Following a National Trend, Illinois' Equal Pay Act Now Bars Employers from Asking Job Applicants about Their Salary History

Labor & Employment Law Update

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With much fanfare, Illinois Governor J.B. Pritzker signed into law major amendments to the Illinois Equal Pay Act (IEPA) that now bar Illinois employers from asking job applicants or their prior employers about salary, wages or benefits history. On average, women in Illinois are paid only 79% of what men receive, according to information recently released from Gov. Pritzker's office. Gov. Pritzker and Illinois legislators hope that the IEPA amendments will help correct the disparity. Gov. Pritzker told a crowd at the recent signing ceremony that "[w]e are declaring that one's history should not dictate one's future, that no person should be held back from earning their true value because of how much money they were paid in a previous job." The new measure takes effect on September 29, 2019.

Since 2017, laws that prohibit questions about salary history have quickly spread nationwide. Variations on the ban are now or soon will be in effect in 17 states and 18 major municipalities, including California, New York, Colorado, Alabama, Washington, Cincinnati, Louisville, San Francisco, and New York City among others. In comparison, Wisconsin and Michigan have gone in the other direction and banned the ban, so to speak, by restricting the ability of local governments to impose rules that would otherwise limit an employer's right to ask about compensation history.

Parting ways with its neighbors, Illinois will prohibit employers from asking job applicants or their current/former employers about salary, wages or benefits history. Also, employees cannot be compelled to sign a contract or waiver that would prohibit the employee from disclosing or discussing information about their salary, wage or benefits. Employers violating the law could face a lawsuit that permits the employee to recover any damages incurred, "special damages" up to $10,000, injunctive relief, as well as costs and attorney's fees. The law further contains a looming risk of separately imposed civil penalties up to "$5,000 for each violation for each employee affected."

Employers are certainly free to provide salary and benefit information about a position and discuss salary expectations with job candidates. Job candidates can also voluntarily provide salary history, but the employer cannot take it into account in making employment or compensation decisions.

In yet another significant change found in the recent IEPA amendments, the law now prohibits sex-based discrimination on pay (or, pay disparity due to being African American) where employees are performing substantially similar work on jobs requiring "*substantially similar* skill, effort, and responsibility." The old version applied to comparable jobs that required "*equal* skill, effort and responsibility." As such, the standards for bringing a claim have loosened to a degree. At the same time, the amendments have further tightened the exceptions that permit pay differences in some limited circumstances.

In light of the IEPA amendments, employers should carefully review their payroll data. Remember, under the IEPA, pay disparity is analyzed on a county level and not based on the facility, site or office the employee is primarily assigned. Hiring forms and policies should also be reviewed. Recruiting and interviewing practices need to be examined as well. Of course, it's always advisable to consult with your legal counsel to help get "it" right.

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