

# Illinois Bans Salary History Inquiry in Amendments to State's Equal Pay Act

By Starr M. Rayford

## INTRODUCTION

Illinois is poised to join over a dozen states in banning employers from inquiring as to applicants' salary history. A recently-signed set of amendments to the Illinois Equal Pay Act of 2003 (IEPA), which will become effective on September 29, 2019, will prohibit employers from inquiring about and considering an applicant's salary history when making employment decisions. The amendments also require pay equity between jobs that entail "substantially similar" skill, effort and responsibility.

## LAW CHANGES THAT WILL IMPACT EMPLOYERS

The recently adopted IEPA amendments are designed to help close the wage gap that causes women and minorities to lose significant earnings over the course of their careers.

There are three primary components to the amendments.

First, under the statute, employers may no longer ask applicants to provide their salary history in applications, cover letters, interviews, or as part of the onboarding process. Employers are also precluded from attempting to discover an applicant's prior salary by contacting prior or current employers. The amendments do not prohibit applicants from *voluntarily* disclosing salary history and other information regarding prior compensation. The amendments do, however, bar employers from using an applicant's prior compensation to determine his/her current compensation.

Next, the amendments ensure that employees have the freedom to share information regarding their compensation with one another. Per the statute, employers may no longer forbid employees from discussing wages, salary, benefits, or other compensation. Both formal and informal practices, policies, and customs that attempt to prevent such discussions are now illegal.

Finally, the amendments modify the IEPA with respect to pay disparity. Section 10 (a) of the Act now provides, in part: "No employer may discriminate between employees on the basis of sex [or race] by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex [or race] for the same or substantially similar work on jobs the performance of which requires ***substantially similar*** levels of skill, effort, and responsibility" 820 ILCS 112/10 (emphasis added). Previously, the IEPA prohibited discrimination on the basis of sex when employees were performing substantially similar work on jobs that required "equal" skill, effort and responsibility. The amendment changes the term "equal" to "substantially similar."

## ENFORCEMENT AND LIABILITY

Employers who violate the IEPA amendments may face statutory fines and employee lawsuits.

For salary history inquiry violations, an injured employee may recover: (a) special damages not to exceed \$10,000; (b) compensatory damages, to the extent they exceed special damages; (c) injunctive relief; and (d) costs and reasonable attorney's fees. In addition, a liable employer may be subject to a civil penalty not to exceed \$5,000 for each violation for each employee affected.

For pay disparity violations, an injured employee may recover: (a) the underpaid wages, plus interest; (b) compensatory damages, if the employee demonstrates the employer acted with malice or reckless indifference; (c) punitive damages; (d) injunctive relief; and (e) reasonable attorney's fees and costs. In addition, employers who violate the statute may be liable for civil penalties of up to \$5,000 for each occurrence.

## CONCLUSIONS AND KEY TAKE-AWAYS

It is important for every employer operating in Illinois to review its hiring and onboarding processes and to revise or discontinue any policies and practices that violate the recently enacted IEPA amendments.

- Illinois employers should review job applications and other hiring documentation to remove any requests for, or references to, a job applicants' salary history.
- Employers should train managers and others involved in the hiring process about the changes in Illinois law, including the prohibition on seeking prior salary information.
- Employers should confirm that their practices, manuals and handbooks do not forbid employees from discussing their salary and compensation with one another. Employers should immediately cease enforcement of any such policies.
- Employers should consider evaluating their compensation practices to confirm that any wage discrepancy between employees of different sexes or races, where the employees perform substantially similar work, are attributable to job-related factors.

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