

Equal Pay Act

The Illinois Equal Pay Act (“IEPA”) prohibits employers from paying a lesser wage based on gender. The recent amendments effective on January 1, 2020 will prohibit an employer from paying a lesser wage based on gender for the same or similar work, performed under the same or similar working conditions.

The IEPA now imposes the burden of proof on employers to demonstrate that wage differentials are based on a factor other than gender. Legitimate factors for a difference include seniority, merit or productivity. However, employers must demonstrate that each factor is applied reasonably and/or is consistent with business necessity. Any factors used must account for the entire wage disparity.

Salary History Inquiries Prohibited

Illinois employers cannot ask job applicants about their current, or prior salary histories, benefits or other compensation. Employers also cannot seek salary information from an applicant’s current or former employers. Voluntary disclosure by an applicant is permissible under the Act. However, an employer cannot consider that information when determining whether to make an offer and its terms.

Sharing Information with Current Colleagues

The IEPA also protects the right of employees to discuss their salaries and benefits with colleagues. Employers cannot require an employee to sign a contract or waiver that would prohibit an employee from disclosing wages, salary, benefits

or other compensation. However, upper level management (including human resources employees and supervisors) cannot disclose this information about others without prior consent.

Compliance

A prevailing employee has always been able to recover the amount of the compensation underpayment, interest, and costs and attorneys' fees in a civil action. However, these amendments also allow for "special damages" (quantifiable monetary losses including lost earnings) already covered above of up to \$10,000 or actual damages (an amount based on proven harm, loss or injury suffered including emotional distress, pain and suffering, or perceived reputational harm) if greater than \$10,000, and injunctive relief. Employees who prove that they were underpaid because of their gender could also receive uncapped compensatory damages, punitive damages (if the employer acted with malice or reckless indifference), and injunctive relief.

Posting and Compliance

Employers must post a notice in their workplace summarizing the IEPA's requirements. The IEPA is enforced by the Illinois Department of Labor could result in additional penalties as high as \$5,000 for each violation for each employee affected. Employees have five (5) years from the date of the violation to bring an action.

Proactive Solutions

Employers that want to be proactive about their compliance with the anticipated changes to the Equal Pay Act may want to conduct gender pay equity audits and should review their pay scales, job applications, job posting boards, and written policies (including confidentiality clauses). Employers should also train hiring personnel, including anyone involved in interviews or recruiting, about the requirements of the new amendments.