September 21, 2018

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

Today, I return House Bill 4163 with specific recommendations for change.

This legislation would prohibit employers from inquiring about previous salary and compensation of prospective employees.

House Bill 4163 substantially resembles House Bill 2462, which I vetoed in August 2017 with the same recommendations I make today. Since that time, the gender wage gap has remained. My position has not changed – I am committed to eliminating the gender wage gap and I strongly support wage equality. I noted in my prior veto message that Massachusetts already has established a best-in-the-country approach to the issue of employers inquiring about salary history. I recommended that Illinois model its legal regime on Massachusetts' model. Unfortunately, legislators again refused to push forward a bipartisan approach that properly balanced the interests of the business community.

Therefore, pursuant to Section 9(e) of Article IV of the Illinois Constitution of 1970, I hereby return House Bill 4163, entitled "AN ACT concerning employment," with the following recommendations for change:

By replacing page 1, line 5 with "Section 10 and by adding Section 28 as follows:"; and

By replacing page 1, lines 12 through 13 with "on jobs the performance of which requires equal skill, effort, and responsibility, and which are"; and

By replacing page 1, line 23 with "Act."; and
By deleting page 2, lines 1 through 6; and

By replacing page 3, lines 1 through 24 with the following:

"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."; and

By inserting on page 4, immediately after line 11 the following:

"(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 employer's 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."; and

By deleting page 4, line 12 through page 6, line 19.

With these changes, House Bill 4163 will have my approval. I respectfully request your concurrence.

Sincerely,

Bruce Rauner
GOVERNOR