



News & Types: Employment, Labor & Benefits Update

Illinois Employers Can No Longer Seek Salary History as of September 29, 2019

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Practices: Employment, Labor & Benefits

For years, employers have used application forms that solicit the applicant's salary history and have routinely sought such information as part of the interview process. Illinois joins the growing number of states that prohibit employers from screening applicants based on their current wages or salary histories. On July 31, 2019, Governor JB Pritzker signed House Bill 834 into law amending the Illinois Equal Pay Act of 2003 ("IEPA").

Currently, the IEPA prohibits employers from discriminating between employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal effort, and responsibility, and which are performed under similar working conditions, except in certain limited circumstances. The amendment changes the standard from work that requires "equal effort and responsibility" to "substantially similar effort and responsibility".

Recognizing that consideration of wage history in making hiring decisions perpetuates wage inequality, Illinois lawmakers strengthened the protections of the IEPA by prohibiting employers from inquiring about an applicant's salary history and also making it unlawful to require an employee to sign an agreement that would prohibit the employee from disclosing or discussing information about the employee's wages, benefits or other compensation.

Accordingly, employers will no longer be able to (1) require the wage history of an applicant satisfy minimum or maximum criteria, or (2) request or require disclosure of wage history as a condition of being interviewed, an offer of employment or being employed. This restriction does not apply if the applicant's wage history is a matter of public record or where a current employee is applying for a position with his or her current employer.

The amendment does not prohibit an employer from providing information about its wages, benefits or compensation or from discussing the applicant's expectations regarding wages, benefits or compensation. In addition, the employer will not violate the IEPA where the applicant "voluntarily and without prompting" discloses his or her current or prior wage or salary history, provided that the employer does not consider or rely on the voluntary disclosures as a factor in determining whether to make an offer or the terms offered.

Under the IEPA amendment, an applicant or employee has the right to bring a civil action within 5 years of a violation of the salary history ban. The amendment provides that the employee may recover damages incurred for an employer's violation of the salary history ban, special damages not to exceed \$10,000, and injunctive relief, as well as reasonable attorney's fees and costs.

Employers should review their hiring procedures and forms to make sure that they comply with the requirements of the amended IEPA. In addition, employers should train personnel involved in the hiring process so they understand that they cannot solicit salary history from applicants and what they should do if applicants voluntarily disclose such information.