August 19, 2019

Salary History Bans and the Illinois Amended Equal Pay Act: What Employers Need to Know Now

Client Bulletins

Author: **Margo Wolf O'Donnell**

On July 31, 2019, Governor J.B. Pritzker signed a bill amending the Equal Pay Act of 2003 ("Act").

The amendments to the Act prohibit Illinois employers and employment agencies from asking job applicants or their prior employers about an applicant's salary history. The amendments are effective as of September 29, 2019.

As a result, by the end of next month, Illinois employers and employment agencies will be banned from screening applicants based on their current or prior salaries. Salary history information may not be requested at any stage during the hiring process, including the application, interview, and offer stage. Exceptions to this ban include only if an applicant's salary history is a matter of public record under the Freedom of Information Act or other federal or state law; or if the applicant is applying for a new job with the same employer.

Illinois employers also may not limit employee disclosure or discussion regarding wages or benefits, and Illinois employers may not require their employees to sign an agreement or waiver prohibiting disclosure or discussion of wages and benefits.

In passing this law, Illinois joins the growing number of states and municipalities with similar salary bans, including Alabama, California, New York, Massachusetts, Philadelphia, San Francisco, and Washington.

The amended Act also expands its protection against unlawful pay practices. Currently, it is unlawful for employers to pay an employee less than another employee on the basis of sex, race, or other projected characteristic for the same or substantiality similar work that requires "*equal* skill, effort." The amended Act expands the comparisons to employees performing work that requires "*substantially similar* skill, effort" (emphasis added). Pay differentials may only be based on lawful factors such as seniority, merit, quantifiable earnings or production.

Illinois employers and employment agencies may still provide applicants with information regarding the compensation and benefits associated with a position. They also may discuss an applicant's expectations as to the salary and benefits associated with a position. An employer will not be found to have violated the Act when, without prompting, an applicant voluntarily discloses his or her salary history, including current or prior compensation and benefits, so long as the employer does not consider or rely on such information in determining whether to offer a job or certain level of compensation to an applicant.

The amendments also expand liability for violations of the Act. With the new amendments, recoveries could include civil penalties of up to $5,000 "for each violation for each employee affected," "special damages" up to $10,000, compensatory damages, attorneys' fees, costs, and injunctive relief.

What Should Employers Do Now?

Employers must prepare now to comply with the new law. Before September 29, 2019, employers should:

- Revise recruiting and hiring practices and policies to eliminate any unlawful salary history inquiries and put protections are in place to ensure that salary history information is not considered for applicable hiring and compensation decisions;
- Revise confidentiality policies and agreements to eliminate unlawful prohibitions against disclosure and discussion of salary history;
- Revise compensation structures and audit pay variances for employees who perform similar work to ensure that any differentials are explicitly based on lawful factors; and
- Train appropriate personnel and retained employment agencies on the new prohibitions of the Act.

Because implementing these new policies and procedures can be complicated, employers should consider retaining legal counsel to assist with ensuring compliance in the coming weeks.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

Margo Wolf O'Donnell at modonnell@beneschlaw.com or 312.212.4982.

Elizabeth (Liz) D. Winiarski at ewiniarski@beneschlaw.com or 312.624.6374.

Related Practices

Labor & Employment

Related Professionals

Margo Wolf O'Donnell
Co-Chair, Labor & Employment Practice Group
Labor & Employment

T. 312.212.4982
modonnell@beneschlaw.com