

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Equal Pay in Employment
- 2) Code Citation: 56 Ill. Adm. Code 320
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
320.100	Amendment
320.110	Amendment
320.120	Amendment
320.140	Amendment
320.150	New Section
320.310	Amendment
320.340	Amendment
320.620	Amendment
320.800	New Section
320.810	New Section
320.820	New Section
320.830	New Section
320.840	New Section
320.850	New Section
320.860	New Section
320.870	New Section
320.880	New Section
320.890	New Section
- 4) Statutory Authority: Equal Pay Act [820 ILCS 112]
- 5) Complete Description of the Subjects and Issues Involved: This rulemaking adds provisions implementing Section 11 of the Equal Pay Act of 2003. It establishes deadlines and timelines for large private businesses and the Department to fulfill obligations under Section 11; establishes what data must be reported to the Department and in what format; clarifies what it means to be in compliance with wage laws; establishes that the Department, after giving notice of a violation, must provide 30 days for an employer subject to Section 11 to come into compliance; outlines the processes for a notification of rejection, for appeal, for suspension or revocation, and for initiation of hearings. This rulemaking also sets requirements for employees of large private businesses who wish to request data as provided for in Section 11. This rulemaking also provides for electronic payment of fines and fees; adds a Section for incorporated and referenced materials, and adds recordkeeping requirements for compliance with Public

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

Act 100-1140, which prohibits employers with 4 or more employees from discriminating against African-American employees with regard to pay.

- 6) Published studies and reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or enlarge a State mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this Notice. Comments should be submitted to:

Anna Koepfel
Illinois Department of Labor
Lincoln Tower Plaza
524 S. 2nd Street
Suite 400
Springfield, IL 62701

217/558-1270
Anna.Koepfel@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: The provisions implementing Section 11 of the Act do not apply to employers with fewer than 100 employees. All employers with more than 4 employees will be subject to the provisions of this Rulemaking requiring keeping

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

records of any basis for payment of any wage differential to employees who are not African-American as compared to employees who are African-American.

B) Reporting, bookkeeping or other procedures required for compliance: Employers must maintain records pertaining to pay determination for employees.

C) Types of professional skills necessary for compliance: None

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed rule:

- 11 Agriculture, Forestry, Fishing and Hunting
- 21 Mining
- 22 Utilities
- 23 Construction
- 31-33 Manufacturing
- 42 Wholesale Trade
- 44-45 Retail Trade
- 48-49 Transportation and Warehousing
- 51 Information
- 52 Finance and Insurance
- 53 Real Estate Rental and Leasing
- 54 Professional, Scientific, and Technical Services
- 55 Management of Companies and Enterprises
- 56 Administrative and Support and Waste Management and Remediation Services
- 61 Educational Services
- 62 Health Care and Social Assistance
- 71 Arts, Entertainment, and Recreation
- 72 Accommodation and Food Services
- 81 Other Services (except Public Administration)
- 92 Public Administration

B) Categories that the agency reasonably believes the rulemaking will impact including:

- viii. record keeping

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

- 15) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was summarized on the Department's January 2022 Regulatory Agenda.

The full text of the Proposed Amendments begins on the next page:

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR
SUBCHAPTER b: REGULATION OF WORKING CONDITIONS

PART 320
EQUAL PAY IN EMPLOYMENT

SUBPART A: GENERAL PROVISIONS

Section	
320.100	Purpose and Scope
320.110	Application of the Act
320.120	Definitions
320.130	Independent Contractor Exemption
320.140	Recordkeeping Requirements
320.150	Incorporated and Referenced Materials

SUBPART B: COMPLAINT

Section	
320.200	Persons Who May File a Complaint
320.210	Contents and Time Limit for Filing
320.220	Confidentiality
320.230	Incomplete Complaint
320.240	Amendment of Complaint
320.250	Withdrawal of Complaint

SUBPART C: PROCEDURE UPON COMPLAINT AND DECISION

Section	
320.300	Jurisdiction
320.310	Investigation
320.320	Fact-Finding Conference
320.330	Decision After Investigation
320.340	Enforcement Procedures

SUBPART D: SETTLEMENT

Section

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

320.400 Settlement

SUBPART E: DISMISSAL, DEFAULT AND CLOSURE

Section

320.500 Dismissal
320.510 Default
320.520 Closure

SUBPART F: INFORMAL INVESTIGATIVE HEARING

Section

320.600 Request for Informal Investigative Hearing
320.610 Convening an Informal Investigative Hearing
320.620 Continuances
320.630 Application of the Rules of Evidence, Pleading and Procedure
320.640 Attorneys and Witnesses at an Informal Investigative Hearing
320.650 Contumacious Conduct
320.660 Telephone Hearings

SUBPART G: REQUEST FOR REVIEW

Section

320.700 Filing with Chief Administrative Law Judge
320.710 Contents of Request for Review
320.720 Reply to Request for Review and Surreply
320.730 Extensions of Time
320.740 Additional Investigation and Decision

SUBPART H: EQUAL PAY REGISTRATION CERTIFICATE

Section

320.800 Purpose
320.810 Definitions
320.820 Enrollment
320.830 Assignment of Filing Date
320.840 Application for Certification; Recertification
320.850 Issuance or Rejection
320.860 Appeal

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

320.870	Suspension and Revocation
320.880	Initiation of Hearing
320.890	Employee Request for Data

AUTHORITY: Implementing the Equal Pay Act of 2003 [820 ILCS 112].

SOURCE: Emergency rule adopted at 28 Ill. Reg. 363, effective January 1, 2004, for a maximum of 150 days; adopted at 28 Ill. Reg. 8009, effective May 26, 2004; amended at 34 Ill. Reg. 19552, effective December 3, 2010; amended at 40 Ill. Reg. 229, effective December 21, 2015; amended at 46 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 320.100 Purpose and Scope

This Part shall apply to actions arising under the Equal Pay Act of 2003 [820 ILCS 112] administered under the jurisdiction of the Director of [the Illinois Department of Labor](#) and/or the [Illinois Department of Labor](#).

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 320.110 Application of the Act

~~Men and women have equal protection under the Act.~~ In areas where the State and federal government have concurrent powers under their respective statute, the stricter of the two laws shall prevail.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 320.120 Definitions

“Act” means the Equal Pay Act of 2003 [820 ILCS 112].

"Authorized agent" means an employee of a business with knowledge of pay practices and who has been designated by the corporate officers of the business to submit information to the Department as required by the Act. Authorized agent does not include any outside or third-party consultant or vendor who serves the business.

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

"Average compensation" means the average wages for a specific occupation in the State of Illinois as determined by the most recent U.S. Bureau of Labor Statistics State Occupational Employment and Wage Estimates publication.

"Complaint" means an allegation of a violation of the Act filed with or initiated by the Department.

"Complainant" means a person who files a complaint, including the Department in cases initiated by the Department.

"Department" means the Illinois Department of Labor.

"Director" means the Director of Labor or a duly authorized representative.

"Effort" means the physical or mental exertion needed for the performance of a job. Job factors that cause mental fatigue and stress, as well as those factors that alleviate fatigue, are to be considered in determining the effort required for the job. Effort encompasses the total requirements of the job. Occasional or sporadic performance of an activity that may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal or equal effort.

"Employee" *means any individual permitted to work by an employer* [820 ILCS 112/5].

"Employer" *means an individual, partnership, corporation, association, business, trust, person, or entity for whom 4 or more employees are gainfully employed in Illinois and includes the State of Illinois, any State officer, department, or agency, any unit of local government, and any school district.* [820 ILCS 112/5]

"Equal Pay Registration Certificate" means a certificate issued by the Department to a business in accordance with the requirements of Section 11 of the Act.

"Filing year" means any calendar year in which a business is due to submit its application for an Equal Pay Registration Certificate, as determined by the due date assigned to the business by the Department, whether the business is applying for its initial certification or a recertification. The filing year is the year immediately after the payroll year.

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

“Merit system” means an established, bona fide, uniform and objective system that rewards an employee with promotion, bonus, increased pay or other advantages based on competence, expertise, proficiency and human relations.

"Minority" means a minority person as defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act. [30 ILCS 575]

"Payroll year" means the complete calendar year upon which the payroll data in the business' Equal Pay Registration Certificate application is based. The payroll year is the year immediately before the filing year.

“Respondent” means an employer against whom a complaint is filed.

“Responsibility” means the degree of accountability required in the performance of the job. Minor or occasional responsibility added to an employee’s duties that are not of significant consequence or importance will not justify a finding of unequal or equal responsibility.

“Seniority system” means a system that gives preference to employees based on years of service.

“Similar working conditions” means the surroundings and hazards, including the frequency and intensity of such conditions. Surroundings measure the elements, such as toxic chemicals or fumes, regularly encountered by an employee. Hazards take into account the physical hazards regularly encountered by an employee. Slight or inconsequential differences in working conditions that are not usually taken into account by employers or in collective bargaining in setting wage rates do not justify a differential in pay. The method used for testing this requirement is flexible. The mere fact that jobs are in different departments of a workplace or performed in different locations will not necessarily mean that the jobs are performed under dissimilar working conditions.

“Skill” means experience, training, education and ability. Possession of a skill not needed to meet the requirements of the job cannot be considered in making a determination regarding equality of skill.

“Substantially similar work” means comparable work on jobs with comparable requirements related to equal skill, effort and responsibility. Substantially similar

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

is not ~~dependent~~~~dependant~~ on a job classification or title but depends rather on actual job requirements and genuine differences in how work is performed.

“Wages”, for purposes of the Equal Pay Act of 2003, means any compensation made to an employee as remuneration for employment regardless of whether paid periodically or deferred until a later date. Compensation includes but is not limited to: wages, salary, vacation pay, sick leave, holiday pay, overtime pay, premium pay, and other benefits such as health insurance, life insurance, disability insurance, commission, draw payments, pension and profit sharing, expenses, bonus, uniform cleaning allowance, hotel accommodations, use of vehicle, gasoline allowance, cafeteria plan and educational benefits.

“Workplace” means a distinct physical place of business rather than an entire business or enterprise that may include several separate places of business.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 320.140 Recordkeeping Requirements

- a) An employer subject to any provision of the Act shall make and preserve records, including but not limited to: name, address, occupation and wages paid to each employee, payroll records and records of other forms of compensation, dates of hire, dates of promotion and dates of pay increases.
- b) In addition, the employer shall preserve any records made in the regular course of the business operation that relate to personnel records, employee qualifications for hire, promotion, transfer, discharge or other disciplinary action, wage rates, skills testing certifications, job evaluations, job descriptions, merit systems, seniority systems, written job offers, individual employment contracts, collective bargaining agreements, description of practices or other matters that describe or explain the basis for payment of any wage differential to employees of the opposite sex, or the basis for payment of any wage differential to employees who are not African-American as compared to employees who are African-American by the same employer and that may be pertinent to a determination whether the differential is based on a factor other than sex or race.
- c) The records required by subsections (a) and (b) shall be maintained for a period of not less than 5 years unless the records relate to an ongoing investigation or

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

enforcement action under the Act, in which case the records must be maintained until their destruction is authorized by the Department or by court order.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 320.150 Incorporated and Referenced Materials

The following regulations and standards are incorporated in this Part. All incorporations by reference refer to the regulations, guidelines and standards on the date specified and do not include any editions or amendments subsequent to the date specified.

- a) Federal Regulations and Publications
 - 1) U.S. Bureau of Labor Statistics Standard Occupational Classification (SOC) System Revision for 2018
 - 2) 29 CFR 1602.7 through .14
 - 3) 41 CFR 60-1.7(a)

- b) The following State statutes and rules are referenced in this Part:
 - 1) The Freedom of Information Act [5 ILCS 140]
 - 2) The Equal Pay Act of 2003 [820 ILCS 112]
 - 3) The Illinois Income Tax Act [35 ILCS 5]
 - 4) The Business Enterprise for Minorities, Women, and Persons with Disabilities Act [30 ILCS 575/]
 - 5) The Illinois Human Rights Act [775 ILCS 5]
 - 6) The Equal Wage Act [820 ILCS 110]
 - 7) The Illinois Administrative Procedure Act [5 ILCS 100/Art. 10]
 - 8) Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120)

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

c) The following federal laws are referenced in this Part:

- 1) 29 U.S.C. 2
- 2) 709(c) of Title VII of the Civil Rights Act of 1964
- 3) 42 U.S.C. 2000e-8(c)
- 4) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e)
- 5) the Equal Pay Act of 1963 (29 U.S.C. 206(d))

(Source: Added at 46 Ill. Reg. _____, effective _____)

SUBPART C: PROCEDURE UPON COMPLAINT AND DECISION

Section 320.310 Investigation

- a) After the Department determines jurisdiction and the matter has not been referred to the Department of Human Rights, the Department shall conduct an investigation to determine whether reasonable cause exists to believe a violation under the Act has occurred. The investigation shall include a written notice to the respondent of the substance of the alleged violation and an opportunity to present any information the respondent wishes the Department to consider in reaching its determination. The investigation may be made by written or oral inquiry, field visit, conference or any method or combination of methods deemed suitable in the discretion of the Department. The Department will limit its investigation to reviewing up to 3 years prior to the date the complaint was filed, but in no case will review occur prior to the effective date of the Act, January 1, 2004.
- b) If during the investigation a respondent refuses to cooperate, the Director may either make a finding of reasonable cause or issue subpoenas to compel the attendance of respondent witnesses or the production of documents.
- c) Whenever a decision is made after an investigation conducted by the Department of Human Rights and the Department of Labor adopts that decision, 56 Ill. Adm. Code 325 ~~supereedes~~ supersedes this Part and shall control as to further procedural actions and remedies available to the parties. If the Department of Labor does not

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

adopt the Department of Human Rights decision, then this Part 320 applies and controls as to further procedural actions and remedies available to the parties.

- d) A complainant must promptly provide the Department with a notice of address or telephone change or any prolonged absence from the current address so that the complainant can be located. A complainant must cooperate with the Department, provide necessary information and be available for interviews, conferences and hearings upon reasonable notice or request by the Department. If a complainant cannot be located or does not respond to reasonable requests by the Department, the Department may dismiss the complaint pursuant to Section 320.500.
- e) The Department may in its discretion withhold any witness statement or identity of any witness as confidential upon the request of a party or the witness. Circumstances in which the Department may withhold a witness statement include, but are not limited to, when the safety or employment status of the witness is endangered or threatened.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 320.340 Enforcement Procedures

- a) The payment of back wages and other relief found due pursuant to Section 30 of the Act will be evidence of compliance with the provisions of the Act. Payment shall be supervised, when possible, by the Director.
- b) The Director may require proof that the employees or former employees received all the back wages and other relief due pursuant to Section 30 of the Act. ~~The and the~~ Director may require the respondent to send [payment for back wages and other relief using an electronic payment system designated by the Department for such payments](#), certified checks, cashier's checks, or money orders, made payable to the individual employees or the Department of Labor, to the Department for disbursement.
- c) If the respondent does not comply within 15 calendar days after the Director's demand, the Director may bring a civil action against the respondent as provided for in Section 30 of the Act. Failure to timely comply may also subject the respondent to further penalties as provided for in Section 35(a) of the Act.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

SUBPART F: INFORMAL INVESTIGATIVE HEARING

Section 320.620 Continuances

Parties shall be prepared to proceed at hearing. A request by one party for a continuance will be granted prior to the hearing if the request is in writing, the other party agrees and the Administrative Law Judge grants permission. Otherwise, a request for a continuance must be made in person to the Administrative Law Judge at the time of hearing with proof that the party notified or attempted to notify the other party in advance of the hearing of the intent to ask for a continuance. The continuance will be granted only upon a showing of good cause. Good cause may be shown by, but not limited to, the failure of the party to receive notice of the hearing, the inability of a party to produce a material witness or relevant~~relevent~~ evidence, the illness or death of a party or counsel, the sudden and unexpected unavailability of counsel and substitution of counsel.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

SUBPART H: EQUAL PAY REGISTRATION CERTIFICATE**Section 320.800 Purpose**

This Subpart shall prescribe the process for businesses as defined in Section 320.810 to apply for and be issued an Equal Pay Registration Certificate under the Equal Pay Act of 2003 [820 ILCS 112].

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.810 Definitions

The following definitions shall apply for this Subpart H only:

"Business" means any private employer who has 100 or more employees in the State of Illinois and that is required to file an Annual Employer Information Report EEO-1 with the Equal Employment Opportunity Commission, but does not include the State of Illinois or any political subdivision, municipal corporation, or other governmental unit or agency. [820 ILCS 112/11]

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

"Employee" means any person performing a service for a business under the Act whose base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is located within the State of Illinois; or whose base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in the State of Illinois. [35 ILCS 5/304(a)(2)(B)(iii)]

"Job classification" or "job category" mean an employee classification that appears on the EEO-1 report of the Equal Employment Opportunity Commission as required by 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), and 29 CFR 1602.7 through .14 and 41 CFR 60-1.7(a).

"Job title" means the title or role established for an employee by their employer that is used to identify and classify the employee internally within that workplace.

"Occupation" means any one of the Standard Occupational Classifications identified and published in the Standard Occupational Classification (SOC) System – Revision for 2018 published by the U.S. Bureau of Labor Statistics.

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.820 Enrollment

- a) A business that is authorized to transact business in the State of Illinois on or before March 23, 2021, shall submit an enrollment form notifying the Department that the business is subject to Section 11 of the Act by March 31, 2022. A business that becomes authorized to transact business in the State of Illinois on or after March 24, 2021, shall submit an enrollment form notifying the Department that the business is subject to Section 11 of the Act by January 1 of the calendar year following the year in which the business becomes authorized to conduct business in the State of Illinois. The enrollment form must include designated contact information for the business.
- b) An enrollment must be submitted via the Department's web-based submission portal found on its web site at <http://labor.illinois.gov>.
- c) If the Department determines that a business that is not subject to the Act has submitted an enrollment, the Department shall notify the business, in writing, that the business is not required to obtain an Equal Pay Registration Certificate.

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.830 Assignment of Filing Date

- a) The Department will assign the business a date by which an Equal Pay Act Registration Application must be filed and a list of the required information outlined in Section 320.840(a) that the business must provide with its application for certification. The filing date shall be randomly assigned by the Department. Each business will receive at least 120 calendar days' notice of the filing date. The application due date is the date by which the Application for Certification must be received by the Department.
- b) Once an application filing date is assigned by the Department, the business shall be enrolled in the Department's web-based portal as a business required to obtain an Equal Pay Registration Certificate. The business shall be required to obtain an Equal Pay Registration Certificate every two years thereafter, unless the business has fewer than 100 employees on December 31 of the business's payroll year.

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.840 Application for Certification; Recertification

A business that has employees in multiple locations or facilities in the State of Illinois shall submit a single application to the Department regarding all of the business's operations in the State of Illinois. [820 ILCS 112/11(c)(3)]

- a) An application for an Equal Pay Registration Certificate shall include the following:
- 1) A copy of the business's most recently filed Employer Information Report EEO-1 for all locations in the State of Illinois and for all employees as defined in this Subpart H, submitted in a text-searchable, sortable Microsoft Excel file or comma-separated values file format.
 - 2) A list of all employees during the 12-month calendar year immediately prior to the application or recertification due date separated by gender and the race and ethnicity categories as reported in the business's most recently filed Employer Information Report EEO-1 in a text-searchable,

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

sortable Microsoft Excel file or comma-separated values file format, as well as any other information required by the Department on the application form. The business may provide any other information it believes is relevant to explain any pay disparities amongst its employees. [820 ILCS 112/11(c)(1)(A)]

- 3) An Equal Pay Compliance Statement, signed by a corporate officer, legal counsel employed by the business, or authorized agent employed by the business, that certifies:
- A) that the business is in compliance with the Act and other relevant laws, including but not limited to, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), the Equal Pay Act of 1963 (29 U.S.C. 206(d)), the Illinois Human Rights Act [775 ILCS 5], and the Equal Wage Act [820 ILCS 110];
 - B) 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 within each of the major job categories in the Employer Information Report EEO-1 Job Classification Guide for which an employee is expected to perform work, taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, education or training, job location, use of a collective bargaining agreement, or other mitigating factors;
 - C) that the business does not restrict employees of one sex to certain job classifications, and makes retention and promotion decisions without regard to sex. Businesses with positions for which sex is a bona fide occupational qualification, as defined in 29 CFR 1604.2, must provide a list of such positions with a short explanation of why sex is a bona fide occupational qualification for those positions;
 - D) that wage and benefit disparities are corrected when identified to ensure compliance with the Acts in subsection (a)(3)(A)(i);
 - E) how often wages and benefits are evaluated; and

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

- F) *the approach the business takes in determining what level of wages and benefits to pay its employees; acceptable approaches include, but are not limited to, a wage and salary survey. [820 ILCS 112/11(c)]*
- b) An application for an Equal Pay Registration Certificate shall be submitted to the Department via the Department's web-based submission portal found on its web site at <http://labor.illinois.gov>.
- c) An application for an Equal Pay Registration Certificate must be accompanied by a filing fee of \$150, to be paid using an electronic payment system designated by the Department for such payments. Checks and money orders shall be made out to Illinois Department of Labor and mailed to the Department's Chicago Office, at 160 N. LaSalle St., C-1300, Chicago, IL 60601. [820 ILCS 112/11(c)]
- d) After receiving an initial Equal Pay Registration Certificate, a business must recertify every two years by submitting to the Department an application, as described in this Subpart, with updated information. The Department will notify the business that recertification is required and will provide the business with a recertification due date at least 180 calendar days before the recertification due date. A business that has fewer than 100 employees on December 31 of the business's payroll year must notify the Department, in writing by the recertification due date, of the number of employees employed by the business on December 31 of the business's payroll year and shall not be required to recertify. [820 ILCS 112/11(c)]
- e) If a business discovers that it has provided incorrect or incomplete information in its application for certification or recertification, that business shall submit to the Department a revised application with correct or complete information, along with a letter identifying the information that was amended. A business that makes a correction shall not be subject to penalties provided that the incorrect or incomplete information was provided in good faith and without knowledge that such information was incorrect or incomplete.

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.850 Issuance or Rejection

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

- a) No more than 45 calendar days after receipt of an application for certification or recertification, the Department will issue to the business an Equal Pay Registration Certificate or a Statement of Rejection stating why the application was rejected.
- b) A business has 30 calendar days from the date the Statement of Rejection is received to cure any deficiencies in its application that led to the rejection and resubmit the revised application to the Department.

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.860 Appeal

- a) A business may appeal a rejected application for certification or recertification under Section 11 of the Act. An appeal shall be submitted to the Department in writing, no more than 14 calendar days after a Statement of Rejection is received. Appeals may be submitted via email to DOL.EPRC.APPEAL@illinois.gov, or mailed to: Illinois Department of Labor, ATTN: Con/Med, 160 North LaSalle Street, Suite C-1300, Chicago, Illinois, 60602. The request, if mailed, shall be prominently marked REQUEST FOR EPRC APPEAL on both the letter and the envelope; or, if emailed, shall contain the subject line REQUEST FOR EPRC APPEAL.
- b) No more than 30 calendar days after receipt of an appeal, the Department will notify the business in writing of the Department's decision on the appeal. If the appeal is granted, the Department will issue the business an Equal Pay Registration Certificate. If the appeal is denied, the Department will provide the business with a notice stating the reason for the denial and a date by which the business must submit an amended application to the Department.
- c) If an appeal is denied, the business must submit to the Department an application with all identified deficiencies cured. Once that application is received and contains all the information required by this Subpart, the Department will issue the business an Equal Pay Registration Certificate. The business shall be in violation of the Act until all deficiencies in its application are cured and the application is approved by the Department.

(Source: Added at 46 Ill. Reg. _____, effective _____)

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

Section 320.870 Suspension and Revocation

An Equal Pay Registration Certificate for a business may be suspended or revoked by the Department when a business:

- a) fails to make a good faith effort to comply with the Act, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), the Equal Pay Act of 1963 (29 U.S.C. 206(d)), the Illinois Human Rights Act [775 ILCS 5], the Equal Wage Act [820 ILCS 110], or any other relevant laws.
- b) fails to make a good faith effort to comply with Section 11 of the Act; or
- c) has multiple violations of Section 11 of the Act or the Acts identified in subsection (a). [820 ILCS 112/11(e)]
- d) As used in this Section, “good faith effort” means demonstrable efforts by the business to promote pay equity and combat employment discrimination, including but not limited to, internal compensation reviews, staff training, adoption of equal opportunity policies, and evidence that such policies were enforced through evaluation, investigation, and personnel action.

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.880 Initiation of Hearing

- a) A hearing pursuant to Section 11(e) and Section 11(i) of the Act shall be initiated upon the request of a party after the party has received a written decision of notice of suspension or revocation of the certificate and/or imposition of civil penalties. The request must be made in writing and mailed by certified mail or delivered in person to the Chief Administrative Law Judge at the Department’s Chicago office within 20 business days after receipt of the written decision of notice of suspension or revocation. The request shall be marked REQUEST FOR HEARING UNDER THE EQUAL PAY ACT on both the letter and the envelope.
- b) Hearings pursuant to Section 11(e) and Section 11(i) of the Act shall be conducted pursuant to the provisions of Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10] and the Department's Rules of Procedure in Administrative Hearings (56 Ill. Adm. Code 120).

ILLINOIS DEPARTMENT OF LABOR

NOTICE OF PROPOSED AMENDMENTS

(Source: Added at 46 Ill. Reg. _____, effective _____)

Section 320.890 Employee Request for Data

- a) *A current employee of a business may request anonymized data regarding their job classification or title and the pay for that title or classification. [820 ILCS 112/11(h)(3)] A request for data must be submitted in writing to the Department, and shall include the employee's name, date of hire, job title or classification, the dates for which the data is being requested, a signed affidavit swearing that the employee holds the specified job title at that business, and evidence that the employee currently holds the specified job title at that business. Acceptable evidence includes, but is not limited to, pay stubs, work schedules, hire letters, work ID cards, business cards, and company website listings. The Director may require multiple forms of evidence as necessary to demonstrate current employment.*
- b) Upon request and if available, the Department shall provide current data, historical data from no more than 10 years prior to the date of the request, or both, to a requesting employee, based on the data timeframe specified in the request for employees working in the same county as the requestor.

(Source: Added at 46 Ill. Reg. _____, effective _____)