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Illinois Appears Poised to Require Disclosure of Pay Scales in Job Postings

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HB3129 (the "Bill"), which was introduced in the Illinois House of Representatives on February 16, 2013, and passed by the Labor & Commerce Committee on February 28, 2023, would require Illinois employers to include pay scale information in job postings—or face financial consequences. The Bill defines "pay scale" to mean the salary or hourly wage range that the employer reasonably expects to pay for the position. The Bill has garnered significant support, including adding 10 Democrat sponsors, as it steadily marches towards a final vote in the Illinois House.

More specifically, the Bill would amend the Illinois Equal Pay Act to make it unlawful for an employer with 15 or more employees to fail to include the pay scale for a position in any job posting. If an employer with 15 or more employees utilizes a third party to announce, post, publish or otherwise make known a job posting, the employer would need to provide the pay scale to the third party, and the third party, in turn, would be required to include the pay scale in the job posting.

Employers that do not comply with the Bill would risk significant financial consequences. As originally drafted, aggrieved employees could bring a civil action to recover actual damages, special damages not to exceed $10,000, injunctive relief and reasonable attorneys' fees. Employees would have up to 5 years to bring a cause of action. In addition, civil penalties for violating the Bill would vary depending on the size of the employer and the number of offenses at issue. However, employers with 100 or more employees would be subject to a fine of up to $10,000 for the first violation.

An amendment to the Bill, which was filed on March 21, 2023, would change the Bill in three significant ways:

- It would expand the Bill to require Illinois employers to include both "pay scale and benefits" information in the job posting. "Pay scale and benefits" is defined to mean "the wage or salary, or the wage or salary range, and a general description of the

benefits and other compensation the employer reasonable expects to offer for the position."

- It would require employers to announce, post, or otherwise make known all opportunities for promotion to all current employees no later than the same calendar day that the employer makes an external job posting for the position.
- It would significantly reduce appliable civil penalties. In particular, it would provide employers up to 7 days to cure a violation upon notification or face a civil penalty of $100 per day for each day the violation continues after the notice period.

If the Bill becomes law, Illinois would join a growing number of states that require employers to publish wage information in a job posting, including California, Colorado and New York (effective September 14, 2023). Several other states require disclosure of wage information either upon an applicant's request or during a specified point in the interview process, including Connecticut, Maryland, Nevada, Rhode Island and Washington. Numerous cities, including New York City, have their own salary disclosure laws.

We will continue to monitor progress on the Bill and any amendments. In addition, employers should review their job posting practices to ensure compliance with the growing number of state and local jurisdictions that require the disclosure of salary information.

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