

New Illinois Legislation Targets Equal Pay; Requires Detailed Pay Report and New Enforcement Methods

March 24, 2021

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An [amendment](#) to the Illinois Equal Pay Act of 2003 requires that, beginning March 23, 2024, employers with more than 100 employees in Illinois must certify compliance with the Equal Pay Act by obtaining an Equal Pay registration certificate from the state Department of Labor.

Under the amendment signed by Governor J.B. Pritzker on March 23, 2021, businesses must pay a \$150 filing fee and submit a statement of compliance with equal pay to the Department of Labor for certification. To obtain the certificate, businesses required to file a federal EEO-1 report (generally companies with more than 100 employees) also must include a copy of their most recent EEO-1 report, and additionally submit a list of all employees in the past calendar year, categorized by gender and race/ethnicity with corresponding wages paid to each employee over that period. Figures are to be calculated to the nearest hundred dollars.

Application for Certification

With the application for certification, a business must:

- Submit a statement signed by an officer or agent asserting that the business is in compliance with Title VII of the Civil Rights Act, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, and the Equal Pay Act of 2003. Currently, what constitutes compliance is vague, to be determined “by rule of the Department of Labor.” As a result, employers must watch for Department of Labor guidance and regulations on how onerous obtaining an equal pay certificate will be for businesses.
- Affirmatively confirm that the business does not restrict certain genders to specific roles and makes employment decisions without regard to sex.
- Explain how often the business reviews wages and benefits for disparities among protected and non-protected classes and certify that wage and benefit disparities are corrected when identified.
- Outline the system used to determine employee compensation, whether through market pricing, state wage requirements, a performance pay system, or other alternative measures.

The amendment requires companies to submit materials and obtain a certificate every two years after the initial compliance. New businesses must obtain the certificate within three years of beginning operations and every two years thereafter.

Enforcement

The Department of Labor will not deny issuance of a certificate unless the required information is not listed by the business in its application. On the other hand, an Equal Pay registration certificate can be revoked if the Department of Labor finds a business has not made good faith attempts to comply with, or has multiple violations of, Title VII, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, or the Equal Pay

Act of 2003.

For businesses at risk of certificate revocation for non-compliance with the Equal Pay registration certificate requirements, the Department of Labor may interview or take depositions from witnesses and may issue subpoenas for production of all relevant documentation or records. If a business does not comply, the department can compel production by proceeding for contempt in circuit court. The amendment offers threatened businesses some recourse. A business that has been notified of the department's intent to suspend or revoke its registration certificate may request an administrative hearing by filing a written request within 20 calendar days after notice is served.

A business that fails to procure the Equal Pay registration certificate, or whose certificate is revoked, will be fined an amount equal to one percent of the business's gross profits. Businesses with state contracts may have those contracts revoked as a penalty.

The amendment also provides the Department of Labor authority to audit a business to ensure compliance with the Equal Pay Act. If audited, a business may have to disclose data on the numbers of its male and female employees, accompanying average salaries, and other information on compensation. The statute also grants the department broad authority to request disclosure of "other information" identified by the Director of the Department of Labor as necessary to ensure compliance.

Similar statutes in other jurisdictions are rare. In the United Kingdom, where pay equity data is published publicly, employers are encouraged to include an addendum describing any pay equity programs used by their business to address wage disparity. In Illinois, businesses must wait for the Department of Labor's directives on the equal pay requirements.

For more information about this statutory amendment or other workplace laws, please contact a Jackson Lewis attorney.

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