

ILLINOIS EMPLOYERS NEED TO GEAR UP FOR NEW EQUAL PAY REQUIREMENTS

Insights
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Last year, the Illinois legislature amended the state's Equal Pay Act of 2003 to impose new requirements on employers. This year, employers will need to start complying with the EPA's new equal pay certification requirements – and you'll need to be ready to shoulder this new effort starting next month. What do Illinois businesses need to know about these significant new requirements?

Illinois Equal Pay Act Background

By way of general background, the state's Equal Pay Act (EPA) provides that employees of a different sex or race who perform substantially similar work on jobs that require substantially similar skill, effort, and responsibility (and which are performed under similar working conditions) may not receive a lower wage rate.

The EPA provides for certain exceptions to this requirement. These include a compensation system based on seniority or merit, a system that measures earnings by quantity or quality of production, or a differential that is based on any other permissible factor (provided that the factor is not based on or derived from a differential in compensation based on sex, race, or another protected characteristic, is job-related with respect to the position and consistent with a business necessity, and accounts for the differential).

What Has Changed?

With this background in mind, it is important to note that perhaps the most significant changes to the EPA pertain to employers' obligation to seek and obtain an equal pay registration certificate from the Illinois Department of Labor

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(IDOL). The registration requirements pursuant to the EPA are applicable to employers (1) that have more than 100 employees in Illinois and (2) are required to file an EEO-1 Report with the Equal Employment Opportunity Commission.

Employers that are authorized to do business in Illinois as of March 23, 2021 will be required to seek and obtain an equal pay registration certificate from the IDOL between March 24, 2022 and March 23, 2024 (and then recertify with the IDOL every two years thereafter). Any employer subject to the certification requirements that is authorized to transact business in Illinois after March 23, 2021 must submit an application to the IDOL to obtain an equal pay registration certificate within three years of commencing business operations (but not before January 1, 2024) and must recertify every two years thereafter.

What Will You Need to Do?

So what does an employer's application for an equal pay registration certificate entail? In order to apply for the relevant certificate, employers must do the following:

1. Send their most recent EEO-1 Report to the IDOL;
2. Compile for the IDOL a list of all employees during the past calendar year (separated by gender and the race and ethnicity categories as reported in the employer's EEO-1 Report), the county in which the employee works, the date the employee started working for the employer, and the total wages paid to each employee rounding to the nearest \$100 (the IDOL has a form spreadsheet available for free on its website);
3. Send an equal pay compliance statement (signed by a corporate officer) to the IDOL stating:
 - The employer is in compliance with the EPA, Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, and other antidiscrimination laws;
 - The average compensation for the employer's female and minority workers is not consistently below the average compensation for male and non-minority workers within each job category in the EEO-1 Report, taking into account factors such as length of service,

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requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, education or training, job location, use of a collective bargaining agreement, or other mitigating factors;

- The employer does not restrict employees of one sex to certain job classifications, and makes retention and promotion decisions without regard to sex;
- The employer corrects wage and benefit disparities when identified to ensure statutory compliance;
- How often the employer evaluates employees' wages and benefits; and
- The approach the employer takes in determining what level of wages and benefits to pay its employees (*e.g.*, wage and salary survey); and

4. Send the IDOL a filing fee of \$150.

When Will You Need to Provide the Certification?

As to the exact timing of when an employer is required to apply for an equal pay registration certificate, the IDOL recently issued a press release stating that it will communicate directly with employers when it is time for them to register. According to the IDOL, each employer will receive no less than 120 days advance notice of their registration deadline. As such, employers should be on the lookout for communications from the IDOL so they can file a timely application.

Further, while the EPA directs the IDOL to issue equal pay registration certificates within 45 days of an employer's application and employers are provided 30 days to remedy issues with their application that resulted in a rejection by the IDOL, employers must be mindful of the EPA's penalty provisions. In the event of an employer's noncompliance with these equal pay registration certificate provisions, the penalties are stiff: the IDOL can fine employers up to \$10,000 per employee. Even with a 30-day period to remedy an inadvertent lack of certification (or recertification) as provided by the statute, employers will need to comply with the EPA's provisions or risk substantial fines.

Conclusion

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, any attorney in [our Chicago office](#), or any attorney in our [Pay Equity Practice Group](#).