

Attorneys of Southwestern Illinois

Here are the Illinois Equal Pay Registration Certificate requirements

By THOMAS BERRY

Systemic disparity in earning opportunities for both women and minority members of the workforce continue to exist.



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While market forces over time have made modest progress in ameliorating this problem, patience with such a *laissez faire* approach is waning. The Illinois Equal Pay Act is intended to aggressively target such disparities and employers can no longer simply ignore these realities in the workplace. Rather, the State of Illinois is now requiring large employers affirmatively examine both their compensation practices for such gender and minority disparities and certify that no such disparities continue to exist.

Last year, the Illinois Equal Pay Act was amended to require businesses with 100 or more employees working or reporting in Illinois to certify compliance by obtaining an Equal Pay Registration Certificate from the Illinois Department of Labor (IDOL). Beginning in the Spring of 2022, the IDOL began notifying covered businesses to submit an application certifying compliance with the Equal Pay Act as well as other federal and Illinois laws. Compliance will be phased in between March 23, 2022, and March 23, 2024.

Once notified by the IDOL, a business must pay a \$150 filing fee and submit its

application within 120 calendar days. To obtain the certificate from the IDOL, businesses will have to submit individualized demographic employee data (race, gender, ethnicity, job classification), geographic location, along with individualized workforce compensation data (compensation of all Illinois employees working for the reporting company in the prior calendar year). The business will also have to affirm compliance with several federal and state pay equity statutes and provide an EEO-1 report for all locations in Illinois.

On May 20, 2022, the IDOL published proposed rules relating to registration certificate process. Significant portions of the proposed regulations track the language of the Illinois Equal Pay Act. The proposed regulations do provide additional detail on several aspects of the certification requirement, including:

Scope of company personnel who can affirm compliance in the application. The Act requires the application to be signed by a corporate officer, legal counsel or authorized agent certifying compliance. The proposed rules have added a definition for “authorized agent” to include “an employee of a business with knowledge of pay practices who has been designated by the corporate officers of the business to submit information to the department as required by the Act.” However, “authorized agent” does not include an outside consultant or vendor.

Definition of Illinois “Employee.” Understanding who is an Illinois employee is important to determine both whether a company has the minimum 100 Illinois employees required to submit an application as well as whose data must be reported.

For those companies needing to submit an application, only the compensation of Illinois employees needs to be provided to the IDOL in the company’s application.

The proposed rules define “Employee” as “any person performing a service for a business whose base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is located within the State of Illinois. Where the base of operations or the place from which the service is directed or controlled is not in any state, but the individual’s residence is in the State of Illinois, they are covered. With many employees still working remotely, employers will have to closely examine the work assignment to determine if the employee is to be included.

BFOQ exception. The compliance statement must affirm that “the business does not restrict employees of one sex to certain job classifications.” For those businesses “with positions for which sex is a bona fide occupational qualification [as gender BFOQs are defined by federal regulation],” the regulations require the business to provide a list of such positions together with a short explanation of why sex is a BFOQ.

IDOL Enrollment. For several months, the IDOL has “invited” companies to provide “business contact information” to the IDOL. The IDOL’s website provides a link entitled “survey” which requests contact information from covered companies. The proposed IDOL rules now suggest that enrollment is expected and required to complete the “Enrollment” process: “A business that is authorized to transact business in the State of Illinois before March

23, 2021, shall submit an enrollment form notifying the Department that the business is subject to the Act by March 31, 2022.... The enrollment form must include designated contact information for the business.”

Multiple locations. The proposed rules require business with multiple locations in Illinois to “submit a single application to the Department regarding all the business’s operations in the State of Illinois.”

Enforcement. A business that provides false or misleading information in its application, or fails to procure the Equal Pay registration certificate, shall be fined by the IDOL up to \$10,000. Businesses with state contracts may have those contracts revoked as a penalty.

Next steps. The proposed IDOL rules will not become final for at least 90 days after publication. Companies will be looking more carefully at these proposed rules and waiting to see if public comments lead to further clarification when the final rules are issued. In the meantime, covered employers are already being notified by the IDOL that they must prepare and submit the initial equal pay registration certificate. The IDOL has made it clear that such requested employers may not be able to delay submission of their application pending finalization of the proposed rules. Prudent employers should begin the process of compiling the required data and proactively addressing any wage disparities prior to being required to apply for the Equal Pay Registration Certificate.

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