A Timely Analysis of Legal Developments

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# Illinois Amends State Equal Pay Act to Extend Filing Periods and Adopt Ledbetter Paycheck Standard

**By Darren M. Mungerson**

Illinois recently amended its Equal Pay Act of 2003 (EPA) to make it easier for employees to complain of perceived violations. These amendments significantly expand the amount of time within which employees must submit complaints, place heavier burdens on employers to keep and preserve wage-related records, and permit employees to complain about distant compensation decisions so long as they are reflected in recent wage payments. These amendments became effective August 14, 2009, the date that Illinois governor Pat Quinn signed the new law, Public Act 96-467.

## Extended Time to File Complaints

The EPA requires employers with four or more employees to pay the same wages to members of both sexes who work in the same county of the State of Illinois and perform "the same or substantially similar work" on jobs that require "equal skill, effort, and responsibility and which are performed under similar working conditions."[1]

The EPA permits employees to complain of perceived violations to the Illinois Department of Labor (IDOL) or bring an action in court to recover any underpayments. Previously, complaints to the IDOL had to be made within 180 calendar days of the date the employee learned of the violations and court actions had to be brought within three years of the date the employee learned of the underpayment.[2]

Through Public Act 96-467, these deadlines have been extended significantly. Now, an employee has one year (instead of 180 days) from the date of the underpayment to file a complaint with the IDOL[3], and court actions, whether brought by the individual employee or the IDOL, must be brought within five years (instead of three).[4]

While some will emphasize the increased statute of limitations for bringing court actions, the extension of time in which to bring claims to the IDOL should not be overlooked as the IDOL is authorized to investigate alleged violations by, among other things, subpoenaing witnesses and records and inspecting work sites.[5] In addition, employers may be subject to additional penalties and interest in court actions brought by the IDOL, which would not otherwise apply in court actions brought by individual employees.[6]

## Adoption of Ledbetter "Paycheck Standard" for Calculating Statute of Limitations

Public Act 96-467 also amends the EPA by changing the method for determining when a violation of the EPA has occurred. Previously, the limitations period ran from "the date the employee learned of the underpayment." Now, the limitations period runs from "the date of the underpayment," which is defined as "each time wages are underpaid."[7] This essentially adopts the paycheck standard embodied in the federal EPA pursuant to the Lilly Ledbetter Fair Pay Act, which was passed by Congress earlier this year. The practical effect is that each paycheck in which the employee is underpaid due to his or her gender constitutes a new violation.

## Extension of Record-Keeping Requirements

Finally, Public Act 96-467 amends the EPA to require that employers "make and preserve records that document the name, address, and occupation of each employee, the wages paid to each employee, and any other information the Director [of the IDOL] may by rule deem necessary and appropriate for enforcement of [the EPA]" for at least five years, unless they relate to an ongoing investigation or enforcement action, in which case the employer must maintain those records until the IDOL or a court authorizes their destruction.[8] Previously, employers were required to maintain such records for only three years.

## Future Implications for Employers

These amendments reflect Illinois' ongoing efforts to promote enforcement of its wage and hour laws, particularly those designed to ensure equal pay between men and women. Given the EPA's applicability to small employers who may not be subject to the federal Equal Pay Act, employers of all sizes should take proactive steps to ensure their compliance with Illinois' EPA and avoid potential liability and penalties, which can be significant. Such steps include conducting guided workforce audits.

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[1] 820 ILCS 112/10(a).

[2] 56 Ill. Adm. Code 320.210(b).

[3] 820 ILCS 112/15(b).

[4] 820 ILCS 112/30(a).

[5] 820 ILCS 112/15.

[6] 820 ILCS 112/30(c); 820 ILCS 112/35(a).

[7] 820 ILCS 112/30(a).

[8] 820 ILCS 112/20.