



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3100

Introduced 2/15/2018, by Sen. Jennifer Bertino-Tarrant

SYNOPSIS AS INTRODUCED:

820 ILCS 112/10
820 ILCS 112/13 new

Amends the Equal Pay Act of 2003. Prohibits an employer from requiring an employee to sign a nondisclosure agreement regarding the employee's salary, from seeking the salary history of a prospective employee, and from requiring that a prospective employee's salary history meet any specified criteria. 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.

LRB100 20542 JLS 35934 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 Section 10 and by 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 equal skill, effort,
13 and responsibility, and which are performed under similar
14 working conditions, except where the 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) sex 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

1 may not, to comply with this Act, reduce the wages of any other
2 employee.

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

10 (b) It is unlawful for any employer to interfere with,
11 restrain, or deny the exercise of or the attempt to exercise
12 any right provided under this Act. It is unlawful for any
13 employer to discharge or in any other manner discriminate
14 against any individual for inquiring about, disclosing,
15 comparing, or otherwise discussing the employee's wages or the
16 wages of any other employee, or aiding or encouraging any
17 person to exercise his or her rights under this Act. It is
18 unlawful for an employer to require an employee to sign a
19 contract or waiver that prohibits the employee from disclosing
20 or discussing the employee's wage, salary, or other
21 compensation. An employer may, however, prohibit a human
22 resources employee, a supervisor, or any other employee whose
23 job responsibilities require or allow access to other
24 employees' wage or salary information from disclosing that
25 information without prior written consent from the employee
26 whose information is sought or requested.

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

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

8 (2) the prospective employee is a current employee of
9 the employer and is applying for a position with the same
10 employer; or

11 (3) a prospective employee has voluntarily disclosed
12 the information.

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

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

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

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

24 (4) fails to comply with any wage or salary history
25 inquiry.

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

1 (820 ILCS 112/13 new)

2 Sec. 13. Self-evaluation plan.

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

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

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

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

24 (3) an examination of the employers' compensation
25 system and comparison of job grades or scores;

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

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

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

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

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

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

24 (d) The Department shall verify an employer's
25 self-evaluation plan established under subsection (a) within
26 30 days after the employer's submission of the self-evaluation

1 plan.

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

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

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

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

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

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