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## NEW ILLINOIS EQUAL PAY ACT AMENDMENT REQUIRES TRANSPARENCY IN EXPECTED COMPENSATION IN JOB POSTINGS

New amendments to the Illinois Equal Pay Act (“EPA”), effective January 1, 2025, require that Illinois employers with at least 15 employees provide the **“pay scale and benefits”** for the advertised job opening in all job postings. The amendments are designed to ensure that all applicants have equal access to information and level the playing field by requiring medium and large sized employers to inform applicants at the time a specific job opportunity is published what compensation and benefits the employer will offer for the position.

More precisely, for any job posting made after January 1, 2025, covered Illinois employers must include the “pay scale and benefits” for the specific job in the posting. The new law defines **“pay scale and benefits”** as “the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position.”

When setting the anticipated wage or salary and benefits for the posted position, employers may refer to: (i) any applicable internal pay scale, (ii) the previously determined pay range for the position, (iii) the actual pay range of others currently holding equivalent positions, or (iv) the budgeted amount for the position, as applicable.

**Complying with new disclosure requirements in job postings.** In its recently issued FAQ guidance to employers, the Illinois Department of Labor (“IDOL”) stated that providing range of pay in a job posting is appropriate so long as the employer provides a range of hourly wage or salary for the specific position advertised, and for amounts the employer might in good faith pay for that position. It further noted that an acceptable range should include the lowest to the highest pay the employer actually believes it might pay for the particular job, depending on circumstances such as employee qualifications, employer finances, or other operational considerations. However, a range’s bottom and top should not include open-ended phrases like “\$40,000 and up” with no top of the range, or “up to \$60,000” with no bottom. Similarly, phrases with qualifications such as “pay starts at \$50,000 depending on experience” are too vague to provide an applicant with an understanding of what the applicable pay would be for the position.

The employer should indicate in the job posting what base pay (or possible range) it will provide for the position and how it will be paid (hourly, salary, piece rate) along with the fact that the position is eligible to receive tips, commissions, or bonuses if applicable, but the employer need not include estimated amounts of such tips, commissions or bonuses.

With respect to benefits, the employer must describe at least the nature of the benefits and what they provide, but does not need to provide specific details, terms and conditions, or dollar values of such benefits. The IDOL intends to provide further guidance and examples of the disclosures required for benefits information in the coming months.

Employers may choose to either identify and list out the required information on pay scale and benefits directly in the job posting or they may include a hyperlink in the posting to a publicly viewable internet page that includes the pay scale and benefits for the particular position being advertised. A general description of benefits that the employer may provide to employees in various positions would not meet the new requirements. An employer with a job posting covered by a collective bargaining agreement may not simply direct applicants to review the collective bargaining agreement.

**Use of third parties for posting and recruitment.** Employers may continue to utilize a third party such as a job listing website or an employment agency or a recruiter to post and advertise job openings. If the employer sought out the third party's assistance for the job posting, the third party's job posting must include the pay scale and benefits information. Therefore, employers must ensure that they provide the pay scale and benefits information to the third party and the third party must include such information in the job posting.

**Impact on job offers.** Employers must provide pay scale and benefits information for job postings in good faith. However, the Illinois EPA does not limit or confine an employer to that pay scale when making an actual job offer. An employer can offer pay and benefits that differ from the anticipated pay scale and benefits set forth in the job posting so long as the pay listed in the job posting was created and disclosed in good faith.

**What employers and jobs are covered.** Any employees of the employer, whether located inside or outside of Illinois, count for purposes of determining if the employer has 15 employees and is deemed a covered employer. Both full-time and part-time employees are included in the calculation.

The requirement to list pay scale and benefits applies to all notices or postings for a specific employment opportunity that (i) will be physically performed, at least in part, in Illinois, or (ii) will be physically performed outside of Illinois, but the employee reports to a supervisor, office or other work site in Illinois. The requirement applies to both external and internal-only job postings.

The Illinois EPA does not require an employer to post any or all job opportunities – either externally or internally. But, if an employer with 15 or more employees chooses to post a specific job opportunity that posting must include pay and benefits information. In addition, if a covered employer chooses to publish a specific job posting externally, the employer also must announce, post or otherwise make that opportunity known to all of its current employees no later than 14 calendar days after making the external posting. An employer's company-wide email to all employees about a particular position opening, or a physical notice posted in a break room about a specific position would constitute a job posting requiring the pay scale and benefits disclosure.

The new EPA requirement would not apply to a business that posts a general "Help Wanted" sign on its physical premises or website, as there is no specific position or job title identified in the posting. In addition, the new law does not prohibit an employer from recruiting or promoting a specific candidate for employment without posting the job opportunity. However, if the employer is hiring for a job opportunity with no job posting, and a candidate asks for pay and benefit information, the employer (or employment agency if applicable) must disclose to the

applicant the pay scale and benefits to be offered for the position prior to any offer or discussion of compensation. This is true even if the candidate came to the employer via a third party engaged by the employer.

**Enforcement of the new posting requirements.** The new amendment to the Illinois EPA requires employers to make and preserve records that document the pay scale and benefits for each position and the job posting for each position, in addition to other pre-existing record-keeping requirements under the EPA. Such records should be preserved for at least 5 years. Complaints of violations of the new Illinois pay transparency law can be initiated by the IDOL. Persons aggrieved by the employer’s violation of the EPA also can file a complaint with the IDOL and can do so anonymously. Complaints must be filed with the IDOL within one year of the alleged violation.

Violations and financial penalties are applicable for both active postings and for job postings that are no longer active at the time the IDOL determines a violation occurred. If the IDOL determines that an employer or a third party violates the pay transparency requirements of the EPA, the IDOL will notify the employer of the violation, the applicable penalty and the period to cure the violation for active job posts. Employers will be provided 14 days to cure a first offense, 7 days to remedy a second offense and no period to cure subsequent offenses. If not cured within the applicable cure period, financial penalties will range from \$250-\$500 for a first offense, up to \$2,500 for a second offense, and up to \$10,000 for subsequent offenses.

**Employer takeaways and next steps.** Previously, Illinois employers may not have provided pay scales or budgeted compensation in their open job listings and postings as a strategic business decision. Now, employers will need to train and work with their HR departments, managers, and internal and external recruiters to determine in good faith a pay scale range for each job posting and maintain records of such pay scales and postings. This needs to be the new standard operating procedure for all job postings. Employers are reminded that the new law does not require that job openings be posted – only what they must contain if they are posted. Finally, employers are not prohibited from asking applicants about their salary expectations and are not confined to the pay scale listed in their job postings in negotiating compensation with new employees so long as the posted pay scale was made in good faith.

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