



# Illinois Salary Ban Fails, But This May Not Be The Last We See Of It

Insights

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An Illinois proposal that would have prevented employers from requiring applicants to disclose their prior wages or salary during the hiring process unexpectedly failed during the Illinois General Assembly veto session on November 9. This comes as a surprise, as earlier this year, the proposed amendments and expansion to the Illinois Equal Pay Act passed through the House and the Senate with strong majorities. Don't get fooled into thinking we've seen the last of it, however, as signs point to a renewed attempt to pass similar legislation in the near future.

## ***House Bill 2462—A brief history lesson***

H.B. 2462's primary focus was to amend the Illinois Equal Pay Act to include stronger language regarding pay equity. Proponents of the bill argued that H.B. 2462 would have reduced the wage disparities between men and women. Had this bill passed, employers operating in Illinois would have been prohibited from requiring applicants to disclose their salary history as a condition of employment. The bill further proposed lowering the burden on employees claiming equal pay violations by replacing the requirement that an employee prove that the jobs being performed require "equal skill, effort, and responsibility" with a "substantially similar" standard. The bill further provided individuals with a private right of action against employers for compensatory and punitive damages for basing a salary offer on salary history.

The bill has had a rocky history; Governor Bruce Rauner vetoed it this past summer. While he agreed in public statements that the "gender wage gap must be eliminated," he suggested that the state legislature instead model its proposal after a similar measure passed in Massachusetts last year. That state's Act to Establish Pay Equity similarly makes it unlawful for an employer to inquire about an applicant's salary history, but also has some significant differences. For example, the Massachusetts law provides an affirmative defense to liability for unlawful pay disparities if an employer has completed a good-faith self-evaluation, reasonable in detail and scope, of its pay practices and can demonstrate reasonable progress in eliminating gender-based compensation differentials.

The Illinois House voted to override Gov. Rauner's veto with an 80 to 33 vote, but the state Senate, on the other hand, came up short and did not secure enough votes to override the veto by the November 9 deadline. Among other reasons cited for the failed vote was a lack of voting attendance.

## ***Preparing for 2018***

*This is not the last time Illinois legislators will consider something like H.B. 2462, however. Indeed, the state legislature already began the resurrection of the effort on November 15 when it introduced H.B. 4163. This measure also prohibits an employer from seeking the salary – including benefits or other compensation or salary history – of a job applicant from any current or former employer. Advocates of the bill are hoping to push this refined version of the bill through the legislature in the very near future.*

Similar to the sweeping “ban the box” trend, which prohibits employers from requiring applicants from disclosing criminal history on a job application, it is just a matter of time before bans on past salary inquiries are passed in most states. In fact, California, Oregon, New York City, Philadelphia, and San Francisco passed laws in the past year alone prohibiting

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