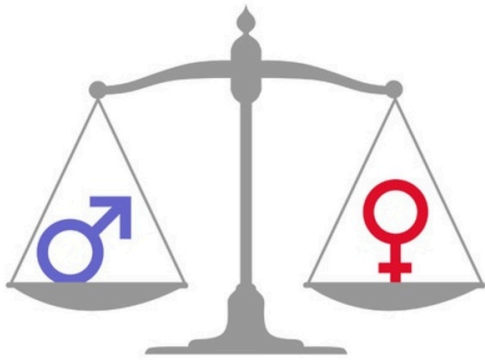


More Tweaks to the IL Equal Pay Act

Labor & Employment Law Update

By Beverly Alfon on July 1, 2021



On June 25, 2021, Governor Pritzker signed into law additional amendments to the IL Equal Pay Act of 2003.

March 2021 Amendments (Recap)

As outlined in our March 23, 2021 blog article, *Will Employers Have to Give 1% of their Total Gross Profits to the State of Illinois?* Gov. Pritzker Signs into Law Unprecedented Changes to IL Equal Pay and Corporate Laws, the March

amendments to the Act require businesses with 100 or more employees to obtain certification of compliance with the Equal Pay Act from the IL Department of Labor (IDOL).

The certification process requires employers to submit an application that contains a statement affirming compliance with the equal pay principles set forth in Title VII of the Civil Rights Act, the Equal Pay Act of 1963, the IL Human Rights Act, the Equal Wage Act, and the IL Equal Pay Act of 2003. Specifically, the statement must be signed by an officer or agent of the business and confirm the following representations:

- The average compensation for the business's female and minority employees is not consistently below the average compensation for its male and non-minority employees within major job categories when accounting for various distinguishing factors;
- The business does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex;

- The wage and benefit disparities are corrected when identified to ensure compliance with applicable anti-discrimination laws; and

In addition, employers who are required to file a federal EEO-1 report must also include a copy of their most recent EEO-1 report.

June 2021 Amendments

Deadline: Employers subject to the certification requirement as of March 23, 2021, must apply to obtain an equal pay registration certificate between March 24, 2022, and March 23, 2024. Covered employers that obtain authorization to do business in Illinois *after* March 23, 2021, must apply for certification within 3 years of commencing operations, but not sooner than January 1, 2024. Recertification must occur every 2 years.

Certification Application Requirements: Covered employers must also submit a “wage records” list of all employees in the past calendar year, categorized by the county in which the employee works, gender and race/ethnicity with corresponding wages paid to each employee over that period, the employee’s start date with the business, and “any other information the Department [of Labor] deems necessary to determine if pay equity exists.” Employers with fewer than 100 employees must certify that they are exempt from requirements.

Compensation Approach: The original legislative text required employers to provide the IDOL with the “system” used to set compensation and required employers to select from certain options (e.g., market-based, performance pay, internal analysis, etc.). Under the new amendments, the employer is required to describe the “approach” used to determine wages, but the employer is not required to select from any specific system. Instead, the statute states that “acceptable approaches include, but are not limited to, a wage and salary survey.”

Penalties: The March amendments provided that employers who fail to comply with the certification requirements or provide false information to the IDOL would result in a non-discretionary fine of 1% of their annual gross profits. Now, the Act authorizes a penalty of \$10,000 for violation of the equal pay certificate requirements.

Grace Period: There is now a 30-day grace period for an employer to correct an inadvertent failure to timely file an application or cure deficiencies in the application for certification.

Third Party Access: A current employee of a covered employer may request “anonymized” data regarding his/her specific job classification, including pay rate/salary. “Individually identifiable information” will not be subject to FOIA requests. The June amendments set forth penalties for IDOL employees who are found to have leaked confidential application information – but the IDOL is authorized to share aggregate data and “individually identifiable information” with the IL Department of Human Rights or Office of the IL Attorney General.

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Side note: On June 28, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) announced that it is extending the July 19, 2021, deadline to submit and certify 2019 and 2020 EEO-1 Component 1 reports to **Monday, August 23, 2021**.

Our recommendations to employers remain the same as set forth in our March 23 blog article:

- Review and, if necessary, modify equal pay policies that demonstrate a commitment to IEPA compliance.
- Audit equal pay compliance annually. This includes creating strong/reliable compensation systems that are in line with the law (base wage, benefits, commission programs and bonus opportunities).
- Update job descriptions annually. Focus not only on job titles, but the actual duties, responsibilities, and qualifications of the position.
- Evaluate performance reviews. These continue to be the “kiss of death” for many employers since very few evaluators are willing to be honest and direct.
- Consider partnering with credible 3rd parties to help design and implement compensation systems in order to comply with all applicable anti-discrimination laws.

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