



# Eye on Washington

## State and Local Update



Timely, topical insights on a variety of payroll and reporting issues.

### Illinois To Require Equal Pay Reports

On March 23, 2021, Senate Bill 1480 was signed into law, creating new reporting and certification requirements for employers under the Illinois Equal Pay Act. SB 1480 also limits criminal background checks in employment decisions. The new Illinois law is generally modeled after recent federal and state laws that include payroll information reporting within measures to improve equity and fairness in private sector compensation and employment.

#### Background: Federal (EEOC) and California Pay Equity Reporting

In 2016, the Equal Employment Opportunity Commission (EEOC) announced the addition of earnings and hours worked, by job category, to the annual Employer Information Report (EEO-1), which summarizes the employer's workforce by race, ethnicity and gender. The reporting requirement was subsequently suspended, but in 2019 was temporarily reinstated, requiring employers to report the additional wage and hours information ("Component 2" data) covering calendar years 2017 and 2018. The Biden Administration is generally expected to reinstate the Component 2 data reporting obligation in the future.

Additionally, several state legislative bodies are considering measures to address perceived equity and discrimination issues in compensation and employment decisions. In September 2020, California Senate Bill 973 required covered employers to annually report similar payroll information by EEO-1 job categories and by race, ethnicity and gender. The first report was due March 31, 2021, covering calendar year 2020.

#### Illinois SB 1480 - Equal Pay Certificates and Reporting

##### EEO-1 Data Must be Included with Annual Reports to the Secretary of State

For domestic corporations organized under Illinois law, and foreign corporations authorized to transact business in Illinois (with certain exceptions), SB 1480 requires businesses to include a copy of their EEO-1 report with their annual corporate reports filed with the Secretary of State, with information substantially similar to the employment data required by Section D of the Federal EEO-1 form; i.e., a breakdown of employees by race, ethnicity and gender within the EEO-1 job categories. The Secretary of State is required to publish these reports on the state website. This obligation applies to corporate reports filed on or after January 1, 2023.

##### New Equal Pay Certificate Obligation for Employers with More Than 100 Employees

Private Illinois businesses with over 100 employees in the state, and any Illinois business that is required to file an annual Employer Information Report EEO-1 with the EEOC (i.e., businesses that are affiliated with other companies that together have 100 or more employees), must submit a copy of the business's most recently filed Employer Information Report EEO-1 for each county in which the business has employees.



These employers will need to apply for an Equal Pay Certificate beginning in 2023 and bi-annually thereafter, which will require a report of wage information aggregated by the demographic groupings on the EEO-1 report — i.e., by gender, race, and ethnicity. In addition, the report must include aggregate wages paid to each employee in the prior year. The Equal Pay Certificate registration must certify that:

- The business is in compliance with several federal and state fair employment laws, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act and the Equal Pay Act of 2003;
- The average compensation for its female and minority employees is not consistently below the average compensation for its male and nonminority employees within each of the job categories in the employer's EEO-1 report, in accordance with United States Department of Labor rules — taking into account factors such as length of service, job requirements, experience, skill, effort, responsibility, working conditions or other mitigating factors;
- The business does not restrict employees of one sex to certain job classifications and does make retention and promotion decisions without regard to sex;
- That wage and benefit disparities are corrected when identified to help ensure compliance with the laws referenced above; and
- How often wages and benefits are evaluated to help ensure compliance with the laws referenced above.

The employer must also include in the statement an explanation of its compensation determinations and policies, such as whether it uses a market-pricing approach; prevailing wage; a performance pay system; internal analysis; or other approaches to determine compensation. Detailed data with respect to wages and benefits may be required in addition to the above information upon audit. The statement must be signed by a corporate officer, legal counsel or an authorized agent of the business.

SB 1480 also prohibits businesses from taking retaliatory action against an employee based on specified protected conduct, such as disclosing to a supervisor or to a public body an activity, inaction, policy, or practice implemented by a business that the employee reasonably believes is in violation of a law, rule or regulation.

Penalties of up to one percent of gross profits may apply if a business does not obtain an equal pay registration certificate; or has their equal pay registration certificate suspended or revoked upon investigation, or falsifies or misrepresents required information. Further guidance in the form of regulations, forms and instructions are expected to be published by the state.

### **Criminal Background Checks in Hiring and Employment Decisions**

SB 1480 also deems an employer's use of an individual's criminal conviction record in employment decisions to be a civil rights violation, unless there is a "substantial relationship" between the offense and the individual's employment or that employing the individual would pose an unreasonable risk to property or the safety of others.

The bill provides detailed qualifications for the "substantial relationship" test to be met, including six mitigating factors that must be considered. Adverse decisions must be preceded by specified written notices and disclosures explaining the decision, and the employer must provide five business days for individuals to respond. There are significant penalties for noncompliance with the Act.

For details, see [Illinois SB 1480](#).

## **ADP Compliance Resources**

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