

# Illinois Expands Equal Pay Act and Bans Inquiries about Job Applicants' Wage Histories

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An amendment to the Illinois Equal Pay Act expands the Act's scope and prohibits employers in Illinois from requesting information about a job applicant's prior compensation.

House Bill 834 passed both houses of the Illinois General Assembly, and was signed into law by Governor J.B. Pritzker on July 31, 2019, as Public Act 101-0177. The new law takes effect on September 29, 2019.

### Wage and Benefit History Prohibition

The new law prohibits employers or employment agencies from:

1. Screening job applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history of an applicant satisfy minimum or maximum criteria;
2. Requesting or requiring a wage or salary history as a condition of being considered for employment, being interviewed, continuing to be considered for an offer of employment, or an offer of employment or compensation; or
3. Requesting or requiring that an applicant disclose wage or salary history as a condition of employment.

The law also prohibits employers from seeking an applicant's wage or salary history from the applicant's current or former employer. This provision, however, does not apply when the applicant's salary is a matter of public record or where the applicant is a current employee applying for a position with the same employer.

The amendment does not prohibit an employer from providing information regarding the benefits of a position or discussing an applicant's expectations regarding compensation. An employer also would not violate the Act if a job applicant voluntarily discloses his or her current or prior salary, provided the employer does not consider the voluntary disclosure in deciding whether to offer the applicant employment or in setting compensation.

In addition, employers may not require employees to sign agreements that would prohibit them from disclosing or discussing information about their wages, salary, benefits, or other compensation. Employers, however, may prohibit human resources employees, supervisors, or other employees who have access to employees' wage or salary information from disclosing that information without written consent from the employee whose information is sought or requested.

With the passage of this amendment, Illinois joins many other states and cities that have passed similar prohibitions on inquiries into an applicant's wage history as part of a broader effort to promote equal pay and reduce a gender wage gap.

An employer in violation of this section may be subject to:

1. Special damages not to exceed \$10,000;
2. Injunctive relief;
3. Costs and reasonable attorney's fees; and
4. A civil penalty not to exceed \$5,000 for each violation for each employee affected.

The Act expressly provides that if special damages are available, an employee may recover compensatory damages only to the extent such damages exceed the amount of special damages.

### Additional Expansions to Equal Pay Act

Public Act 101-0177 expands the protections provided by the Equal Pay Act.

Previously, the Act prohibited discrimination on the basis of sex where employees were performing substantially similar work on jobs that required “*equal skill, effort and responsibility.*” The amended Act prohibits sex-based discrimination where employees are performing substantially similar work on jobs requiring “*substantially similar skill, effort, and responsibility.*”

The amendment also limits the exceptions to the equal pay requirement. Previously, the law made an exception for pay differentials based on seniority, merit, measures of earning by quantity or quality, or a differential not based on sex or unlawful discrimination. The revised Act states that a differential based on any factor other than sex or a factor that would constitute unlawful discrimination under the Illinois Human Rights also must:

1. Not be based on or derived from a differential in compensation based on sex or another protected characteristic;
2. Be job-related with respect to the position and consistent with a business necessity; and
3. Account for the differential.

These same changes also apply to the Act's identical prohibition on wage discrimination against African American employees.

Under the revised Act, an employee paid less than what he or she is entitled may recover:

1. Underpayment of wages plus interest;
2. Compensatory damages if the employee demonstrates the employer acted with malice or reckless indifference;
3. Punitive damages;
4. Injunctive relief; and
5. Reasonable attorney's fees and costs.

Jackson Lewis attorneys are available to answer questions regarding the Illinois Equal Pay Act and to assist employers in complying with its requirements.

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