Illinois Equal Pay Act Requirements: Implementation Rules Still Pending as Rolling Registration Deadlines Approach

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We had been holding off on publishing an update on the Illinois Equal Pay Act requirements in hopes that the State of Illinois would publish its proposed rules implementing the law. Those rules have not yet come. Accordingly, we are
publishing this interim update. When the state announces its rules, we will issue further information.

The Illinois Equal Pay Act (820 ILCS 112 et seq.) created an affirmative requirement for employers to certify their compliance with state and federal equal pay laws and submit employee-level pay data along with their most recent EEO-1 reports. Illinois is announcing the deadline for each employer to submit the required reports and certifications on a rolling basis. The state has, so far, issued two rounds of notices to employers to set filing deadlines that come 120 days after an employer receives a notice. It appears that the first two rounds of notices went to employers that had provided contact information to the state using the form available on the state’s website. The state will continue to set deadlines on a rolling basis, with all employers with one hundred or more employees in Illinois required to comply by March 23, 2024.

The statute itself addresses several requirements:

**Who is covered?**

Private employers with one hundred or more employees in Illinois that are also required to file the annual Employer Information Report EEO-1 with the U.S. Equal Employment Opportunity Commission (EEOC) are covered “businesses” under the statute.

**What must employers submit?**

- An application for an equal pay registration certificate
- Their most recently filed Employer Information Report EEO-1
- A report of employee-specific compensation data
- A $150 filing fee

**When are the required reports and certification due?**

The Illinois Department of Labor (IDOL) will provide notice 120 days in advance of the date by which the employer must submit an application to obtain an equal pay registration certificate. The employer will be required to recertify every two years from the initial deadline. The IDOL will accept applications between March 24, 2022, and March 23, 2024.

If an employer receives a notice from the IDOL but has fewer than one hundred employees in Illinois, the business must respond and certify that it is exempt from the new certificate requirements.

**Wage Report**

Under the Illinois Equal Pay Act, an employer must provide a wage statement that includes a list of all employees and the total wages paid for the last calendar year. The employee information must be broken down by gender, race/ethnicity, the county in which the employee works, the first date of employment, and “any other
information the [IDOL] deems necessary to determine if pay equity exists among employees.” The state has published a template file that can be used to structure the report.

Employers may want to be aware that aggregate data from applications and the recertification process is not confidential data and can be subject to an Illinois Freedom of Information Act request. Aggregate data includes job categories and the average hourly wage by county for each gender and race/ethnicity category on the registration certificate applications.

**Compliance Statement**

The application also requires a covered business to sign a compliance statement by a corporate officer, legal counsel, or authorized agent. The business must certify:

1. “that the business is in compliance with [the Illinois Equal Pay Act] and other relevant laws, including ... Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act, and the Equal Wage Act, and “any “other relevant laws”;
2. “that the average compensation for its female and minority employees is not consistently below the average compensation ... for its male and non-minority employees within each of the major job categories in the Employer Information Report EEO-1 ..., taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, education or training, job location, use of a collective bargaining agreement, or other mitigating factors”;
3. “that the business does not restrict employees of one sex to certain job classifications, and makes retention and promotion decisions without regard to sex”;
4. “that wage and benefit disparities are corrected when identified”;
5. “how often wages and benefits are evaluated”; and
6. how the wages and benefits are determined.

This creates new burdens for employers to determine whether they truly are in compliance with the various state and federal laws listed. Employers that fail to comply in good faith with the requirements of the new equal pay registration certificate or have their certificates revoked or suspended may face fines of up to $10,000.

**Employer Next Steps**

Even if they have not yet received notice from the state of their deadline to comply, an employer covered by this law may want to consider taking steps to ensure compliance with the new equal pay registration certificate by:

- conducting a pay equity audit to ensure the business can certify statements 1 and 2 of the compliance statement;
- (depending on the outcome of the audit) correcting disparities that are not justified by legitimate reasons; and
- confirming that it can compile the data required on the state’s template wage
Remaining Questions

There are a number of details that remain uncertain, absent rules or other guidance from the state:

- How is the one hundred-employee threshold calculated, particularly for related entities?
- How will an employer know if the state will deem additional information “necessary to determine if pay equity exists among employees”?
- How exactly will the state require employers to group employees for purposes of the pay analysis?
- What other factors will the state allow to explain differences in pay?
- Must employers conduct statistical analyses for differences in representation of women at various levels of their workforces—in connection with statement 3 in the certification list?
- What position will the state take as to whether the analyses that underlie the certification remain subject to the attorney-client privilege?


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