Salary History Inquiry Bill Down But Far From Out

Labor & Employment Law Update

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On June 28, 2017, HB 2462, an amendment to the Illinois Equal Pay Act, passed both chambers of Illinois General Assembly. The bill would have made an employer's inquiry into an applicants' wage, benefits, and other compensation history an unlawful form of discrimination. Even worse for Illinois employers, the bill would allow for compensatory damages, special damages of up to $10,000, injunctive relief, and attorney fees through a private cause of action with a five (5) year statute of limitations.

On August 25, 2017, Governor Rauner vetoed the bill with a special message to the legislature that, while the gender wage gap must be eliminated, Illinois' new law should be modeled after Massachusetts's "best-in-the-country" law on the topic, and that he would support a bill that more closely resembled Massachusetts' law.

The bill, which passed 91 to 24 in the House, and 35 to 18 in the Senate, could be reintroduced as new or amended legislation following the Governor's statement, or the General Assembly could override the veto (71 votes are needed in the House, and 36 in the Senate, so this is possible) with the current language.

Why is this important?

With the Trump Administration, we have seen an increase in local regulation of labor and employment law. This means that employers located in multiple states, counties, and cities must carefully pay attention to the various laws impacting their workforces. Examples of this type of "piecemeal legislation" we have already seen in Illinois and across the country include local ordinances impacting minimum wage, paid sick leave, and other mandated leaves. Additionally, laws that go into effect in other jurisdictions may foreshadow changes at home as well (e.g., Illinois's governor pointing towards Massachusetts's exemplary statue).

Had it become law, this amendment would have effective required employers to keep applications and interview records (even for those they did not hire) for five years to comply with the statute of limitations for an unlawful wage inquiry (the Illinois Equal Pay Act already imposes a five year status of limitations for other discriminatory pay practices). By contrast, under Federal law, application records must be kept for only one year from the date of making the record or the personnel action involved (2 years for educational institutions and state and local

governments).

What do you do now?

While the law has not gone into effect as of the date of this blog, it is likely that some form of the salary history amendment will ultimately become law in Illinois. Businesses should carefully review their job applications, interview questions, and related policies to avoid inquiries that may lead to challenges in the hiring process.

Additionally, record retention (and destruction!) policies should be reviewed for compliance with these and other statutes – as well as to ensure data integrity and security.

Finally, seek the advice of experienced employment counsel for best practices in light of national trends to remain proactive with an ounce of prevention.