

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 190380

Amending Chapter 38, Human Relations, Sections 38-1, 38-101 and creating Section 38-102, for the purpose of banning the inquiry and reliance on salary history of applicants for employment; and establishing an effective date.

WHEREAS, in 2018, Kansas City had a gender pay gap of 21.7 percent, ranking 43 out of the 50 largest metropolitan areas, wider than the national average; and

WHEREAS, while women nationwide are typically paid 80 percent of what men are paid, women in Missouri and Kansas earn just 78 and 77 cents respectively, and women of color experience pay gaps that are far wider; and

WHEREAS, although women in the United States now earn more college and postgraduate degrees than men, women with bachelor degrees working full time are paid 26 percent less than their male counterparts; and

WHEREAS, there are several factors which lead to an initial pay gap for women, including bias and discrimination; and

WHEREAS, relying on salary history in setting salaries for new employees results in employers continuing to underpay women, perpetuating the gender pay gap; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 38, Code of Ordinances of the City of Kansas City, Missouri is hereby amended by repealing Sections 38-1 and 38-101 and enacting in lieu thereof a new section of like number and title, and creating a new Section 38-102, to read as follows:

Sec. 38-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.

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- (2) *Applicant* means any person applying for employment with an employer located in Kansas City, Missouri.
- (3) *City* means the City of Kansas City, Missouri.
- (4) *Commission* means the city human rights commission.
- (5) *Complainant* means any person claiming injury by the alleged violation of Chapter 213, RSMo, or of this Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (6) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo, or of this Chapter.
- (7) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (8) *Covered multifamily dwelling* means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.
- (9) *Criminal history* means a record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance; records of arrests not followed by a valid conviction; convictions which have been, pursuant to law, annulled or expunged; pleas of guilty without conviction; convictions for which a person received a suspended impositions of sentence; and misdemeanor convictions where no jail sentence can be imposed.
- (10) *Department* means the department of human relations.
- (11) *Director* means the director of the human relations department or their delegate.

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- (12) *Disability* means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (13) *Dwelling* means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- (14) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (15) *Employer* includes any person employing six or more employees.
- (16) *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.
- (17) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (18) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:
- a. A parent or another person having legal custody of such individual or individuals; or
 - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process

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of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.

- (19) *Family* includes a single individual.
- (20) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.
- (21) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (22) *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.
- (23) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.
- (24) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.
- (25) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (26) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:

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- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
 - b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
 - c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
 - d. The style, cut or length of a hair style,
 - e. The colors of the garments,
 - f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.
- (27) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:
- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.
 - b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
 - c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.

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- d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.
 - e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.
 - f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.
 - g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.
- (28) *Redevelopment area* means a tax increment redevelopment area as defined in section 99.805(11); RSMo, a planned industrial expansion project area as defined in section 100.300, et seq., RSMo; an urban renewal project area or land clearance project area as defined in section 99.300, et seq., RSMo; any area under the control of the port authority of Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo.
- (29) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (30) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo, or this Chapter.
- (31) *Salary History* means the applicant's current or prior wages, 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.
- (32) *Sex* shall include sexual harassment.
- (33) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

- (34) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.
- (35) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.

Sec. 38-101. Prohibited.

(a) Discriminatory practices, as defined in sections 38-102, 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, are prohibited. Any person who engages in a prohibited discriminatory practice shall be guilty of an ordinance violation, punishable by a fine of not more than \$500.00, by imprisonment of not more than 180 days, or by such fine and imprisonment.

(b) Nothing in sections 38-102, 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113 shall be read or interpreted to require the imposition of quotas or any form of affirmative action to remedy any past practices.

Sec. 38-102. Salary History.

(a) Except as otherwise provided in in this section, it shall be unlawful for an employer or agent 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, or 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.

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(b) Notwithstanding paragraph (a) of this section, an employer or its agent may, without inquiring about salary history, engage in discussion with the applicant about the 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) The prohibitions in paragraph (a) of this section shall not apply to:

- (1) Applicants for internal transfer or promotion with their current employer;
- (2) A voluntary and unprompted disclosure of salary history information by an Applicant;
- (3) 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;
- (4) Employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining; and
- (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.

Section 2. This ordinance shall be effective October 31, 2019.

Approved as to form and legality:

Saskia Jacobse
Assistant City Attorney