

LEGAL UPDATES

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# Illinois Enacts SB 1480 Strengthening the Equal Pay Act and Restricting Use of Criminal Convictions in Employment Decisions

On March 23, 2021, Illinois Governor Pritzker signed into law Senate Bill 1480, which amends both the Illinois Human Rights Act (IHRA) and the Illinois Equal Pay Act, and requires employers to report EEO-1 and pay data to the Illinois Secretary of State.

## Key points of SB 1480

Provides individuals who have been involved with the criminal justice system a fair chance to obtain employment by restricting the use of criminal conviction records to make an adverse employment decision or otherwise disqualifying an individual from an employment opportunity until after the employer has determined that a substantial relationship exists between the conviction and the job, and has engaged in an interactive process with the individual.

Obligates Illinois employers who are required to file an EEO-1 report with the Equal Employment Opportunity Commission (EEOC) to include in annual corporate reports filed with the Illinois Secretary of State information that is substantially similar to the employment data reported under Section D of the corporation's EEO-1 form including data relating to the gender, race and ethnicity of employees.

Requires private-sector employers with more than 100 employees to obtain an equal pay registration certificate from the Illinois Department of Labor (IDOL)

by providing proof of total wages paid to each employee for the prior calendar year as well as race, gender and ethnicity of each employee.

### **IHRA amendment relating to criminal convictions**

The IHRA protects against discrimination and forbids employers from taking adverse employment action against an employee based on the protected characteristics of sex, pregnancy, race, color, national origin, ancestry, national citizenship status, religion, age, physical or mental disability, marital status, military status, order of protection status, sexual orientation or gender identity.

Effective immediately, SB 1480 amends the IHRA by extending protections to individuals with a criminal conviction record and restricting employers' use of criminal conviction records as a basis to disqualify or take adverse action against an individual in an employment context unless:

There is a substantial relationship between the criminal offense(s) and the employment position; or

There would be an unreasonable safety risk to any person or property.

The term "substantial relationship" includes a consideration by the employer of "whether the employment position offers an opportunity for the same or similar offense to occur" or presents circumstances that will lead to similar conduct. If either factor exists an employer may decide that the individual's conviction record disqualifies the individual from the employment opportunity.

Employers are required to consider the following mitigating factors when making a determination of the existence of either a substantial relationship between the criminal offense and the employment position or an unreasonable safety risk:

The length of the time since the conviction;

The number of convictions on the record;

The nature and severity of the conviction and its relationship to the safety and security of others;

The facts and circumstances surrounding the conviction;

The age of the employee at the time of the conviction; and

Any evidence of rehabilitation efforts.

Individuals who are disqualified are entitled to a written notice of the preliminary employment decision that identifies the conviction or convictions that are the basis of the preliminary decision; a copy of the conviction history report; and information regarding their right to respond to the notice and to provide mitigating information before the decision becomes final. In such cases, disqualified individuals must be given five business days to respond to the notice.

If, after considering an individual's response, an employer decides to disqualify the individual based upon their conviction record, the employer must:

Notify the individual of the final decision in writing;

Identify the conviction(s) that are the basis of the final decision, the employers' "reasoning" and any existing procedures available to the individual to challenge the decision; and

Inform the individual of the right to file a charge with the Illinois Department of Human Rights (IDHR).

The IDHR has published FAQs on its website as a compliance guide for employers.

### **EEO-1 data filing requirements**

SB 1480 also amends the Illinois Business Corporation Act to require any domestic or registered foreign corporation that is currently required to file an EEO-1 report with the EEOC to include in annual corporate reports filed with the Illinois Secretary of State information that is substantially similar to the employment data reported under Section D of the corporation's EEO-1 form.

The Secretary of State will publish the data on the gender, race and ethnicity of each corporation's employees on the Secretary of State's official website within 90 days of receipt of a properly filed annual report. This requirement applies to a corporation's annual report filed on or after January 1, 2023.

### **Amendments to the Illinois Equal Pay Act**

SB 1480 amends the Equal Pay Act of 2003 by requiring private-sector employers with over 100 employees in Illinois to obtain an "equal pay registration certificate" from the IDOL within three years after the effective date of SB 1480. To receive the certificate, covered employers must provide a copy of their EEO-1 report as described above and proof of total wages paid to each employee during the prior calendar year. The term "wages" as used in this amendment adopts the broad definition of wages used in Section 2 of the Illinois Wage Payment and Collection Act. Employers subject to the amendment must obtain a recertification from the IDOL every two years thereafter.

The purpose of the amendments is to eliminate unlawful discriminatory compensation disparities based on gender, race and ethnicity by ensuring that the average compensation of female and minority employees is not consistently below the average compensation of male and non-minority employees within the same job categories of the EEO-1 report after accounting for job-related factors.

The amendment to the Equal Pay Act also includes audit provisions, whistleblower protections, and imposes a civil penalty in an amount equal to 1% of the non-compliant employer's gross profits.

The IDOL is directed to issue additional instructions for employers related to this amendment shortly.

## **What this means to you**

The impact of the amendments to the IHRA and the Equal Pay Act are significant. Non-compliance with the amendments to the Equal Pay Act subjects employers to audits and penalties. Employers should consult with counsel regarding best practices; to update employment manuals, policies, applications, and forms; and to ensure compliance with new Illinois EEO-1 reporting requirements.

## **Contact us**

For guidance on compliance issues related SB 1480, contact Anne Mayette or your Husch Blackwell attorney.

*Julie Garabedian, Law Clerk, is a contributing author of this content.*