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10100HB0834sam001

LRB101 06799 JLS 58588 a

1 AMENDMENT TO HOUSE BILL 834

2 AMENDMENT NO. _____. Amend House Bill 834 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Equal Pay Act of 2003 is amended by
5 changing Sections 10 and 30 as follows:

6 (820 ILCS 112/10)

7 Sec. 10. Prohibited acts.

8 (a) No employer may discriminate between employees on the
9 basis of sex by paying wages to an employee at a rate less than
10 the rate at which the employer pays wages to another employee
11 of the opposite sex for the same or substantially similar work
12 on jobs the performance of which requires substantially similar
13 ~~equal~~ skill, effort, and responsibility, and which are
14 performed under similar working conditions, except where the
15 payment is made under:

16 (1) a seniority system;

1 (2) a merit system;

2 (3) a system that measures earnings by quantity or
3 quality of production; or

4 (4) a differential based on any other factor other
5 than: (i) sex or (ii) a factor that would constitute
6 unlawful discrimination under the Illinois Human Rights
7 Act, provided that the factor:

8 (A) is not based on or derived from a differential
9 in compensation based on sex or another protected
10 characteristic;

11 (B) is job-related with respect to the position and
12 consistent with a business necessity; and

13 (C) accounts for the entire differential.

14 No employer may discriminate between employees by paying
15 wages to an African-American employee at a rate less than the
16 rate at which the employer pays wages to another employee who
17 is not African-American for the same or substantially similar
18 work on jobs the performance of which requires substantially
19 similar ~~equal~~ skill, effort, and responsibility, and which are
20 performed under similar working conditions, except where the
21 payment is made under:

22 (1) a seniority system;

23 (2) a merit system;

24 (3) a system that measures earnings by quantity or
25 quality of production; or

26 (4) a differential based on any other factor other

1 than: (i) race or (ii) a factor that would constitute
2 unlawful discrimination under the Illinois Human Rights
3 Act, provided that the factor:—

4 (A) is not based on or derived from a differential
5 in compensation based on race or another protected
6 characteristic;

7 (B) is job-related with respect to the position and
8 consistent with a business necessity; and

9 (C) accounts for the entire differential.

10 An employer who is paying wages in violation of this Act
11 may not, to comply with this Act, reduce the wages of any other
12 employee.

13 Nothing in this Act may be construed to require an employer
14 to pay, to any employee at a workplace in a particular county,
15 wages that are equal to the wages paid by that employer at a
16 workplace in another county to employees in jobs the
17 performance of which requires equal skill, effort, and
18 responsibility, and which are performed under similar working
19 conditions.

20 (b) It is unlawful for any employer to interfere with,
21 restrain, or deny the exercise of or the attempt to exercise
22 any right provided under this Act. It is unlawful for any
23 employer to discharge or in any other manner discriminate
24 against any individual for inquiring about, disclosing,
25 comparing, or otherwise discussing the employee's wages or the
26 wages of any other employee, or aiding or encouraging any

1 person to exercise his or her rights under this Act. It is
2 unlawful for an employer to require an employee to sign a
3 contract or waiver that would prohibit the employee from
4 disclosing or discussing information about the employee's
5 wages, salary, benefits, or other compensation. An employer
6 may, however, prohibit a human resources employee, a
7 supervisor, or any other employee whose job responsibilities
8 require or allow access to other employees' wage or salary
9 information from disclosing that information without prior
10 written consent from the employee whose information is sought
11 or requested.

12 (b-5) It is unlawful for an employer or employment agency,
13 or employee or agent thereof, to (1) screen job applicants
14 based on their current or prior wages or salary histories,
15 including benefits or other compensation, by requiring that the
16 wage or salary history of an applicant satisfy minimum or
17 maximum criteria, (2) request or require a wage or salary
18 history as a condition of being considered for employment, as a
19 condition of being interviewed, as a condition of continuing to
20 be considered for an offer of employment, as a condition of an
21 offer of employment or an offer of compensation, or (3) request
22 or require that an applicant disclose wage or salary history as
23 a condition of employment.

24 (b-10) It is unlawful for an employer to seek the wage or
25 salary history, including benefits or other compensation, of a
26 job applicant from any current or former employer. This

1 subsection (b-10) does not apply if:

2 (1) the job applicant's wage or salary history is a
3 matter of public record under the Freedom of Information
4 Act, or any other equivalent State or federal law, or is
5 contained in a document completed by the job applicant's
6 current or former employer and then made available to the
7 public by the employer, or submitted or posted by the
8 employer to comply with State or federal law; or

9 (2) the job applicant is a current employee and is
10 applying for a position with the same current employer.

11 (b-15) Nothing in subsections (b-5) and (b-10) shall be
12 construed to prevent an employer or employment agency, or an
13 employee or agent thereof, from:

14 (1) providing information about the wages, benefits,
15 compensation, or salary offered in relation to a position;
16 or

17 (2) engaging in discussions with an applicant for
18 employment about the applicant's expectations with respect
19 to wage or salary, benefits, and other compensation.

20 (b-20) An employer is not in violation of subsections (b-5)
21 and (b-10) when a job applicant voluntarily and without
22 prompting discloses his or her current or prior wage or salary
23 history, including benefits or other compensation, on the
24 condition that the employer does not consider or rely on the
25 voluntary disclosures as a factor in determining whether to
26 offer a job applicant employment, in making an offer of

1 compensation, or in determining future wages, salary,
2 benefits, or other compensation.

3 (c) It is unlawful for any person to discharge or in any
4 other manner discriminate against any individual because the
5 individual:

6 (1) has filed any charge or has instituted or caused to
7 be instituted any proceeding under or related to this Act;

8 (2) has given, or is about to give, any information in
9 connection with any inquiry or proceeding relating to any
10 right provided under this Act; ~~or~~

11 (3) has testified, or is about to testify, in any
12 inquiry or proceeding relating to any right provided under
13 this Act; or ~~or~~

14 (4) fails to comply with any wage or salary history
15 inquiry.

16 (Source: P.A. 100-1140, eff. 1-1-19.)

17 (820 ILCS 112/30)

18 Sec. 30. Violations; fines and penalties.

19 (a) If an employee is paid by his or her employer less than
20 the wage to which he or she is entitled in violation of Section
21 10 of this Act, the employee may recover in a civil action the
22 entire amount of any underpayment together with interest,
23 compensatory damages if the employee demonstrates that the
24 employer acted with malice or reckless indifference, punitive
25 damages as may be appropriate, injunctive relief as may be

1 appropriate, and the costs and reasonable attorney's fees as
2 may be allowed by the court and as necessary to make the
3 employee whole. At the request of the employee or on a motion
4 of the Director, the Department may make an assignment of the
5 wage claim in trust for the assigning employee and may bring
6 any legal action necessary to collect the claim, and the
7 employer shall be required to pay the costs incurred in
8 collecting the claim. Every such action shall be brought within
9 5 years from the date of the underpayment. For purposes of this
10 Act, "date of the underpayment" means each time wages are
11 underpaid.

12 (a-5) If an employer violates subsection (b), (b-5),
13 (b-10), or (b-20) of Section 10, the employee may recover in a
14 civil action any damages incurred, special damages not to
15 exceed \$10,000, injunctive relief as may be appropriate, and
16 costs and reasonable attorney's fees as may be allowed by the
17 court and as necessary to make the employee whole. If special
18 damages are available, an employee may recover compensatory
19 damages only to the extent such damages exceed the amount of
20 special damages. Such action shall be brought within 5 years
21 from the date of the violation.

22 (b) The Director is authorized to supervise the payment of
23 the unpaid wages under subsection (a) or damages under
24 subsection (b), (b-5), (b-10), or (b-20) of Section 10 owing to
25 any employee or employees under this Act and may bring any
26 legal action necessary to recover the amount of unpaid wages,

1 damages, and penalties or to seek injunctive relief, and the
2 employer shall be required to pay the costs. Any sums recovered
3 by the Director on behalf of an employee under this Section
4 shall be paid to the employee or employees affected.

5 (c) Employers who violate any provision of this Act or any
6 rule adopted under the Act are subject to a civil penalty for
7 each employee affected as follows:

8 (1) An employer with fewer than 4 employees: first
9 offense, a fine not to exceed \$500; second offense, a fine
10 not to exceed \$2,500; third or subsequent offense, a fine
11 not to exceed \$5,000.

12 (2) An employer with 4 or more employees: first
13 offense, a fine not to exceed \$2,500; second offense, a
14 fine not to exceed \$3,000; third or subsequent offense, a
15 fine not to exceed \$5,000.

16 An employer or person who violates subsection (b), (b-5),
17 (b-10), (b-20), or (c) of Section 10 is subject to a civil
18 penalty not to exceed \$5,000 for each violation for each
19 employee affected.

20 (d) In determining the amount of the penalty, the
21 appropriateness of the penalty to the size of the business of
22 the employer charged and the gravity of the violation shall be
23 considered. The penalty may be recovered in a civil action
24 brought by the Director in any circuit court.

25 (Source: P.A. 99-418, eff. 1-1-16.)

1 Section 99. Effective date. This Act takes effect 60 days
2 after becoming law.".