Recent Updates to Illinois HR Law

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There are new updates in Illinois HR law which concern paid leave and wage transparency — two critical issues in today's legal landscape. Employers based in Illinois or that have workers there should be aware of these key updates.

Amendment to Illinois Equal Pay Act

Illinois recently amended the Illinois Equal Pay Act, and the new changes will go into effect on January 1, 2025. The changes place new obligations on Illinois employers to disclose wage and benefit information to job applicants and provide certain notices to current workers regarding new position opportunities. Although these changes will not go into effect until January 2025, employers should familiarize themselves with these changes now to ensure they understand their obligations.

This law applies to employers with at least 15 employees. The law does not specify whether the employer must have 15 employees *companywide* or whether there must be 15 employees *performing work in Illinois* for it to apply. The law also does not distinguish between full-time, temporary, or part-time employees. Therefore, to reduce legal risk, employers with both 15 employees companywide and at least one employee working in Illinois should assume this law is applicable to them until clearer guidance is available.

Employers have specific obligations under this law. Foremost, employers must disclose in job advertisements the "pay scale and benefits" information for positions that will be performed physically in Illinois as well as for certain remote work positions.

This law defines "pay scale and benefits" as:

> *[T]he 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, set by reference to any 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 therefore use their own data to predict in good faith what the pay scale and benefits will be for a given position. If employers use a third-party vendor to post positions, this information described above must be provided to the vendor and the vendor must post it.

Regarding remote positions, this law will apply to remote positions if either of the following is true about the remote position: (1) the employee will perform at least *some* of the work *physically in Illinois*; or (2) the remote position is based completely outside of Illinois but the employee reports to a *supervisor, office, or other site in Illinois*. Because many workplaces are offering flexible work options, it is critical for employers to carefully assess what contact an employee is expected to have with Illinois to determine whether compliance with this law is required.

This law also provides options for employers to post the required information. To comply, employers may, but do not have to, create a publicly viewable webpage with the requisite pay scale and benefits information and post a hyperlink to that public webpage right in the advertisement itself. However, there is no requirement that employers create such a webpage if they post the required information right in the advertisement itself. As long as employers choose one of these options, they will be in compliance. Employers must also keep records of pay scale and benefits information for 5 years.

Finally, this law also imposes certain requirements for providing internal notices to an employer's existing workforce. Under this law, if an employer makes an external job posting that current employees can apply for as a promotion, the employer must send an internal notice of the existence of the position to "all current employees" no later than 14 calendar days after the external job posting is made. "All current employees" appears to mean that employees companywide must receive these internal notices regardless of the employees' current positions.

Pay transparency laws are becoming more common across the country, and Boardman Clark continues to monitor new developments as they arise.

Paid Leave for All Workers Act

Another major development in Illinois HR law is the Paid Leave for All Workers Act ("Paid Leave Act") which went into effect on January 1, 2024. The Illinois Department of Labor has proposed regulations which are still being finalized and may be subject to change.

The Paid Leave Act mandates that covered employers provide eligible employees with at least 40 hours of paid leave in a 12-month period "for any purpose." Employers that already have paid leave policies which comply with the minimum requirements of the law are not required to change their policies.

The Paid Leave Act's definitions of "employer" and "employee" are broad, and additional guidance from the Illinois Department of Labor is expected to refine the definitions. Based on current guidance, an employer is likely subject to this law if it employs at least one individual who works in Illinois. This law applies to full-time, part-time, and seasonal employees *but not* independent contractors. Whether this law also applies to interns and temporary employees is less clear, but those workers may be covered depending on the specific situation. Final guidance which clarifies these issues as well as how this law applies to remote work situations is still forthcoming.

Under the Paid Leave Act, employees must be able to take at least 40 hours of paid leave in a 12-month period. An employer may choose any 12-month period, such as the calendar year or the 12-month period running from an employee's first date of employment.

Employers may also choose whether an employee will accumulate the leave, using either an accrual method or a frontload method.

- If an employer uses the accrual method, employees must be allowed to accrue *at least 1 hour of paid leave for every 40 hours worked* in a 12-month period. Under the accrual method, employees must be permitted to carry over unused leave at the end of the year. An accrual cap on leave which meets the minimum requirements under this law remains allowable.
- If an employer uses the frontload method, meaning providing the allotted leave all at once at the beginning of the leave year, carryover of leave *is not required,* Employers may prorate frontloaded leave for new hires if they start after the fixed date that an employer has selected for the 12-month

period. Additional guidance from the Illinois Department of Labor is forthcoming.

As Illinois employers know, earned but unused vacation time is considered "wages" and must be paid out to terminated employees. The Paid Leave Act makes clear that leave provided under the Paid Leave Act *does not* have to be paid out at termination. However, there is an exception which states that Paid Leave Act leave *must* be paid out at termination if an employer co-mingles Paid Leave Act leave with an employee's existing bucket of PTO or vacation time. Therefore, employers that wish to avoid additional payout obligations must keep Paid Leave Act leave separate from other forms of leave and track it separately. Employers that already have existing PTO/vacation policies which comply with the Paid Leave Act's requirements do not have additional obligations.

We encourage employers to reach out to a member of the Boardman Clark Labor & Employment Practice Group with questions.

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