

**100TH GENERAL ASSEMBLY****State of Illinois****2017 and 2018****SB2333**

Introduced 1/24/2018, by Sen. Michael Connelly - Tom Rooney - John F. Curran - Sue Rezin, Karen McConnaughay, et al.

SYNOPSIS AS INTRODUCED:

820 ILCS 112/10
820 ILCS 112/28 new

Amends the Equal Pay Act of 2003. Provides that it is unlawful for an employer to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing the employee's wage or salary; however, an employer may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage or salary information from disclosing such information without prior written consent from the employee whose information is sought or requested. Provides that it is unlawful for an employer to seek the wage or salary history of a prospective employee from the prospective employee or a current or former employer or to require that a prospective employee's prior wage or salary history meet certain criteria, with some exceptions. Provides that an employer against whom an action is brought alleging a violation of the Act's prohibition against gender-based wage differentials and who, within the previous 3 years and prior to the commencement of the action, has completed a self-evaluation of the employer's pay practices and can demonstrate that reasonable progress has been made towards eliminating wage differentials based on gender for the same or substantially similar work in accordance with that evaluation shall have an affirmative defense to liability. Provides that an employer who cannot demonstrate that the evaluation was reasonable in detail and scope shall not be entitled to an affirmative defense, but is liable for any civil fine of: (1) up to \$500 per employee affected, if the employer has fewer than 4 employees; or (2) up to \$2,500 per employee affected, if the employer has 4 or more employees.

LRB100 17048 JLS 32199 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Equal Pay Act of 2003 is amended by changing
5 Section 10 and by adding Section 28 as follows:

6 (820 ILCS 112/10)

7 Sec. 10. Prohibited acts.

8 (a) No employer may discriminate between employees on the
9 basis of sex by paying wages to an employee at a rate less than
10 the rate at which the employer pays wages to another employee
11 of the opposite sex for the same or substantially similar work
12 on jobs the performance of which requires equal skill, effort,
13 and responsibility, and which are performed under similar
14 working conditions, except where the payment is made under:

15 (1) a seniority system;

16 (2) a merit system;

17 (3) a system that measures earnings by quantity or
18 quality of production; or

19 (4) a differential based on any other factor other
20 than: (i) sex or (ii) a factor that would constitute
21 unlawful discrimination under the Illinois Human Rights
22 Act.

23 An employer who is paying wages in violation of this Act

1 may not, to comply with this Act, reduce the wages of any other
2 employee.

3 Nothing in this Act may be construed to require an employer
4 to pay, to any employee at a workplace in a particular county,
5 wages that are equal to the wages paid by that employer at a
6 workplace in another county to employees in jobs the
7 performance of which requires equal skill, effort, and
8 responsibility, and which are performed under similar working
9 conditions.

10 (b) It is unlawful for any employer to interfere with,
11 restrain, or deny the exercise of or the attempt to exercise
12 any right provided under this Act. It is unlawful for any
13 employer to discharge or in any other manner discriminate
14 against any individual for inquiring about, disclosing,
15 comparing, or otherwise discussing the employee's wages or the
16 wages of any other employee, or aiding or encouraging any
17 person to exercise his or her rights under this Act. It is
18 unlawful for an employer to require an employee to sign a
19 contract or waiver that prohibits the employee from disclosing
20 or discussing the employee's wage, salary, or other
21 compensation. However, an employer may prohibit a human
22 resources employee, a supervisor, or any other employee whose
23 job responsibilities require or allow access to other
24 employees' wage, salary, or other compensation information
25 from disclosing such information without prior written consent
26 from the employee whose information is sought or requested.

1 (b-5) It is unlawful for an employer to seek the wage,
2 salary, or other compensation history of a prospective employee
3 from the prospective employee or a current or former employer
4 or to require that a prospective employee's wage, salary, or
5 other compensation history meet certain criteria. This
6 subsection does not apply if:

7 (1) the prospective employee's wage, salary, or other
8 compensation history is a matter of public record;

9 (2) the prospective employee is a current employee of
10 the employer and is applying for a position with the same
11 employer; or

12 (3) a prospective employee has voluntarily disclosed
13 such information.

14 An employer may seek or confirm a prospective employee's
15 wage, salary, or other compensation history after an offer of
16 employment, with wage, salary, or other compensation, has been
17 negotiated and made to the prospective employee.

18 (c) It is unlawful for any person to discharge or in any
19 other manner discriminate against any individual because the
20 individual:

21 (1) has filed any charge or has instituted or caused to
22 be instituted any proceeding under or related to this Act;

23 (2) has given, or is about to give, any information in
24 connection with any inquiry or proceeding relating to any
25 right provided under this Act; ~~or~~

26 (3) has testified, or is about to testify, in any

1 inquiry or proceeding relating to any right provided under
2 this Act; ~~or~~

3 (4) fails to comply with any wage history inquiry.

4 (Source: P.A. 93-6, eff. 1-1-04.)

5 (820 ILCS 112/28 new)

6 Sec. 28. Self-evaluation.

7 (a) An employer against whom an action is brought alleging
8 a violation of subsection (a) of Section 10 and who, within the
9 previous 3 years and prior to the commencement of the action,
10 has completed a self-evaluation of the employer's pay practices
11 and can demonstrate that progress has been made towards
12 eliminating wage differentials based upon gender for the same
13 or substantially similar work on jobs the performance of which
14 requires equal skill, effort, and responsibility, and which are
15 performed under similar working conditions, in accordance with
16 that evaluation, shall have an affirmative defense to liability
17 under subsection (a) of Section 10. For purposes of this
18 subsection, an employer's self-evaluation may be of the
19 employer's own design so long as it is, in light of the size of
20 the employer, reasonable in detail and scope.

21 A self-evaluation plan may include, but is not limited to,
22 the following components:

23 (1) an evaluation of the employer's compensation
24 system for internal equity;

25 (2) an evaluation of the employer's compensation

1 system for industry competitiveness;
2 (3) examination of the employers' compensation system
3 and comparison of job grades or scores;
4 (4) a review of data for personnel entering the
5 employer;
6 (5) an assessment of how raises are awarded; and
7 (6) an evaluation of employee training, development,
8 and promotion opportunities.
9 (b) An employer that has completed a self-evaluation within
10 the previous 3 years and prior to the commencement of the
11 action and can demonstrate that reasonable progress has been
12 made towards eliminating wage differentials based on gender for
13 the same or substantially similar work on jobs the performance
14 of which requires equal skill, effort, and responsibility and
15 which are performed under similar working conditions, but
16 cannot demonstrate that any steps were taken to address any
17 identified deficiencies, is not entitled to an affirmative
18 defense under this Section and shall be liable for any civil
19 fine for a violation of this Act as follows:
20 (1) up to \$500 per employee affected, if the employer
21 has fewer than 4 employees; or
22 (2) up to \$2,500 per employee affected, if the employer
23 has 4 or more employees.
24 (c) Evidence of a self-evaluation or remedial steps
25 undertaken in accordance with this Section is not admissible in
26 any proceeding as evidence of a violation of this Act.

1 (d) An employer who has not completed a self-evaluation
2 shall not be subject to any negative or adverse inference as a
3 result of not having completed a self-evaluation.

4 (e) An employer who uses the affirmative defense under this
5 Section is not precluded from using any other affirmative
6 defense under this Act.