August 25, 2017

To the Honorable Members of
The Illinois House of Representatives,
100th General Assembly:

Today, I veto House Bill 2462, which would prohibit employers from enquiring about previous salary and compensation of prospective employees.

The gender wage gap must be eliminated, and I strongly support wage equality. Massachusetts already has established a best-in-the-country approach to the issue of employers inquiring about salary history. Illinois should model its legal regime on Massachusetts' model.

I strongly encourage the sponsors and the General Assembly at large to take up the following legislative language that more closely resembles the Massachusetts approach:

> "Section 5. The Equal Pay Act of 2003 is amended by changing Sections 10 and 30 and by adding Section 28 as follows:
>
> (820 ILCS 112/10)
>
> Sec. 10. Prohibited acts.
>
> (a) No employer may discriminate between employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made under:
>
> (1) a seniority system;
>
> (2) a merit system;

(3) a system that measures earnings by quantity or quality of production; or

(4) a differential based on any other factor other than: (i) sex or (ii) a factor that would constitute unlawful discrimination under the Illinois Human Rights Act.

An employer who is paying wages in violation of this Act may not, to comply with this Act, reduce the wages of any other employee.

Nothing in this Act may be construed to require an employer to pay, to any employee at a workplace in a particular county, wages that are equal to the wages paid by that employer at a workplace in another county to employees in jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(b) It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this Act. It is unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any person to exercise his or her rights under this Act. It is unlawful for an employer to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing the employee's wage salary, or other compensation. However, an employer may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage ~~or~~ salary or other compensation information from disclosing such information without prior written consent from the employee whose information is sought or requested.

(b-5) It is unlawful for an employer to seek the wage, salary, or other compensation history of a prospective employee from the prospective employee or a current or former employer or to require that a prospective employee's wage, salary, or other compensation history meet certain criteria. This subsection does not apply if:

(1) the prospective employee's wage, salary or other compensation history is a matter of public record;

(2) the prospective employee is a current employee of the employer and is applying for a position with the same employer; or

(3) a prospective employee has voluntarily disclosed such information.

An employer may seek or confirm a prospective employee's wage, salary, or other compensation history after an offer of employment, with wage, salary, or other compensation, has been negotiated and made to the prospective employee.

(c) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual:

(1) has filed any charge or has instituted or caused to be instituted any proceeding under or related to this Act;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Act; or ~~.~~

(4) fails to comply with any wage history inquiry.

(820 ILCS 112/28 new)

Sec. 28. Self-evaluation.

(a) An employer against whom an action is brought alleging a violation of subsection (a) of Section 10 and who, within the previous 3 years and prior to the commencement of the action, has completed a self-evaluation of the employer's pay practices and can demonstrate that progress has been made towards eliminating wage differentials based on gender for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, in accordance with that evaluation, shall have an affirmative defense to liability under subsection (a) of Section 10. For purposes of this subsection, an employer's self-evaluation may be of the employer's own design, so long as it is, in light of the size of the employer reasonable in detail and scope.

A self-evaluation plan may include but is not limited to the following components:

1) An evaluation of the employer’s compensation system for internal equity;

2) An evaluation of the employer’s compensation system for industry competitiveness;

3) Examination of the employers’ compensation system and comparison of job grades or scores;

4) A review of data for personnel entering the employer;

5) An assessment of how raises are awarded; or

6) An evaluation of employee training, development and promotion opportunities.

(b) An employer who has completed a self-evaluation within the previous 3 years and prior to the commencement of the action and can demonstrate that progress has been made towards eliminating wage differentials based on gender for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and

which are performed under similar working conditions, but cannot demonstrate that any steps were taken to address any identified deficiencies, shall not be entitled to an affirmative defense under this subsection, and shall be liable for any civil fine for a violation of this Act:

(1) up to $500 per employee affected, if the employer has fewer than 4 employees; or

(2) up to $2,500 per employee affected, if the employer has 4 or more employees.

(c) Evidence of a self-evaluation or remedial steps undertaken in accordance with this Section shall not be admissible in any proceeding as evidence of a violation of this Act.

(d) An employer who has not completed a self-evaluation shall not be subject to any negative or adverse inference as a result of not having completed a self-evaluation.

(e) An employer who uses the affirmative defense under this Section is not precluded from using any other affirmative defense under this Act.

Therefore, pursuant to Section 9(b) of Article IV of the Illinois Constitution of 1970, I hereby return House Bill 2462, entitled "AN ACT concerning employment," with the foregoing objections, vetoed in its entirety.

Sincerely,

Bruce Rauner
GOVERNOR