



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3129

Introduced 2/17/2023, by Rep. Mary Beth Canty

SYNOPSIS AS INTRODUCED:

820 ILCS 112/10
820 ILCS 112/30

Amends the Equal Pay Act of 2003. Provides that it is unlawful for an employer with 15 or more employees to fail to include the pay scale for a position in any job posting. Provides that if an employer with 15 or more employees engages a third party to announce, post, publish, or otherwise make known a job posting, the employer shall provide the pay scale to the third party and the third party shall include the pay scale in the job posting. Defines "pay scale". Makes conforming changes to provisions concerning violations of the Act and fines and penalties. Effective immediately.

LRB103 30957 SPS 57530 b

1 AN ACT concerning employment.

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

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

6 (820 ILCS 112/10)

7 Sec. 10. Prohibited acts.

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

16 (1) a seniority system;

17 (2) a merit system;

18 (3) a system that measures earnings by quantity or
19 quality of production; or

20 (4) a differential based on any other factor other
21 than: (i) sex or (ii) a factor that would constitute
22 unlawful discrimination under the Illinois Human Rights
23 Act, provided that the factor:

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

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

6 (C) accounts for the differential.

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

15 (1) a seniority system;

16 (2) a merit system;

17 (3) a system that measures earnings by quantity or
18 quality of production; or

19 (4) a differential based on any other factor other
20 than: (i) race or (ii) a factor that would constitute
21 unlawful discrimination under the Illinois Human Rights
22 Act, provided that the factor:

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

26 (B) is job-related with respect to the position

1 and consistent with a business necessity; and

2 (C) accounts for the differential.

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

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

13 (b) It is unlawful for any employer to interfere with,
14 restrain, or deny the exercise of or the attempt to exercise
15 any right provided under this Act. It is unlawful for any
16 employer to discharge or in any other manner discriminate
17 against any individual for inquiring about, disclosing,
18 comparing, or otherwise discussing the employee's wages or the
19 wages of any other employee, or aiding or encouraging any
20 person to exercise his or her rights under this Act. It is
21 unlawful for an employer to require an employee to sign a
22 contract or waiver that would prohibit the employee from
23 disclosing or discussing information about the employee's
24 wages, salary, benefits, or other compensation. An employer
25 may, however, prohibit a human resources employee, a
26 supervisor, or any other employee whose job responsibilities

1 require or allow access to other employees' wage or salary
2 information from disclosing that information without prior
3 written consent from the employee whose information is sought
4 or requested.

5 (b-5) It is unlawful for an employer or employment agency,
6 or employee or agent thereof, to (1) screen job applicants
7 based on their current or prior wages or salary histories,
8 including benefits or other compensation, by requiring that
9 the wage or salary history of an applicant satisfy minimum or
10 maximum criteria, (2) request or require a wage or salary
11 history as a condition of being considered for employment, as
12 a condition of being interviewed, as a condition of continuing
13 to be considered for an offer of employment, as a condition of
14 an offer of employment or an offer of compensation, or (3)
15 request or require that an applicant disclose wage or salary
16 history as a condition of employment.

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

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

1 employer to comply with State or federal law; or

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

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

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

10 (2) engaging in discussions with an applicant for
11 employment about the applicant's expectations with respect
12 to wage or salary, benefits, and other compensation,
13 including unvested equity or deferred compensation that
14 the applicant would forfeit or have canceled by virtue of
15 the applicant's resignation from the applicant's current
16 employer. If, during such discussion, the applicant
17 voluntarily and without prompting discloses that the
18 applicant would forfeit or have canceled by virtue of the
19 applicant's resignation from the applicant's current
20 employer unvested equity or deferred compensation, an
21 employer may request the applicant to verify the aggregate
22 amount of such compensation by submitting a letter or
23 document stating the aggregate amount of the unvested
24 equity or deferred compensation from, at the applicant's
25 choice, one of the following: (1) the applicant's current
26 employer or (2) the business entity that administers the

1 funds that constitute the unvested equity or deferred
2 compensation.

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

12 (b-25) It is unlawful for an employer with 15 or more
13 employees to fail to include the pay scale for a position in
14 any job posting. If an employer with 15 or more employees
15 engages a third party to announce, post, publish, or otherwise
16 make known a job posting, the employer shall provide the pay
17 scale to the third party and the third party shall include the
18 pay scale in the job posting. As used in this subsection, "pay
19 scale" means the salary or hourly wage range that the employer
20 reasonably expects to pay for the position.

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

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

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

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

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

9 (Source: P.A. 101-177, eff. 9-29-19; 102-277, eff. 1-1-22.)

10 (820 ILCS 112/30)

11 Sec. 30. Violations; fines and penalties.

12 (a) If an employee is paid by his or her employer less than
13 the wage to which he or she is entitled in violation of Section
14 10 or 11 of this Act, the employee may recover in a civil
15 action the entire amount of any underpayment together with
16 interest, compensatory damages if the employee demonstrates
17 that the employer acted with malice or reckless indifference,
18 punitive damages as may be appropriate, injunctive relief as
19 may be appropriate, and the costs and reasonable attorney's
20 fees as may be allowed by the court and as necessary to make
21 the employee whole. At the request of the employee or on a
22 motion of the Director, the Department may make an assignment
23 of the wage claim in trust for the assigning employee and may
24 bring any legal action necessary to collect the claim, and the
25 employer shall be required to pay the costs incurred in

1 collecting the claim. Every such action shall be brought
2 within 5 years from the date of the underpayment. For purposes
3 of this Act, "date of the underpayment" means each time wages
4 are underpaid.

5 (a-5) If an employer violates subsection (b), (b-5),
6 (b-10), ~~or~~ (b-20), or (b-25) of Section 10, the employee may
7 recover in a civil action any damages incurred, special
8 damages not to exceed \$10,000, injunctive relief as may be
9 appropriate, and costs and reasonable attorney's fees as may
10 be allowed by the court and as necessary to make the employee
11 whole. If special damages are available, an employee may
12 recover compensatory damages only to the extent such damages
13 exceed the amount of special damages. Such action shall be
14 brought within 5 years from the date of the violation.

15 (b) The Director is authorized to supervise the payment of
16 the unpaid wages under subsection (a) or damages under
17 subsection (b), (b-5), (b-10), ~~or~~ (b-20), or (b-25) of Section
18 10 owing to any employee or employees under this Act and may
19 bring any legal action necessary to recover the amount of
20 unpaid wages, damages, and penalties or to seek injunctive
21 relief, and the employer shall be required to pay the costs.
22 Any sums recovered by the Director on behalf of an employee
23 under this Section shall be paid to the employee or employees
24 affected.

25 (c) Employers who violate any provision of this Act or any
26 rule adopted under the Act are subject to a civil penalty for

1 each employee affected as follows:

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

6 (2) An employer with between 4 and 99 employees: first
7 offense, a fine not to exceed \$2,500; second offense, a
8 fine not to exceed \$3,000; third or subsequent offense, a
9 fine not to exceed \$5,000.

10 (3) An employer with 100 or more employees who
11 violates any Section of this Act except for Section 11
12 shall be fined up to \$10,000 per employee affected. An
13 employer with 100 or more employees that is a business as
14 defined under Section 11 and commits a violation of
15 Section 11 shall be fined up to \$10,000.

16 Before any imposition of a penalty under this subsection,
17 an employer with 100 or more employees who violates item (b) of
18 Section 11 and inadvertently fails to file an initial
19 application or recertification shall be provided 30 calendar
20 days by the Department to submit the application or
21 recertification.

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

26 (d) In determining the amount of the penalty, the

1 appropriateness of the penalty to the size of the business of
2 the employer charged and the gravity of the violation shall be
3 considered. The penalty may be recovered in a civil action
4 brought by the Director in any circuit court.

5 (Source: P.A. 101-177, eff. 9-29-19; 102-36, eff. 6-25-21.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.