

Legislative Update Impacting Illinois Employers

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Jackson Lewis attorneys are monitoring the progress of [Senate Bill 1480](#), which was approved by the Illinois General Assembly during the lame duck session that convened in early January 2021. The final version of the bill includes several provisions of concern to employers:

- New procedures that must be followed if an employer seeks to disqualify an applicant or employee based on a criminal conviction record;
- A requirement that employers report workforce demographic data to the Secretary of State for publication on the Secretary of State's website; and
- A requirement that employers obtain an equal pay certification and certify that they comply with federal and state discrimination and equal pay laws.

The final version of SB 1480 as amended passed both houses of the General Assembly on January 13, 2021. It was sent to the Governor's office on February 5, 2021.

In summary, these new provisions impact Illinois employers in three important ways.

Amendment to the Illinois Human Rights Act Regarding Criminal Convictions

SB 1480 amends the Illinois Human Rights Act regarding employment decisions based on criminal convictions. The employer must determine that there is either a substantial relationship between the conviction and the position sought (which requires that the employer consider whether the employment position offers the opportunity for the same or a similar offense to occur and the circumstances leading to the conviction will recur in the employment position) or that the granting of employment would involve an unreasonable risk to property or to the safety or welfare of specific

individuals or the general public. The bill includes several factors employers must consider in making this determination. If an employer seeks not to hire an individual based on a criminal record, the employer must give notice to the affected individual, engage in an interactive process, and consider information provided by the applicant about why the conviction should not be considered or be dispositive before it makes a decision to disqualify the applicant, and it must provide additional information to the employee if it does decide to disqualify the applicant.

New Obligation to Report EEO Data in Annual Reports to Secretary of State

SB 1480 also amends the Business Corporation Act. This amendment requires each domestic or registered foreign corporation that is required to file an EEO-1 report to include in annual corporate reports filed with the Illinois Secretary of State information substantially similar to the employment data required by Section D of the federal EEO-1 form. The Secretary of State will publish data on the gender, race, and ethnicity of the corporation's employees on the Secretary of State's website. This obligation applies to corporate reports filed on or after January 1, 2023.

New Equal Pay Certificate Obligation for Employers with More Than 100 Employees

SB 1480 will require private employers with more than 100 employees in Illinois to obtain an "equal pay registration certificate." To obtain the certificate, the employer must provide the EEO-1 data listed above plus the total wages paid to each employee during the prior calendar year. The term "wages" in the new law refers to the expansive definition of "wages" in section 2 of the Illinois Wage Payment and Collection Act, which includes wages, salaries, earned commissions, and other forms of compensation.

The employer also must submit a statement signed by a corporate officer, legal counsel, or other authorized agent of the business for each county in which the business has a facility or employees that includes the following representations:

1. The business is in compliance with Title VII, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, and the Equal Pay Act of 2003;
2. The average compensation for its female and minority employees is not consistently below the average compensation, as determined by IDOL rules, for its male and non-minority employees within each of the major job categories in the Employer Information Report EEO-1 report for which an employee is expected to perform work under the contract, accounting for factors such as length of service, job requirements, experience, skill, effort, responsibility, working condition and other mitigation factors;
3. The business does not restrict employees of one sex to certain job classification and makes retention and promotion decisions without regard to sex;
4. Wage and benefit disparities are corrected when identified; and
5. The business reports how often the employer evaluates wages and benefits to ensure compliance with the above-listed statutes.

The certification also requires the employer to certify whether it uses certain approaches in setting compensation and benefits. An employer who does not obtain a certificate or whose certificate is suspended or revoked after an IDOL investigation is subject to a mandatory civil penalty equal to 1% of “gross profits.”

Existing corporations must obtain certificates within three years after the effective date of the new law. New corporations must obtain certificates within three years after commencing operations. Recertification is required every two years.

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