



Employer FAQs on the New and Expansive Anti-Discrimination Rules in Pennsylvania's Lehigh County

Insights

7.15.24

Employers with operations in Lehigh County, Pennsylvania, must comply with a new and expansive anti-discrimination ordinance that took effect June 1. Our FP attorneys developed this series of FAQs to address all employment aspects of the new rules.

What is this new ordinance?

The Lehigh County Human Relations Ordinance (LCHRO) was signed and approved by county officials earlier this year and took effect on June 1. The LCHRO is intended to ensure equal opportunity for all individuals in Lehigh County concerning employment, housing, education, healthcare, and use of public accommodations, without regard to actual or perceived protected characteristics.

Which employers must comply?

The LCHRO applies to nearly all employers with operations in Lehigh County. Any private or public employer that has at least one employee (exclusive of parents, spouses, or children) must comply with the ordinance.

Who is covered by the employment discrimination protections?

The LCHRO prohibits discrimination against employees (including prospective and current employees) and independent contractors based on certain protected characteristics.

What are the protected characteristics?

The LCHRO prohibits discrimination based on a covered individual's actual or perceived:

- race, ethnicity, color, religion, creed, national origin or citizenship status, or ancestry;
- sex (including pregnancy, childbirth, and related medical conditions), gender identity, gender expression, sexual orientation, genetic information, marital status, or familial status;
- GED rather than high school diploma;
- physical or mental disability, or relationship or association with a disabled person;

- source of income;
- age;
- height or weight;
- veteran status;
- use of guide or support animals or mechanical aids; or
- domestic or sexual violence victim status.

Note that many any of these characteristics are not currently protected under federal or Pennsylvania state law. In addition, a claim for age discrimination under the ordinance applies to those who are **age 35 or older**, compared to the 40-year age minimum under the federal Age Discrimination in Employment Act and the Pennsylvania Human Relations Act (PHRA).

What are some examples of prohibited discriminatory actions?

The LCHRO prohibits employers from taking certain actions with regard to any employee or independent contractor based on any protected characteristic (as described above). For example, employers must not:

- refuse to hire or employ or contract with, or bar or discharge from employment, or otherwise discriminate against an individual with respect to compensation, hiring, volunteering, tenure, terms, conditions, or privileges of employment or contract, if the individual is the best able and most competent to perform the services required;
- elicit any information or make or keep a record of, or use any form of application or application blank, containing questions or entries concerning the protected class of any job applicant;
- inquire, prior to an offer of employment, as to whether an individual has a disability or the severity of such disability (though an employer may inquire about the applicant's ability to perform the essential functions of the position);
- deny employment because of a prior disability;
- exclude or otherwise deny an employee or applicant for employment equal jobs or benefits because of the individual's relationship or association with a disabled person; or
- discriminate against any individual because they have made a charge, testified, or assisted in any discrimination investigation, proceeding, or hearing under the LCHRO or any other non-discrimination laws or regulations.

Does the LCHRO provide other restrictions on employers?

Yes. In addition to the robust anti-discrimination prohibitions described above, the LCHRO also contains so-called "ban-the-box" rules and a ban on salary history inquiries.

What are the “ban-the-box” rules?

Many states and localities have “ban-the-box” laws to give individuals who have criminal records a fair chance when applying for a job. The LCHRO prohibits employers from:

- asking on an employment application whether the applicant has ever been convicted of a crime (but the job requirements may include a clean driving record or the ability to pass a child abuse clearance check);
- requiring job applicants to disclose their criminal convictions (this information may only be requested after an initial interview); or
- considering conviction records which do not relate to an applicant’s suitability for employment (but employers may, after a first interview, use background checks and prior history to determine suitability for employment).

Note that Pennsylvania state law requires employers to provide written notice if employment was denied based in whole or in part on the applicant’s criminal history – and failure to provide that notice will also violate the LCHRO.

What is the salary history ban?

The LCHRO follows a national trend by prohibiting employers from asking a job applicant about the applicant’s current or past salary.

Who enforces the LCHRO?

A group of seven to 13 volunteers will enforce the ordinance on behalf of the newly formed Lehigh County Human Relations Commission.

What does the complaint process look like?

Any individual who wishes to file a complaint alleging that their employer has violated the LCHRO must do so within 180 days of the most recent alleged acts of discrimination. The employer then has 60 days to answer the complaint. Next, the Commission investigates the complaint, answer, and other information related to the case. If probable cause is found, the parties may proceed to mediation or a public hearing.

What are the employer penalties for violating the LCHRO?

If, after considering the evidence presented at the hearing, the Commission finds that the employer violated the LCHRO, it may:

- order any of the remedies available under the PHRA; or

- order any of the remedies available under the FLSA, or
- act directly to require the employer to change practices, make restitution, and, in egregious instances, pay a maximum \$500 fine.

Does the LCHRO give individuals the right to sue?

Yes. An individual has up to one year after the Commission dismisses a complaint (or one year after filing if no such dismissal occurs) to file a complaint in the Lehigh County Court of Common Pleas.

What should you do?

Pennsylvania employers with operations in Lehigh County should familiarize themselves with these new requirements, update their policies and procedures (including job application forms and hiring processes) as needed, and ensure their human resources and managerial employees receive appropriate training to comply with the LCHRO.

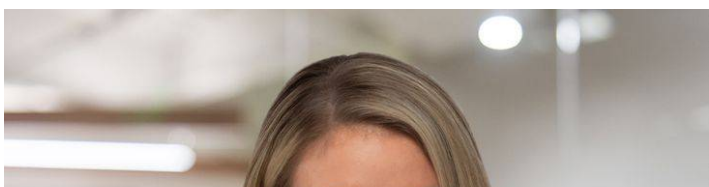
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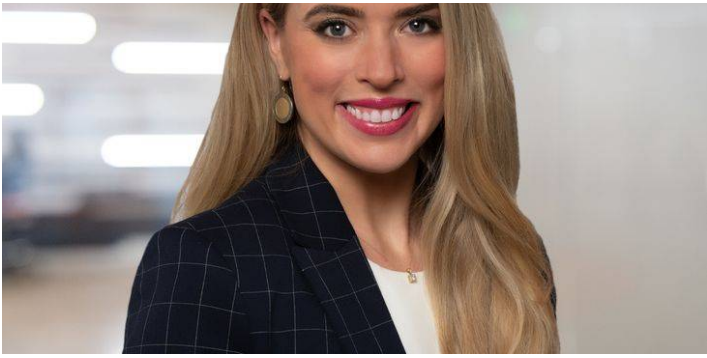
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