

Illinois Mandates Pay Transparency in Job Postings

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Illinois Governor J.B. Pritzker signed a [new law](#) on August 11, 2023, that will amend the Illinois Equal Pay Act (IEPA) and mandate pay transparency in job postings for most Illinois employers.

The law will go into effect on January 1, 2025, and, along with [other](#) recent [amendments](#) to the IEPA, will have a significant impact on how employers operate in Illinois.

New Pay Transparency Requirements

The amendments make it unlawful for an employer with at least 15 employees to fail to include the pay scale and benefits for a specific job in a job posting in Illinois. Unlike pay transparency laws in other states, employers can satisfy this requirement by including a hyperlink to a publicly viewable webpage that includes the relevant pay scale and benefits.

“Pay scale and benefits” is defined broadly as the “wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position.” In determining the pay scale, employers should look to any previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position.

Remote Positions Are Covered

The amendments do not just apply to positions that will be performed in Illinois. Rather, the amendments apply to any positions that (1) will be physically performed, at least in part, in Illinois or (2) will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois.

Promotional Opportunities for Current Employees

If an employer makes an external job posting for a position that current employees may also apply for as a promotion, the employer must announce that opportunity to current employees no later than 14

calendar days after the external job posting is made.

Third-Party Job Postings

If an employer uses a third party to announce, post, publish, or otherwise make known a job posting, the employer must provide the pay scale and benefits (or a hyperlink to the pay scale and benefits) to the third party, who, in turn, must include that information in the job posting. The third party is liable for its failure to include the information in the job posting, unless the third party can show that the employer did not provide the required information.

Applicants' Ability to File a Complaint

An employee, former employee, or any person that claims to be aggrieved under the amendments to the IEPA may file a complaint with the Illinois Department of Labor. All complaints must be filed within one year from the date of the relevant violation.

Fines, Penalties for Violations

The Department may initiate investigations (for both active and inactive job postings) of alleged violations of the IEPA upon receiving a complaint from any person who claims to be aggrieved or at the Department's own discretion.

If the Department determines that a violation has occurred, it may assess fines of up to \$500 for a first offense, \$2,500 for a second offense, and \$10,000 for a third or subsequent offense. Before fines are levied, employers will be given a short notice and cure period for first (14 days) and second (seven days) offenses. However, employers will incur automatic penalties without a cure period for five years following a third offense (which will restart if, during that period, an employer receives a subsequent notice of violation from the Department).

Recordkeeping Requirements

Employers will be required to make and preserve records that document the pay scale and benefits for each position, as well as the job posting for each position.

PERM Ramifications

An employer seeking a permanent labor certification from the U.S. Department of Labor to allow it to hire a foreign worker to work permanently in the United States should be prepared to add Illinois to the list of [states](#) with similar transparency requirements.

Next Steps

The IEPA has been significantly overhauled in recent years, both in terms of pay equity and pay transparency, and it is anticipated that this trend will continue. Illinois employers should discuss compliance with employment counsel.

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