

FLASHPOINTS (ARCHIVED 2023)

EMPLOYMENT & LABOR LAW FLASHPOINTS JUNE 2023

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Illinois Imposes New Pay Transparency Requirements on Employers

On May 17, 2023, the Illinois legislature passed [H.B. 3129, 103d Gen.Assem. \(2023\)](#), which would amend the Illinois Equal Pay Act of 2003, 820 ILCS 112/1, *et seq.*, to impose, as of January 1, 2025, affirmative requirements on certain employers to include the pay scale and benefits for a vacant position in a job posting and share information with current employees pertaining to promotional opportunities. While the bill has not yet been signed into law by Governor Pritzker, the potential obligations imposed on many employers to modify the manner in which they hire and retain employees will be a significant change.

Requirement To Include Pay Scale and Benefits in Job Posting

The bill provides that it is unlawful for any employer with 15 or more employees to fail to include the “pay scale and benefits” for a position in any specific job posting. The bill’s requirements would apply only to positions that (1) will be physically performed, at least in part, in Illinois, or (2) will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois. The bill’s requirements would only apply to job postings made on or after January 1, 2025.

The bill defines “pay scale and benefits” as the wage or salary, or the wage and salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives that the employer reasonably expects in good faith to offer for the position, set by reference to any applicable pay scale, the previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position, as applicable. Employers may elect to include in the posting a link to a publicly viewable webpage that includes the pay scale and benefits in order to satisfy the requirements. Similarly, if an employer engages a third party to facilitate its job postings (*e.g.*, Indeed, Zip Recruiter, etc.), it must provide the third party with the pay scale and benefits or a link to such for inclusion in the posting. However, the bill indicates that nothing requires an employer to actually make a job posting.

Nothing within the bill prohibits employers from asking applicants about their wage or salary expectations. However, employers will be required to disclose the pay scale and benefits to be offered for the position to an applicant prior to any offer or discussion of compensation. Employers are expressly prohibited from refusing to interview, hire, promote, or employ, or otherwise retaliate against any applicant or employee for exercising any of the aforementioned statutory rights.

Requirement To Share Promotional Opportunities

The bill also imposes an obligation on an employer to announce, post, or otherwise make known all opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position, with the exception of any positions in the State of Illinois workforce designated as exempt from competitive selection.

Recordkeeping Obligations

Employers will also be required to maintain and preserve records that document the name, address, and occupation of each employee, the wages paid to each employee, the pay scale and benefits for each position, the job posting for each position, and any other information deemed necessary and appropriate by the Director of Labor. Employers must preserve such records for at least five years.

Enforcement and Penalties

The bill provides the Illinois Department of Labor (IDOL) with the authority to initiate investigations into alleged violations of the pay transparency requirements by a covered employer. Individuals who claim to be aggrieved will be required to submit a complaint within one year after the alleged violation. Should an active job posting or batch of job postings be found by IDOL to have violated the statutory requirements, the penalties are as follows:

1. for a first offense (a first offense may be either a single or multiple job postings identified at the same time by IDOL which violate the statutory requirements), following a cure period of 14 days to remedy the violation, a fine not to exceed \$500 at the discretion of IDOL;
2. for a second offense (a single job posting that violates the statutory requirements), following a cure period of 7 days to remedy the violation, a fine not to exceed \$2,500 at the discretion of IDOL; and
3. for a third and subsequent offense (a single job posting that violates the statutory requirements), no cure period is provided, and a fine imposed not to exceed \$10,000 at the discretion of IDOL.

If a company has had a third offense, it shall incur automatic penalties without a cure period for a period of five years, at the completion of which any future offense shall count as a first offense. The five-year period shall restart if, during that period, an employer receives a subsequent notice of violation from IDOL.

In determining the amount and appropriateness of the penalty imposed, IDOL will consider the size of the business of the employer charged and the gravity of the violation.

Key Takeaway

While House Bill 3129 still awaits the Governor's signature, it appears inevitable that it will eventually be signed into law. Covered employers would then have until January 1, 2025, to prepare for the new requirements and adapt any hiring and job posting practices to align with the pay transparency obligations. Illinois employers with 15 or more employees should be sure to pay close attention to the status of the bill and, if signed, move quickly to adjust their hiring processes to ensure legal compliance.

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