

## [Updates](#)

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### Illinois Joins the Growing List of States With New Pay Transparency Laws



Governor J.B. Pritzker signed into law [HB 3129](#), an amendment to the Illinois Equal Pay Act that changes how employers can advertise for position openings in Illinois, on August 11, 2023.

The amendment goes into effect January 1, 2025, and requires all employers with 15 or more employees to provide pay scale and benefits information in all open job postings. A summary of key requirements is below.

#### **HB 3129's Disclosure Requirements: an Overview**

Under HB 3129, Illinois employers with "15 or more employees" must include the pay scale, benefits, and other compensation information in all job postings for positions that will be performed at least in part in Illinois (or will require reporting to a supervisor or work site located in Illinois). HB 3129 defines "benefits and other compensation" as, among other things, stock options, bonuses, and incentive-based compensation. The amendment does not directly address how the number of employees is to be counted.

Unlike many other states that have passed pay transparency laws, the new Illinois law permits employers to provide the required pay and benefits information in the form of a hyperlink, allowing prospective applicants to access the information online. By posting a relevant general benefits description in an easily accessible place on the employer's website with job listings referring to the posting, employers satisfy the benefits requirements.

Additionally, HB 3129 provides helpful guidance to employers on how to identify the proper pay scale for a position by allowing employers to set pay ranges based on any of the following factors:

- The previously determined range for the position.
- The actual range of other employees currently holding equivalent positions.
- The budgeted amount for the position.
- Any applicable pay scale.

Regardless of the selected basis for the proffered range, the pay scale and benefits information provided by an employer must be based on a good faith assessment of what the employer reasonably expects to offer for the position. The pay scale and benefits must be disclosed upon an applicant's request and prior to any offer or discussion of compensation.

### **Third-Party Listings**

Employers who enlist third parties to "announce, post, publish, or otherwise make known a job posting" must provide the pay scale and benefits to the third party or a compliant hyperlink for such postings. Under HB 3129, third parties will be liable for noncompliant job listings unless the third party can show that the employer failed to provide the necessary pay scale and benefits information. Employers who regularly use recruiters or other third-party employment organizations should work to develop a process for compliant postings.

### **Remote Work and Promotional Positions**

Although the new law primarily targets Illinois-based employees and general job listings, portions of the law expand its application to remote workers and promotional positions that may be outside of the state. Although a remote position may be based primarily in a different state, if the position takes place "at least in part" in Illinois—such as requiring occasional meetings in the state or requiring reporting to supervisors or offices in Illinois—it falls within the law's ambit. HB 3129 creates specific requirements for opportunities posted externally that current employees may also apply for as a promotion. Such externally listed promotional opportunities must be announced, posted, or otherwise made known to all current employees within 14 days of the external posting.

### **Enforcement and Penalties**

HB 3129 provides current and former employees with the ability to file a complaint with the Illinois Department of Labor (IDOL) within one year of a violation of the law. The IDOL may also initiate investigations at its discretion. Fines for violations range from \$250 for a first-time offense involving an inactive job listing to \$10,000 for a third or subsequent offense, whether involving an active or inactive job listing. For active job listings found to be in violation, the IDOL will require employers to cure the violation within a time frame provided by the IDOL. Parties who report violations of the law are also protected under the law, and employers "shall not refuse to interview, hire, promote, or employ," or in any other way retaliate against any such individuals.

### **Takeaway**

Employers with workers, offices, or work sites based in Illinois, or those who have employees reporting to supervisors or offices in Illinois, should review covered job listings and begin developing workplace policies to comply. Employers with questions should contact experienced counsel.

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