



*“Advice and counsel that is concise, timely,
on-point and cost-effective.”*

Are you ready to comply with the Illinois Equal Pay Act, and is your analysis protected by attorney client privilege? It should be.

Scharf Banks Marmor, LLC Provides Privileged Analyses and Compliant Submissions for Employers Across the Nation Required to Comply with the Illinois Equal Pay Act

The Illinois Equal Pay Act (IEPA) pay equity certification compliance process has begun. While the details of enforcement and penalties are yet to be fully fleshed out, the Illinois Legislature has made one thing clear: they are ready to make this State one of the strictest in the nation when it comes to enforcing pay equity. The rules apply to any company in the United States that has 100 or more employees in Illinois. The burden for complying with the statute, and with all the rigorous accounting and detailed compensation analyses that accompany it, will be borne entirely by the employer. Many employers may not fully be prepared for that work, and many may not have thought through how best to go about complying with the IEPA.

Right now, many employers are not fully aware of the new certification requirements; and the filing deadlines are something of a moving target. Scharf Banks Marmor, in consultation with expert statisticians, has developed an innovative approach to preparing a pay equity certification submission to the Illinois Department of Labor. Simply put, our firm can help your company design and complete the required pay equity studies required under the IEPA and complete the certification submission under the law – all under the protections of the attorney client privilege, which allows for thoughtful and complete submissions without the risk of future discovery in litigation. This enables employers to do the important work of assessing their pay equity data without fear that the process itself could be picked apart unfairly by litigants.

Employers can do the work of complying with the new and developing certification process that the amended IEPA requires, while preserving the ability to identify and address legal issues that surface in the preparation process. The statute requires that employers conduct one or more “pay equity studies” in order to certify that they comply with the IEPA. Pay equity studies are statistical analyses by which an employer examines whether there are meaningful differences in compensation between groups of similarly situated employees. To understand what your data is telling you, and to protect the process – including what may be iterations of pay equity studies – from discovery in litigation should it arise, the best practice is to use legal counsel to conduct the pay equity studies under the Attorney-Client Privilege for the purpose of obtaining legal advice. Once the employer understands what its data shows, it can make any recommended compensation adjustments and/or provide detailed explanations for any disparities shown before submitting its data to the IDOL.

Scharf Banks Marmor provides the expertise needed to do just that. We can work with employers to

identify appropriate employee groups (i.e., employees or job titles that perform substantially similar work), understand the factors that influence pay at the employer, identify the data in its human resources information systems that demonstrate those factors, and direct the necessary statistical analyses. In collaboration with your HR department, our firm can analyze your employee data, provide initial analyses, and work with you to refine those analyses so they are complete, fair, and accurate before they are submitted. Once complete, our attorneys can work with an employer to submit its Equal Pay Compliance Application required by Illinois law.

The bottom line for Illinois employers is the IEPA is here; each Illinois employer must submit detailed compensation data to the state and represent that it has reviewed its compensation data and is in compliance with IEPA. The sooner an employer begins the process, the better its data analysis and compliance results will be. For better or worse, the State of Illinois, their employees, their customers, and their shareholders all expect employers to conduct pay equity analyses.

A little more detail about the Illinois Equal Pay Act compliance requirements

If your company has one hundred or more employees in the state of Illinois, you need to know about the recent amendments to the IEPA, which created significant reporting and “certification” requirements for Illinois employers. By March 31, 2022, all covered employers were obligated to submit an IEPA Enrollment Form on the Illinois Department of Labor (IDOL) web portal. This took—and continues to take—many covered employers by surprise, in part because the IDOL did not publish proposed enforcement regulations until last July, and those regulations are still not final. Nonetheless, Illinois employers are currently obligated to comply with the law. No matter where an Illinois employer is in its IEPA compliance journey, it should be analyzing its compensation data so that it is prepared to comply.

After enrolling, a covered Illinois employer will be assigned the Filing Due Date by which it must submit an Equal Pay Act Registration Application. The designated representative identified on the employer’s IEPA Enrollment Form will receive the Filing Due Date notice, after which the employer has 120 days to submit its Equal Pay Act Registration Application. In addition to being a statutory compliance requirement, employers should submit their IEPA Enrollment Form to be sure the IDOL sends its Filing Due Date notice to the right person, rather than a general business address otherwise registered with the State of Illinois.

When an employer receives notice, it will have 120 days (four months) to comply and, in any event, all covered Illinois employers must comply by no later than March 31, 2024. Preparation is key. On or before the assigned Filing Due Date, the employer must submit its Application via the IDOL submission portal accompanied by a \$150 filing fee. The Application includes their most recent EE0-1 Form for locations in Illinois, extensive compensation data for all individuals it employed in Illinois during the immediately preceding calendar year, and an Equal Pay Compliance Statement signed by a corporate officer or agent authorized by a corporate officer. To file the statement, the employer must be able to swear that “the average compensation for the business's female and minority employees is not consistently below the average compensation for its male and non-minority employees” when considering such factors as job duties, length of service and other job-related criteria. In other words, the employer must represent that it is in compliance with the Illinois Equal Pay Act and provide the detailed data by which the IDOL can confirm that representation is true.

Scharf Banks Marmor is happy to answer any questions you may have about the IEPA requirements and our approach. For more information, please contact Susan Rider at srider@scharfbanks.com.