

Illinois Makes Significant Amendments to the Illinois Human Rights Act, Equal Pay Act and Business Corporation Act

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On March 23, 2021, Illinois Governor Pritzker signed into law [SB1480](#). As discussed below, the law makes significant changes to the Illinois Human Rights Act (IHRA), the Illinois Equal Pay Act (IEPA) and the Illinois Business Corporation Act, aimed at curtailing employer use of conviction records, imposing new reporting and registration requirements concerning employee demographics and pay, and creating new whistleblower anti-retaliation protections. The amendments take effect immediately.

The Illinois Human Rights Act

SB 1480 amends the IHRA to make it a civil rights violation for an employer to use a conviction record as a basis to refuse to hire, to segregate or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment unless: there is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

To determine whether a “substantial relationship” exists, employers must consider whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position. Employers must also consider the following factors in evaluating the “substantial relationship” or risk to property or safety factors noted above: the length of time since the conviction; the number of convictions that appear on the conviction record; the nature and severity of the conviction and its relationship to the safety and security of others; the facts or circumstances surrounding the conviction; the age of the employee at the time of the conviction; and evidence of rehabilitation efforts.

If, after considering the mitigating factors, the employers makes a preliminary decision that the employee’s conviction record disqualifies the employee, the employer is required to notify the employee of this preliminary decision in writing. The notification must contain: notice of the disqualifying conviction(s) that are the basis for the preliminary decision and the employer’s reasoning for the disqualification; a copy of the conviction history report; and an explanation of the employee’s right to respond to the notice of the employer’s preliminary decision before that decision becomes final. The notice must also inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification or evidence of mitigation, such as rehabilitation.

The employee is then allowed at least 5 business days to respond to the notification. The employer must consider any information submitted by the employee before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the employee’s conviction record, the employer shall notify the employee in writing of the following: notice of the disqualifying conviction(s) and the employer’s reasoning of the disqualification; any existing procedure the employer has for the employee to challenge the decision or request reconsideration; and the right to file a charge with the Illinois Department of Human Rights.

The Illinois Business Corporation Act

Beginning January 1, 2023, corporations that are organized under Illinois law and that are required to file an Employer Information Report EEO-1 with the EEOC must now include in their annual report to the State of Illinois information that is substantially similar to the employment data reported under Section D of the corporation's EEO-1 report. The Secretary of State will then publish data on the gender, race, and ethnicity of each corporation's employees on the Secretary of State's website.

The Illinois Equal Pay Act

The IEPA was amended to require private businesses with more than 100 employees to obtain an "equal pay registration certificate" by March 23, 2024, and every two years thereafter. To apply for the certificate, the business must submit a filing fee, an equal pay compliance statement, a copy of the employer's most recent EEO-1 report, and report the total wages paid to each employee during the past calendar year. The equal pay certification will certify that:

- The business is in compliance with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the IHRA, the Equal Wage Act and the IEPA;
- The average compensation for its female and minority employee is not consistently below the average compensation for its male and non-minority employees within each of the major job categories in the Employer's EEO-1 report, taking into account factors such as length of service, requirements of specific jobs, experience, skill set, effort, responsibility, working conditions of the job, or other mitigating factors;
- The business 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 the laws referenced above; and
- Wages and benefits are evaluated to ensure compliance with the laws referenced above, as well as the frequency of any such evaluations.

The employer must also indicate on its equal pay compliance statement whether, in setting compensation and benefits, it utilizes: a market pricing approach; state prevailing wage or union contract requirements; a performance pay system; an internal analysis; or an alternative approach to determine what level of wages and benefits to pay its employees.

The Illinois Department of Labor (IDOL) can impose a penalty on any business in an amount equal to 1% of the business's gross profits if: the business does not obtain an equal pay registration certificate; or the business's equal pay registration is suspended or revoked after an investigation by the IDOL. In addition, the issuance of a registration certificate by the IDOL does not constitute a defense against any IEPA violation and also does not constitute a basis to mitigate damages.

New Whistleblower Anti-Retaliation Protections

The IEPA was also amended to prohibit a business from taking any retaliatory action against an employee because he or she: discloses or threatens to disclose to a supervisor or to a public body an activity, inaction, policy or practice implemented by the business that the employee reasonably believes is in violation of a law, rule, or regulation; provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule or regulation by a nursing home administrator; or assists or participate in a proceeding to enforce the provisions of the IEPA.

An employee claiming retaliation must show that the alleged protected activity was a "contributing factor" in the alleged retaliatory action. The employer can avoid liability if it demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of that conduct. A prevailing employee may be awarded reinstatement, double back-pay with interest and reasonable costs and attorneys' fees.

Conclusion

Illinois employers should review their current policies for compliance with these amendments. We will continue to monitor and report developments relating to this law.

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Related Professionals

- **Steven J. Pearlman**
Partner
- **Edward C. Young**

