

TYPES NOT MAPPED YET March 24, 2023 | TTR not mapped yet | Chuck M. Poplstein, Susan M. Lorenc, Zoe S. Spector

Pay transparency may be coming to Illinois job postings sooner than we thought

Illinois legislators have been busy the last couple of years making changes to the Illinois Equal Pay Act. To recap, in 2021, [we reported](#) on an amendment to the Illinois Equal Pay Act, which imposed new equal pay compliance requirements and created new obligations for private employers with more than 100 employees in Illinois. In 2022, [we reported](#) on the long-awaited guidance on those new requirements from the Illinois Department of Labor.

Now, in 2023, a new bill - [HB3129](#) - is quickly making its way through the Illinois House and, if passed and signed into law, would again amend the Illinois Equal Pay Act and significantly redefine how employers post jobs in Illinois. Here are some key takeaways from the bill.

- The bill makes it unlawful for an employer with 15 or more employees to fail to include the pay scale for a job in any job posting in Illinois.
- The bill provides that if an employer with 15 or more employees relies on a third party to publish a job posting, the third party must include the pay scale in the job posting.
- The bill defines “pay scale” as “the salary or hourly wage range that the employer reasonably expects to pay for the position.”
- In its current form, the bill provides that an employee would be able to recover in a civil action for an employer’s violation of these new requirements any damages that incurred, special damages not to exceed \$10,000, injunctive relief and costs and reasonable attorney’s fees.

The bill is not expected to stay in its original form, and in fact, the first amendment to HB3129 is quickly making its way through House committees. Specifically, on March 21, 2023, House Floor Amendment No. 1 to HB3129 was filed and referred to the Rules Committee, and the next day on March 22, 2023, the amendment was referred to the Labor & Commerce Committee. On March 23, 2023, the Labor & Commerce Committee recommended that [House Floor Amendment No. 1](#) be adopted.

House Floor Amendment No. 1 to HB3129 expands the bounds of the HB3129 by imposing additional requirements for employers and providing clarification on ambiguity in HB3129:

- The amended version of the bill would make it unlawful for an employer with 15 or more employees to not only fail to include pay scale information, but also to fail to include benefits information regarding the job.
- The amendment defines “pay scale and benefits” as “the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation the employer reasonably expects to offer for the position.”
- The amended version of the bill would impose liability on the employer for a third party’s failure to include the pay scale and benefits information in a job posting on behalf of the employer.
- The amended version of the bill further would require an employer to announce, post or otherwise make known all job opportunities to all current employees no later than the same day that the employer makes the job posting.
- It also clarifies that *HB3129 does not create any requirement for employers to make job postings.*

- Moreover, the amended version of the bill would impose recordkeeping requirements, including a new obligation for employers to preserve records of the pay scale and benefits information for each position posted by the employer.
- Finally, House Floor Amendment No. 1 provides that the Illinois Department of Labor would be able to initiate investigations of alleged violations of this new subsection of the Illinois Equal Pay Act. It provides that if the Illinois Department of Labor determines a violation occurred, the employer would have seven (7) days upon receipt of notice of a violation from the Department to remedy the violation. If the employer does not demonstrate that the violation has been remedied, the employer would be subject to a civil penalty of \$100 per day for each day that a violation continues after the seven (7) day notice period.
- The amendment provides that each job posting that fails to be in compliance with the requirements of the Equal Pay Act would be considered separate violations.

While we wait to learn more about the status of HB3129, House Floor Amendment No. 1, and any future modifications to the bill, employers should consider contacting a Thompson Coburn Labor and Employment attorney, or other counsel, to discuss potential permanent adjustments employers may need to make to their job postings in Illinois if this bill, or a version of it, should pass through the General Assembly and be signed into law.

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