

Frequently Asked Questions Regarding the Illinois Salary History Ban

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Q: What is the “salary history ban”?

A: The “salary history ban” is an amendment to the Illinois Equal Pay Act of 2003 that prohibits employers from:

- screening job applicants based on current or prior salary or wage history (including benefits, commissions, bonuses,);
- requesting or requiring an applicant to disclose his/her current or prior salary, wage or benefit history as a condition of being considered for a job;
- asking the former employers of a candidate questions about the applicant’s current or prior salary, wage or benefit history; AND/OR
- retaliating against someone who fails to respond to an unlawful inquiry about his/her current or prior salary, wage or benefits

Q: When does the salary history ban go in effect for Illinois employers?

A: The salary history ban applies to all applications for employment received or accepted on or after Sunday, September 29, 2019.

Q: What constitutes “wage or salary history”?

1. The phrase “wage or salary history” includes all “benefits or other compensation” of a job applicant. This broad definition means that employers should not ask a candidate to disclose his/her history related

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to commissions, bonuses, benefits, health insurance retirement plans, car allowance, cellular phone reimbursement practices, or any other type of remuneration provided by a current or past employer.

Q: If the employer is located in Illinois but the candidate is being considered to work outside of Illinois, is it lawful to inquire about that candidate's salary or wage history?

A: No. This salary history ban extends to any individual who is "permitted to work by an employer" who is located in Illinois. So, if the employer is located in Illinois, it is precluded from asking questions about salary or wage history regardless of the location where the applicant resides or will actually perform his/ her work activities if hired.

Q: Does the law apply to internal transfers?

A: No. The salary history ban does not apply to circumstances where an existing employee is a candidate for an internal transfer or promotion within the same organization.

Q: Can I obtain information about salary history through a FOIA request or by accessing the collective bargaining agreement that was applicable to an employee?

A: The salary history ban does not apply to circumstances where the salary history is a matter of public record or available through a Freedom of Information Act request.

Q: Can I ask about salary history on an application form as long as I don't discuss the response during the interview process?

A: No. Employers should modify job applications (including on-line applications) to remove all questions regarding current and prior pay and benefits.

Q: Can I provide the candidate salary information offered in relation to the position that the candidate applied for in order to gauge the candidate's reaction after hearing the information?

A: Sure. It is lawful for you to provide salary information and to discuss the candidate's reaction to the salary offered as long as the discussion does not "prompt" the candidate to disclose

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his/her current or prior compensation history.

Q: Is it ok to ask an applicant about his/her salary “expectations” or anticipated “salary range”?

A: Yes. The salary history ban does not limit or prevent an employer from asking any direct or indirect questions about a candidate’s future “expectations” related to salary, wages, benefits or other compensation related issues.

Q: Are there any “risky” areas to avoid when discussing the candidate’s compensation “expectations” during the application process?

A: Employers are precluded from “prompting” the candidate to voluntarily disclose his/her current or prior salary history. There is no bright-line test for determining when unlawful “prompting” occurs. However, one example may be asking a candidate if his/her salary “expectation” is tied to his/her current or prior salary history.

Q: Is it appropriate to ask a recruiter to screen candidates for salary history information as long as the recruiter doesn’t share the exact salary history with the employer?

A: No. It is unlawful for an employer to ask this information or to rely on information obtained from another source like a recruiter or even the past employers of the candidate.

Q: Is it appropriate to ask a candidate about the percentage of his/her total compensation history that was based on base salary v. commission or bonus, for example?

A: There is nothing in the law that prevents an employer from inquiring about formulas or factors that were relied on in computing the employee’s salary, wages, commission or bonus amounts, so long as you are not doing so in a way to “prompt” the candidate to voluntarily disclose his/her current or prior salary.

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Q: What should I say to an applicant who “volunteers” such information to me without being prompted to do so?

A: If you feel comfortable doing so, the interviewer might inform the candidate that the company does not rely on information about an individual’s prior or current salary or wage history

in making its employment or future compensation decisions. Otherwise, a best practice is to steer the discussion in a different direction that relates to the skills, experiences

and future expectations of the candidate.

Q: If an applicant volunteers information to me about his/her salary history, should I keep a record of such information?

A: There is no legal obligation to document instances like this when a candidate volunteers information without prompting. However, a best practice is to include a statement in the application form or offer letter that notifies all candidates that the company does not rely on current or prior salary history information in making hiring or future salary decisions.

Q: Is it lawful to ask a candidate about his/her salary history after an offer of employment was made.

A: Yes, as long as the individual’s future salary is not affected by the info obtained. A best practice however, would be to avoid any such request to minimize a possible future claim that the Company relied upon salary history in a subsequent compensation decision.

NOTE: The information in this FAQ document is not intended as a substitute for legal advice as there may be circumstances that alter the answers referenced in the above questions. You are encouraged to consult your legal service provider if you have specific questions related to the amendment to the Illinois Equal Pay Act of 2003 or any other laws.