Illinois Enacts New Job Posting Transparency Law

A Practical Guidance® Article by Stephanie L. Sweitzer, Mikaela Shaw Masoudpour, and Christopher B. Dempsey, Morgan, Lewis & Bockius, LLP

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Following the lead of numerous other states and localities requiring pay transparency in job postings, the State of Illinois further amended the Illinois Equal Pay Act of 2003 (IEPA) to accomplish this goal. Effective January 1, 2025, employers must include in any job posting for covered roles the corresponding wage or salary range and a description of the benefits and other compensation offered for the position. These changes, signed by Governor Pritzker on August 11, 2023 (HB3129, as amended), add further obligations for Illinois employers, many of which already must file an Illinois equal pay registration certificate.

A Nationwide Trend

Illinois joins California, Hawaii, New York, and Washington, as well as local governments including New York City and Jersey City, among others, in enacting legislation that regulates job postings for employment in the state. This wave of legislation, started by Colorado in 2021, aims to improve pay transparency among employees and requires that employers include in job postings the details of the wages and benefits for the role.

Illinois Job Posting Requirements

HB3129, as amended, applies to any employer with 15 or more employees that makes a job posting on or after January 1, 2025. Under the amendments, any job posting for a position that will be "physically performed, at least in part, in Illinois" or for a position that will be physically performed outside of Illinois but that reports to a "supervisor, office, or other work site in Illinois" must include the pay scale and benefits for that posting.

"Pay scale and benefits" is defined in the statute as "the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation," including bonuses, stock options, and other incentives. Employers must set the wage or salary according to an "applicable pay scale, the previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position, as applicable."

Employers can satisfy the benefits-posting requirement by posting "a relevant and up to date general benefits description in an easily accessible, central, and public location on an employer's website" and referring to this description in the job posting. Employers may also include in the job posting itself a hyperlink to a publicly viewable webpage that includes the pay scale and benefits suffices.

Importantly, the amendments expressly state that employers are not required to post a position at all. But for any employment opportunity (including promotions or transfers) that has not been posted, the employer or employment agency "shall disclose" the pay scale and benefits offered for the position upon the applicant's request or prior to "any offer or discussion of compensation" with an applicant. If an employer chooses to post a position externally, the amendments require employers to inform all current employees of the opportunity for the promotion within 14 calendar days of that posting.

Employers and employment agencies are permitted to ask an applicant about their wage or salary expectations.

Recordkeeping Requirements

The amendments add two new recordkeeping requirements: Under the amended Act, employers must now maintain records for five years of (i) the pay scale and benefit information for each position, and (ii) the job posting for each position (if made).

Third-Party Liability

Employers that engage third parties to make job postings must provide the third party with the pay scale and benefits (or a link to a publicly viewable webpage that includes pay scale and benefits) for the position. The third party is required to include that information in the posting. That third party is liable under the amendments for failure to include the required information unless the third party can show the employer did not provide it.

Penalties

The amendments empower the Illinois Department of Labor (IDOL) to investigate alleged violations either upon receiving a complaint from an aggrieved employee or applicant (those complaints must be made within one year of the violation) or at its own discretion.

If the IDOL determines a violation has occurred, it must notify the employer of the violation and the applicable penalty, and provide an opportunity to cure. The applicable penalties and opportunity to cure change as the number of violations increases.

For job postings active at the time the IDOL issues a notice of violation:

- First offense: 14-day cure period and fine up to $500
- Second offense: 7-day cure period and fine up to $2,500
- Third and every subsequent offense: no cure period and fine up to $10,000

When the IDOL finds an employer has committed a third offense, the employer will be subject to a five-year period in which it "shall incur automatic penalties without a cure period." Every subsequent violation restarts the five-year period. After five years without a violation, any future violation counts as a "first" offense.

If the job posting is not active when the IDOL issues a notice of the violation, the employer may be assessed fees up to $250, $2,500, and $10,000 for a first, second, and third violation, respectively. Any subsequent offense involving an inactive job posting within a five-year period of the third offense will trigger automatic penalties of up to $10,000.

Open Questions

The transparency amendments are unclear on several issues, including the following:

1. What does it mean for a job to be "physically performed, at least in part, in Illinois"? How extensive do a job's contacts with the state need to be for the amendments to apply to the position?
2. Does a violation of the law for an "inactive" job posting trigger a penalty escalation for an "active" job posting, and vice versa? Or are the penalties and their escalation provisions separate and independent?
3. The amendments only provide for notice and penalties to an employer, but also state that a third party responsible for the job posting can be held liable, when applicable. Was this intentional or an oversight?
4. Are roles that are based in a physical office in another state but report to a manager or supervisor based in Illinois covered under the law? Other states, including New York, added similar language in their pay disclosure measures about the scope of the law, with the express intent of addressing remote workers. However, it remains to be seen whether the intent of the law is to cover positions where employees work from an office outside Illinois but are managed by a supervisor located in Illinois.

Next Steps

Employers with employees or expected future hires in Illinois or employees who are supervised by a manager in Illinois should consider taking the following steps before January 1, 2025:

- Determine and document the pay scale and benefits for all positions where individuals (i) currently work, even "in part," in Illinois, or (ii) report to a supervisor, office, or other worksite in Illinois.
- Review existing job posting templates or create new ones to use after January 1, 2025.
- Train supervisors, managers, compliance personnel, human resources personnel, and legal professionals on the implications of the amendments, including appropriate communications with applicants and employees.
- Conduct a privileged pay equity audit (either for certain positions in Illinois or a broader review of current pay) because salary information provided in external job postings will become public on January 1, 2025.
- Monitor the IDOL website for further guidance.

Related Content

Practice Notes

- Pay Disclosure and Transparency Requirements for Job Postings State and Local Law Survey (Private Employers)
- Pay Transparency and Disclosure Laws: Best Employer Practices
- Wage Transparency State Law Survey: Bans on Employers Preventing Employees from Discussing Their Pay

Statutes & Regulations

- HB3129, Illinois General Assembly

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Stephanie L. Sweitzer focuses her practice on the representation of employers in financial services, retail, technology, manufacturing and other industries in all areas of employment law, including class action, collective action, and complex litigation disputes involving the ADA, FMLA, Age Discrimination in Employment Act (ADEA), Title VII, the FLSA, ERISA, and numerous state and local wage and hour laws. When not litigating in US federal and state court, Stephanie advises clients on a variety of human resources management and compliance issues.

A significant portion of Stephanie's practice is devoted to counseling and representing employers regarding litigation involving restrictive covenants, unfair competition, misappropriation of trade secrets, and state and federal wage and hour issues, including claims of misclassification and off-the-clock work. Stephanie's experience includes representing employers in federal trials and evidentiary hearings, emergency proceedings, arbitrations, mediations, and state and federal administrative proceedings.

In addition to handling disputes, Stephanie advises her clients on day-to-day employment issues, such as litigation- and union-avoidance measures, personnel policies and procedures, executive employment agreements, independent contractor agreements, severance agreements, restrictive covenants, and hiring, discipline, and discharge. She also conducts training seminars on a variety of employment topics.

Stephanie also counsels US and non-US companies on cross-border transactions and employment issues, and has represented multinational employers in global restructuring, reductions in force, and policy changes. She is active in the firm's Workforce Change Practice, which addresses employment, labor, and benefits issues that accompany mergers and acquisitions, joint ventures, startups and spinoffs, workforce reductions, shutdowns, outsourcing, and offshoring.

Stephanie joined Morgan Lewis in 2008 after practicing at high-profile firms in Chicago and Detroit.

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Mikaela Shaw Masoudpour provides strategic employment counseling on complex issues including statutory compliance, leaves of absence, antidiscrimination practices, pay equity, and best practices for avoiding litigation and developing positive employee relations. Mikaela conducts internal investigations into allegations of workplace misconduct, advises on responses and remediation measures in connection with alleged misconduct, and defends companies in employment litigation and other workplace crises.

Mikaela represents employers in a wide variety of employment-related matters arising under numerous federal and local laws, such as Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, and federal labor laws. She is known for achieving results that make good business sense for her clients with minimal disruption to their internal business clients.

Mikaela is recognized as a practical resource for time-sensitive and common-sense advice for in-house counsel, HR, and business leaders. She advises clients on creating safe, respectful, diverse, and inclusive workplaces and day-to-day employment issues such as personnel policies and procedures, executive employment agreements, severance agreements, restrictive covenants, and hiring, discipline, and discharge. She also conducts training seminars on a variety of employment topics.

Mikaela was elected to the 2022 and 2023 Best Lawyers in America "Ones to Watch" list, recognizing attorneys excelling in the legal profession with a tenure of five to nine years. A strong pro bono proponent, Mikaela serves as a member of Morgan Lewis's Chicago office Pro Bono Committee, as well as the Hiring Committee. The National Immigrant Justice Center named her a "Rising Star" in 2018 for her successful family representation in a complex defensive immigration hearing.

Mikaela previously served as a law clerk to Judge Sharon Johnson Coleman of the US District Court for the Northern District of Illinois.

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In addition to his labor and employment litigation work, Chris maintains an active pro bono practice.

During law school, Chris traveled to Washington, DC to compete in the International Rounds of the Philip C. Jessup International Law Moot Court Competition and served as editor-in-chief of the *Loyola University Chicago Law Journal*.