiring about salary history, engage in discussion 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 by resigning from their current employer.

(C) The prohibitions contained in this section shall not apply to any of the following:

- (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 solely 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 three years of the Applicant's most recent date of termination of 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 governmental employers, other than the City of Columbus.

2335.04 - Complaint Procedure

An applicant may file a complaint with the Community Relations Commission under Section 2331.05(A) alleging that an employer has engaged in or is now engaging in any violations of section 2335.03.

2335.05 - Civil Penalties

Upon an administrative finding of violation by the commission, an employer may be subject to civil penalties outlined in Section 2331.05(B).

2335.06 - 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.

2335.07 - Effective Date

This Chapter shall take effect on March 1, 2024.

SECTION 2. That Section 139.02 of the Columbus City Codes is hereby amended as follows:

139.02 Duties.

The community relations commission is created and established under the Department of Neighborhoods to help eliminate discrimination or to remove the effects of past discrimination on both a personal and systemic level in the city of Columbus.

To advance these objectives the community relations commission may:

- (a) Promote the development of mutual understanding and respect among all racial, religious, nationality, cultural and ethnic groups in the city of Columbus by making recommendations to city officials on means to prevent discriminatory practices against such groups.
- (b) Aid in seeing that no person is deprived of equal services by city government by reason of discrimination on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status.
- (c) Encourage, receive, investigate and evaluate from any person a claim of discrimination in accordance with section 2331 or section 2335 of the Columbus City Codes, and make public the procedures which a person may use to complain of discrimination.
- (d) Confer with the city attorney or designee on such complaints pertaining to the city of Columbus or criminal conduct as appear to require a legal process after initial investigation and/or failure to achieve conciliation.
- (e) Initiate and conduct or refer for mediation in situations in which the commission has reason to believe that discrimination may have occurred.
- (f) Engage a hearing officer to conduct administrative hearings.
- (g) Investigate upon request or initiate investigation of alleged discriminatory practices and make recommendations for corrective action and coordinate efforts toward their resolution.
- (h) Verify information relating to complaints of alleged discrimination practices.
- (i) Formulate, develop and disseminate programs of community information, educational materials, and reports which will assist in the elimination of prejudice, intolerance and discrimination or which promote good will and result in better human relations.
- (j) Coordinate with the city's equal employment officers, local employers, unions, and employment agencies to improve employment opportunities in city government for persons who have been the traditional targets of discrimination in employment.
- (k) Assist community groups and various social, service and benevolent organizations in the promotion of educational campaigns devoted to the elimination of group prejudices, racial or neighborhood tensions, and tolerance and discrimination.
- (l) Conduct research to ascertain the status and treatment of racial, religious, and ethnic groups in the city and the best means of progressively improving human relations in Columbus.
- (m) Cooperate with and render assistance to city government entities in the area of human rights.
- (n) Cooperate with and render assistance to county, state, federal and other governmental agencies in the area of discrimination.
- (o) Prepare and publish an annual report and other factual reports and recommendations as it deems necessary concerning problems relating to the discrimination, racial tensions and other human relations concerns. Copies of all such reports and recommendations shall be filed with the city council.
- (p) Contract with an entity not affiliated with the City of Columbus government to conduct investigations.

SECTION 3. That Section 2331.05 of the Columbus City Codes is hereby amended as follows:

2331.05 Complaint procedure.

- (A) Whenever it is alleged in a complaint, in writing, by a person or aggrieved organization, hereinafter referenced to as "complainant," that any person, employer, employment agency, or labor organization, hereinafter referred to as the "respondent," has engaged in or is engaging in any unlawful discriminatory practices as defined in Title 23, Chapter 2331 and Chapter 2335 of the Columbus City Codes, or upon its own initiative, in matters relating to such discriminatory practices, the community relations commission staff may initiate a preliminary investigation. Such complaint shall be filed with the community relations commission within six (6) months after the alleged unlawful discriminatory practices are committed.
 - (1) If the community relations commission staff determines after such investigation, that there is no reasonable basis to believe that unlawful discriminatory practices have been or are being engaged in, staff may

recommend to the community relations commission that the complaint be dismissed. If the commission approves, staff shall notify the complainant that it has so determined, and the complaint will be dismissed.

- (2) If the community relations commission staff determines, after such investigation, that there is a reasonable basis to believe that unlawful discriminatory practices have been or are being engaged in, they shall endeavor to eliminate such practices by informal methods of conference, conciliation, and persuasion.
 - (a) If after such investigation and conference the community relations commission staff is satisfied that any unlawful discriminatory practice of the respondent will be eliminated, staff may recommend to the community relations commission that it treat the complaint as conciliated. If the commission agrees, staff shall notify the complainant that the complaint will be dismissed.
 - (b) If the community relations commission staff fails to effect the elimination of such unlawful discriminatory practices or to obtain conciliation of the matter, or, if the circumstances warrant, in advance of or during any such preliminary investigation or endeavors to conciliate the matter, the community relations commission may refer the complaint to the City Prosecutor to evaluate for criminal prosecution. This subdivision shall not apply to complaints filed under Chapter 2335.
 - (c) If the community relations commission staff fails to effect the elimination of such unlawful discriminatory practices or to obtain conciliation of the matter and no referral to the City Prosecutor to evaluate for criminal prosecution is then pending, the community relations commission may direct staff to issue and cause to be served upon the respondent a notice of a finding of administrative violation and imposition of civil penalty. The notice shall notify the respondent of the right to request an administrative hearing before a hearing officer appointed by the community relations commission to contest the finding of administrative violation. Failure to request an administrative hearing within fifteen (15) days of receipt of the notice of violation shall constitute a waiver of the right to a hearing.
- (B) If a hearing officer is appointed, the hearing officer shall have the authority to:
 - (1) Conduct an administrative hearing;
 - (2) Provide to all the parties, witnesses, and the Community Relations Commission timely notice of the hearing date, time, and location;
 - (3) Direct the exchange of discovery;
 - (4) Set, change as necessary, and timely communicate to the parties such reasonable procedural rules as the hearing officer shall deem appropriate including:
 - (a) A member of the Community Relations Commission staff shall have the burden of going forward with the presentation of evidence. All parties shall have the right to appear and be heard in person, or by legal counsel, to present their case.
 - (b) All parties shall have the right to: offer and examine witnesses and present evidence in support of their case; cross examine adverse witnesses; and proffer evidence into the record if its admission has been denied.
 - (c) Testimony shall be given under oath.
 - (d) The hearing officer shall make recommendations on all matters of evidence. In so doing, the hearing officer is not strictly bound by the rules of evidence. The hearing officer may ask questions of any witness at any point in the proceedings and may set time and other limitations for each side in the presentation of evidence. A record of proceedings shall be kept. Parties seeking a stenographic record shall acquire such stenographic record at their own expense.
 - (5) Except as otherwise prescribed by law, the hearing officer shall submit to the Community Relations Commission a written report setting forth the hearing officer's findings of fact and conclusions of law and a recommendation of the action to be taken by the Commission.
 - (a) If the Hearing Officer finds, by a preponderance of the evidence, that respondent did engage in, or continues to engage in, an unlawful discriminatory act or practice under this chapter as noticed in the finding of administrative violation, the Hearing Officer's report shall so indicate by recommending that the finding of violation be upheld.
 - (b) If the Hearing Officer finds that the evidence presented failed to support the finding of violation, the Hearing Officer's report shall so indicate by recommending that the finding of administrative violation be overturned and the complaint dismissed.

- (c) The final report of the Hearing Officer may not include any orders for reinstatement of employment, refund of monies paid, other mitigation of damages, or any other orders for corrections or sanctions, except as provided in this section.
 - (6) A copy of the Hearing Officer's written report and recommendation shall, within five days of the date of filing thereof, be served upon the respondent or respondent's attorney, by certified mail. The respondent may, within ten days of receipt of the copy of the written report or recommendation, file with the Community Relations Commission written objections to the report and recommendation, which objections shall be considered by the Community Relations Commission before approving, modifying, or disapproving the recommendation. The Community Relations Commission may grant extensions of time to the respondent within which to file such objections. No recommendation of the Hearing Officer shall be approved, modified, or disapproved by the Community Relations Commission until ten days after the service of the report and recommendation as provided in this section. The Community Relations Commission may order additional testimony to be taken or permit the introduction of further documentary evidence.
 - (7) The Community Relations Commission, by majority vote, may approve, modify or disapprove the recommendation from the Hearing Officer by written decision which shall become effective upon service to the affected parties, unless otherwise stated in the Community Relation Commission's decision.
 - (8) The final decision of the Community Relations Commission may be appealed pursuant to the provisions of R.C. Chapter 2506.
- (B) Civil Penalties
- (1) Upon an administrative finding of violation by the commission, a civil penalty in an amount not to exceed one thousand dollars (\$1,000) may be imposed;
 - (2) Upon an administrative finding of violation by the commission, if the violator has been found to have committed one violation of this Chapter during the five-year period immediately preceding the date on which a complaint was filed with the community relations commission, a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500) may be imposed;
 - (3) Upon an administrative finding of violation by the commission, if the violator has been found to have committed two or more violations of this Chapter during the five-year period immediately preceding the date on which a complaint was filed with the community relations commission, a civil penalty in an amount not to exceed five thousand dollars (\$5,000) may be imposed;
- (E) If a civil penalty has been imposed by the Community Relations Commission, and any portion thereof remains unpaid thirty days following receipt of service of the notice of finding of violation or, if an administrative hearing had been requested, thirty days following receipt of service of the final written decision of the Community Relations Commission, the City Attorney may institute civil enforcement proceedings against the respondent.

SECTION 4. That existing Sections 139.02 and 2331.05 are hereby repealed.

SECTION 5. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.