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Equal Pay Act expands with new year

Equal pay issues continue to garner attention from courts and legislatures around the country as initiatives designed to eradicate pay inequities continue to gain ground. Illinois recently became part of this momentum by increasing the strength of its own equal pay law.

Illinois' Equal Pay Act of 2003 generally prohibits employers from discriminating between employees on the basis of sex by paying wages at a rate not less than the rate at which the employer pays wages to employees of the opposite sex for the "same or substantially similar" work on jobs that require equal skill, effort and responsibility and that are performed under similar working conditions.

Importantly, effective Jan. 1, the act applies to all employers, whereas previously it only applied to employers with four or more employees. Notably, the definition of employer under the act is expansive and includes "an individual, partnership, corporation, association, business, trust, person or entity for whom employees are gainfully employed in Illinois," as well as the state of Illinois, any state officer, department or agency, any unit of local government and any school district.

There are exceptions to the equal pay requirement in the act, including where the employer can point to a seniority system; merit system; a system that measures earnings by quantity or quality of production; or differential based on any other factor other than sex or a factor that would constitute unlawful discrimination under the Illinois Human Rights Act.

The Illinois Human Rights Act

prohibits discrimination in the workplace on a variety of factors, including race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, citizenship status, physical or mental disability, military status, sexual orientation, pregnancy or unfavorable discharge from military service.

Employees and former employees can file a complaint alleging a violation of the Equal Pay Act with the Illinois Labor Department, which has the power to investigate complaints and administer and enforce the provisions of the act.

The act also provides that the labor department can refer a complaint alleging a violation of the act to the Illinois Department of Human Rights for investigation if the subject matter of the complaint also alleges a violation of the Illinois Human Rights Act.

The amended act also changes the penalties applicable to an employer that has been found to have violated the act. For an employer with fewer than four employees, the fines are as follows:

- First offense, a fine not to exceed \$500.
- Second offense, a fine not to exceed \$2,500.
- Third offense, a fine not to exceed \$5,000.

For an employer with four or more employees, the fines are as follows:

- First offense, a fine not to exceed \$2,500.
- Second offense, a fine not to exceed \$3,000.
- Third offense, a fine not to exceed \$5,000.

With respect to damages, if an employee is paid less than the wage to which he or she is entitled, the employee may recover

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in a civil action the entire amount of the underpayment with interest, costs and reasonable attorney fees.

In addition to requiring employers to provide equal pay, the act also states that it is unlawful for any person to discharge or discriminate against any individual because the individual has filed a charge or instituted a proceeding under the act, has given or is about to give information in any inquiry or proceeding under the act or has testified or is about to testify in a proceeding under the act.

The act further provides that it is unlawful for an employer to interfere with, restrain, deny or attempt to deny the exercise of any right as well as to discharge or discriminate against an

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 the act.

The amended act now provides that committing any of these public policy violations will subject the employer to a civil penalty not to exceed \$5,000.

The federal Equal Pay Act also governs disparities in pay based on gender but differs in several respects from the Illinois Equal Pay Act. One significant difference is that the federal Equal Pay Act states that an employer may not discriminate by paying at a rate less than the rate paid to employees of the opposite sex for "equal" work on jobs that require equal skill, effort and responsibility, and which are performed under similar working conditions. Under the Illinois Equal Pay Act, the work can be the same or "substantially similar."

Employees have five years under the Illinois Equal Pay Act to bring an action in court to recover any alleged underpayment of wages, whereas the statute of limitations under the federal Equal Pay Act is either two or three years depending on whether the employer is found to have engaged in a willful violation of the act.

Employers in Illinois should be mindful of the Illinois Equal Pay Act and its new provisions and continue to effectively monitor their pay practices to ensure that any pay inequities are remediated and that any discrimination against employees who discuss or compare wages or otherwise exercise their rights under the act is not occurring.