

# *Legal Update*

*October 2017*

## **LIMITS ON EMPLOYEE COMPENSATION DISCUSSIONS**

By Jon Vegosen\*

Employers often adopt policies or utilize agreements or admonitions prohibiting or discouraging employees from disclosing or discussing their compensation with other employees. Understandably, employers view such information as sensitive and confidential. Many employers, however, are surprised to learn that such policies and prohibitions are often unlawful.

### **What Employers May Not Do and Why**

With limited exceptions, certain laws, such as the National Labor Relations Act (“NLRA”), impose limits on both a unionized and non-unionized employer’s ability to prohibit employees – especially non-supervisory employees – from discussing their compensation. In addition, an employer may not prohibit one employee on behalf of another employee or group of employees from seeking to improve compensation and other terms and conditions of employment. Based on the NLRA, the National Labor Relations Board (“NLRB”) has invalidated a variety of policies, confidentiality agreements, employment contracts, handbook provisions, and even unwritten workplace rules prohibiting compensation discussions. Indeed, even if a policy does not explicitly prohibit the discussion of compensation, it may still violate the NLRA. For example, the NLRB has invalidated company policies that merely (a) forbid discussing “personal information of co-workers [and] personnel information such as home phone numbers, cell phone numbers, addresses, and email addresses,” or (b) prohibit discussing “personal information.” The NLRB reasoned these policies could chill employees’ wage discussions.

Employers must also be aware of requirements outside the NLRA. Notably, President Obama issued an April 2014 Executive Order that federal contractors, even if not separately covered by the NLRA, may not prohibit employees and supervisors from discussing their compensation. Further, state laws may also affect employers’ policies and go beyond the prohibitions of the NLRA. For example, the NLRA only applies to employees below the supervisory level, while many state statutes, including one in Illinois, apply to rank-and-file employees and supervisors alike.

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\* Great thanks to [Paul King](#), who will be admitted to the Illinois Bar in November of 2017, for his research and work on this Newsletter.

## **What Employers May Do**

Notwithstanding these prohibitions, employers may limit employee compensation discussions in certain ways, including for example:

- restricting an employee's ability to discuss compensation when that employee's job entails access to the employer's payroll and compensation information;
- prohibiting an employee from disclosing another employee's salary without permission; and
- prohibiting, through an appropriate policy, salary discussions during working time.

Employers may also take steps to educate employees to ensure that they understand their salary ranges and how they can improve their earnings.

## **Conclusion**

Employers should check their policies, agreements, and practices, and confer with legal counsel, to make sure that they are not violating applicable laws regarding restrictions on discussions of employee compensation. They should also train supervisors to ensure that they are aware of these legal restrictions and do not unwittingly violate them.

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