

Reminder: 100 or more employees? New Illinois Requirements

Now that OSHA has withdrawn its Emergency Temporary Standard regarding mandatory COVID-19 vaccination/testing, employers can focus on other recent changes in the law, including amendments to the Illinois Equal Pay Act (“Act”). This Act places new requirements on businesses with 100 or more employees, which are also required to file an EEO-1 report with the Equal Employment Opportunity Commission (“EEOC”). This minute memo summarizes the new requirements under the Act.

In our April 5, 2021 Monthly Minute Memo, we summarized the amendment to the Act, which required certain businesses to apply for an “equal pay registration certificate” and recertify every 2 years. A subsequent amendment changed some of those requirements including shortening the deadline to apply for this certificate beginning March 24, 2022, and ending on March 23, 2024. The Illinois Department of Labor (“IDOL”) will assign a date on which each employer must apply for the certificate. Failure of a business to apply for this certificate could result in a fine of up to \$10,000, however it is unclear from the statute if this is a one-time penalty or up to \$10,000 per violation.

Under the Act, a business is defined as any private employer “who has more than 100 employees in the state of Illinois and is required to file an Annual Employer Information Report EEO-1 with the [EEOC.]” 820 ILCS 112/11. Although the statute sets the threshold as “more than 100 employees,” the IDOL in recent news releases appears to take the position that this statute applies to businesses with 100 or more employees. Until the IDOL clarifies its position, businesses with 100 employees or more should also begin preparing their application.

Also, if a business is under 100 employees, but subsequently hires additional employees and meets the statutory threshold, the business must apply for the certificate. Finally, if at the time of recertification, the business is under the statutory threshold, the business must notify the IDOL that it is now exempt under the Act. In order to prepare for the filing requirements, employers should take the following steps:

Step 1: Consider providing the IDOL with contact information.

In order to ensure your company receives IDOL notices and instructions regarding the certificate, the IDOL advises that three email contacts may be submitted to the IDOL’s online portal located [here](#). Although the IDOL is responsible for notifying a business of the application submission date, the employer is still responsible to comply with the Act even if the IDOL does

not provide a date. Failure of the IDOL to notify the business of its deadline is only a mitigating factor when determining if the business violated the Act.

Step 2: Gather documentation.

Regardless of the number of locations in Illinois, a business only submits one application for the certificate. The following documentation must be submitted with the application:

- Most recent EEO-1 report filed with the EEOC.
- A list of all employees during the last calendar year (separated by gender and race/ethnicity categories), and for each employee, the county in which the employee works, the date employment began, and total wages as defined by the Illinois Wage Payment and Collection Act during the past calendar year (rounded to the nearest \$100).

Step 3: Prepare the compliance statement.

In addition to submitting the above documentation and paying the \$150 fee, the statement must be signed by a corporate officer, legal counsel, or authorized agent of the employer certifying:

- The business complies with all relevant state and federal EEO laws.
- The average compensation for its female and minority employees is not consistently below the average compensation, as determined by the U.S. Department of Labor, for its male and non-minority employees within each of the major job categories in the EEO-1 report that an employee is expected to perform work. In making this determination, the employer should consider factors such as length of service, the requirements of the specific job, experience, skill, effort, responsibility, working conditions, education or training, job location, collective bargaining agreement or other mitigating factors.
- The employer does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex.
- Wage and benefit disparities are corrected when identified to ensure compliance with relevant EEO laws.
- How often the employer evaluates wages and benefits.
- The approach the employer takes in determining what level of wages and benefits to pay its employees.

Once the above documentation, compliance statement, and the \$150 filing fee are submitted to the IDOL, either the certificate will be issued by the IDOL, or the IDOL will provide a statement of why the application was rejected. If rejected, businesses will have 30 days to cure any deficiencies in the application, prior to the IDOL imposing any fines or penalties.

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