



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0834

by Rep. Anna Moeller

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.

LRB101 06799 TAE 51826 b

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 No employer may discriminate between employees by paying
8 wages to an African-American employee at a rate less than the
9 rate at which the employer pays wages to another employee who
10 is not African-American for the same or substantially similar
11 work on jobs the performance of which requires equal skill,
12 effort, and responsibility, and which are performed under
13 similar working conditions, except where the payment is made
14 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) race 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
24 may not, to comply with this Act, reduce the wages of any other
25 employee.

26 Nothing in this Act may be construed to require an employer

1 to pay, to any employee at a workplace in a particular county,
2 wages that are equal to the wages paid by that employer at a
3 workplace in another county to employees in jobs the
4 performance of which requires equal skill, effort, and
5 responsibility, and which are performed under similar working
6 conditions.

7 (b) It is unlawful for any employer to interfere with,
8 restrain, or deny the exercise of or the attempt to exercise
9 any right provided under this Act. It is unlawful for any
10 employer to discharge or in any other manner discriminate
11 against any individual for inquiring about, disclosing,
12 comparing, or otherwise discussing the employee's wages or the
13 wages of any other employee, or aiding or encouraging any
14 person to exercise his or her rights under this Act. It is
15 unlawful for an employer to require an employee to sign a
16 contract or waiver that would prohibit the employee from
17 disclosing or discussing information about the employee's
18 wages, salary, benefits, or other compensation.

19 (b-5) It is unlawful for an employer, employment agency, or
20 employee or agent thereof to screen job applicants based on
21 their current or prior wage or salary history, including
22 benefits or other compensation, by requiring that such wage or
23 salary history of an applicant satisfy minimum or maximum
24 criteria; or to request or require such wage or salary history
25 as a condition of being considered for employment, such as when
26 applying online or talking with a headhunter, as a condition of

1 being interviewed, as a condition of continuing to be
2 considered for an offer of employment, as a condition of an
3 offer of employment or an offer of compensation, or as a
4 condition of employment that an applicant disclose such wage or
5 salary history.

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

10 (1) the job applicant's wage or salary history is a
11 matter of public record under the Freedom of Information
12 Act, or any other equivalent State or federal law, or is
13 contained in a document completed by the job applicant's
14 current or former employer and then made available to the
15 public by the employer, or submitted or posted by the
16 employer to comply with State or federal law; or

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

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

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

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

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

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

5 (Source: P.A. 100-1140, eff. 1-1-19.)

6 (820 ILCS 112/30)

7 Sec. 30. Violations; fines and penalties.

8 (a) If an employee is paid by his or her employer less than
9 the wage to which he or she is entitled in violation of Section
10 10 of this Act, the employee may recover in a civil action the
11 entire amount of any underpayment together with interest,
12 compensatory damages if the employee demonstrates that the
13 employer acted with malice or reckless indifference, punitive
14 damages as may be appropriate, injunctive relief as may be
15 appropriate, and the costs and reasonable attorney's fees as
16 may be allowed by the court and as necessary to make the
17 employee whole. At the request of the employee or on a motion
18 of the Director, the Department may make an assignment of the
19 wage claim in trust for the assigning employee and may bring
20 any legal action necessary to collect the claim, and the
21 employer shall be required to pay the costs incurred in
22 collecting the claim. Every such action shall be brought within
23 5 years from the date of the underpayment. For purposes of this
24 Act, "date of the underpayment" means each time wages are
25 underpaid.

1 (a-5) If an employer violates subsection (b), (b-5), or
2 (b-10) of Section 10, the employee may recover in a civil
3 action any damages incurred, special damages not to exceed
4 \$10,000, injunctive relief as may be appropriate, and costs and
5 reasonable attorney's fees as may be allowed by the court and
6 as necessary to make the employee whole. If special damages are
7 available, an employee may recover compensatory damages only to
8 the extent such damages exceed the amount of special damages.
9 Such action shall be brought within 5 years from the date of
10 the violation.

11 (b) The Director is authorized to supervise the payment of
12 the unpaid wages under subsection (a) or damages under
13 subsection (b), (b-5), or (b-10) of Section 10 owing to any
14 employee or employees under this Act and may bring any legal
15 action necessary to recover the amount of unpaid wages,
16 damages, and penalties or to seek injunctive relief, and the
17 employer shall be required to pay the costs. Any sums recovered
18 by the Director on behalf of an employee under this Section
19 shall be paid to the employee or employees affected.

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

23 (1) An employer with fewer than 4 employees: first
24 offense, a fine not to exceed \$500; second offense, a fine
25 not to exceed \$2,500; third or subsequent offense, a fine
26 not to exceed \$5,000.

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

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

8 (d) In determining the amount of the penalty, the
9 appropriateness of the penalty to the size of the business of
10 the employer charged and the gravity of the violation shall be
11 considered. The penalty may be recovered in a civil action
12 brought by the Director in any circuit court.

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