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## EMPLOYMENT APPLICANT'S WAGE AND SALARY HISTORY NOW OFF LIMITS UNDER NEW ILLINOIS LAW

Illinois' new law banning inquiries into a job applicant's salary history recently went into effect on September 29, 2019. It prohibits employers from asking job applicants about their prior pay, or otherwise screening potential employees based on their wage or salary history.

**Ban on inquiry into salary history.** The new law is an amendment to the Illinois Equal Pay Act (820 ILCS 112/10), and is intended to close the gender pay gap and make compensation earned by men and women more equitable. More specifically, the law seeks to stop the practice of paying women comparably less than men, where the setting of compensation is based on an applicant's past wages rather than the applicant's qualifications and the duties and responsibilities of the position. It applies to all Illinois employers of any size and to both salaried and hourly employees. Illinois joins a growing list of states that have recently passed similar bans on salary history inquiries.

**Specific prohibited inquiries.** The ban prohibits seeking information about an applicant's wage or salary history, including benefits and other compensation. The prohibition covers requesting wage or salary history as a (i) condition for being considered for employment, (ii) condition for being interviewed, (iii) condition for being considered for an offer of employment or an offer of compensation, or (iv) condition for actual employment.

The law also prohibits employers from seeking wage or salary history directly from the applicant's current or former employer, unless: (i) such information is a matter of public record and made available to the public by the current or former employer in accordance with applicable law; or (ii) the job applicant is a current employee and is applying for a position with the same employer. Relatedly, employers are prohibited from screening job applicants based on their current or prior wages or salary histories by requiring that applicants satisfy minimum or maximum pay criteria.

**Importantly, some discussions about pay and salary expectations are permissible.** There are specific safe harbors for employers that are expressly set forth in the new law as enacted. The law **does not** prohibit the employer from: (i) providing information about the wages, benefits, compensation, or salary offered by the employer in relation to a specific position; and (ii) engaging in discussions about the applicant's expectations with respect to wages or salary, benefits and other compensation. Finally, it is not a violation of the law if a job applicant voluntarily and without prompting discloses his or her current or prior wage or salary history, so long as the employer does not consider or rely on the voluntary disclosures as a factor in determining whether to offer a job applicant employment, in making an offer of compensation or in determining future wages, salary, benefits or other compensation.

**Expanded restrictions on limiting employee discussions about pay.** The Equal Pay Act's existing prohibitions on interfering with an employee's right to discuss wages or salary with others have been expanded to specifically prohibit an employer from requiring an employee

to sign an agreement that would restrict the employee from disclosing or discussing with others information regarding the employee's wages, salary, benefits, or other compensation. Employers may, however, restrict human resources personnel or supervisors who have access to wage and salary information from disclosing compensation information of another employee without such employee's prior written consent.

### **Implications for Employers**

- Employers need to review their interview and hiring procedures and train hiring managers and personnel about the new prohibition on salary history inquiries and what can and cannot be discussed about the applicant's compensation.
- Employers may need to modify their existing hiring paperwork including their applications for employment, which may contain requests for prior salary or pay history.
- Importantly, as noted above, not all discussions about compensation are barred. The employer can: (i) inform the applicant of the range of compensation for the position in question; (ii) ask the applicant about his or her expectations about the compensation for the position; and (iii) listen if an employee volunteers information about his or her past compensation so long as the employer does not rely on any such information volunteered by the applicant.
- Employers should review their employment manuals and confidentiality agreements to ensure they are not asking employees to sign agreements that prohibit them from discussing their compensation with others, including their colleagues.
- The new law provides for a civil cause of action for a violation and the recovery of special damages not to exceed \$10,000, compensatory damages to the extent they exceed the award of special damages, injunctive relief as may be appropriate, and the applicant's costs and reasonable attorney's fees. Additionally, employers are subject to a civil penalty of up to \$5,000 for each violation.

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