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**FOR**  
**EQUAL OPPORTUNITY**

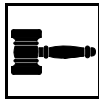
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## INTRODUCTION

All employers, regardless of size, should be aware of state and federal laws regarding equal opportunity. Different laws and regulations apply, depending on the size and type of business.

## ILLINOIS LEGAL OBLIGATIONS



Illinois Human Rights Act—prohibits employment discrimination based on race, color, religion, sex, sexual orientation, national origin, ancestry, citizenship status, marital status, age, physical or mental disability, order of protection status, military service or unfavorable military discharge, and prohibits sexual harassment. The Act covers all public employers, private employers with 15 or more employees and all employers with public contracts, except for the sexual harassment and disability provisions, which apply to all employers.

The Illinois Department of Human Rights and the Illinois Human Rights Commission enforce the Illinois Human Rights Act. The Illinois Department of Human Rights can issue, receive, investigate, settle and dismiss discrimination complaints.



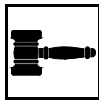
Illinois Equal Pay Act of 2003—prohibits employers from paying unequal wages to male and female employees for doing the same or substantially similar work that requires equal skill, effort, and responsibility, and is performed under similar working conditions. Employers cannot retaliate against employees for exercising their rights under the Act, and employers are prohibited from disciplining or discharging an employee for discussing or comparing wages. Applies to both private- and public-sector employers with four or more employees. Employers covered by the Act must **post** a summary of the law in the workplace.

The Illinois Equal Pay Act is enforced by the Illinois Department of Labor (IDOL). The Labor Department has significant power to investigate compliance with the Act, including entering and inspecting workplaces.



Illinois Equal Wage Act—for employers engaged in manufacturing; requires equal pay for equal work. Seniority, experience, training, skill or ability or difference in duties or services performed (whether regular or occasional) and any other reasonable factor other than sex may be considered. Applies only to employers engaged in manufacturing with six or more employees.

The Illinois Department of Labor (IDOL) enforces the Illinois Equal Wage Act.



The Illinois Victims' Economic Security and Safety Act (VESSA) provides 12 weeks of unpaid leave within a 12-month period to an employee who is a victim of domestic or sexual violence or whose family or household member is a victim. VESSA prohibits employers from discharging, discriminating or retaliating against employees who are victims of domestic violence and must take time off from work. Employers covered by the Act must **post** a summary of the law in the workplace.

The Illinois Department of Labor (IDOL) enforces the Victims' Economic Security and Safety Act (VESSA).

## ILLINOIS HUMAN RIGHTS ACT



The Illinois Human Rights Act prohibits employment discrimination based on race, color, religion, sex, sexual orientation, national origin, ancestry, citizenship status, marital status, age, physical or mental disability, order of protection status, military status or unfavorable military discharge, and prohibits sexual harassment.



The Illinois Citizen Soldier Initiative, effective August 16, 2004, expands the term “military status” in the Illinois Human Rights Act to include National Guard members and reservists, in addition to active duty military service members.

The Illinois Human Rights Act covers all public employers, private employers with 15 or more employees, and all employers with public contracts. However, the sexual harassment and disability provisions apply to *all employers*.

Employers are prohibited from retaliating against an employee for filing a discrimination charge, participating in an investigation or opposing a discriminatory practice. In addition, employers may not inquire into, or rely on, information from an arrest or criminal history record that has been expunged, sealed or impounded as a basis for employment actions.

The Illinois Department of Human Rights and the Illinois Human Rights Commission enforce the Illinois Human Rights Act. The Illinois Department of Human Rights can issue, receive, investigate, settle and dismiss discrimination complaints.



For more information on the Illinois Human Rights Act, refer to the **DISCRIMINATION CHARGES** section later in this chapter.

### **ARE THERE ANY EXCEPTIONS TO THE ILLINOIS HUMAN RIGHTS ACT?**

Yes. Exceptions to the Illinois Human Rights Act include the following.

- Illinois law permits an employer to hire or select between persons for “Bona Fide Occupational Qualifications” (BFOQ).
- Preferential treatment can be given to veterans as required by law.
- When a position involves fiduciary responsibility, unfavorable discharge from military employment may be considered.
- Acting upon results of professionally-developed ability tests is allowed.
- Different standards of compensation or terms of employment may be applied pursuant to a merit or retirement system provided that such administration does not have the effect of unlawful discrimination.
- Employers may establish educational requirements as prerequisites for a training or apprenticeship program, as long as such prerequisites do not have the effect of discriminating on any basis except age.
- Employers may make legitimate distinctions based on citizenship status if authorized or required by state or federal law.

### **DOES ILLINOIS PERMIT MANDATORY RETIREMENT?**

Generally, mandatory retirement at any age is prohibited under Illinois law. However, mandatory retirement for executives over 65 years of age is allowed if the individual:

1. has been an executive or a high-level policymaker for (at least) the two years preceding retirement; and
2. is entitled to an immediate, non-forfeitable annual retirement income of at least \$44,000 from the employer.

### **“ENGLISH-ONLY” POLICIES UNDER THE ILLINOIS HUMAN RIGHTS ACT**

Employers may *not* restrict an employee's right to speak languages other than English when the communication is not related to the employee's job duties. An English-only policy is unlawful unless it is narrowly tailored and justified by a business necessity. The prohibition against such policies applies to employers with 15 or more employees who are covered by the Illinois Human Rights Act.

It is a civil rights violation for an employer to adopt or enforce an English-only policy, and employees may file a Charge of Discrimination with the Illinois Department of Human Rights. Penalties for violating the law include compensatory and punitive damages, civil penalties of up to \$75,000 for repeated offenses, and attorneys' fees.

#### **WHAT ARE SOME EXAMPLES OF ACTIVITIES WHERE LANGUAGE CANNOT BE PROHIBITED?**

For example, an employer cannot prohibit an employee from speaking in a foreign language while discussing a movie or a ballgame with a fellow employee (*e.g.*, activities that are not related to the employee's duties).

### **ILLINOIS EQUAL PAY ACT**



Illinois Equal Pay Act of 2003—prohibits employers from paying unequal wages to male and female employees for doing the same or substantially similar work that requires equal skill, effort, and responsibility, and is performed under similar working conditions. Employers cannot retaliate against employees for exercising their rights under the Act, and employers are prohibited from disciplining or discharging an employee for discussing or comparing wages.

*Posting Requirement:* Employers covered by the Act must **post** a summary of the law in the workplace.

EXCEPTION: Unequal pay is not prohibited where wage differences are based on:

- a merit system;
- a system that measures earnings by quantity or quality of production;
- a seniority system; or
- any factor other than gender.

**WHICH EMPLOYERS MUST  
COMPLY WITH THE ILLINOIS  
EQUAL PAY ACT?**

The Illinois Equal Pay Act, which is similar to the federal Equal Pay Act, covers both private- and public-sector employers with four or more employees. Refer to the **Compensation** chapter for more information.

**CAN EMPLOYERS PENALIZE  
EMPLOYEES FOR  
DISCUSSING WAGES?**

No. The Act prohibits employers from penalizing or otherwise discriminating against employees for discussing or comparing their wages or the wages of other employees with co-workers.

**WHAT ARE THE RECORD KEEPING  
REQUIREMENTS UNDER THE  
ILLINOIS EQUAL PAY ACT?**

Employers must keep the name, address, occupation, and the wage and salary records of each employee for three years.

**WHAT ARE THE  
PENALTIES FOR  
VIOLATING  
THE ACT?**

Employers who violate the Illinois Equal Pay Act will be required to make up the wage difference to the employee, pay legal costs, and civil fines of up to \$2,500 per violation. The Act allows actions to be brought up to three years after the employee learns of the wage underpayment.