

Upcoming Requirement of Equal Pay Registration Certificates for Illinois Private-Sector Employers With 100 or More Employees

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Section 11 of the Illinois Equal Pay Act of 2003 (IEPA) was signed into law through Public Act 101-656, on March 23, 2021. Section 11 of the IEPA requires businesses with more than 100 employees to acquire an Equal Pay registration certificate on or before March 23, 2024. The upcoming requirements of Section 11 make this an opportunistic time to evaluate your compensation and benefits practices.

Who is Subject to Section 11 and Equal Pay Registration Certificates?

Section 11 of the IEPA does not apply to the state of Illinois or any political subdivision, municipal corporation, or other governmental unit or agency and only applies to private-sector employers with 100 or more employees. The certificates must be re-certified every two years thereafter. Employers subject to this Section and newly authorized to transact business in Illinois after March 23, 2021, must obtain an Equal Pay registration certificate within three years of commencing business and re-certify every two years thereafter. If a business has multiple locations in Illinois, it is allowed to submit one application for all locations.

The Application for an Equal Pay Registration Certificate

Employers seeking to obtain an Equal Pay registration certification must submit an application to the Illinois Department of Labor (IDOL). The application must include a \$150 filing fee, an Equal Pay compliance

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statement, the most recent EEO-1 report for each county in which the business has a facility or employees, and a list of all employees including the total wages paid to each employee during the past calendar year.

The compliance statement must be signed by a corporate officer, legal counsel, or authorized agent and provide that the business is in compliance with all equal pay and civil rights laws, that minorities and females are paid consistent with non-minorities and males, account for any differences in pay between the different groups, describe how often wages and benefits are evaluated and how any disparities in pay are rectified, and outline the method the business uses to set wages and benefits.

IDOL must accept or reject the application for an Equal Pay registration certificate within 45 calendar days of receipt and may only reject the application if the business failed to include required information in its application.

Employers should be aware that the submission of the statement does not provide a defense to violations of any equal pay or civil rights laws, nor is it a basis for mitigating damages relevant to any complaint or lawsuit arising out of an Equal Pay Act violation.

Enforcement and Audit by the Department

Section 11 gives IDOL the ability to audit any business's compliance with this section. If requested, a business must provide information regarding each of the major job categories in the EEO-1 report and any other information identified by the IDOL. Section 11 of the IEPA also allows the IDOL to request and require the production of evidence with a sworn statement of the accuracy of the records. The refusal to furnish a sworn statement will be taken as a violation of the IEPA.

Any data submitted to the IDOL related to the Equal Pay registration certificates or provided for compliance with the same is considered by the IDOL to be private and confidential information of individuals. Only the IDOL's decision to issue, not issue, revoke, or suspend a certificate will be publicly available data.

Penalties under Section 11

Employers subject to Section 11 will be assessed a civil penalty of one percent of the business's gross profits if the employer fails to obtain an Equal Pay registration certificate by the deadline. Section 11 also prohibits retaliation against an employee for disclosing or threatening to disclose conduct or a policy of the business the employee reasonably believes is in violation of the IEPA or assists or participates in a proceeding to enforce the IEPA. An employee may seek the following remedies for retaliation:

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- Reinstatement to the same or an equivalent position;
- Two times the amount of back pay;
- Interest on back pay;
- Reinstatement of full fringe benefits and seniority rights; and,
- Payment of reasonable costs and attorney's fees.

What to Do Now?

As Equal Pay registration certificates are not required until March 23, 2024, we expect there to be further guidance and directives issued by IDOL. This is an opportunistic time for employers to review their pay scales and compensation across gender and minority groups. Should you have any questions regarding the amendment to the Equal Pay Act of 2003 or how to prepare for a compensation audit, please reach out to your Laner Muchin attorney or contact.