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Illinois enacts new salary history ban — effective next month

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As a result of a new law signed this week, and effective next month, Illinois will soon restrict the ability of Illinois employers to inquire about a job applicant's salary history. The law specifically prohibits Illinois employers from screening job applicants based on their wage or salary history. The law was enacted to address the gender pay gap. The effective date of this new law is September 29, 2019.

Significantly, Illinois employers are barred from requiring job applicants to disclose their wage or salary history as a condition of: (1) being interviewed, (2) continuing to be considered for a position, or (3) receiving an offer of employment or compensation.

Subject to very limited exceptions, employers are also prohibited from seeking wage and salary history information from a job applicant's current or former employer.

Note the following three pointers for Illinois employers. First, employers can ask applicants about his/her pay expectations for the position. Second, employers can state the salary range for the open position. Third, nothing in the new law prohibits a job applicant from voluntarily sharing current or prior wage or salary history, so long as the employer does not prompt the applicant to do so. If, however, a job applicant chooses to share this information, employers are prohibited from relying upon the same in: (1) determining whether to make the applicant a job offer; (2) making an offer of compensation; or (3) determining future wages, salary, benefits, or other compensation.

If an employer runs afoul of these new requirements, employees may recover damages, costs, and attorneys' fees, and may also be entitled to injunctive relief. Employers may also be subject to a civil penalty not to exceed \$5,000 per violation.

In enacting this new law by amending the Illinois Equal Pay Act of 2003, Illinois follows in the footsteps of several other states and municipalities that have imposed "salary history bans" over the last few years. Those states include: Alabama, California, Connecticut, Colorado, Delaware, Hawaii, Maine, Massachusetts, New Jersey, New York, Oregon, Vermont, Washington, and the U.S. territory of Puerto Rico.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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