



Sen. Cristina H. Pacione-Zayas

Filed: 3/24/2023

10300SB2038sam001

LRB103 29069 SPS 59845 a

1 AMENDMENT TO SENATE BILL 2038

2 AMENDMENT NO. _____. Amend Senate Bill 2038 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 20 and 30 and by adding Section 12 as
6 follows:

7 (820 ILCS 112/12 new)

8 Sec. 12. Equal opportunities for employment.

9 (a) As used in the Section, "wage or salary range" means
10 the minimum and maximum wage or salary for a position set in
11 good faith by reference to any applicable pay scale, the
12 previously determined range for the position, the actual range
13 of others currently holding equivalent positions, or the
14 budgeted amount for the position, as applicable. The
15 difference between the minimum and maximum of the wage or
16 salary range provided by the employer or employment agency to

1 an employee or applicant is one factor relevant to the
2 analysis of whether the wage or salary range has been set in
3 good faith.

4 (b) This Section covers positions that will be physically
5 performed, at least in part, in Illinois, or a job, promotion,
6 transfer, or other employment opportunity that will physically
7 be performed outside of Illinois but the employee reports to a
8 supervisor, office, or other work site in Illinois.

9 (c) An employer or employment agency shall disclose in
10 each public and internal posting for each job, promotion,
11 transfer, or other employment opportunity the wage or salary,
12 or the wage or salary range, and a general description of the
13 benefits and other compensation to be offered for the job,
14 promotion, transfer, or other employment opportunity. Nothing
15 in the Section requires an employer or employment agency to
16 create a public or internal posting for jobs, promotions, and
17 transfers where none previously existed.

18 (d) An employer or employment agency shall disclose to an
19 applicant for employment the wage or salary, or the wage or
20 salary range, and a general description of the benefits and
21 other compensation to be offered for the job, promotion,
22 transfer, or other employment opportunity prior to any offer
23 or discussion of compensation and at any time at the
24 applicant's request, if a public or internal posting for the
25 job, promotion, transfer, or other employment opportunity has
26 not been made available to the applicant.

1 (e) An employer and employment agency shall provide an
2 employee the current wage or salary range and a general
3 description of the benefits and other compensation for the
4 position in which the employee is employed upon hire,
5 promotion, or transfer and at least annually thereafter and
6 upon the employee's request.

7 (f) An employer and employment agency shall not refuse to
8 interview, hire, promote, or employ, and shall not otherwise
9 retaliate against, an applicant for employment or employee for
10 exercising any rights under this Section.

11 (g) This Section shall apply only to job postings that
12 have been posted after the effective date of this amendatory
13 Act of the 103rd General Assembly.

14 (820 ILCS 112/20)

15 Sec. 20. Recordkeeping requirements. An employer subject
16 to any provision of this Act shall make and preserve records
17 that document the name, address, and occupation of each
18 employee or applicant, the wages paid to each employee or
19 applicant, a statement confirming that the wage or salary, or
20 the wage or salary range, and a general description of
21 benefits and other compensation were disclosed to each
22 employee or applicant for each employment opportunity, the
23 actual information disclosed to each employee or applicant,
24 and any other information the Director may by rule deem
25 necessary and appropriate for enforcement of this Act. An

1 employer subject to any provision of this Act shall preserve
2 those records for a period of not less than 5 years and shall
3 make reports from the records as prescribed by rule or order of
4 the Director, unless the records relate to an ongoing
5 investigation or enforcement action under this Act, in which
6 case the records must be maintained until their destruction is
7 authorized by the Department or by court order.

8 (Source: P.A. 96-467, eff. 8-14-09.)

9 (820 ILCS 112/30)

10 Sec. 30. Violations; fines and penalties.

11 (a) If an employee is paid by his or her employer less than
12 the wage to which he or she is entitled in violation of Section
13 10 or 11 of this Act, the employee may recover in a civil
14 action the entire amount of any underpayment together with
15 interest, compensatory damages if the employee demonstrates
16 that the employer acted with malice or reckless indifference,
17 punitive damages as may be appropriate, injunctive relief as
18 may be appropriate, and the costs and reasonable attorney's
19 fees as may be allowed by the court and as necessary to make
20 the employee whole. At the request of the employee or on a
21 motion of the Director, the Department may make an assignment
22 of the wage claim in trust for the assigning employee and may
23 bring any legal action necessary to collect the claim, and the
24 employer shall be required to pay the costs incurred in
25 collecting the claim. Every such action shall be brought

1 within 5 years from the date of the violation underpayment.
2 For purposes of this Act, "date of the violation underpayment"
3 means each time a violation occurs ~~wages are underpaid~~.

4 (a-5) If an employer or employment agency violates
5 subsection (b), (b-5), (b-10), or (b-20) of Section 10 or
6 Section 12, the employee or applicant may recover in a civil
7 action any damages incurred, special damages not to exceed
8 \$10,000, injunctive relief as may be appropriate, and costs
9 and reasonable attorney's fees as may be allowed by the court
10 and as necessary to make the employee or applicant whole. If
11 special damages are available, an employee or applicant may
12 recover compensatory damages only to the extent such damages
13 exceed the amount of special damages. Such action shall be
14 brought within 5 years from the date of the violation.

15 (a-10) Any individual who believes the employer or
16 employment agency is in violation of Section 12 of this Act may
17 file a complaint with the Department within one year after the
18 date the individual learned of the violation.

19 The Department may initiate an investigation, either on
20 its own or upon receiving a complaint from an employee,
21 applicant, or interested party. If, following an
22 investigation, the Department determines that one or more
23 violations has occurred, it shall send, via certified mail,
24 notice to the employer of the violation or violations and
25 information pertaining to the provisions of this Section and
26 how the violation or violations might be cured.

1 Upon the first receipt of notice for one or multiple
2 violations, an employer employing 4 or fewer employees shall
3 be given an opportunity to cure the violation or violations
4 within 14 days. Upon the first receipt of notice for one or
5 multiple violations, an employer employing 5 or more employees
6 shall be given an opportunity to cure the violation within 14
7 days.

8 Upon the second receipt of notice for one or more
9 subsequent violations, an employer employing 4 or fewer
10 employees shall be given 7 days to cure the violation or
11 violations. Upon the second receipt of notice for one or more
12 subsequent violations, an employer employing 5 or more
13 employees shall be penalized up to \$10,000.

14 Upon the third receipt of notice for one or more
15 subsequent violations, and upon every subsequent notice, an
16 employer shall be penalized, upon the receipt of such notice,
17 for each individual violation. Employers employing 4 or fewer
18 employees shall be penalized up to \$5,000 for every violation.
19 Employers employing 5 or more employees shall be penalized up
20 to \$10,000 for every violation.

21 When applicable, a violation may be cured by adding the
22 wage or salary range to the job posting, and updating existing
23 applicants of that posted wage or salary range. The employer
24 must send to the Department documentation of the employer
25 having cured the violation. If the employer has not cured the
26 violation within the relevant opportunity to cure period

1 provided in the notice of violation, such employer shall be
2 subject to a penalty of \$100 for each day they continue to
3 violate the Act up to a maximum of \$5,000 for employers
4 employing 4 or fewer employees and a maximum of \$10,000 for
5 employers employing 5 or more employees.

6 (a-15) The Department shall resolve violations that have
7 been reported to the Department after the allegedly violating
8 job posting is no longer active as follows:

9 (1) employers who are entitled to a period to cure as
10 described in subsection (a-10) shall receive notice that
11 they were in violation of this Section and the
12 consequences of subsequent violations;

13 (2) employers who are no longer entitled to a cure
14 period as described in subsection (a-10) because of
15 previous violations shall receive a notice of violation
16 along with a notice of the penalty owed to the Department.
17 Penalties for employers receiving such notice shall be in
18 conformance with those established in subsection (a-10).

19 (b) The Director is authorized to supervise the payment of
20 the unpaid wages under subsection (a) or damages under
21 subsection (b), (b-5), (b-10), or (b-20) of Section 10 and
22 Section 12 owing to any employee or employees or applicants
23 under this Act and may bring any legal action necessary to
24 recover the amount of unpaid wages, damages, and penalties or
25 to seek injunctive relief, and the employer or employment
26 agency shall be required to pay the costs. Any sums recovered

1 by the Director on behalf of an employee or applicant under
2 this Section shall be paid to the employee or employees or
3 applicant or applicants affected.

4 (c) Except as provided in subsection (a-10) of this
5 Section, employers or employment agencies that ~~Employers who~~
6 violate any provision of this Act or any rule adopted under the
7 Act are subject to a civil penalty for each employee or
8 applicant affected as follows:

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

13 (2) An employer or employment agency with between 4
14 and 99 employees: first offense, a fine not to exceed
15 \$2,500; second offense, a fine not to exceed \$3,000; third
16 or subsequent offense, a fine not to exceed \$5,000.

17 (3) An employer or employment agency with 100 or more
18 employees who violates any Section of this Act except for
19 Section 11 shall be fined up to \$10,000 per employee
20 affected. An employer with 100 or more employees that is a
21 business as defined under Section 11 and commits a
22 violation of Section 11 shall be fined up to \$10,000.

23 Before any imposition of a penalty under this subsection,
24 an employer with 100 or more employees who violates item (b) of
25 Section 11 and inadvertently fails to file an initial
26 application or recertification shall be provided 30 calendar

1 days by the Department to submit the application or
2 recertification.

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

7 (d) In determining the amount of the penalty, the
8 appropriateness of the penalty to the size of the business of
9 the employer or employment agency charged and the gravity of
10 the violation shall be considered. The penalty may be
11 recovered in a civil action brought by the Director in any
12 circuit court.

13 (Source: P.A. 101-177, eff. 9-29-19; 102-36, eff. 6-25-21.)

14 Section 99. Effective date. This Act takes effect January
15 1, 2024.".