

What HR Professionals Need to Know About Illinois Equal Pay Act Certificate Applications

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Practice Area: Labor and Employment

Many states have adopted strict pay equity laws designed to eliminate pay inequities for certain protected classes, such as women and minorities. Illinois is one such state. As many HR Professionals are aware, the Illinois Equal Pay Act (“IEPA”) was amended to require private businesses with more than 100 employees in the State of Illinois to obtain an Equal Pay Registration Certificate (“Certificate”) by March 23, 2024, and every two years thereafter.

The Certificate is intended to increase compliance with the IEPA’s pay equity mandates, authorizing the Illinois Department of Labor (“IDOL”) to collect information to determine whether employers are complying with the IEPA. As deadlines approach, HR departments throughout the state are making this a hot button item to avoid fines and other consequences of noncompliance. This *Legal Update* is intended to help HR Professionals confront the pay equity challenges just around the corner.

Covered Employers Must Submit a Timely Application to Obtain the Certificate

In order to obtain the Certificate, employers must submit an application package by the particular deadline assigned to the business by IDOL. These deadlines are being issued on a rolling basis with an individual notice being sent directly to employers advising them of the deadline. For example, on January 25, 2022, IDOL issued notices to 625 Illinois businesses with a deadline of May 25, 2022 to submit their application.

With application dates being assigned at random and without an announced timetable, Illinois employers who have not already done so should register with the IDOL to ensure they receive notice. HR Professionals should not wait to the last minute as the application’s requirement constitute a significant undertaking.

Please note that the IEPA amendments specifically provide that failure by the IDOL to assign an application deadline *does not* extend the overall March 23, 2024 deadline for obtaining the Certificate. With employers facing fines of up to \$10,000 per violation—and it is unclear whether this fine would be applied as a “one-time” fine, or a continuing violation for each day of non-compliance—employers are advised to take steps now to prepare their Certificate applications.

What Do I Need to Gather to Complete My Application?

The Application requires wage records and data for all covered employees. This information includes:

- A copy of the employer's most recent annual EEO-1 form;
- A list of all employees employed during the past calendar year;
- Date each employee started working for the business;
- Breakdown by gender, race, and ethnicity categories for all employees;
- County in which each employee works;
- Additional information required by the IDOL to determine pay equity; and
- Total wages paid to each employee during the past calendar year.

The Application will also require submission of an Equal Pay Compliance Statement signed by a responsible agent of the business. It is anticipated that this Compliance Statement may be a labor-intensive process. For example, the business may need to perform a pay equity analysis to determine whether the average compensation for its female and minority employees is not consistently below the average compensation for male and non-minority employees for each job category reported on the EEO-1 form. The business must consider the following factors in making this certification:

- Length of service;
- Requirements of specific jobs;
- Experience, skill, effort, responsibility, and working conditions of the job;
- Education or training;
- Job location;
- Use of a collective bargaining agreement;
- Other mitigating factors.

The Equal Pay Compliance Statement will also require certification of the following items:

- Compliance with IEPA and all other relevant EEO laws, both state and federal;
- That the business makes employment decisions without regard to sex;
- That job classification assignments are not restricted by sex;
- Wage and benefit disparities are identified to ensure pay equity under the IEPA;
- The frequency on which wage and benefits are evaluated;
- How and whether the business determines wages and benefit levels by acceptable approaches consistent with pay equity.

Key Take-Aways for Next Steps

Illinois has made clear that pay equity monitoring and enforcement is a priority for the IDOL. Fines and penalties for pay equity claims and audits can be a significant liability. The prospect of negative publicity for non-issuance of Certification is a valid concern for Illinois businesses, as such information will be publicly available. To protect the business, we believe the key take-away for HR Professionals is to be pro-active in determining compensation practices for pay equity issues on a company-wide basis. We suggest the following may be considered:

- Review the wage and benefit data to determine whether there are any pay equity or wage gap concerns lurking in your company;
- If any pay equity concerns are present, determine the cause and correct it now, rather than later, well before the application becomes due;
- Review compensation practices and policies to ensure compliance with pay equity principles;
- Consider a pay equity analysis to cut wage gaps and be an exemplar of cutting edge pay equity practices;
- Stay ahead of the curve – engagement with the workforce to assess employee morale and concerns as to any actual or perceived wage gaps or equity issues;
- Develop strategies and policies to bring your company to the forefront of pay equity thought leadership and initiatives;
- Address both internal and external recruiting and promotion strategies to eliminate bottlenecks in the pay equity progression;
- Consider wage, benefit and other PTO packages from a global equitable-result generating perspective.

HR Professionals may find value in consulting with experienced labor and employment counsel to assist with this process.

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