

August 28, 2019

Illinois is Changing the Conversation on Salaries. How Do Employers Prepare?



David Michael

Human Resources & Employment

A new amendment to the Illinois Equal Pay Act seeks to ensure gender pay equity. As discussed in our recent posting, [New Illinois Law Bans Employers from Asking about Salary History](#), starting Sept. 29, 2019, employers will be prohibited from asking job applicants (and their former employers) about wage, salary or benefits history. The following frequently asked questions cover important information employers need to know to amend their policies to remain compliant.

How does the new law restrict employers?

The new law prohibits employers from requesting or requiring prospective employees to provide their salary histories as a condition of being considered for employment. The amendment to the Equal Pay Act also prohibits employers from asking about a range within which the candidate was paid. These restrictions apply to written materials like job applications, as well as in-person job interviews. Employers should review their job application forms to remove any such questions.

Can employers ask applicants about prior benefits or other compensation?

No. According to the new law, "It is unlawful for an employer or employment agency, or employee or agent thereof, to ... screen job applicants based on their current or prior wages or salary histories, including benefits or other compensation."

Can employers ask a candidate's prior employer about salary history?

No. The new law prohibits Illinois employers (with only a few narrow exceptions noted below) from seeking a candidate's wage or salary history from a current or past employer.

Can an employer prohibit employees from speaking to each other about wages, salaries, and benefits?

No. In addition, Illinois prohibits employers to require employees to sign a contract or waiver preventing them from discussing compensation with other employees. However, there is an exception that allow employers to prohibit (1) human resources employees, (2) a supervisor or (3) any other employee whose job responsibilities require or allow access to other employees' wage or salary history from disclosing that information without prior written consent from the employee whose information it is.

What can employers ask applicants about regarding salary?

The law does allow an employer to discuss an applicant's compensation expectations. Employers can also provide information about the wages, salary and benefits related to the position they are interviewing for.

What if the candidate voluntarily provides prior salary information?

Even if a candidate voluntarily discloses his or her current or prior compensation, the employer cannot “consider or rely on the voluntary disclosure as a factor in determining whether to offer ... or in determining future ... compensation.” Employers should consider informing the applicant that the employer is prohibited from considering an applicant’s salary history, including benefits and other compensation, when making hiring decisions.

So what *can* employers say?

Employers are permitted to: (1) provide information about the wages, benefits, compensation and salary offered in relation to a given position (“This job pays \$50,000 and has the company’s regular benefits.”) and (2) discuss with the applicant their expectations with respect to wages or salary, benefits and other compensation (“What salary and benefits are you looking for?”).

Are there exceptions when employers can ask about a candidate’s salary history?

Yes, but they are limited. The subsection that makes it unlawful to seek a salary history does not apply if: (1) the job applicant’s wage or salary history is a matter of public record under the Freedom of Information Act (or any other equivalent state or federal law) or is contained in a document completed by the job applicant’s current or former employer and then made available to the public by the employer, or submitted or posted by the employer to comply with state or federal law; or (2) the job applicant is a current employee applying for a position with the same current employer.

How do employers need to update their policies, materials and hiring practices to remain compliant?

To avoid exposure to liability and damages, employers should: (1) review all recruitment and hiring materials, as well as their policies, to remove inquiries into pay history, and (2) update training for personnel involved in hiring about the ban on pay history inquiries.

For more information or questions about the new law, contact a member of Gould & Ratner’s [Human Resources and Employment Practice](#).