



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1707

Introduced 2/15/2019, by Sen. Jennifer Bertino-Tarrant

#### SYNOPSIS AS INTRODUCED:

820 ILCS 112/10  
820 ILCS 112/13 new  
820 ILCS 112/30

Amends the Equal Pay Act of 2003. Prohibits an employer from: (i) screening job applicants based on their wage or salary history, (ii) requiring that an applicant's prior wages satisfy minimum or maximum criteria, and (iii) requesting or requiring as a condition of being interviewed or as a condition of continuing to be considered for an offer of employment that an applicant disclose prior wages or salary. Prohibits an employer from seeking the salary, including benefits or other compensation or salary history, of a job applicant from any current or former employer, with some exceptions. Provides for employers to establish a self-evaluation plan of the employer's pay practices. Sets forth permissible components of a self-evaluation plan. Requires the self-evaluation plan to be submitted to the Department of Labor for verification. Provides that an employer that has completed a self-evaluation plan that has been verified by the Department of Labor has an affirmative defense to liability for certain alleged violations of the Act. Provides that an employer that does not have a verified self-evaluation plan may be subject to civil penalties for violations of the Act. Limits defenses. Provides for penalties and injunctive relief.

LRB101 08920 JLS 54010 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 and adding Section 13 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 similar  
13 equal 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 and  
5           consistent with a business necessity; and

6           (C) accounts for the entire 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 equal skill,  
12          effort, and responsibility, and which are performed under  
13          similar working conditions, except where the payment is made  
14          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.

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

26          Nothing in this Act may be construed to require an employer

1 to pay, to any employee at a workplace in a particular county,  
2 wages that are equal to the wages paid by that employer at a  
3 workplace in another county to employees in jobs the  
4 performance of which requires equal skill, effort, and  
5 responsibility, and which are performed under similar working  
6 conditions.

7 (b) It is unlawful for any employer to interfere with,  
8 restrain, or deny the exercise of or the attempt to exercise  
9 any right provided under this Act. It is unlawful for any  
10 employer to discharge or in any other manner discriminate  
11 against any individual for inquiring about, disclosing,  
12 comparing, or otherwise discussing the employee's wages or the  
13 wages of any other employee, or aiding or encouraging any  
14 person to exercise his or her rights under this Act. It is  
15 unlawful for an employer to require an employee to sign a  
16 contract or waiver that would prohibit the employee from  
17 disclosing or discussing information about the employee's  
18 wages.

19 (b-5) It is unlawful for an employer to screen job  
20 applicants based on their wage or salary history, including by  
21 requiring that an applicant's prior wages, including benefits  
22 or other compensation, satisfy minimum or maximum criteria or  
23 requesting or requiring as a condition of being interviewed, as  
24 a condition of continuing to be considered for an offer of  
25 employment, as a condition of an offer of employment or an  
26 offer of compensation, or as a condition of employment that an

1 applicant disclose prior wages or salary.

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

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

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

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

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

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

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

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

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

2 (820 ILCS 112/13 new)

3 Sec. 13. Self-evaluation plan.

4 (a) An employer against whom an action is brought alleging  
5 a violation of Section 10 of this Act and who, within the  
6 previous 3 years and prior to the commencement of the action,  
7 has completed a self-evaluation plan of its pay practices that  
8 has been verified by the Department pursuant to subsection (b)  
9 of this Section and can demonstrate that progress has been made  
10 towards eliminating wage differentials based upon gender for  
11 the same or substantially similar work on jobs the performance  
12 of which requires equal skill, effort, and responsibility and  
13 which are performed under similar working conditions, in  
14 accordance with that evaluation, has an affirmative defense to  
15 liability for violations under Section 10 of this Act. An  
16 employer's self-evaluation may be of the employer's own design  
17 provided that it is, in light of the size of the employer,  
18 reasonable in detail and scope.

19 A self-evaluation plan may include, but is not limited to,  
20 the following components:

21 (1) an evaluation of the employer's compensation  
22 system for internal equity;

23 (2) an evaluation of the employer's compensation  
24 system for industry competitiveness;

25 (3) an examination of the employers' compensation

1 system and comparison of job grades or scores;

2 (4) a review of data for personnel entering the  
3 employer;

4 (5) an assessment of how raises are awarded;

5 (6) an evaluation of employee training, development,  
6 and promotion opportunities; and

7 (7) a written policy that prohibits the employer from  
8 seeking the wage or salary history of a prospective  
9 employee and prohibits the employer from requiring an  
10 employee to sign a contract or waiver that would prohibit  
11 the employee from disclosing or discussing the employer's  
12 wage, salary, or other compensation.

13 (b) An employer shall submit the self-evaluation plan to  
14 the Department for verification that a self-evaluation plan has  
15 been completed. The self-evaluation plan shall be submitted to  
16 the Department on standard templates or forms issued by the  
17 Department.

18 (c) If an employer has completed a self-evaluation plan in  
19 another state within the previous 3 years that demonstrates  
20 that progress has been made towards eliminating wage  
21 differentials based on gender, then the business's evaluation  
22 plan shall be verified by the Department upon the employer  
23 providing proof the self-evaluation plan is completed and  
24 approved, verified, or otherwise accepted in that state.

25 (d) The Department shall verify an employer's  
26 self-evaluation plan established under subsection (a) within

1 30 days after the employer's submission of the self-evaluation  
2 plan.

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

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

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

19 (f) Evidence of a self-evaluation plan or remedial steps  
20 undertaken in accordance with this Section is not admissible in  
21 any proceeding as evidence of a violation of this Act.

22 (g) An employer who has not completed a self-evaluation  
23 plan shall not be subject to any negative or adverse inference  
24 as a result of not having completed a self-evaluation plan.

25 (h) An employer who uses the affirmative defense under this  
26 Section is not precluded from using any other affirmative



1 defense under this Act.

2 (820 ILCS 112/30)

3 Sec. 30. Violations; fines and penalties.

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

22 (a-5) If an employer violates subsection (b), (b-5), or  
23 (b-10) of Section 10, the employee may recover in a civil  
24 action any damages incurred, special damages not to exceed  
25 \$10,000, injunctive relief as may be appropriate, and costs and

1 reasonable attorney's fees as may be allowed by the court and  
2 as necessary to make the employee whole. If special damages are  
3 available, an employee may recover compensatory damages only to  
4 the extent such damages exceed the amount of special damages.  
5 Such action shall be brought within 5 years from the date of  
6 the violation.

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

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

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

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

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

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

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