

# EQUAL PAY UPDATES



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## Illinois - the Newest State to Toughen its Equal Pay Laws with a Robust Salary History Ban

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**Seyfarth Synopsis:** On July 31, 2019, the Illinois Governor J.B. Pritzker signed [HB0834](#) into law, amending the state's Equal Pay Act. The amendments toughen the state's pay equity protections and includes a salary history ban, among other provisions. This adds Illinois to the growing list of states barring employers from inquiring about an applicant's salary history. Former Governor Bruce Rauner vetoed previous attempts to prohibit private employers from requesting applicants' previous pay history, but current Governor J.B. Pritzker had publically pledged to sign the bill into law. The new law becomes effective September 29, 2019.

### Stronger Equal Pay Protections & Tougher Penalties

Since we have been tracking equal pay trends across the country, states, counties, and even cities have enacted more stringent equal pay laws. ([Click here](#) for our 50-State Pay Equity Desktop Reference, which was updated in June.). Illinois now joins a slew of other states to strengthen its equal pay protections, providing for a robust salary history ban and narrowed affirmative defenses, in addition to protecting wage discrimination on the basis of sex and against African American employees.

The amendments change the Illinois Equal Pay Act's requirement that employers pay equally for work that requires "equal" skill, effort, and responsibility and instead allows comparisons to those with "substantially similar" skill, effort, and responsibility. This change broadens the scope of equal pay claims under the Act by expanding the universe of potential comparators, putting Illinois in line with California, Massachusetts, New York, New Jersey, Oregon and other jurisdictions.

The amendments also increase the employer's burden of proof to defeat Equal Pay Act claims by requiring that any differences in pay meet the following criteria:

- Not be based on or derived from a differential in compensation based on sex or another protected characteristic,
- Be job-related and consistent with business necessity, and
- Accounts for the differential in pay.

Violating the Act's new provisions may now cost employers even more. Prior to the amendments, an employee who suffers a violation of the Act was only entitled to lost wages and attorney's fees and costs. Now that the amendments have become law, violating Illinois's Equal Pay Act becomes riskier than in the past since the statute will now allow an employee to recover lost wages, compensatory damages, special damages not to exceed \$10,000, punitive damages and injunctive relief as may be appropriate.

An employer is also subject to civil penalties that range from \$500 for the first offense to \$5,000 for a third or subsequent offense, depending upon the size of the employer, *for each employee affected*.

## Pay History Ban

Illinois is now the fourteenth state with a salary history ban that applies to applicants for employment.

The amendments prohibit Illinois employers from: (i) screening job applicants based on their wage or salary history, (ii) requiring that an applicant's prior wages satisfy minimum or maximum criteria, and (iii) requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment that an applicant disclose prior wages or salary.

Employers are also prohibited from seeking the salary, including benefits or other compensation or salary history, of a job applicant from any current or former employer, with some exceptions. This prohibition does not apply if a job applicant's wage or salary history is a matter of public record or the job applicant is a current employee and is applying for a position with the same current employer.

Employers are free to provide salary information offered in relation to a position and engage in discussions with an applicant about his or her salary expectations. Additionally, the amendments make clear that an employer does not violate the statute when a job applicant voluntarily and without prompting discloses his or her current or prior salary history. But unlike many states that allow employers to consider voluntarily provided information, the Illinois law does not permit employers to consider or rely on the voluntary disclosures as a factor in determining whether to offer a job applicant employment, in making an offer of compensation, or in determining future wages, salary, benefits, or other compensation.

In short, employers may not ask about salaries, but employees are free to discuss that information as they see fit.

## Expanded Anti-Retaliation Provision

The amendments also expand retaliation protections under the Act. The Illinois Equal Pay Act has always prohibited retaliation in response to filing a charge related to the Act, giving information in connection with any inquiry relating to any right under the Act or testifying in a proceeding under the Act. However, it now protects an individual who fails to comply with any wage or salary history inquiry.

## Pay Transparency Protected

Finally, the amendments explicitly protects employees' right to discuss wages, salary, benefits, or other compensation. Employers are prohibited from requiring employees to sign any contract or waiver of these rights. Notably, human resource employees, supervisors or any other employee whose job responsibilities require or allow access to another employees' wage or salary information are exempted from this provision.

## What Should Employers Do?

The new law becomes effective September 29, 2019. Employers should review their job applications and other policies and procedures, make any necessary changes, and consider training hiring managers and human resources employees about the amendments. Because of the complex risks associated with implementing changes to comply with the Act, we recommend working closely with legal counsel before making these changes. In addition, employers should consider whether to conduct a comprehensive pay audit as a proactive step in complying with the statute's protections against discrimination in pay on the basis of sex and against discrimination in pay for African American employees.

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