



Changes Are Coming to the Illinois Equal Pay Act

Insights

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The Illinois House of Representatives and Senate recently voted to override Illinois Governor Bruce Rauner's veto of proposed changes to the Illinois Equal Pay Act, meaning that employers will soon be required to comply with new set of pay equity obligations. The changes will now be part of state law effective **January 1, 2019**. What do employer need to know about these new requirements?

The Act, originally put into place in 2003, prohibits Illinois employers from paying men and women different rates of pay for similar work. Beginning January 1, 2019, the Act's protections will be expanded to African-American workers and will prohibit employers from paying African-American employees less than others. The amended Act applies the same protections afforded to women to African-American employees and states that African-American employees cannot be paid less for performing the same or substantially similar work, on jobs that require equal skill, effort, and responsibility, and for work that is performed under "similar working conditions." Similar to the gender pay equality provisions, the amended Act also recognizes the validity of wage differentials pursuant a seniority system, merit system, a system that measures earnings by quantity or quality of production, or any other wage differential based on any factor "other than race" or one that would constitute unlawful discrimination.

As a result of the amendments to the Act, employers should continue to maintain compliance with the Act by ensuring their employees' compensation is consistent with the employer's neutral, nondiscriminatory wage structures. Additionally, because phrases such as "substantially similar work" and "similar working conditions" are broad and undefined, employers should ensure that each position's duties are sufficiently detailed in company job descriptions. Overbroad job descriptions may be used to support pay equity claims under the Act.

What's Next for Illinois Equal Pay Law?

In 2017, the Illinois legislature passed H.B. 2462, which would have prohibited employers from screening job applicants based on their wage or salary history. However, this bill was vetoed by Governor Rauner on August 25, 2017. In 2018, a similar bill, H.B. 4163, was passed by the Illinois legislature—but again vetoed by Governor Rauner in September 2018.

Those in favor of such legislation argue that inquiries into pay history only further perpetuate wage discrimination and the gender pay gap, given the history of unequal pay to women. However, many employers feel that outlawing inquiries into wage history would prevent employers from adequately valuing the job market. Many employers posit that salary history is not used to discriminate: rather,

rating the job market. Many employers peak that salary history is not used to discriminate; rather, such information is used to gauge prospective employees' interest in the job, to compare to other applicants, and to evaluate the monetary component of job offers. Further, once an employee is ultimately hired, laws such as the Illinois Equal Pay Act already require employers to fairly compensate their employees.

Equal pay laws are prevalent in today's political and employment law discourse. Illinois employers should therefore stay apprised of all developments in regard to this legislation. While outgoing Republican Governor Rauner vetoed the pay history legislation twice, such legislation is not expected to receive any scrutiny from incoming Democratic Governor, JB Pritzker. Thus, Illinois employers should be aware that legislation outlawing pay history inquiries seems inevitable.

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