



Illinois Equal Pay Reporting Obligations

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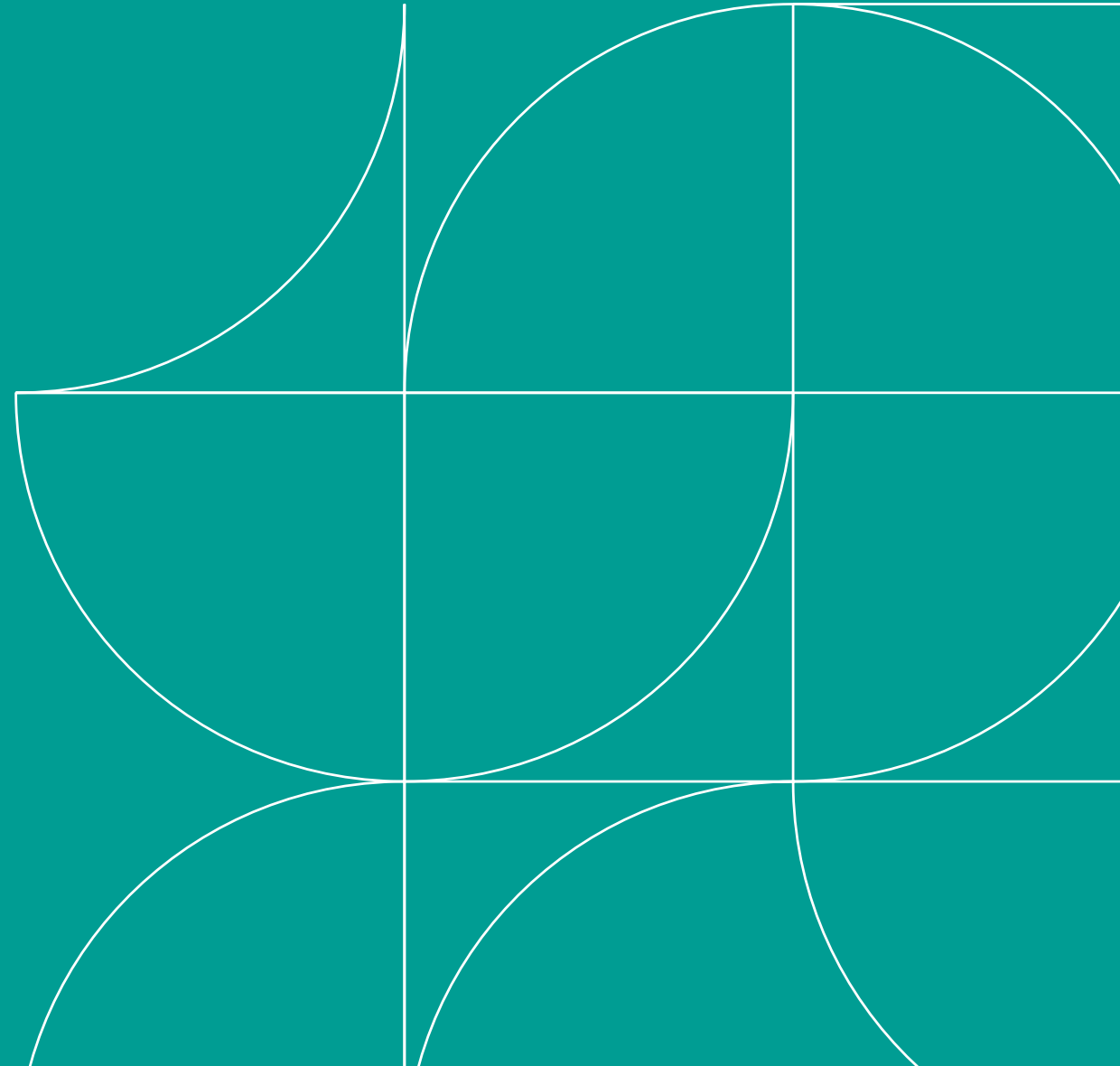
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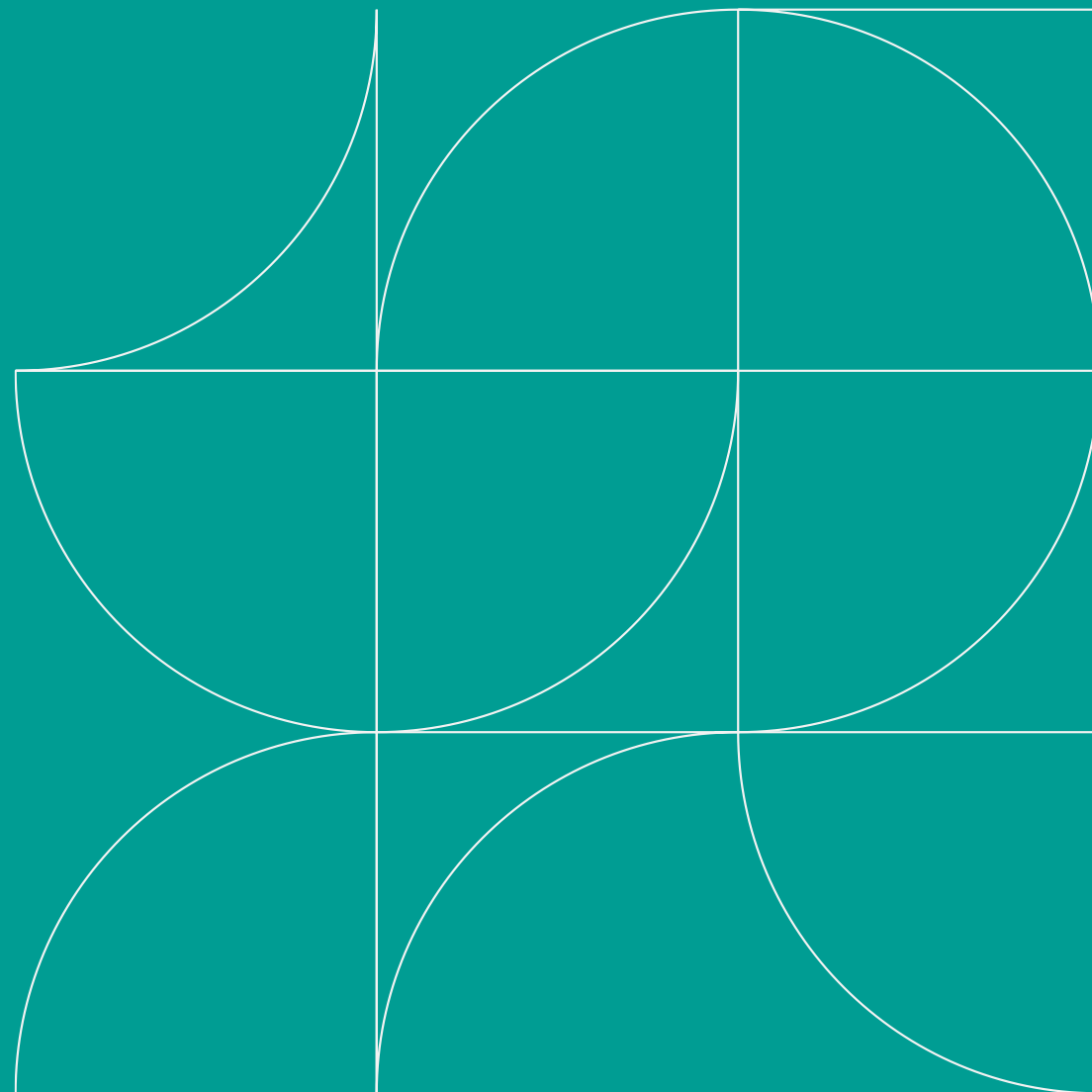


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Agenda

- 01** Background
- 02** Application Components and Process
- 03** Access to Data
- 04** Administrative Procedures and Penalties
- 05** Next Steps and Take-Aways

Background



Background



- The Illinois Equal Pay Act of 2003 (“IEPA”) prohibits employers with four or more employees from paying unequal wages to women or African-American employees for the same or substantially similar work.
- On March 23, 2021, Illinois Governor J.B. Pritzker signed a major new piece of legislation amending the IEPA designed to target equal pay issues.
- The bill was amended in June 2021 as part of a compromise to address key areas of concern:
 - Replaced of 1% gross profit penalty with a more appropriate penalty
 - Gave employers the opportunity a process to cure deficiencies
 - Added privacy consideration for corporate and individualized data submitted to IDOL

Overview of the Law



- Illinois joins California to become only the second state to require the collection and production of workforce pay data from private employers.
- The Illinois law goes even further by requiring that employers **proactively verify compliance** with certain state and federal laws and by collecting **employee-level** pay data.
- Under the law, a covered “business” must:
 - Obtain an equal pay registration certificate (EPRC) from the Illinois Department of Labor
 - Recertify compliance every two years thereafter

COVERED “BUSINESS”

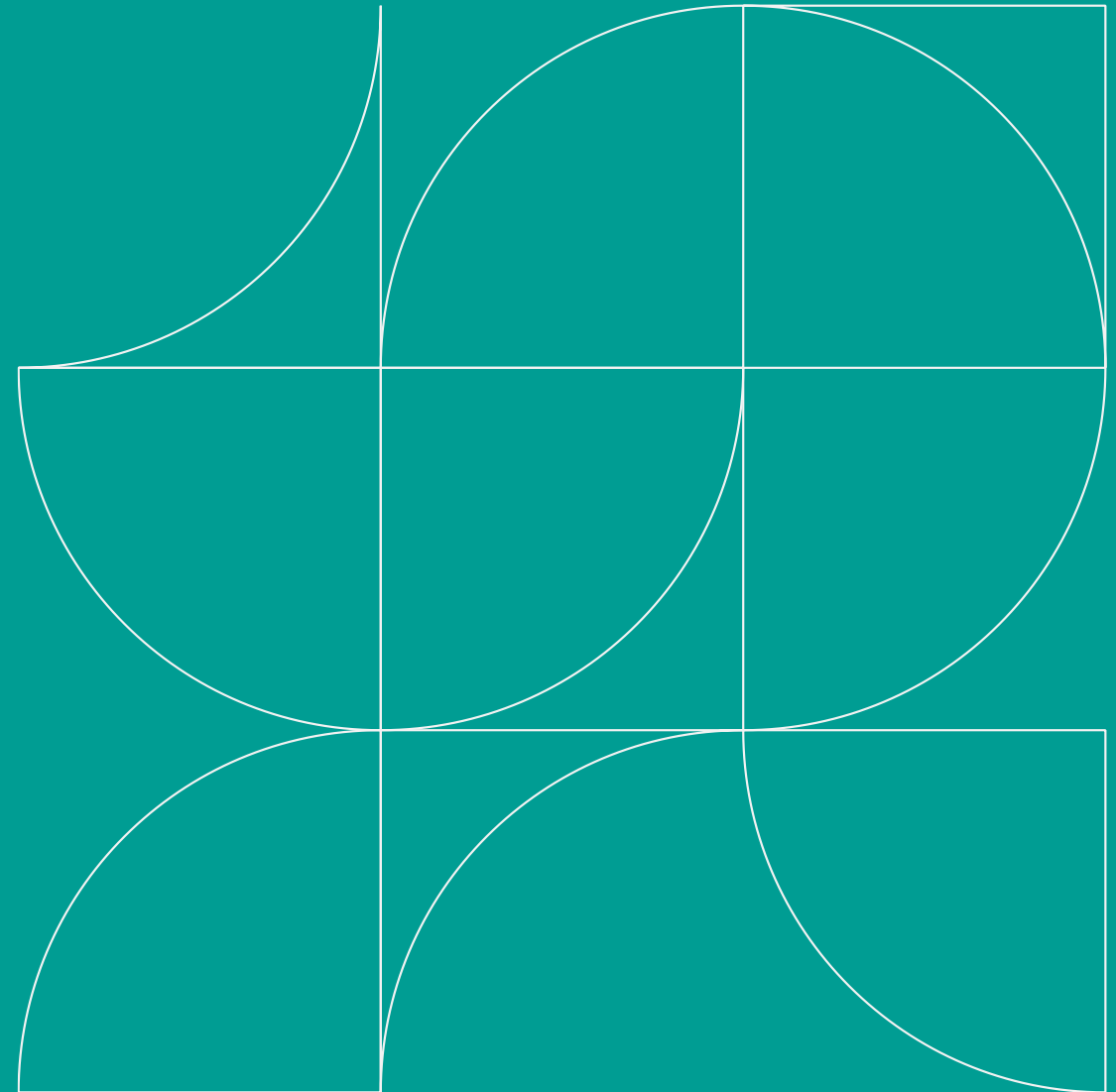
1. The employer has **100 or More Employees** in the State; and
2. The employer is required to file an Annual Employer Information Report **EEO-1** with the Equal Employment Opportunity Commission

****The employee count is evaluated based on EIN, and includes employees who (1) work in Illinois and (2) remote employees who report to an Illinois location. Illinois home-based workers who work remotely and report to a non-Illinois location are NOT included.*

Application Deadlines

- Employers that met the coverage requirements as of March 23, 2021, are required to apply to obtain an EPRC sometime between **March 24, 2022 and March 23, 2024**.
- IDOL will **assign** a specific deadline for an employer's first EPRC application filing
 - First and second notices recently sent to employers – May and June deadlines
- Future notices will go out on a **rolling basis**, but employers will have at least 120 days of advance notice to submit their first application.
- The due date will remain the same for subsequent filings that will be required every other year.
- Covered Businesses are to provide contact information the Illinois Department of Labor (“IDOL”) <https://forms.office.com/g/VQweNsryxx>

EPRC Application Components & Process



1

Filing Fee
(\$150)

2

Equal Pay
Compliance
Statement

3

EEO-1 &
Wage Data

Equal Pay Compliance Statement

- **Statutory Compliance**
 - No non-appealable adverse judgements (anti-discrimination laws).
- **Lack of Wage Disparity**
 - Average compensation for female and minority employees is not below the average compensation of the business' male and non-minority employees in the same EEO-1 report.
- **No Sex-Based Personnel Decisions**
 - Business does not restrict employees of one sex to certain job classifications, and makes retention decisions without regard to sex.
- **Wage Disparities Addressed**
- **Frequency of Wage Determinations**
 - How often wages and benefits are evaluated to ensure compliance with laws
- **Analysis of Wage Determinations**
 - Information regarding the approach the business takes to determining appropriate wages for its employees.

******IDOL has developed a template document for use by employers.***

EEO-1 & Wage Data

- **(1) EEO-1 Report**
 - The business' most recently filed EEO-1 Report.
- **(2) Employee Wage Data** A listing providing **employee-level data** for all Illinois-based employees separated by:
 - Name
 - Last 4 of SSN
 - Gender
 - Race and ethnicity
 - Total wages rounded to the nearest \$100 (*Box 5 of W-2)
 - Hire date (training materials refer to job start date);
 - Termination date (training materials refer to job end date)
 - Job Classification (EEO-1 Category)
 - Job Title
 - County where employee works
- Data may be manually added or uploaded using CSV file

* Per training session

Information Shared by IDOL in Recent Training Session

- Each legal entity with more than 100 employees in Illinois will be required to file separately, each with their own filing fee
 - The 100 employee threshold applies for each EIN separately (i.e., 5 EINs with 90 Illinois workers would not be required to file)
 - 100 employee threshold is determined based 12/31
 - Parent may file but must file separately for each EIN; HQ address can be outside of Illinois
- 2022 filers will provide 2021 EEO-1 for Illinois locations
- Regardless of tenure, all Illinois employees employed during the reporting year should be reported (counts will not match EEO-1)
- Employers will report W-2 Box 5 year-end data
- If an employee held more than one job in the reporting year, the employee should be reported separately by job title
 - It is not clear how compensation would be reported if an employee appears multiple times on the same report
 - Although template requests company tenure, training materials and direction was that start and end dates for each position held during the year should be included.

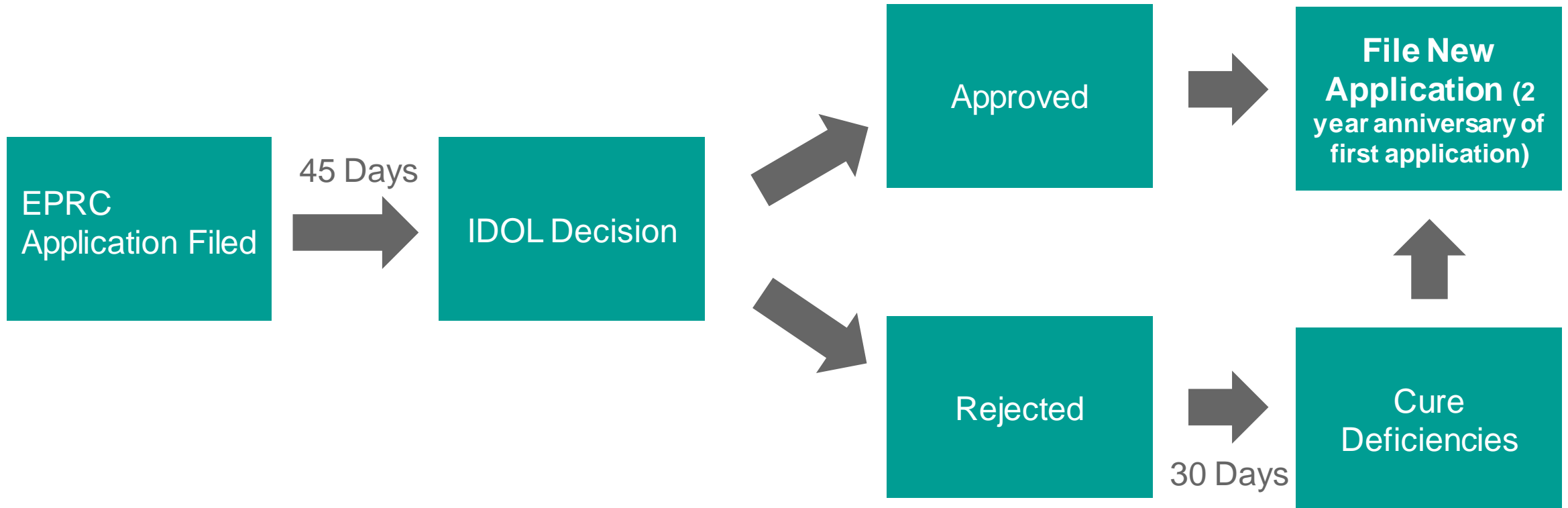
IDOL's Employee List Template

FirstName	LastName	SSN	Gender	Race	Ethnicity	Wages	HireDate	TerminationDate	JobClassification	JobTitle	County
		Last 4 Digits Only	F	American Indian or Alaska Native	Hispanic or Latino	Round to nearest hundred dolla	12/1/2020	12/1/2020	Executive/Senior Level Official or Manager		
			M	Asian alone	Not Hispanic or Latino				First/Mid-Level Official or Manager		
			X	Black or African American alone					Professional		
				Hispanic or Latino of any race					Technician		
				Native Hawaiian or Other Pacific Islander alone					Sales Worker		
				White alone					Office or Clerical Worker		
				Some other race alone					Craft Worker (Skilled)		
				Two or more races					Operative (Semi-Skilled)		
									Laborer (Unskilled)		
									Service Worker		

<https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/equalpay.aspx>

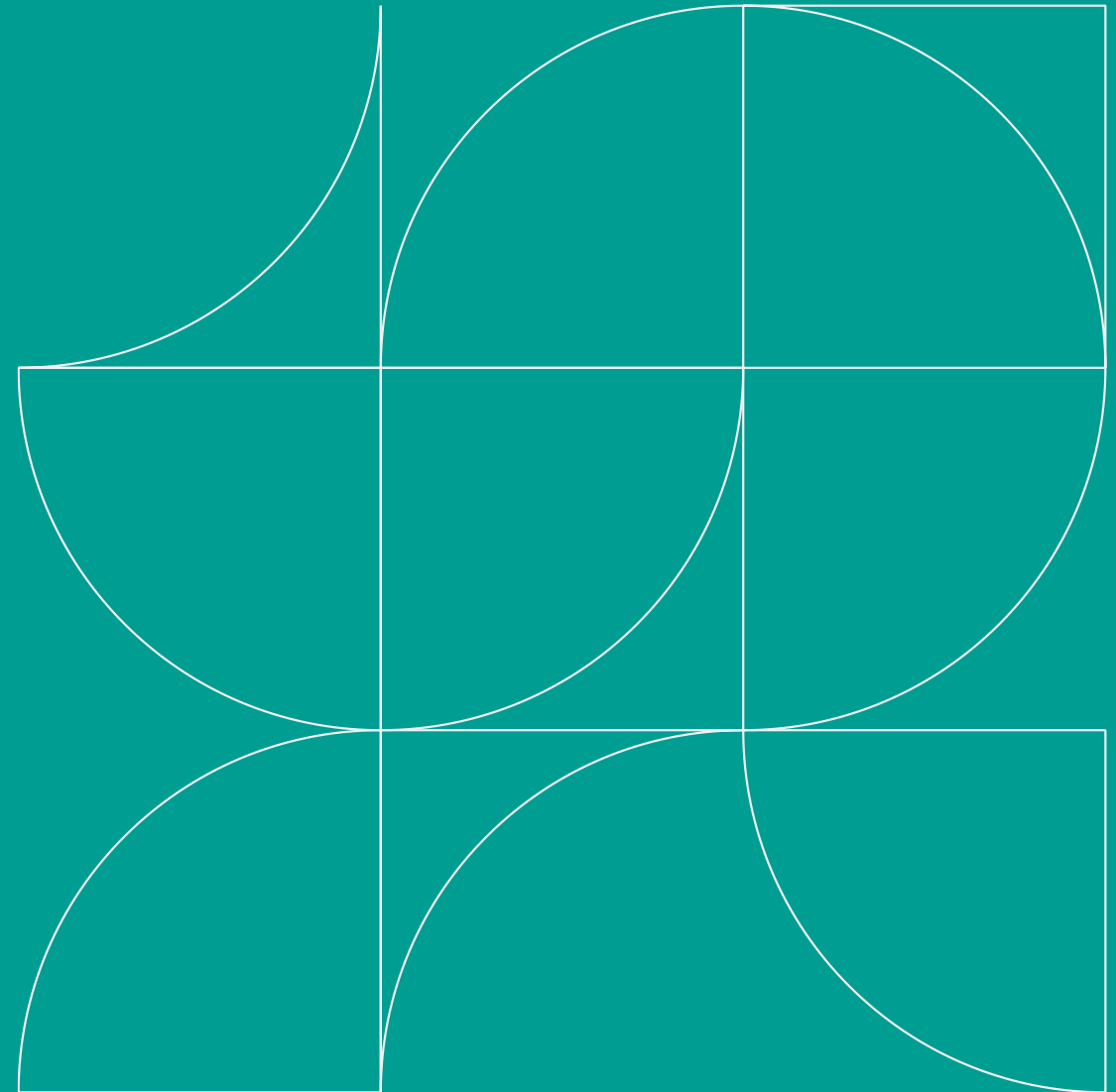
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EPRC Application Process



****Receipt of an Equal Pay Registration Certificate does not establish compliance with the Illinois Equal Pay Act.**

Access to Data



Access to Records

- **Aggregate Data:** Data that is reasonably calculated not to identify individual employees or businesses will be deemed not confidential.
 - Such data includes job category and average hourly wages by county for each gender, race and ethnicity category. IDOL may compile and share such aggregate data.
- Approval, Denial or revocation of EPRC is not confidential

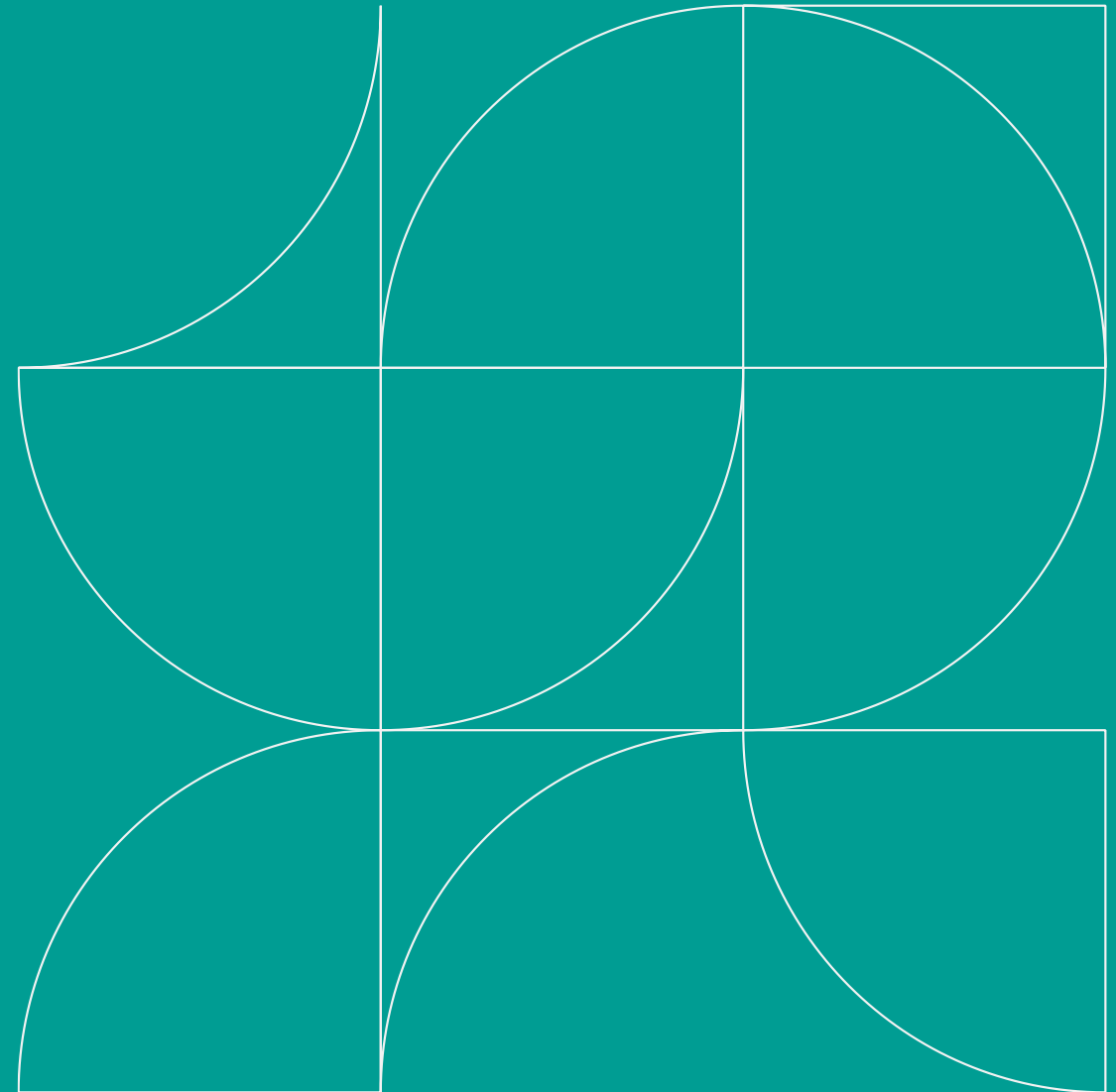


Access to Records

- **Individually Identifiable Information** submitted as part of the Equal Pay Registration Certificate application -- i.e., information associated with a **specific individual or business** -- is considered **confidential** and not subject to disclosure pursuant to an Illinois FOIA request.
- **Employee Requests:** A current employee may request anonymized data from IDOL the **pay for individuals with the same job classification or title**.
 - Affidavit will likely be required to access data
 - But, likely no protection for “small” employee groups



Administrative Procedure and Penalties



Administrative Procedures



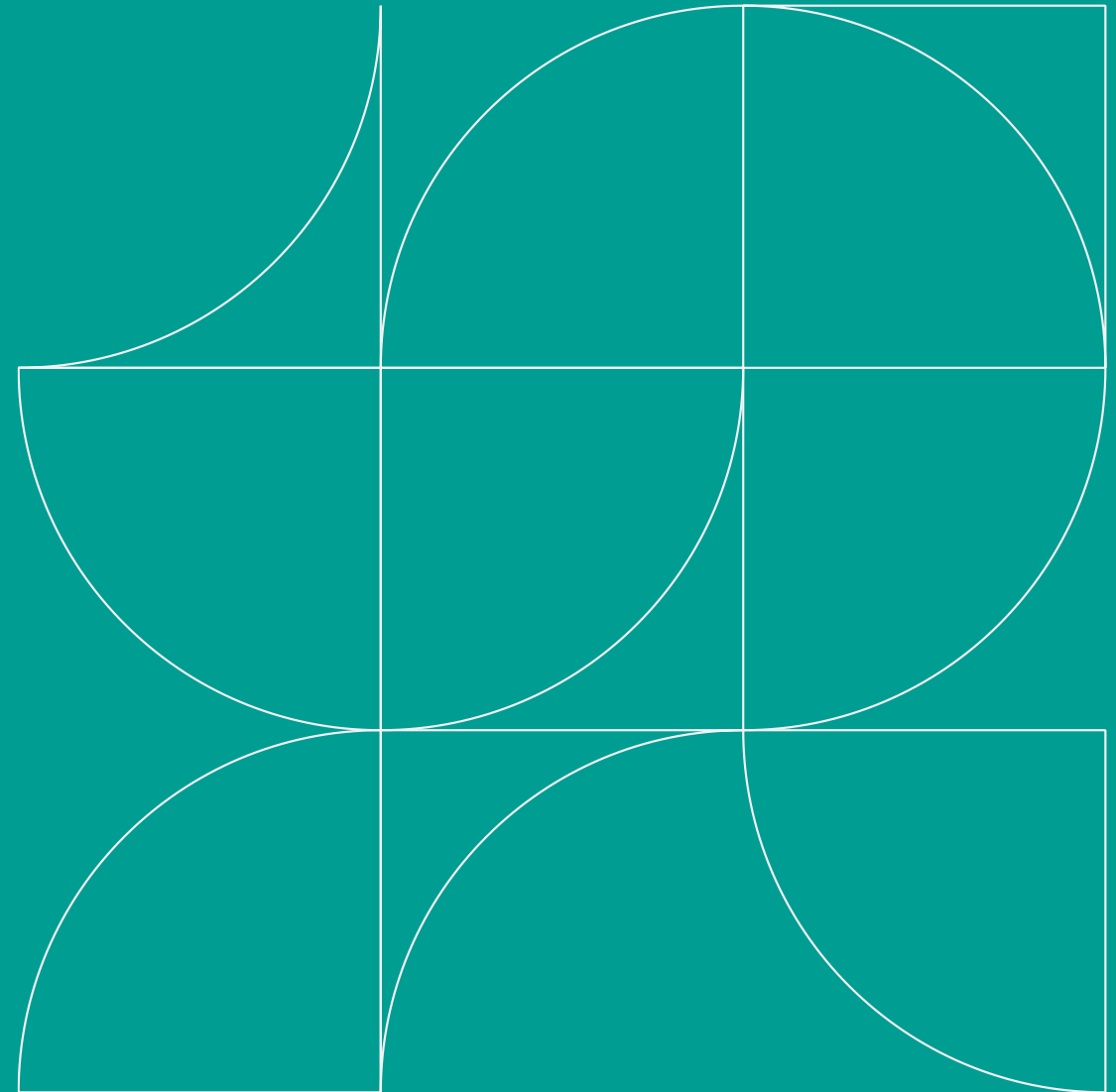
- The Act allows IDOL to **suspend or revoke** the EPRC of an employer:
 - Failure to make good faith efforts to comply with the Act, or
 - If the employer has multiple violations of the anti-discrimination statutes with which it certifies compliance as a part of the EPRC application.
- Before revocation, IDOL is obligated to conciliate with the business concerning wages and benefits it contends are “due” to employees.
- The Act permits IDOL to interview workers, take depositions, and subpoena witnesses testimony, personnel records, and compensation records in connection with a potential suspension or revocation of an EPRC.

Penalties and Enforcement



- Falsification or misrepresentation of information on an application may result in:
 - Suspension or revocation of Equal Pay Registration Certificate; or
 - Civil penalties of up to \$10,000.
- The Act provides that businesses may request an administrative hearing prior to the suspension or revocation of its EPRC or if IDOL imposes civil penalties.
- Businesses requesting an administrative hearing must file a written request within 20 calendar days of receiving notice of the suspension, revocation, or fine.

Next Steps & Take-Aways





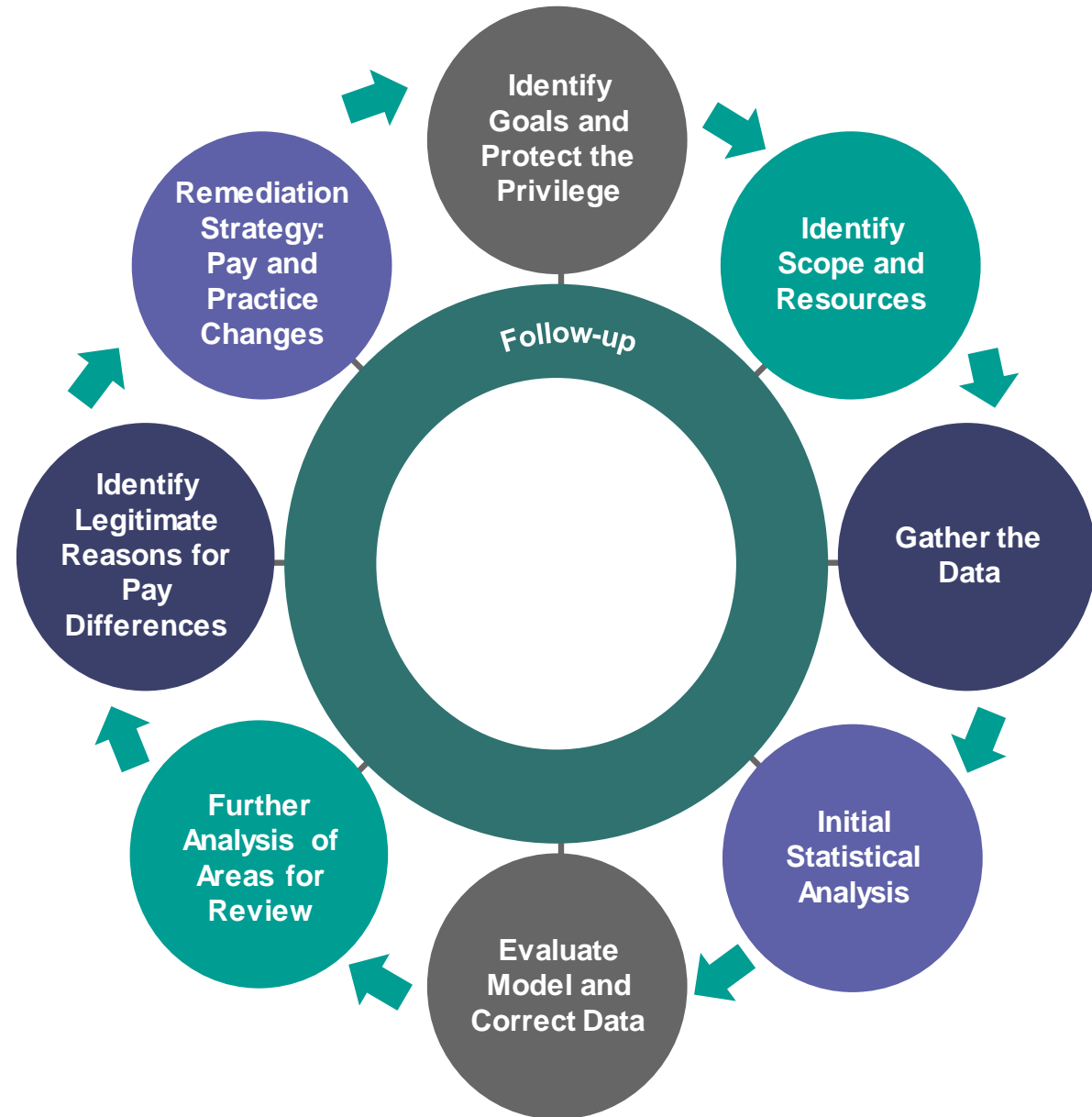
What Employers Should Expect

- We anticipate proposed rules to be released by the IDOL in the coming weeks.
- Employers with upcoming deadlines have been invited to attend IDOL training sessions that provide additional details and specific information regarding the EPRC filing process.
 - <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/equalpay.aspx>

What Should Employers Do Now

- In light of the sensitive nature of certifications, ensure that key stakeholders including HR, IT, compensation and legal teams are aware of the certification and reporting processes
- Ensure relevant information is accessible in the format requested
- Continue to conduct robust pay analyses, ideally under attorney-client privilege
 - Consider whether to evaluate Illinois data alone, by county, to support verification statements
- Develop strategy for responding to certification statements
- Develop strategy for responding to employee inquiries based on data they may receive from IDOL
 - For instance, the data provided to IDOL is limited in that it does not include most of the factors relevant to pay. If an employee questions his or her pay relative to the pay of others, how much information is the employer willing to share?
- Identify relevant contacts to share with IDOL and ensure contact information remains up to date

Life Cycle of a Pay Equity Audit



**thank
you**

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