



Rep. Norine K. Hammond

**Filed: 4/25/2017**

10000HB2094ham001

LRB100 04505 KTG 25260 a

1 AMENDMENT TO HOUSE BILL 2094

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2094 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Equal Pay Act of 2003 is amended by  
5 changing Sections 10 and 30 and by adding Section 28 as  
6 follows:

7 (820 ILCS 112/10)

8 Sec. 10. Prohibited acts.

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

16 (1) a seniority system;

1 (2) a merit system;

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

4 (4) a differential based on any other factor other  
5 than: (i) sex or (ii) a factor that would constitute  
6 unlawful discrimination under the Illinois Human Rights  
7 Act.

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

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

18 (b) It is unlawful for any employer to interfere with,  
19 restrain, or deny the exercise of or the attempt to exercise  
20 any right provided under this Act. It is unlawful for any  
21 employer to discharge or in any other manner discriminate  
22 against any individual for inquiring about, disclosing,  
23 comparing, or otherwise discussing the employee's wages or the  
24 wages of any other employee, or aiding or encouraging any  
25 person to exercise his or her rights under this Act. It is  
26 unlawful for an employer to require an employee to sign a

1 contract or waiver that would prohibit the employee from  
2 disclosing or discussing the employee's wage or salary.  
3 However, an employer may prohibit a human resources employee, a  
4 supervisor, or any other employee whose job responsibilities  
5 require or allow access to other employees' wage or salary  
6 information from disclosing such information without prior  
7 written consent from the employee whose information is sought  
8 or requested.

9 (b-5) It is unlawful for an employer to seek the wage or  
10 salary history of a prospective employee from the prospective  
11 employee or a current or former employer or to require that a  
12 prospective employee's prior wage or salary history meet  
13 certain criteria. This subsection does not apply if:

14 (1) the prospective employee's wage or salary history  
15 is a matter of public record;

16 (2) the prospective employee is a current employee of  
17 the employer and is applying for a position with the same  
18 employer; or

19 (3) a prospective employee has voluntarily disclosed  
20 such information.

21 An employer may seek or confirm a prospective employee's  
22 wage or salary history after an offer of employment, with  
23 salary or wage, has been negotiated and made to the prospective  
24 employee.

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

1 individual:

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

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

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

10 (Source: P.A. 93-6, eff. 1-1-04.)

11 (820 ILCS 112/28 new)

12 Sec. 28. Self-evaluation.

13 (a) An employer against whom an action is brought alleging  
14 a violation of subsection (a) of Section 10 and who, within the  
15 previous 3 years and prior to the commencement of the action,  
16 has completed a self-evaluation of the employer's pay practices  
17 in good faith and can demonstrate that reasonable progress has  
18 been made towards eliminating wage differentials based on  
19 gender for the same or substantially similar work on jobs the  
20 performance of which requires equal skill, effort, and  
21 responsibility, and which are performed under similar working  
22 conditions, in accordance with that evaluation, shall have an  
23 affirmative defense to liability under subsection (a) of  
24 Section 10. For purposes of this subsection, an employer's  
25 self-evaluation may be of the employer's own design, so long as

1 it is reasonable in detail and scope in light of the size of  
2 the employer, or may be consistent with standard templates or  
3 forms issued by the Department.

4 (b) An employer who has completed a self-evaluation in good  
5 faith within the previous 3 years and prior to the commencement  
6 of the action and can demonstrate that reasonable progress has  
7 been made towards eliminating wage differentials based on  
8 gender for the same or substantially similar work on jobs the  
9 performance of which requires equal skill, effort, and  
10 responsibility, and which are performed under similar working  
11 conditions, but cannot demonstrate that the evaluation was  
12 reasonable in detail and scope, shall not be entitled to an  
13 affirmative defense under this subsection, but shall not be  
14 liable for any civil fine for a violation of this Act in excess  
15 of:

16 (1) \$500 per employee affected, if the employer has  
17 fewer than 4 employees; or

18 (2) \$2,500 per employee affected, if the employer has 4  
19 or more employees.

20 (c) Evidence of a self-evaluation or remedial steps  
21 undertaken in accordance with this Section shall not be  
22 admissible in any proceeding as evidence of a violation of this  
23 Act.

24 (d) An employer who has not completed a self-evaluation  
25 shall not be subject to any negative or adverse inference as a  
26 result of not having completed a self-evaluation.

1       (e) An employer who uses the affirmative defense under this  
2 Section is not precluded from using any other affirmative  
3 defense under this Act.

4       (820 ILCS 112/30)

5       Sec. 30. Violations; fines and penalties.

6       (a) If an employee is paid by his or her employer less than  
7 the wage to which he or she is entitled in violation of Section  
8 10 of this Act, the employee may recover in a civil action the  
9 entire amount of any underpayment together with interest and  
10 the costs and reasonable attorney's fees as may be allowed by  
11 the court and as necessary to make the employee whole. At the  
12 request of the employee or on a motion of the Director, the  
13 Department may make an assignment of the wage claim in trust  
14 for the assigning employee and may bring any legal action  
15 necessary to collect the claim, and the employer shall be  
16 required to pay the costs incurred in collecting the claim.  
17 Every such action shall be brought within 5 years from the date  
18 of the underpayment. For purposes of this Act, "date of the  
19 underpayment" means each time wages are underpaid.

20       (b) The Director is authorized to supervise the payment of  
21 the unpaid wages owing to any employee or employees under this  
22 Act and may bring any legal action necessary to recover the  
23 amount of unpaid wages and penalties and the employer shall be  
24 required to pay the costs. Any sums recovered by the Director  
25 on behalf of an employee under this Section shall be paid to

1 the employee or employees affected.

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

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

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

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

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

21 (e) If an employee recovers unpaid wages under this Section  
22 and also files a complaint or brings an action under 29 U.S.C  
23 Section 206(d) which results in additional recovery under  
24 federal law for the same violation, the employee shall return  
25 to the employer the amounts recovered under this Section or the  
26 amounts recovered under federal law, whichever is less.

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