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Illinois EPA Amendment Lowers Standard For Discrimination Claims

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Earlier this week, we posted a blog on the recent amendment to the Illinois Equal Pay Act concerning its prohibition on inquiring into [applicants' compensation history](#). Not to be overlooked, however, the amendment also contained significant modifications to the anti-discrimination provisions contained within the Act.

The amendment, set to take effect on September 29, 2019, breaks with federal law by expanding the protections afforded under Illinois law. The Illinois Equal Pay Act previously barred discrimination on the basis of sex and race where employees were paid less for the same or substantially similar work on jobs that required "equal skill, effort, and responsibility." The amendment now dictates that the job skill requirement need only be "substantially similar," rather than "equal." What "substantially similar" means will be left for the courts to decide, but one thing is clear: it does not mean "equal," which has been the standard under both federal and state law for decades.

The Illinois Equal Pay Act previously made exceptions for pay differentials that were based on a seniority system, a merit system, or a system that measured earnings by quantity or quality of production – or any other factor, provided it would not constitute unlawful discrimination under the Illinois Human Rights Act (the catchall exception). Now, as amended, employers can only use the catchall exception if the factor:

- Is not based on or derived from a differential in compensation based on a another protected characteristic;
- Is job-related with respect to the position and consistent with business necessity; and,
- Accounts for the differential in pay.

While the prohibition on questions of compensation history garnered most of the headlines with the [recent amendment to the Equal Pay Act](#), Illinois's relaxing of the standard for an employee to show pay discrimination is just as important for employers. In light of the expanded anti-discrimination protections provided by the amendment, Illinois employers may consider reviewing their compensation models to ensure compliance and guard against future claims.