

Public Act 101-0177

HB0834 Enrolled

LRB101 06799 TAE 51826 b

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Equal Pay Act of 2003 is amended by changing Sections 10 and 30 as follows:

(820 ILCS 112/10)

Sec. 10. Prohibited acts.

(a) No employer may discriminate between employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work on jobs the performance of which requires substantially similar ~~equal~~ skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made under:

- (1) a seniority system;
- (2) a merit system;
- (3) a system that measures earnings by quantity or quality of production; or
- (4) a differential based on any other factor other than: (i) sex or (ii) a factor that would constitute unlawful discrimination under the Illinois Human Rights Act, provided that the factor: -

(A) is not based on or derived from a differential in compensation based on sex or another protected characteristic;

(B) is job-related with respect to the position and consistent with a business necessity; and

(C) accounts for the differential.

No employer may discriminate between employees by paying wages to an African-American employee at a rate less than the rate at which the employer pays wages to another employee who is not African-American for the same or substantially similar work on jobs the performance of which requires substantially similar ~~equal~~ skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made under:

- (1) a seniority system;
- (2) a merit system;
- (3) a system that measures earnings by quantity or quality of production; or
- (4) a differential based on any other factor other than: (i) race or (ii) a factor that would constitute unlawful discrimination under the Illinois Human Rights Act, provided that the factor: -

(A) is not based on or derived from a differential in compensation based on race or another protected characteristic;

(B) is job-related with respect to the position and consistent with a business necessity; and

(C) accounts for the differential.

An employer who is paying wages in violation of this Act may not, to comply with this Act, reduce the wages of any other employee.

Nothing in this Act may be construed to require an employer to pay, to any employee at a workplace in a particular county, wages that are equal to the wages paid by that employer at a workplace in another county to employees in jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(b) It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this Act. It is unlawful for any employer to discharge or in any other manner discriminate against any individual for inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, or aiding or encouraging any

person to exercise his or her rights under this Act. It is unlawful for an employer to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing information about the employee's wages, salary, benefits, or other compensation. An employer may, however, prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage or salary information from disclosing that information without prior written consent from the employee whose information is sought or requested.

(b-5) It is unlawful for an employer or employment agency, or employee or agent thereof, to (1) screen 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) request or require a wage or salary history as a condition of being considered for employment, as a condition of being interviewed, as a condition of continuing to be considered for an offer of employment, as a condition of an offer of employment or an offer of compensation, or (3) request or require that an applicant disclose wage or salary history as a condition of employment.

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

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

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

(b-15) Nothing in subsections (b-5) and (b-10) shall be construed to prevent an employer or employment agency, or an employee or agent thereof, from:

(1) providing information about the wages, benefits, compensation, or salary offered in relation to a position; or

(2) engaging in discussions with an applicant for employment about the applicant's expectations with respect to wage or salary, benefits, and other compensation.

(b-20) An employer is not in violation of subsections (b-5) and (b-10) when a job applicant voluntarily and without prompting discloses his or her current or prior wage or salary history, including benefits or other compensation, on the condition that the employer does not consider or rely on the voluntary disclosures as a factor in determining whether to offer a job applicant employment, in making an offer of compensation, or in determining future wages, salary, benefits, or other compensation.

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

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

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

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

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

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

(820 ILCS 112/30)

Sec. 30. Violations; fines and penalties.

(a) If an employee is paid by his or her employer less than the wage to which he or she is entitled in violation of Section 10 of this Act, the employee may recover in a civil action the entire amount of any underpayment together with interest, compensatory damages if the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, injunctive relief as may be appropriate, and the costs and reasonable attorney's fees as may be allowed by the court and as necessary to make the

employee whole. At the request of the employee or on a motion of the Director, the Department may make an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs incurred in collecting the claim. Every such action shall be brought within 5 years from the date of the underpayment. For purposes of this Act, "date of the underpayment" means each time wages are underpaid.

(a-5) If an employer violates subsection (b), (b-5), (b-10), or (b-20) of Section 10, the employee may recover in a civil action any damages incurred, special damages not to exceed \$10,000, injunctive relief as may be appropriate, and costs and reasonable attorney's fees as may be allowed by the court and as necessary to make the employee whole. If special damages are available, an employee may recover compensatory damages only to the extent such damages exceed the amount of special damages. Such action shall be brought within 5 years from the date of the violation.

(b) The Director is authorized to supervise the payment of the unpaid wages under subsection (a) or damages under subsection (b), (b-5), (b-10), or (b-20) of Section 10 owing to any employee or employees under this Act and may bring any legal action necessary to recover the amount of unpaid wages, damages, and penalties or to seek injunctive relief, and the employer shall be required to pay the costs. Any sums recovered by the Director on behalf of an employee under this Section shall be paid to the employee or employees affected.

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

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

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

An employer or person who violates subsection (b), (b-5), (b-10), (b-20), or (c) of Section 10 is subject to a civil penalty not to exceed \$5,000 for each violation for each employee affected.

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

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

Section 99. Effective date. This Act takes effect 60 days after becoming law.

Effective Date: 9/29/2019