


APRIL 15, 2021 | STATE & LOCAL TRENDS

# Illinois Senate Bill 1480 Takes A Direct Aim at Ensuring Diversity, Equity, and Inclusion in Illinois Workplaces

[Senate Bill 1480](#) (SB 1480) signed by Governor J.B. Pritzker on March 23 is the latest in a long list of laws that have taken effect in Illinois aimed at ensuring diverse candidates have an equal opportunity in hiring, tenure or terms, and privileges and conditions of employment. In July 2014 Illinois “banned the box” when then Governor Pat Quinn signed [the Job Opportunities for Qualified Applicants Act](#). The legislation prohibits employers with 15 or more employees from asking applicants about their criminal record until the employer has determined the applicant is qualified for the position and has selected the applicant for an interview and notified the applicant or if there is no interview made a conditional offer of employment. In July 2019 Governor Pritzker signed the [Equal Pay Act Salary History Ban](#), which prohibits all employers in the state of Illinois from asking applicants about their current rate of pay or any benefits they are eligible to receive. Now, SB 1480 requires employers to provide notice in writing after an employer has made a preliminary decision to not extend the applicant a job offer because of their conviction record, obtain an Equal Pay certificate, and the Illinois Secretary of State will begin publishing employers EEO-1 data. 

## ***Amendment to the Illinois Human Rights Act***

Senate Bill 1480 amends the Illinois Human Rights Act such that employers must provide written notice to applicants after making a preliminary decision not to offer employment to the applicant because of their conviction record. Under the amendment, unless otherwise authorized by law, it is a civil rights violation for an employer to use conviction records in employment related decisions, including hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, and privileges or conditions of employment unless:

1. there is either a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or
2. the granting or continuation of the employment would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public.

When determining if an applicant meets the exceptions employers must perform a robust analysis and consider any mitigating factors. Under the first exception, a substantial relationship occurs when the employment position

offers the opportunity for the same or similar offense to occur and the circumstances leading to the conduct for which the person was convicted will recur in the employment position. Employers should consider the following mitigating factors when performing the substantial relationship analysis:

1. The length of time since the conviction.
2. The number of convictions that appear on the conviction record.
3. The nature and severity of the conviction and its relationship to the safety and security of others.
4. The facts or circumstances surrounding the conviction.
5. The age of the employee at the time of the conviction.
6. Evidence of rehabilitation efforts.

If, after considering the mitigating factors, the employer ultimately decides not to hire the applicant based on their conviction record, the employer must notify the applicant of their preliminary decision in writing. The notice must contain:

1. A notice of the disqualifying conviction or convictions that are the basis for the preliminary decision along with the employer's reasoning for disqualification.
2. A copy of the conviction history report, if any.
3. An explanation of the employee's right to respond to the notice of the employer's preliminary decision before the decision becomes final.

When making their final decision, employers must consider any information submitted by the applicant in response to the written notice. If the employer's final decision is not to hire the applicant, the employer must inform the applicant in writing of the denial. The written notice must contain:

1. A notice of the disqualifying conviction or convictions that are the basis for the preliminary decision along with the employer's reasoning for disqualification.
2. Any existing procedure the employer has for the employee to challenge the decision or request reconsideration.
3. Notice indicating the applicant's right to file a charge with the Illinois Department of Human Rights.

It is imperative to note that this is an amendment to the Illinois Human Rights Act (IHRA), which means employers may not be covered the Job Opportunities for Qualified Applicants Act, are covered by this amendment. Any employer with one or more employees is covered by the IHRA. Penalties for non-compliance include uncapped compensatory damages, back pay, front pay, reinstatement, attorney's fees and costs, and punitive damages. This provision of SB 1480 took effect immediately. In light of the SB 1480 amendment all Illinois employers should review their current hiring practices and make sure they are compliant with SB 1480. Additionally, HR and operations teams should be trained on any changes implemented to ensure compliance.

### ***Amendment to the Illinois Equal Pay Act***

SB 1480 amends the Illinois Equal Pay Act to require employers to certify compliance. Employers who are required to complete annual EEO-1 reporting, generally employers with more than 100 employees, must certify compliance with the Equal Pay Act by obtaining an Equal Pay registration certificate ("certificate"). To obtain a

certificate employers must pay the \$150 filing fee and submit a statement of compliance to the Illinois Department of Labor. The statement of compliance should indicate that the employer is in compliance with 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. Additionally, the statement should include an affirmative statement that the business does not restrict certain genders to specific roles or make employment decisions on the basis of sex, state how often the business audits for wage and benefit disparities between protected and non-protected classes and certify that if a disparity is identified it is corrected, and outline the system used by the business to determine employee compensation. The statement must be signed by an officer or agent of the business. Assuming employers pay the filing fee and include all of the required information, the Illinois Department of Labor generally will not deny the issuance of a certificate. After issuance, the certificate can be revoked if the Illinois Department of Labor determines an employer has not made good faith attempts to comply with or has multiple violations of Title VII, the Equal Pay Act of 1963, the Illinois Human Rights Act, the Equal Wage Act, or the Equal Pay Act of 2003. Any employer who is required to but fails to obtain the Equal Pay registration certificate, or whose certificate is revoked, will be fined an amount equal to one percent of the businesses' gross profits and businesses with state contracts may have those contracts revoked as an additional penalty. Existing employers must acquire their first certificate within three years of SB 1480's effective date, which would be March 23, 2024. New employers must acquire certificates within three years of opening their operations. After receiving their initial certificate, employers are required to pay the filing fee and re-submit an application every two years.

Illinois employers are advised to work with legal counsel to determine the best way to comply SB 1480 without creating litigation risks.

### ***Amendment to the Illinois Business Corporation Act***

SB 1480 amends the Illinois Business Corporation Act and requires businesses to file an annual report with the Illinois Secretary of State. The [amendment](#) outlines extensive data to be included in the annual report. Employers required to file an Employer Information Report EEO-1 with the Equal Employment Opportunity Commission must file with the Illinois Secretary of State information that is substantially similar to the employment data reported under Section D of the corporation's EEO-1. The format of the submission will be determined and approved by the Secretary of State at a later date. The Secretary of State will publish the corporation's data on gender, race, and ethnicity on the Secretary of State's official website. The data reporting will begin in 2023. While employers wait for the Illinois Secretary of State to provide additional detail on what must be reported and how, employers should keep track of all deadlines to ensure compliance.