

No More Salary History Questions for Illinois Employers

In April 2018 [we predicted](#) that Illinois was “one governor’s election” away from banning salary history questions. Right on schedule, Governor Pritzker signed a [law](#) that will amend the Equal Pay Act of 2003 and ban salary history questions for job applicants starting on September 29, 2019. Illinois is now one of 17 states to [ban salary history](#) questions along with 19 localities.

Salary History Ban - Effective September 29, 2019

The Illinois Equal Pay Act now prohibits employers from engaging in the following:

1. Using wage or salary histories to screen job applicants.
2. Requesting or requiring job applicants to disclose prior wages or salary in order to be interviewed or as a condition for continued consideration in the hiring process. An employer is not considered in violation of the Act if a job applicant voluntarily discloses her prior compensation history.
3. Obtaining salary, benefits or any other compensation from an applicant’s current or former employers unless the job applicant’s wage or salary history is a matter of public record.
4. Requiring an applicant or employee to sign a contract or waiver that would prohibit the individual from disclosing or discussing information about his or her wages, salary, benefits, or other compensation.

Item No. 4 deserves special attention. From time to time we see employee handbooks or manuals that prohibit employees from discussing their wages with another employee. These rules

against sharing salary information are now illegal. Employers should eliminate these rules from their workplace if they still have them.

The Cost of Employer Violations

Previously, employers who violated the Equal Pay Act were responsible for an employee's lost wages and attorney's fees and cost. Now, employees may recover lost wages, compensatory damages, special damages (not to exceed \$10,000), punitive damages and injunctive relief.

In addition, depending on an employer's size, employers will also be subject to civil penalties that range from \$500 (first offense) to \$5,000 for a third or subsequent offense for each individual employee affected.

Employer Next Steps

With the new prohibition right around the corner, employers should review job applications and policies related to recruiting and hiring as soon as possible. Job applications should not request salary history. Employer policies should not refer to employee salary history questions (e.g., help wanted ads should no longer include a request for cover letter, resume and salary history, interview questions should no longer include reference to an employee's current or past compensation).

Employers should train all employees who participate in the recruitment and hiring process. For example, hiring personnel must understand the subtle difference between sharing details of a position's compensation package, as opposed to asking an applicant what salary she earned at her last position.

Employee Compensation Can Still Be Discussed

There is nothing wrong with asking a job applicant if the compensation package your firm is offering meets the applicant's expectations. It is acceptable for a job applicant to talk about her prior salary, but employers must not prompt the job applicant to do so. There are a variety of creative "work arounds" for employers with respect to setting the appropriate compensation for their new employees. Illinois' ban on salary history questions should not prejudice employers in the long run. The law goes into effect on September 29th which means that now is the time to ensure compliance.

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