CLIENT ALERTS & INSIGHTS

Illinois Employers Take Note: New Pay Transparency Requirements Go into Effect in 2025

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Effective January 1, 2025, amendments to the Illinois Equal Pay Act will require that Illinois employers with 15 or more employees disclose "pay scale and benefits" in all job postings. The amendments, which were signed by Governor J.B. Pritzker in 2023, apply to (1) jobs that will be physically performed, at least in part, in Illinois and (2) jobs performed outside of Illinois if the employee reports to a supervisor, office, or other work site within Illinois. The amendments also introduce new requirements for internal promotion procedures.

Requirements: "Pay Scale" and "Benefits"

Employers are required to include the "good faith" range that the employer reasonably expects to offer for the position. Employers may use any of the following considerations in order to determine the "pay scale" for a job posting:

- The actual, applicable pay scale;
- The previously determined salary range for the position;
- The actual salary range of employees who currently hold the position; and/or
- The budgeted amount for the position.

In order to disclose "benefits" in accordance with the new requirements, employers should provide a general description of benefits and other forms of compensation, including bonuses, stock options, and other incentives. Employers do not need to disclose a range or amount for "benefits" and instead must simply list the benefits.

How to Disclose

The amendments allow employers flexibility in how this information is disclosed in job postings. First, employers can include pay scale and benefits in their own job postings. Employers also can provide a hyperlink to a page on the employer's website that shows the required information. If an employer uses a third party (such as an external recruiter or employment service provider) to make or list job postings, the employer is responsible for providing pay scale and benefits information to the third party, and the third party is then responsible for posting that information.

Notably, the amendments do not require that employers *make* job postings with this information if no such job postings exist. These requirements apply only to job postings that the employer chooses to post. In other words, if an employer chooses to create a job posting, *then*

the employer must comply with these requirements. But, employers are not required to create job postings from scratch due to these new requirements.

Applicability to Employees in Illinois

As noted above, these requirements apply to all jobs that will be physically performed, at least in part, in Illinois, as well as jobs performed outside of Illinois where the employee reports to a supervisor, office, or other work site in Illinois.

Although this description of jobs "physically performed, at least in part, in Illinois" might seem intuitive at first glance, it raises questions about positions that might, only rarely, require some work performed in Illinois (such as, for example, coming into Illinois for a brief meeting and then leaving again). The Act itself does not provide a definitive answer as to what it means for a job to be "physically performed, at least in part, in Illinois." There is also no guidance from the Illinois Department of Labor on this question. However, similar laws in California, Colorado, New York, and Washington state generally provide that brief meetings, conferences, or commuting would not meet the requirements for those states' respective laws. In other words, it appears that most states do not take such an extreme, rigid interpretation that their pay transparency laws include work that involves occasional travel to the state.

Internal Promotion Requirements

Under the new amendments, employers are now required to announce, post, or otherwise make known all opportunities for promotion to current employees no later than 14 calendar days after making an external job posting for that same position. In other words, if an employer makes an external posting for a position, it must also post or announce the opportunity to all current employees no later than 14 calendar days after the external posting.

Recordkeeping, Retaliation, and Penalties

Recordkeeping. Employers covered by these new requirements must make and preserve records of the job posting, pay scale, and benefits for each position for no less than five (5) years.

Retaliation. Employers covered by these new requirements cannot refuse to interview, hire, promote, employ, or otherwise retaliate against an employee or applicant for exercising any rights under the Act. Employers may, however, ask a prospective employee's wage or salary expectations, so long as they do not screen applicants based on current/prior wage history or request wage/salary history as a condition of application, offer, or employment.

Penalties. The Illinois Department of Labor will enforce these new requirements and provides a notice and cure period of 14 days for first offenses and seven (7) days for second offenses. Fines are applied either to a single posting or a batch of postings and differ depending on the number of offenses and whether the posting is active or inactive at the time of the offense. In order to determine whether a posting is "active," the Illinois Department of Labor will consider factors such as if the employer is still accepting applications, whether the position has been filled, and how long the posting has been accessible to the public.

For active job postings, the penalty scale is as follows:

- First Offense: A fine not to exceed $500 (if the violation is not remedied within the 14-day cure period)
- Second Offense: A fine up to $2,500 (if the violation is not remedied within the seven-day cure period)
- Third Offense and Subsequent Offenses: A fine up to $10,000 (no cure period)

For inactive job postings, the penalty scale is as follows:

- First Offense: A fine up to $250
- Second Offense: A fine up to $2,500
- Third Offense and Subsequent Offenses: A fine up to $10,000

Next Steps: What Should Illinois Employers Do Now?

Employers subject to these new requirements should review active job postings to ensure compliance with the new requirements before January 1, 2025. If employers use third parties to make or list job postings, they should ensure that the required disclosures are communicated to those third parties in advance of January 1, 2025.

Benesch attorneys are ready to assist with compliance with these amendments to the Illinois Equal Pay Act. For more information, please contact Benesch's Labor & Employment Law attorneys listed below.

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