AN ACT concerning employment.

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

Section 5. The Equal Pay Act of 2003 is amended by changing Sections 5, 10, 15, 20, and 30 as follows:

(820 ILCS 112/5)

Sec. 5. Definitions. As used in this Act:

"Director" means the Director of Labor.

"Department" means the Department of Labor.

"Employee" means any individual permitted to work by an employer.

"Employer" means an individual, partnership, corporation, association, business, trust, person, or entity for whom employees are gainfully employed in Illinois and includes the State of Illinois, any state officer, department, or agency, any unit of local government, and any school district.

"Pay scale and benefits" means the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including, but not limited to, bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position, set by reference to any applicable pay scale, the previously determined range for the position, the actual range of others

currently holding equivalent positions, or the budgeted amount for the position, as applicable.

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

(820 ILCS 112/10)

Sec. 10. Prohibited acts.

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

(1) a seniority system;

(2) a merit system;

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

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

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

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

and consistent with a business necessity; and

(C) accounts for the differential.

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

(1) a seniority system;

(2) a merit system;

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

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

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

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

(C) accounts for the differential.

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

employee.

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

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

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

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

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

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

(b-15) Nothing in subsections (b-5) and (b-10) shall be

construed to prevent an employer or employment agency, or an employee or agent thereof, from:

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

(2) engaging in discussions with an applicant for employment about the applicant's expectations with respect to wage or salary, benefits, and other compensation, including unvested equity or deferred compensation that the applicant would forfeit or have canceled by virtue of the applicant's resignation from the applicant's current employer. If, during such discussion, the applicant voluntarily and without prompting discloses that the applicant would forfeit or have canceled by virtue of the applicant's resignation from the applicant's current employer unvested equity or deferred compensation, an employer may request the applicant to verify the aggregate amount of such compensation by submitting a letter or document stating the aggregate amount of the unvested equity or deferred compensation from, at the applicant's choice, one of the following: (1) the applicant's current employer or (2) the business entity that administers the funds that constitute the unvested equity or deferred compensation.

(b-20) An employer is not in violation of subsections (b-5) and (b-10) when a job applicant voluntarily and without

prompting discloses his or her current or prior wage or salary history, including benefits or other compensation, on the condition that the employer does not consider or rely on the voluntary disclosures as a factor in determining whether to offer a job applicant employment, in making an offer of compensation, or in determining future wages, salary, benefits, or other compensation.

(b-25) It is unlawful for an employer with 15 or more employees to fail to include the pay scale and benefits for a position in any specific job posting. The inclusion of a hyperlink to a publicly viewable webpage that includes the pay scale and benefits satisfies the requirements for inclusion under this subsection. If an employer engages a third party to announce, post, publish, or otherwise make known a job posting, the employer shall provide the pay scale and benefits, or a hyperlink to the pay scale and benefits, to the third party and the third party shall include the pay scale and benefits, or a hyperlink to the pay scale and benefits, in the job posting. The third party is liable for failure to include the pay scale and benefits in the job posting, unless the third party can show that the employer did not provide the necessary information regarding pay scale and benefits. An employer shall announce, post, or otherwise make known all opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position, except for positions in the State of

Illinois workforce designated as exempt from competitive selection. Nothing in this subsection requires an employer to make a job posting. Posting of a relevant and up to date general benefits description in an easily accessible, central, and public location on an employer's website and referring to this posting in the job posting shall be deemed to satisfy the benefits posting requirement under this subsection. This subsection only applies to positions that (i) will be physically performed, at least in part, in Illinois or (ii) will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois. Nothing in this subsection prohibits an employer or employment agency from asking an applicant about his or her wage or salary expectations for the position the applicant is applying for. An employer or employment agency shall disclose to an applicant for employment the pay scale and benefits to be offered for the position prior to any offer or discussion of compensation and at the applicant's request, if a public or internal posting for the job, promotion, transfer, or other employment opportunity has not been made available to the applicant. This subsection shall only apply to job postings that have been posted after the effective date of this amendatory Act of the 103rd General Assembly.

(b-30) An employer or an employment agency shall not refuse to interview, hire, promote, or employ, and shall not otherwise retaliate against, an applicant for employment or an

employee for exercising any rights under subsection (b-25).

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

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

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

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

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

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

(820 ILCS 112/15)

Sec. 15. Enforcement.

(a) The Director or his or her authorized representative shall administer and enforce the provisions of this Act. The Director of Labor shall adopt rules necessary to administer and enforce this Act.

(b) An employee, ~~or~~ former employee , or, for the purposes of a violation of subsection (b-25) of Section 10, any person that claims to be aggrieved by a violation of that subsection,

may file a complaint with the Department alleging a violation of this Act by submitting a signed, completed complaint form. All complaints shall be filed with the Department within one year from the date of the relevant violation ~~underpayment~~.

(c) The Department has the power to conduct investigations in connection with the administration and enforcement of this Act and the authorized officers and employees of the Department are authorized to investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records at reasonable times during regular business hours, question the employees and investigate the facts, conditions, practices, or matters as he or she may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of this Act.

(d) The Department may refer a complaint alleging a violation of this Act to the Department of Human Rights for investigation if the subject matter of the complaint also alleges a violation of the Illinois Human Rights Act and the Department of Human Rights has jurisdiction over the matter. When a complaint is referred to the Department of Human Rights under this subsection, the Department of Human Rights shall also file the complaint under the Illinois Human Rights Act and be the agency responsible for investigating the complaint. The Department shall review the Department of Human Rights'

investigation and findings to determine whether a violation of this Act has occurred or whether further investigation by the Department is necessary and take any necessary or appropriate action required to enforce the provisions of this Act. The Director of Labor and the Department of Human Rights shall adopt joint rules necessary to administer and enforce this subsection.

(Source: P.A. 98-1051, eff. 1-1-15.)

(820 ILCS 112/20)

Sec. 20. Recordkeeping requirements. An employer subject to any provision of this Act shall make and preserve records that document the name, address, and occupation of each employee, the wages paid to each employee, the pay scale and benefits for each position, the job posting for each position, and any other information the Director may by rule deem necessary and appropriate for enforcement of this Act. An employer subject to any provision of this Act shall preserve those records for a period of not less than 5 years and shall make reports from the records as prescribed by rule or order of the Director, unless the records relate to an ongoing investigation or enforcement action under this Act, in which case the records must be maintained until their destruction is authorized by the Department or by court order.

(Source: P.A. 96-467, eff. 8-14-09.)

(820 ILCS 112/30)

Sec. 30. Violations; fines and penalties.

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

(a-5) If an employer violates subsection (b), (b-5), (b-10), or (b-20) of Section 10, the employee may recover in a civil action any damages incurred, special damages not to exceed $10,000, injunctive relief as may be appropriate, and costs and reasonable attorney's fees as may be allowed by the court and as necessary to make the employee whole. If special

damages are available, an employee may recover compensatory damages only to the extent such damages exceed the amount of special damages. Such action shall be brought within 5 years from the date of the violation.

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

(c) Employers who violate any provision of this Act or any rule adopted under the Act<u>, except for a violation of subsection (b-25) of Section 10,</u> are subject to a civil penalty for each employee affected as follows:

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

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

(3) An employer with 100 or more employees who

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

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

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

(c-5) The Department may initiate investigations of alleged violations of subsection (b-25) of Section 10 upon receiving a complaint from any person that claims to be aggrieved by a violation of that subsection or at the Department's discretion. Any person that claims to be aggrieved by a violation of subsection (b-25) of Section 10 may submit a complaint of an alleged violation of that subsection to the Department within one year after the date of the violation. If the Department has determined that a violation has occurred, it shall issue to the employer a notice setting forth the violation, the applicable penalty as

described in subsections (c-10) and (c-15), and the period to cure the violation as described in subsection (c-10).

(c-7) A job posting found to be in violation of subsection (b-25) of Section 10 shall be considered as one violating job posting regardless of the number of duplicative postings that list the job opening.

(c-10) The penalties for a job posting or batch of postings that are active at the time the Department issues a notice of violation for violating subsection (b-25) of Section 10 are as follows:

(1) For a first offense, following a cure period of 14 days to remedy the violation, a fine not to exceed $500 at the discretion of the Department. A first offense may be either a single job posting that violates subsection (b-25) of Section 10 or multiple job postings that violate subsection (b-25) of Section 10 and are identified at the same time by the Department. The Department shall have discretion to waive any civil penalty under this paragraph.

(2) For a second offense, following a cure period of 7 days to remedy the violation, a fine not to exceed $2,500 at the discretion of the Department. A second offense is a single job posting that violates subsection (b-25) of Section 10. The Department shall have discretion to waive any civil penalty under this paragraph.

(3) For a third or subsequent offense, no cure period,

a fine not to exceed $10,000 at the discretion of the Department. A third or subsequent offense is a single job posting that violates subsection (b-25) of Section 10. The Department shall have discretion to waive any civil penalty under this paragraph. If a company has had a third offense, it shall incur automatic penalties without a cure period for a period of 5 years, at the completion of which any future offense shall count as a first offense. The 5-year period shall restart if, during that period, an employer receives a subsequent notice of violation from the Department.

(c-15) The penalties for a job posting or batch of job postings that are not active at the time the Department issues a notice of violation for violating subsection (b-25) of Section 10 are as follows:

(1) For a first offense, a fine not to exceed $250 at the discretion of the Department. A first offense may be either a single job posting that violates subsection (b-25) of Section 10 or multiple job postings that violate subsection (b-25) of Section 10 and are identified at the same time by the Department. The Department shall have discretion to waive any civil penalty under this paragraph.

(2) For a second offense, a fine not to exceed $2,500 at the discretion of the Department. A second offense is a single job posting that violates subsection (b-25) of

Section 10. The Department shall have discretion to waive any civil penalty under this paragraph.

(3) For a third or subsequent offense, a fine not to exceed $10,000 at the discretion of the Department. A third or subsequent offense is a single job posting that violates subsection (b-25) of Section 10. The Department shall have discretion to waive any civil penalty under this paragraph.

For the purposes of this subsection, the Department, during its investigation of a complaint, shall make a determination as to whether a job posting is not active by considering the totality of the circumstances, including, but not limited to: (i) whether a position has been filled; (ii) the length of time a posting has been accessible to the public; (iii) the existence of a date range for which a given position is active; and (iv) whether the violating posting is for a position for which the employer is no longer accepting applications.

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

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

Section 99. Effective date. This Act takes effect January 1, 2025.