

**SB3390**



**100TH GENERAL ASSEMBLY**

**State of Illinois**

**2017 and 2018**

**SB3390**

Introduced 2/16/2018, by Sen. Cristina Castro

**SYNOPSIS AS INTRODUCED:**

820 ILCS 112/10  
820 ILCS 112/30

Amends the Equal Pay Act of 2003. Prohibits an employer 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. Prohibits an employer 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. Limits defenses. Provides for penalties and injunctive relief.

LRB100 20833 KTG 36327 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 Sections 10 and 30 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 substantially similar  
13 ~~equal~~ skill, effort, and responsibility, and which are  
14 performed under similar working conditions, except where the  
15 payment is made under:

16 (1) a seniority system;

17 (2) a merit system;

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

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

1           (A) is not based on or derived from a differential  
2           in compensation based on sex or another protected  
3           characteristic;

4           (B) is job-related with respect to the position and  
5           consistent with a business necessity; and

6           (C) accounts for the entire differential.

7           Such defense shall not apply if the employee  
8           demonstrates that an alternative employment practice  
9           exists that would serve the same business purpose without  
10           producing such differential and that the employer has  
11           refused to adopt such alternative practice.

12           An employer who is paying wages in violation of this Act  
13           may not, to comply with this Act, reduce the wages of any other  
14           employee.

15           Nothing in this Act may be construed to require an employer  
16           to pay, to any employee at a workplace in a particular county,  
17           wages that are equal to the wages paid by that employer at a  
18           workplace in another county to employees in jobs the  
19           performance of which requires equal skill, effort, and  
20           responsibility, and which are performed under similar working  
21           conditions.

22           (b) It is unlawful for any employer to interfere with,  
23           restrain, or deny the exercise of or the attempt to exercise  
24           any right provided under this Act. It is unlawful for any  
25           employer to discharge or in any other manner discriminate  
26           against any individual for inquiring about, disclosing,

1 comparing, or otherwise discussing the employee's wages or the  
2 wages of any other employee, or aiding or encouraging any  
3 person to exercise his or her rights under this Act. It is  
4 unlawful for an employer to require an employee to sign a  
5 contract or waiver that would prohibit the employee from  
6 disclosing or discussing information about the employee's  
7 wages.

8 (b-5) It is unlawful for an employer to screen job  
9 applicants based on their wage or salary history, including by  
10 requiring that an applicant's prior wages, including benefits  
11 or other compensation, satisfy minimum or maximum criteria or  
12 requesting or requiring as a condition of being interviewed, as  
13 a condition of continuing to be considered for an offer of  
14 employment, as a condition of an offer of employment or an  
15 offer of compensation, or as a condition of employment that an  
16 applicant disclose prior wages or salary.

17 (b-10) It is unlawful for an employer to seek the wage or  
18 salary history, including benefits or other compensation, of  
19 any job applicant from any current or former employer. This  
20 subsection (b-10) does not apply if:

21 (1) the job applicant's wage or salary history is a  
22 matter of public record under the Freedom of Information  
23 Act, or any other equivalent State or federal law, or is  
24 contained in a document completed by the job applicant's  
25 current or former employer and then made available to the  
26 public by the employer, or submitted or posted by the

1 employer to comply with State or federal law; or

2 (2) the job applicant is a current employee and is  
3 applying for a position with the same current employer.

4 (c) It is unlawful for any person to discharge or in any  
5 other manner discriminate against any individual because the  
6 individual:

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

9 (2) has given, or is about to give, any information in  
10 connection with any inquiry or proceeding relating to any  
11 right provided under this Act; or

12 (3) has testified, or is about to testify, in any  
13 inquiry or proceeding relating to any right provided under  
14 this Act; or -

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

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

17 (820 ILCS 112/30)

18 Sec. 30. Violations; fines and penalties.

19 (a) If an employee is paid by his or her employer less than  
20 the wage to which he or she is entitled in violation of Section  
21 10 of this Act, the employee may recover in a civil action the  
22 entire amount of any underpayment together with interest,  
23 compensatory damages if the employee demonstrates that the  
24 employer acted with malice or reckless indifference, punitive  
25 damages as may be appropriate, injunctive relief as may be

1 appropriate, and the costs and reasonable attorney's fees as  
2 may be allowed by the court and as necessary to make the  
3 employee whole. At the request of the employee or on a motion  
4 of the Director, the Department may make an assignment of the  
5 wage claim in trust for the assigning employee and may bring  
6 any legal action necessary to collect the claim, and the  
7 employer shall be required to pay the costs incurred in  
8 collecting the claim. Every such action shall be brought within  
9 5 years from the date of the underpayment. For purposes of this  
10 Act, "date of the underpayment" means each time wages are  
11 underpaid.

12 (a-5) If an employer violates subsection (b), (b-5), or  
13 (b-10) of Section 10, the employee may recover in a civil  
14 action any damages incurred, special damages not to exceed  
15 \$10,000, injunctive relief as may be appropriate, and costs and  
16 reasonable attorney's fees as may be allowed by the court and  
17 as necessary to make the employee whole. If special damages are  
18 available, an employee may recover compensatory damages only to  
19 the extent such damages exceed the amount of special damages.  
20 Such action shall be brought within 5 years from the date of  
21 the violation.

22 (b) The Director is authorized to supervise the payment of  
23 the unpaid wages under subsection (a) or damages under  
24 subsection (b), (b-5), or (b-10) of Section 10 owing to any  
25 employee or employees under this Act and may bring any legal  
26 action necessary to recover the amount of unpaid wages, l

1 damages, and penalties or to seek injunctive relief, and the  
2 employer shall be required to pay the costs. Any sums recovered  
3 by the Director on behalf of an employee under this Section  
4 shall be paid to the employee or employees affected.

5 (c) Employers who violate any provision of this Act or any  
6 rule adopted under the Act are subject to a civil penalty for  
7 each employee affected as follows:

8 (1) An employer with fewer than 4 employees: first  
9 offense, a fine not to exceed \$500; second offense, a fine  
10 not to exceed \$2,500; third or subsequent offense, a fine  
11 not to exceed \$5,000.

12 (2) An employer with 4 or more employees: first  
13 offense, a fine not to exceed \$2,500; second offense, a  
14 fine not to exceed \$3,000; third or subsequent offense, a  
15 fine not to exceed \$5,000.

16 An employer or person who violates subsection (b), (b-5),  
17 (b-10), or (c) of Section 10 is subject to a civil penalty not  
18 to exceed \$5,000 for each violation for each employee affected.

19 (d) In determining the amount of the penalty, the  
20 appropriateness of the penalty to the size of the business of  
21 the employer charged and the gravity of the violation shall be  
22 considered. The penalty may be recovered in a civil action  
23 brought by the Director in any circuit court.

24 (Source: P.A. 99-418, eff. 1-1-16.)