

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### Pay transparency in the Land of Lincoln

On August 11, Illinois became the latest state to require pay scale disclosures in job postings. The new law will impact employers with 15 or more employees beginning in 2025.

#### Background

Targeting pay inequities, a growing number of states and localities across the country — including California, Colorado, Hawaii, New York and Washington, among others — have enacted or are currently considering laws requiring increased pay transparency in job postings and advertisements. (See, for example, our [August 2, 2023 FYI](#).) Depending on the law, employers may have to make salary information more accessible in external or internal job postings, at a specified point during the hiring or promotion process, or upon request.

#### House Bill 3129

On August 11, Governor J.B. Pritzker signed [House Bill 3129](#) into law, making Illinois the latest state to require pay range disclosures in job postings. The new law amends Illinois' Equal Pay Act to require most employers to disclose pay scale and benefits information in job postings, beginning January 1, 2025.

#### Covered employers and positions

The new disclosure requirement applies to employers with 15 or more employees and to any positions that will be physically performed, at least in part, in Illinois. It also applies to positions that will be physically performed out-of-state but report to a supervisor, office or other work site in Illinois.

Volume 46

Issue 14

August 28, 2023

#### Authors

Nancy Vary, JD

Abe Dubin, JD

### Disclosure requirement

The new law requires covered employers to include “pay scale and benefits” information for job postings in Illinois. “Pay scale and benefits” information is broadly defined 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.” Pay scales may be set by reference to a previously determined pay range for the position, the range of others holding equivalent positions, or the amount budgeted for the position.

Employers may either describe the pay scale and benefits in the job posting itself or include a hyperlink in the posting to a public website that has the required disclosures. The benefits posting requirement may be satisfied by posting a general benefits description in a publicly accessible location on an employer’s website and referring to it in the job posting.

Employers that use a third party to post jobs must provide them with pay scale and benefits information to include in the job posting. The third party is required to include that information in the posting and will be liable for failure to do so unless it can show that the employer failed to provide it.

Notably, the law does not require an employer to post a job nor does it prohibit an employer or employment agency from asking an applicant about their wage or salary expectations. However, when a job has not been posted, an employer will have to disclose the position’s pay scale and benefits prior to any offer or discussion of compensation and upon request.

### Promotional opportunities

The new disclosure requirement also extends to promotional opportunities for Illinois-based and Illinois-reporting employees. It requires employers to announce, post or otherwise make known all promotion opportunities to current employees no later than 14 calendar days after the employer posts the job externally, except for certain positions in the State of Illinois workforce.

### Recordkeeping

Employers will be required to maintain records of the pay scale, benefits and job posting for each position for five years.

### Penalties

Penalties vary depending on whether violation of the new disclosure requirements involves an active or inactive posting, as well as the number of prior violations. For active postings, employers will be given a 14-day notice and cure period for first offenses and a 7-day cure period for second offenses before penalties are issued. Civil penalties range from up to \$500 for a first offense, \$2,500 for a second offense, and \$10,000 for a third or additional offense. For postings that are not active, penalties range from up to \$250 for the first offense to up to \$10,000 for third and subsequent offenses. Whether a job posting is active or not will be determined by the Illinois Department of Labor based upon a totality of the circumstances, including whether the job has been filled, how long it has been posted, and whether the employer is still accepting applications.

## In closing

Employers should begin to review their internal and external job posting protocols to ensure that their hiring managers and any third parties they use in the recruiting process will be prepared to comply with the new pay transparency requirements on January 1, 2025. Additionally, employers should consider reviewing their pay practices in light of the new disclosure requirements.

### **Produced by the Compliance Consulting Practice**

The Compliance Consulting Practice is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*<sup>®</sup> publications in their entireties. To manage your subscriptions or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.