

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

PART 320  
EQUAL PAY IN EMPLOYMENT

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**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 Labor and/or the Department of Labor.

**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.

**Section 320.120 Definitions**

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

“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]

“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.

“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 is not 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.

**Section 320.130 Independent Contractor Exemption**

- a) As used in this Part, the term “employee” shall not include any individual:
  - 1) who has been and will continue to be free from control and direction over the performance of the individual’s work, both under the contract of service with the employer and in fact; and
  - 2) who performs work that is either outside the usual course of business or is performed outside all the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and
  - 3) who is an independently established trade, occupation, profession or business.
- b) “Control” means the existence of general control or right to general control, even though the details of the work are left to an individual’s judgment.
- c) “An independently established trade, occupation, profession or business” means the individual performing the services has a proprietary interest in such business, to the extent that the individual operates the business without hindrance from any other person and as the enterprise’s owner, may sell or otherwise transfer the business.
- d) All three conditions in subsection (a) must be satisfied for the independent contractor exemption to apply.
- e) An individual may be an employee without being entirely dependent upon the relationship with a specified employer for the individual's livelihood. An individual engaged in other occupations may be an employee of a specified employer even though the individual only worked intermittently or part time.
- f) In determining whether the exemption applies, the Department shall consider the actual, rather than the alleged, relationship between a respondent and complainant. Designations and terminology used by the parties, as well as the individual's status for tax purposes, are not controlling.

**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 by the same employer and that may be pertinent to a determination whether the differential is based on a factor other than sex.

**Section 320.200 Persons Who May File a Complaint**

An employee or former employee claiming to be aggrieved under the Act may file a complaint, including the Department in cases initiated by the Department.

**Section 320.210 Contents and Time Limit for Filing**

- a) A complaint shall be in such detail as to substantially apprise the parties of the dates, place and facts with respect to the alleged violation of the Act. Each complaint shall contain the following information:
- 1) the full name and address of the complainant;
  - 2) the full name and address of each respondent;
  - 3) a statement of the facts alleged to constitute a violation under the Act, including the dates and place of the alleged violation;
  - 4) a statement of each specific harm the complainant has suffered as a consequence of the alleged violation;
  - 5) complainant's signature, including date of signing; and
  - 6) a statement as to any other action, civil or criminal, instituted in any other forum, and as to any pending administrative proceeding based on the same violation as alleged in the complaint, together with a statement as to the status or disposition of the other action.
- b) All complaints and amendments shall be delivered by U.S. mail or personal delivery to the Department's Chicago office within 180 calendar days from the date the employee learned of the alleged violation of the Act. The complaint shall be deemed filed as of the date of the post-mark or as it is date stamped as received by the Department.

**Section 320.220 Confidentiality**

Where a complainant requests confidentiality, the Department will advise the complainant of the need to reveal the complainant's identity so that the Department can conduct its investigation. In such cases, the Department will allow the complainant an opportunity to withdraw the complaint pursuant to Section 320.250 before notification of the complainant's identity is given to the respondent.

**Section 320.230 Incomplete Complaint**

If the Department receives a written complaint from an individual that complies substantially with Section 320.210 but is lacking an element that still must be provided, the Department may accept and docket the complaint as an incomplete complaint. The Department shall notify the complainant in writing of the elements that must be supplied. If the complainant fails or refuses to perfect the complaint within 30 calendar days, the complaint may be dismissed pursuant to Section 320.500.

**Section 320.240 Amendment of Complaint**

- a) A complaint may be amended to cure technical defects or to set forth additional facts or allegations related to the subject matter of the original complaint and the amendments, if timely filed pursuant to Section 320.210, shall relate back to the original filing date.
- b) A complaint may be amended to substitute or name additional respondents. The amendment will relate back to the original filing date, if timely filed pursuant to Section 320.210, and if at the time of the amendment a separate complaint could have been timely filed against the additional respondent or the additional respondent had timely notice of the original complaint and the fact that it might be involved in that complaint. Mere misnomer of a party may be cured at any time.
- c) If a party dies while the proceedings are pending, the complaint may be amended to substitute the legal representative, or any other person with a legally recognized interest in the decedent's estate, for the deceased.
- d) The Department shall provide any amendment to a complaint to all parties.

**Section 320.250 Withdrawal of Complaint**

A complaint may be withdrawn at any time prior to issuance of a notice dismissing the complaint or filing of a court action based on the complaint. A complainant's request to withdraw a complaint shall be in writing and signed by the complainant and shall specifically reference the Department's complaint number. The Department shall grant the request if it is shown that the request is made voluntarily. After the Department's review of the withdrawal request, the complaint may be closed and the Department will notify all parties in writing. Withdrawal does not preclude the Department from pursuing a complaint on its own motion based on the same facts.

**Section 320.300 Jurisdiction**

- a) At the time of filing, the Department shall determine initially whether the allegations in the complaint sufficiently state a claim under the Act so that the Department can proceed with the investigation.
- b) If, at the time of filing, or at any subsequent time, it is determined that there is a lack of jurisdiction, the complaint shall be dismissed. All parties shall be notified of the dismissal pursuant to Section 320.500.

**Section 320.310 Investigation**

- a) After the Department determines jurisdiction, the Department shall conduct an investigation to ascertain the facts relating to the violation alleged in the complaint and determine whether reasonable cause exists to believe a violation under the Act has occurred. 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) The Department will notify the respondent of the existence of the complaint and forward a copy of the complaint to the respondent.
- c) The respondent must remit a written response to the complaint within 30 calendar days after the date the Department forwarded the complaint. The response shall include relevant data regarding wages, hours and other conditions and practices of employment deemed necessary and appropriate to the Department's investigation.
- d) Upon receipt of the respondent's response, the complainant is provided a copy of the response and shall submit a rebuttal. Failure of the complainant to submit a rebuttal to the Department within 30 calendar days after the date the Department forwarded the respondent's response will result in dismissal of the complaint pursuant to Section 320.500. At least 10 calendar days prior to convening a fact finding conference or an informal investigative hearing, the Department will provide to the respondent a copy of the complainant's rebuttal.
- e) 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.
- f) 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.
- g) 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.

**Section 320.320 Fact-Finding Conference**

- a) As part of its investigation, the Department may convene a fact-finding conference in person or by telephone for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conferences will be limited in scope to those issues the Department believes to be in question.
- b) Notice of the conference shall be given to all parties at least 10 calendar days prior to the conference and shall identify the individuals requested to attend on behalf of each party.
- c) A party may be accompanied at a fact-finding conference by the party's attorney and by a translator if necessary.
- d) Department investigator shall conduct the conference and control the proceedings. No tape recordings, stenographic report or other verbatim record of the conference shall be made. If any person fails to cooperate at the conference and becomes so disruptive or abusive that a full and fair conference cannot be conducted, the Department investigator shall exclude the person from the conference.
- e) A party who appears at the conference exclusively through an attorney or other representative unfamiliar with the events at issue shall be deemed to have failed to attend, unless, with respect to a respondent, it establishes that it does not employ or control any person with knowledge of the events at issue.

**Section 320.330 Decision After Investigation**

- a) At the conclusion of an investigation, the Department must make one of the following findings:
  - 1) Reasonable cause found. If the Department determines that there is reasonable cause to believe that a violation of the Act has occurred, it may:
    - A) Seek a voluntary settlement agreement signed by the respondent that eliminates the unlawful practice and provides appropriate relief to the complainant; or
    - B) Recommend the commencement of a civil action.
  - 2) No reasonable cause found. If the Department determines that there is no reasonable cause to believe that a violation of the Act has occurred, the complaint will be dismissed pursuant to Section 320.500.
- b) Whenever a decision is made under this Section, a written notice must be provided to the parties stating the action taken, findings of fact and the conclusions of law supporting the action and the right to request review under Subparts F and G of this Part. The notice must also advise the complainant of the right to bring a civil action as provided for in Section 30 of the Act.

**Section 320.340 Enforcement Procedures**

- a) The payment of back wages and other relief found due pursuant to Section 30 after 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 and the Director may require the respondent to send 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 order, the Director may bring a civil action against the respondent as provided for in Section 30 of the Act.

**Section 320.400 Settlement**

- a) At any time prior to the commencement of a civil action, the parties may settle the complaint on mutually agreeable terms. Such an agreement will not affect the processing of a complaint made by any other complainant, the allegations of which are like or related to the individual allegations settled.
- b) If the Department finds that the complainant's objections to a proposed settlement agreement are without merit or that the complainant is unavailable or unwilling to participate in settlement negotiations, or continuing the investigation would be otherwise detrimental, the Department may, in its discretion, dismiss the complaint pursuant to Section 320.500.

**Section 320.500 Dismissal**

- a) The Department shall serve upon the parties a written notice of dismissal of all or part of a complaint. The dismissal notice shall state the grounds for dismissal and that the complainant may obtain review by filing a request for review under Subparts F and G of this Part within 15 calendar days after the dismissal notice. The dismissal notice shall also advise the complainant of the right to bring a private action within 3 years from the date the employee learned of the underpayment.
- b) The dismissal may be based on, but not limited to, lack of reasonable cause that a violation under the Act occurred, lack of jurisdiction or complainant's failure to proceed pursuant to Section 320.310(f). The notice of dismissal shall specify the manner in which the complainant has failed to proceed.

**Section 320.510 Default**

Except for good cause shown, the failure of a respondent to appear at an informal investigative hearing shall constitute a default.

**Section 320.520 Closure**

When the Department becomes aware that there is a complaint pending in federal or State court containing some or all of the issues before the Department, it may close the issues of the complaint that are being litigated and continue to process the remaining issues. If all issues are being litigated, then the entire complaint will be closed. The Department shall notify all parties in writing that the complaint before the Department is closed.

**Section 320.600 Request for Informal Investigative Hearing**

Any complainant or respondent contesting the results of the Department's investigation may file a written request for an informal investigative hearing within 15 calendar days after the Department's written notice of decision. Such request shall be marked "Request for Informal Investigative Hearing" on both the letter and the envelope and shall be delivered by U.S. mail or personal delivery to the Department's Chicago office. The request must set forth reasons why the party believes the Department's findings are incorrect as a matter of law or fact or any newly discovered evidence the party could not have discovered during the course of the investigation. Late submissions need not be considered by the Department.

**Section 320.610 Convening an Informal Investigative Hearing**

- a) The Department shall make an initial determination with respect to the legal and factual merits of a “Request for Informal Investigative Hearing”. If the request presents a reasonable issue of law or fact, the Department may schedule an informal hearing before an Administrative Law Judge for purposes of obtaining evidence and identifying the issue in dispute.
- b) A written notice of an informal investigative hearing shall be sent, not less than 10 calendar days prior to the date of the hearing, to the complainant and respondent, and may also be sent to those employees, former employees or witnesses covered by the investigation at issue. Each notice shall identify the individual requested to attend and records or documents the party must produce at the hearing.
- c) If a request for an informal investigative hearing is denied, the Department will notify the party who filed the request of the Department’s determination in writing.

**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 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 evidence, the illness or death of a party or counsel, the sudden and unexpected unavailability of counsel and substitution of counsel.

**Section 320.630 Application of the Rules of Evidence, Pleading and Procedure**

When an Administrative Law Judge conducts an informal investigative hearing, the Administrative Law Judge is not bound by the rules of evidence or by any technical or formal rules of pleading or procedure.

**Section 320.640 Attorneys and Witnesses at an Informal Investigative Hearing**

A party may be accompanied at an informal investigative hearing by the party's attorney and by a translator, if necessary. The parties may bring witnesses to the hearing, but the Administrative Law Judge shall decide which witnesses shall be heard and the order in which they shall be heard. The Administrative Law Judge may exclude witnesses and other persons from the hearing when they are not giving testimony. The Administrative Law Judge shall conduct and control the proceedings. No tape recordings, stenographic report or other verbatim record of the hearing shall be made.

**Section 320.650 Contumacious Conduct**

If any person becomes so disruptive or abusive that a full and fair hearing cannot be conducted, the Administrative Law Judge shall exclude the person from the proceeding. The Administrative Law Judge may take any of the following actions: continue the hearing without the participation of the excluded individual; render a decision based upon the evidence previously presented; dismiss the complainant's complaint; or strike the respondent's response.

**Section 320.660 Telephone Hearings**

- a) Written requests to participate in an informal investigative hearing by telephone must be received by the Department's Chicago office no later than seven calendar days prior to the hearing date. The request shall be in writing and state a compelling reason why the party needs to participate by telephone and the name, address and telephone number of the person to be contacted.
- b) A party shall not consider its request granted unless the party receives written notice of the Department's approval prior to the hearing date.

**Section 320.700 Filing with Chief Administrative Law Judge**

- a) A complainant may request review by the Chief Administrative Law Judge of a decision by the Department, including a decision made after an informal investigative hearing, to dismiss one or more allegations of a complaint for:
  - 1) Lack of substantial evidence;
  - 2) Lack of jurisdiction;
  - 3) No reasonable cause found;
  - 4) Failure of complainant to proceed; or
  - 5) Failure of complainant to accept a settlement offer.
- b) A respondent may request review by the Chief Administrative Law Judge of a decision by the Department, including a decision made after an informal investigative hearing, to issue a notice of default or a notice of reasonable cause found.
- c) A request for review must be delivered by U.S. mail or personal delivery to the Chief Administrative Law Judge at the Department's Chicago office within 15 calendar days after the decision.
- d) Neither the parties nor the Department may communicate directly or indirectly with the Chief Administrative Law Judge except in writing with copies to all parties and the Department.

**Section 320.710 Contents of Request for Review**

A request for review must be in writing and state the reasons the party disagrees with the Department's decision. The request must be prominently marked "REQUEST FOR REVIEW" on both the letter and the envelope. A copy of the decision sought to be reviewed must be included with the request. The request for review must set forth the reasons why the party believes the Department misconstrued the evidence or misapplied the law to the facts and any newly discovered evidence the party could not have discovered prior to the Department's decision.

**Section 320.720 Reply to Request for Review and Surreply**

- a) When a party files a timely request for review, the Chief Administrative Law Judge may request other parties to submit a reply to the request for review. The reply must be filed with the Chief Administrative Law Judge within 14 calendar days after the request by the Chief Administrative Law Judge. The reply must be served on all other parties and proof of service must be provided to the Chief Administrative Law Judge or the reply cannot be considered. A reply is limited to the issues raised in the request for review. Whether a reply is needed or required is in the sole discretion of the Chief Administrative Law Judge.
- b) If a reply to a request for review is timely filed with the Chief Administrative Law Judge, the party requesting review may file a surreply to the reply with the Chief Administrative Law Judge. Such surreply must be filed within 14 calendar days after the deadline for filing the reply. The surreply must be served on all parties and proof of service must be provided to the Chief Administrative Law Judge or the surreply cannot be considered. A surreply is limited to the issues raised in the reply.

**Section 320.730 Extensions of Time**

- a) For good cause shown, a party may request in writing an extension of time to file a request for review, reply or surreply. Such an extension shall be no more than 14 calendar days. Requests for extensions of time must be filed with the Chief Administrative Law Judge no later than the original deadline and will be granted if the Chief Administrative Law Judge determines that good cause has been shown.
- b) A determination for an extension of time shall be sent to all parties.

**Section 320.740 Additional Investigation and Order**

At the conclusion of the request for review process, the Chief Administrative Law Judge must make one of the following findings:

- a) Additional investigation. If the Chief Administrative Law Judge determines that additional investigation is needed, all parties will be notified of the decision. All parties will be informed of the results of the additional investigation and provided copies of any documents submitted in response to the decision for additional investigation. All parties will be given 14 calendar days to file a supplemental request for review, reply and surreply to address the results of the additional investigation.
- b) Order. If after review of the Department's decision to dismiss a complaint, issue a notice of default, or issue a reasonable cause finding, the Chief Administrative Law Judge determines that the Department's decision should be sustained, an order shall be entered stating the findings and reasons for the determination. Otherwise, the Chief Administrative Law Judge shall order that the dismissal, default or reasonable cause finding be vacated. The Chief Administrative Law Judge will either return the complaint to the Department for additional investigation or order a reasonable cause finding or order of dismissal be entered. The Chief Administrative Law Judge shall serve the order upon all parties to the complaint.