Engage PEO Client Alert: Illinois

Additional Requirements for Annual EEO-1 Reports

What's New: Illinois will be joining California with its own requirements to report Annual EEO-1 Reporting, scheduled to begin January 1, 2023. Illinois employers' EEO-1 reports **will include individual employee pay data** and **will be made public**. Notably, employers also **must obtain an "equal pay registration certificate"** that demonstrates the average compensation for its female and minority employees is not consistently below that for its male and non-minority employees, taking into consideration certain factors outlined below in the Compliance Statement section.

Many employers are familiar with the federal rules, which require all private employers with 100 or more employees, and government contractors with 50 or more employees and a contract or subcontract of at least $50,000, to file an annual EEO-1 report with the U.S. Department of Labor. That report includes a demographic breakdown of the employer's workforce by race and gender.

New Requirement for Illinois EEO-1 Reports

SB 1480, a new law passed in Illinois, will soon require employers who submit a federal EEO-1 report to submit a similar report to the state of Illinois that includes "information that is substantially similar to the employment data reported under Section D of the federal EEO-1 Report."

Unlike the federal EEO-1 report, **the Illinois EEO-1 report will be made public**. SB 1480 expressly provides that "the Secretary of State shall publish the data on the gender, race, and ethnicity of each corporation's employees on the Secretary of State's official website" within 90 days of receipt.

New Pay Data Reporting Requirement

Illinois will also require employers to **collect and submit employee pay data to the state**. Based on the newly enacted Illinois law, any private employer with 100 or more employees in the state will be **required to obtain an "equal pay registration certificate"** from the Illinois Department of Labor ("or certify in writing that it is exempt) no later than **March 24, 2024**. Employers are also required to recertify every 2 years thereafter.

More drastic is the requirement under this new Illinois law to compile "a list of all employees during the past calendar year, separated by gender and the race and ethnicity categories," as included in the EEO-1 report, and **"report the total wages as defined by Section 2 of the Illinois Wage Payment and Collection Act paid to each employee during the past calendar year, rounded to the nearest hundred dollar…**"[2] Each covered employer requesting an equal pay certification certificate must submit a detailed report.

Here is what we know about Illinois' new "equal pay" initiative so far:

Application: Each company will be contacted by the Illinois Department of Labor (IDOL) and will be given a deadline to apply for an equal pay registration certificate between now and the March 24, 2024 deadline. To apply for an equal pay registration certificate, employers will be required to submit the following to the Illinois Department of Labor:

- *Compliance statement*: An equal pay act compliance statement, signed by a corporate officer, legal counsel, or authorized agent of the business;
- *Employer Information Report EEO-1*: If required to file an EEO-1 report with the EEOC, a copy of the business's most recently filed EEO-1 report for each county in which the business has a facility or employees;
- *List of employees*: Separated by gender and race/ethnicity categories as reported in the business's most recently filed EEO-1 report and the total wages as defined by Section 2 of the Illinois Wage Payment and Collection Act paid to each employee during the past calendar year; and
- *$150 filing fee*.

Compliance Statement: An appropriate compliance statement, signed by a corporate officer, legal counsel, or authorized agent of the business, must certify the following:

- The business complies with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, and the Equal Pay Act of 2003;
- The average compensation for its female and minority employees is not consistently below the average compensation for its male and non-minority employees, as determined by the U.S. Department of Labor's rule, within each of the major job categories in the EEO-1 report, "taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors";
- The business does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex;
- The business corrects wage and benefit disparities when identified to ensure compliance with the above-cited Acts;
- How often wages and benefits are evaluated to ensure compliance with the above-cited Acts; and
- Whether the business utilizes a market pricing approach, state prevailing wage or union contract requirements, performance pay system, internal analysis, or an alternative approach in setting compensation.

Multiple Locations: A business that operates in multiple locations or has multiple facilities within the state should submit a single application regarding all its operations in Illinois.

Rejection or Revocation of Certificate: An application will be rejected if it does not comply with the above-enumerated requirements. An equal pay registration certificate may be suspended or revoked if the business fails to make a good-faith effort to comply with the new law, or has multiple violations.

Audit: The Illinois Department of Labor may audit a business's compliance by requesting the following information regarding employees who are expected to perform work under the contract in each of the major job categories in the EEO-1 report:

- Number of male and female employees;

- Average annualized salaries paid to male and female employees;
- Information on performance payments, benefits, or other elements of compensation;
- Average length of service for male and female employees in each major job category; and
- Other information identified by the business or by the Illinois Department of Labor as needed to determine compliance with above-specified requirements.

Penalty: Any business that falsifies or misrepresents information on its application, does not obtain an equal pay registration certificate, or whose certificate is suspended or revoked after Department investigation may be penalized in an amount equal to 1% of the business's gross profits.

Please connect with your HR Consultant if you have any further questions about the new Illinois compliance requirements scheduled to begin on **January 1, 2023**.