



Illinois Becomes the Latest State to Ban Questions on Salary History

The Illinois Equal Pay Act (“Equal Pay Act”), which was enacted in 2003, makes it illegal for employers to determine employee pay based sex or race. On July 31, 2019, Gov. J.B. Pritzker expanded the reach of the Equal Pay Act, making Illinois the 14th state to ban inquiries into an applicant’s prior salary and benefits.

Under the amended version of the Equal Pay Act, employers are prohibited from seeking information relating to an applicant’s prior compensation or benefits at any stage of the hiring process, including the application, interview, reference checks and offer. Even if an applicant voluntarily discloses his or her salary history, the employer may not consider or use that information in deciding whether to hire the applicant or to offer a certain level of compensation. There are a few narrow exceptions to these prohibitions, including when an applicant’s salary history is a matter of public record or when the applicant is applying for a position within the same employer.

In addition to limiting questions relating to salary and benefits, the Equal Pay Act does not permit employers to restrict employees from discussing their wages or benefits in the workplace. To that

end, employers may not require their employees to sign an agreement, such as an employee handbook, agreeing not to disclose salary information or otherwise prohibiting the discussion of wages.

The penalties for violating the Equal Pay Act may be significant, including damages suffered by an aggrieved applicant, special damages up to \$10,000, civil penalties of up to \$5,000 per violation, injunctive relief, costs and attorney’s fees.

In light of the Equal Pay Act’s new restrictions, what can employers discuss with job applicants about their pay history?

- Employers are allowed to provide a job applicant with information about wages, salary, and other forms of compensation relating to any position for which the applicant is being considered.
- Employers may also discuss a job applicant’s *expectations* regarding salary, benefits, and other forms of compensation – the key takeaway being that employers may not ask job applicants about their *past* compensation and benefits.

Because the amended Equal Pay Act becomes effective in just over one month, employers should act swiftly to:

- 1) Modify any offending hiring policies and procedures;
- 2) Train personnel involved in hiring and management on the new areas of the law; and
- 3) Remove any restrictions contained in handbooks or other policies that improperly restrict or prohibit employees from disclosing their compensation and benefits.

If you have any questions about this Alert, or if you would like assistance in updating your employment policies and procedures, or training your hiring

team to comply with the new provisions of the Equal Pay Act, please contact the authors listed below or the Aronberg Goldgehn attorney with whom you work.

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