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EMPLOYMENT PRACTICES AND DISCRIMINATION

How New Amendments Will Affect Illinois Employers

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New requirements signed into law by Governor J.B. Pritzker will expand obligations on employers in the state of Illinois when it comes to both handling and preventing grievances in their workplace. The new requirements will affect how employers address discrimination, harassment, equal pay between genders and also protection of employees who are victims of gender violence.

Employers within the state will want to be sure to update all written materials and training provided to current and incoming employees on these subjects. Here is a summary of the amendments:

Amendments to the Illinois Equal Pay Act, Beginning September 29, 2019

Work requiring “substantially similar” skill, effort and responsibility will necessitate the same wage regardless of gender. Employers will also now have the burden of proof to establish that a wage differential is based on factors other than gender. Previously, employers could justify a wage differential between employees of different genders by simply asserting that the employees’ jobs were not “equal.” Employers will now be required to establish that compensation does not differ for employees performing “substantially similar” work, creating a much broader scope of work that would demand equal pay. Subject to certain limitations, employers can still justify that wage differentials are based on seniority, merit or productivity.

Employers will effectively be prohibited from considering salary history when determining an employee’s compensation. Specifically, under this amendment, employers will be prohibited from (a) screening job applicants based on their salary history, (b) requiring that an applicant’s prior salary satisfy minimum or maximum criteria, (c) requesting or requiring as a condition of being interviewed or considered for an offer of employment that an applicant disclose prior salary information, and (d) seeking an applicant’s salary information from a current or former employer.

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This will prohibit employers from justifying unlawful differences in wages based on salary history. If an applicant voluntarily discloses his or her salary history, the employer remains prohibited from considering the disclosure when making the determination of whether to offer a position or its terms within their first week of employment. The policy should provide the employee with information about how to file a charge with the Illinois Human Rights Department and the Equal Employment Opportunity Commission.

Employers will no longer be permitted to stop employees from discussing information regarding their salary or other compensation. However, employers are allowed to direct human resources personnel to keep such information confidential.

Employees who prevail in a civil action pursuant to the Illinois Equal Pay Act will now be able to recover “special damages” of up to \$10,000 or actual damages if greater than \$10,000 and injunctive relief. Previously, such employees’ recovery would be limited to the amount of the underpayment, interest and costs and attorneys’ fees. The Illinois Department of Labor could also issue penalties up to \$5,000 for each violation for each employee affected.

Amendments to the Illinois Human Rights Act, Beginning January 1, 2020

Discrimination of an employee based on only a *perception* that the employee is a member of a protected class or group, (i.e., race, color, religion, national origin) will now subject an employer to liability even if that perception is erroneous. Previously, employees would only be protected from discrimination based on their *actual* inclusion in a protected group. Employers could now be held liable for discrimination against an employee based on even an *incorrect perception* that the employee is a member of a protected group.

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Employers will now be required to provide annual anti-harassment training to all employees. A model training and prevention program is expected to be issued by the Illinois Department of Human Rights to assist employers in implementing the training and will be made available at no cost. The new requirements also provide that employers can be subject to fines of up to \$5,000 for failing to comply.

Incidents of harassment that occur outside the office will now also subject an employer to liability. This signals an acknowledgement by the Act that the “workplace” is no longer limited to a physical location where employees are assigned to perform their duties.

In addition to protecting an employer’s employees, the Act will now also provide that harassment or discrimination of non-employees present in the workplace, including contractors or consultants providing services to the employer pursuant to contract, will also subject employers to liability.

The Illinois Human Rights Act will now also provide that harassment or discrimination of non-employees present in the workplace will subject employers to liability.

Employees of restaurants, bars, and coffee shops should be provided a written sexual harassment policy, in English and Spanish, within their first week of employment. The policy should provide the employee with information about how to file a charge with the Illinois Human Rights Department and Equal Employment Opportunity Commission.

The charging party or a responding party can now request that the Human Rights Department dismiss a pending charge if a state or federal lawsuit has been filed based on the same issues. Previously, only the charging party had that option.

Amendments to the Illinois Equal Pay Act, Beginning July 1, 2020

The Illinois Human Rights Act will be expanded to cover employers with 1 or more employees within the state of Illinois during 20 calendar weeks in the current year or the year preceding an alleged violation. Currently, the Act applies to employers of one or more employees for claims of sexual harassment and claims of discrimination based on pregnancy and disability. The Act currently applies to employers with 15 or more employees for all other claims.

Employers will be required to disclose details of adverse judgments regarding harassment or discrimination to the Illinois Human Rights Department and also provide information during department investigations of settlements and agreements reached to resolve such claims. A failure to comply could subject an employer to fines of up to \$3,000.

Amendments to the Victim's Economic Security and Safety Act, Beginning January 1, 2020

The Victims' Economic Security and Safety Act will be expanded to include victims of gender violence. "Gender violence" is defined under the act as violence or aggression that is illegal under state law irrespective of whether criminal charges were ultimately brought. The Act further does not differentiate between violence based on a person's actual or perceived sex or gender. The Act allows such victims to take up to 12 weeks of unpaid leave during any 12-month period to address issues arising from the violence. This leave is intended to allow victims to seek medical treatment, victim services, counseling, safety planning, or legal assistance. Employers should also note that the leave can be taken intermittently or on a reduced work schedule.

The Act's protections to victims of gender violence is in addition to the already protected victims of domestic or sexual violence, or those who have family or household members who are victims of domestic or sexual violence.

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