Illinois House Set to Pass Tough Pay History Ban, Equal Pay Amendments

Friday, March 8, 2019

Once again, the Illinois Legislature is working to pass more aggressive equal pay laws. HB 834 includes not only a pay history ban, but also additional amendments to strengthen pay equity protections and pay transparency provisions.

Pay History

In 2017, and at the end of 2018, former Illinois Governor Bruce Rauner vetoed attempts to prohibit private employers from requesting applicants’ previous pay history. Having gained control of the governorship and commanding advantages in the Illinois House and Senate in the 2018 election, Democrats appeared poised to add Illinois the growing list of states barring all employers, public and private, from inquiring about an applicant’s salary history.

HB 834 would prohibit all employers, employment agencies, and agents (such as recruiters) from seeking the salary information of any applicant from any current or former employer. Additionally, the bill prevents employers from requiring that an applicant’s prior wage or salary “satisfy minimum or maximum criteria; or to request or require such wage or salary history as a consideration of being considered for employment.” The provision banning an employer from seeking pay history does not apply if the applicant’s salary is publicly available or subject to FOIA requests.

Expanded Comparators and Narrowed Affirmative Defenses

Similar to other state pay equity laws, the amendment would also change the Illinois Equal Pay Act’s requirement that employers pay equally for work that requires “equal” skill, effort, and responsibility and instead allow comparisons to those with “substantially similar” skill, effort, and responsibility.

The amendment also would increase the employer’s burden of proof by requiring that any differences in pay:

1. Not be based on or derived from a differential in compensation based on sex or another protected characteristic,
2. Be job-related and consistent with business necessity, and
3. Accounts for the entire differential in pay.

Pay Transparency

Finally, Illinois would join a growing number of states by codifying protections to employees’ right to discuss “wages, salary, benefits, or other compensation.” Employers would be prohibited from requiring employees to sign any contract or waiver of these rights.

HB 834 picked up 44 co-sponsors on its way through Committee, and House leaders have sent the bill for debate before the full House, where Democrats have a 74-44 advantage. If it passes, the salary history ban will proceed to the Illinois Senate.