

Equal Pay Act Amendments

On July 31, 2019, Governor Pritzker signed into law HB834, which amends the Equal Pay Act of 2003. Effective September 30, 2019, all employers must comply with the following provisions.

Employment Screening

This law prohibits employers from screening job applicants based on: their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history of an applicant satisfy minimum or maximum criteria. Employers are prohibited from requesting or requiring applicants to disclose wage or salary history as a condition of employment, or from requesting such information from a current or former employer.

It is unlawful for an employer to seek the wage or salary history from any current or former employer except if:

1. The job applicant's wage or salary history is a matter of public record under the Freedom of Information Act, or any other equivalent State or Federal law,
2. The job applicant is a current employee and is applying for a position with the same current employer.

An employer is not in violation of this section in the case that an employee voluntarily disclosed his or her current or prior wage or salary history on the condition that the employer does not rely on the voluntary disclosures as a factor in determining an offer of employment.

Disclosing Compensation

Under the new provisions, an employer is prohibited from requiring an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing information about the employee's wages, salary, benefits, or other compensation.

An employer may only prohibit a human resources employee, supervisor, or any other employee whose job duties require or allow access to other employee's wage or salary information from disclosing that information without prior written consent from the employee.

Wage Discrimination

The law amends the Equal Pay Act's protection in two ways:

1. Instead of having to demonstrate that another employee performs work requiring "equal" skill, effort, and responsibility, plaintiffs will now only have to show that the levels of skill, effort and responsibility are "substantially similar."
2. The law limits employers' ability to justify pay disparities based upon "any factor other than" unlawful discrimination by requiring employers to show that the factor relied upon "is not based on or derived from a differential in compensation based on sex or another protected characteristic," that it is "job-related with respect to the position and consistent with business necessity," and that the factor "accounts for the differential."

Penalties

Under the new law, employees are allowed to recover compensatory damages if the plaintiff demonstrates that the employer acted “with malice or reckless indifference,” and punitive damages. Employers who are in violation of the new restrictions on salary history inquiries can be held liable for special damages of up to \$10,000 and any additional compensatory damages necessary.

What Employers Should Do

The Equal Pay Act applies to all Illinois employers, regardless of size, including governmental bodies. Employers should consider taking the following steps to insure compliance with this new law:

1. Employers must change their recruiting and hiring practices to eliminate inquiries regarding compensation and benefit history and should not rely on candidates’ compensation or benefit history when selecting candidates or determining compensation or benefits.
2. When recruiting, employers should shift compensation discussions with candidates away from the candidates’ salary history to focus on candidates’ expectations and the salary range that the employer has identified for the position.
3. Employers should train all personnel involved in the recruiting and hiring process on these new requirements.
4. Employers should review their existing compensation structures to identify pay differentials between employees who perform similar work and assess whether those differentials can be justified under the amended law. Differentials based solely upon prior compensation history may now be difficult for employers to defend.
5. While employers should consider addressing any pay disparities that may be problematic under the new law, they should be cautious in how they do so. The Act prohibits employers from reducing the pay of any employee to comply with the Act.
6. Employers should review their confidentiality policies and agreements to ensure that they do not run afoul of the Act’s new restrictions on provisions limiting disclosure of compensation information.
7. Employers should consider posting the salary range and benefits applicable to the position.

References: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0177>
<https://www.wagehourinsights.com/2019/06/illinois-poised-to-ban-salary-history-inquiries/>