

**SB0073**



**101ST GENERAL ASSEMBLY**

**State of Illinois**

**2019 and 2020**

**SB0073**

Introduced 1/23/2019, by Sen. Cristina Castro

**SYNOPSIS AS INTRODUCED:**

820 ILCS 112/10  
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. Limits defenses. Provides for penalties and injunctive relief. Effective 60 days after becoming law.

LRB101 07292 TAE 52331 b

**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 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, salary, benefits, or other compensation.

19 (b-5) It is unlawful for an employer, employment agency, or  
20 employee or agent thereof to screen job applicants based on  
21 their current or prior wage or salary history, including  
22 benefits or other compensation, by requiring that such wage or  
23 salary history of an applicant satisfy minimum or maximum  
24 criteria; or to request or require such wage or salary history  
25 as a condition of being considered for employment, such as when  
26 applying online or talking with a headhunter, as a condition of

1 being interviewed, as a condition of continuing to be  
2 considered for an offer of employment, as a condition of an  
3 offer of employment or an offer of compensation, or as a  
4 condition of employment that an applicant disclose such wage or  
5 salary history.

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

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

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

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

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

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

1           (3) has testified, or is about to testify, in any  
2           inquiry or proceeding relating to any right provided under  
3           this Act; or -

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

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

6           (820 ILCS 112/30)

7           Sec. 30. Violations; fines and penalties.

8           (a) If an employee is paid by his or her employer less than  
9           the wage to which he or she is entitled in violation of Section  
10          10 of this Act, the employee may recover in a civil action the  
11          entire amount of any underpayment together with interest,  
12          compensatory damages if the employee demonstrates that the  
13          employer acted with malice or reckless indifference, punitive  
14          damages as may be appropriate, injunctive relief as may be  
15          appropriate, and the costs and reasonable attorney's fees as  
16          may be allowed by the court and as necessary to make the  
17          employee whole. At the request of the employee or on a motion  
18          of the Director, the Department may make an assignment of the  
19          wage claim in trust for the assigning employee and may bring  
20          any legal action necessary to collect the claim, and the  
21          employer shall be required to pay the costs incurred in  
22          collecting the claim. Every such action shall be brought within  
23          5 years from the date of the underpayment. For purposes of this  
24          Act, "date of the underpayment" means each time wages are  
25          underpaid.

1       (a-5) If an employer violates subsection (b), (b-5), or  
2       (b-10) of Section 10, the employee may recover in a civil  
3       action any damages incurred, special damages not to exceed  
4       \$10,000, injunctive relief as may be appropriate, and costs and  
5       reasonable attorney's fees as may be allowed by the court and  
6       as necessary to make the employee whole. If special damages are  
7       available, an employee may recover compensatory damages only to  
8       the extent such damages exceed the amount of special damages.  
9       Such action shall be brought within 5 years from the date of  
10       the violation.

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

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

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

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

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

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

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

14          Section 99. Effective date. This Act takes effect 60 days  
15          after becoming law.