

THOUGHT LEADERSHIP

LEGAL UPDATES

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Illinois Amends Equal Pay Act and Adds Ban on Pay History Inquiries

Key Points:

Illinois amended the Equal Pay Act to protect job applicants by banning inquiries into salary and wage history information.

The Act also protects employees' rights to disclose, and otherwise exercise their rights under the Act regarding wage or salary history information.

The Act prohibits pay discrimination based on race or sex and establishes a new standard for evaluating discriminatory pay disparities by requiring equal pay for substantially similar skill, effort, and responsibility.

Civil actions may be brought by the Director of Labor and employees.

The effective date of the Act is September 29, 2019.

On July 31, 2019, Illinois Governor J.B. Pritzker approved an amendment to the Illinois Equal Pay Act of 2003 (Act) which sets in motion the short 60-day time frame in which employers must comply with the law's mandates. The new provisions of the Act ban questions about wage and salary history and prohibit discriminatory pay practices based on sex and race classification as an African American for jobs requiring substantially similar levels of skill, effort, and responsibility.

Wage disparities

The Act seeks to close the pay gap between men and women and for African Americans by requiring equal pay for work that requires substantially similar skill, effort, and responsibility performed under "similar working conditions." The Act's change in terminology from "equal" to "substantially similar skill ..."

reflects a new standard for determining comparative jobs. The job duties rather than job title also will determine whether work is substantially similar.

Wage disparities resulting from the following circumstances are excepted from the Act:

A seniority system.

A merit system.

A system in which earnings are based on quantity or quality of production.

A differential based on any factor other than sex, race, or a factor that would be protected from discrimination under the Illinois Human Rights Act provided that the factor 1) is not derived from a wage differential based on sex, race, or another protected characteristic; 2) is job related with respect to the position and consistent with a business necessity; and 3) accounts for the differential.

Job locations in different counties.

Ban on salary or wage history inquiries

The Act also bans salary and wage history inquiries and prohibits employers from engaging in the following specific activities:

Discriminating or retaliating against employees from disclosing or discussing employees' compensation, or otherwise encouraging employees from exercising their rights under the Act;

Requiring employees to sign a contract or waive their right to disclose pay information;

Screening job applicants based on pay history, including use of minimum and maximum pay criteria;

Inquiring about or requiring the pay history of a job applicant as a condition of employment;

Obtaining pay history from a job applicant's current or former employer;

Discharging or discriminating against any individual for failing to comply with a pay history inquiry; and

Correcting pay disparities by reducing the pay of other employees to eliminate unlawful discriminatory pay disparities.

Employer rights

The terms of the Act specifically allow employers to prohibit human resources employees with access to employee pay records from disclosing employees' pay information without written consent of the employee. Additionally, the prohibition on acquisition of an employee's pay records does not apply in certain circumstances if the information is a matter of public record or the employee is an internal job applicant.

An employer also is allowed to discuss salary expectations with a job applicant but cannot consider an applicant's compensation information in its job offer to the applicant where the applicant "voluntarily and without prompting" discloses pay history information.

Enforcement measures

A civil cause of action may be brought by an individual or the Director of Labor for violations of the Act within five years from the date of the violation or underpayment of compensation. Individuals may recover damages, including damages for malice and reckless indifference, punitive damages, injunctive relief, interest, costs, and attorneys' fees for claims of unlawful wage disparities. For claims alleging violation of the pay history ban, individuals may recover damages incurred, special damages not in excess of \$10,000.00, costs, and attorneys' fees.

A separate civil action brought by the Director of Labor subjects an employer to additional penalties, including penalties of up to \$5,000.00 per employee per occurrence.

What this means to you

To avoid exposure to liability and damages under the Act, employers should:

Review all recruitment and hiring materials and policies to remove inquiries into pay history;

Update training for personnel involved in hiring about the ban on pay history inquiries;

Conduct a comprehensive pay audit of their workforce to comply with the new standard regarding pay disparities for substantially similar work.

If you have a question about your obligations under the Illinois Equal Pay law, would like review of your hiring and recruitment materials, or training for your human resource and management team on the new prohibitions under the law, contact Joe Glynias, A.J. Weissler or your Husch Blackwell attorney.

Tracey Oakes O'Brien was a contributing author of this content.