

Illinois Outlaws Questions about Job Applicants' Prior Salaries

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Beginning September 29, 2019, it will be against the law in Illinois for employers to ask job applicants about their prior salaries or wage history.

In order to avoid fines and lawsuits, companies recruiting in Illinois should remove any questions about prior pay from their job applications and any related documents both on-line or in hard copy.

The new law prohibits employers and employment agencies from:

1. Screening job applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history of an applicant satisfy minimum or maximum criteria;
2. Requesting or requiring a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, or an offer of employment or compensation; or
3. Requesting or requiring that an applicant disclose wage or salary history as a condition of employment.

Employers also are prohibited from seeking an applicant's wage or salary history from the applicant's current or former employer. This provision, however, does not apply when the applicant's salary is a matter of public record or where the applicant is a current employee applying for a position with the same employer.

Employers are not prohibited, however, from providing information about the benefits of a position or discussing an applicant's expectations about compensation. An employer also would not violate the law if a job applicant voluntarily discloses his or her current or prior salary, provided the employer does not consider the voluntary disclosure in deciding whether to offer the applicant employment or in setting compensation.

In addition, employers may not require employees to sign agreements that would prohibit them from disclosing or discussing information about their wages, salary, benefits, or other compensation. Employers, however, may prohibit human resources employees, supervisors, or other employees who have access to employees' wage or salary information from disclosing that information without written consent from the employee whose information is sought or requested.

An employer in violation of the law may be subject to special damages not to exceed \$10,000, injunctive relief, costs and reasonable attorney's fees, and a civil penalty not to exceed \$5,000 for each violation for each employee affected.

Takeaways

Employers should refrain from:

- Asking applicants about their current or former wages, salaries, benefits, or other compensation;

- Setting a minimum or maximum prior wage or salary requirement; and
- Asking applicants' current or former employers about the applicant's wages, salary, benefits, or other compensation.

If an applicant voluntarily discloses his or her salary or benefits, that information may not be considered in deciding whether to offer the applicant employment or in setting compensation.

Employers still may:

- Provide information about the wages, benefits, compensation, or salary offered in relation to a position; and
- Discuss an applicant's expectations with respect to wage or salary, benefits, and other compensation.

Jackson Lewis attorneys are available to answer questions regarding the Illinois law and to assist employers in complying with its requirements.

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