

# Employment Law Updates to Remember and Topics to Watch in the New Year!

## Labor & Employment Law Update

on December 30, 2014

Throughout 2014, we have provided updates on a variety of new laws. Below are several Illinois laws that employers should be aware are effective January 1, 2015, as well as an update on Illinois' medical marijuana law:

- **Ban the Box** – Effective January 1<sup>st</sup>, Illinois employers with 15 or more employees or employment agencies working for them are forbidden from inquiring about a job applicant's criminal record/history prior to the applicant being selected for an interview or, if there is no interview, prior to a conditional offer of employment.
- **Pregnancy Discrimination and Accommodation** – Effective January 1<sup>st</sup>, the Illinois Human Rights Act will prohibit employers with one or more employees from discriminating based on pregnancy and require reasonable accommodations for any pregnancy related condition (not just medical conditions). Employers must also provide notice to employees in their handbooks and by posting the approved Illinois Department of Human Rights Notice, which can be found here.
- **Payroll Cards** – Effective January 1<sup>st</sup>, Illinois employers will be able to pay employees through payroll debit cards but must follow strict requirements regarding implementing and use, including offering other payment methods, written disclosures, voluntarily consent and limits on fees including that there must be methods to make withdraws at no cost to the employee.
- **Medical Marijuana** – On September 1, 2014, Illinois started the process to license registered users, dispensaries and cultivators. Over 11,000 individuals have applied to become registered users and more than 600 registered user licenses have been approved. Licenses for cultivators and dispensaries are anticipated to be approved within the next month or two.
- **Unemployment Implications** – Employees may receive unemployment benefits, even if terminated for admitted use of marijuana while off-duty. *Eastham v. Housing Authority of Jefferson County*, 2014 IL App (5th) 130209. In *Eastham*, the Appellate Court held that an employee's off-duty marijuana use was not "in the course of employment" and did not violate the employer's drug policy or constitute "misconduct" under the Unemployment Insurance Act. *Id.* Similarly, a Michigan Court has held that absent evidence that an employee was intoxicated at work or their job

performance was impaired by medical marijuana use, there was no gross misconduct and the employee was entitled to unemployment benefits. *Braska v. Challenge Mfg. Co.*, No. 313932, 2014 WL 5393501 (Mich. Ct. App. Oct. 23, 2014).

- **Workers' Compensation Implications** – While still unknown in Illinois, a New Mexico Court held that New Mexico's workers' compensation law requires employers and insurers to pay for "reasonable and necessary medical care" for any work related injury and since medical marijuana is legal in New Mexico and was prescribed by a doctor for the work injury, the insured was required to pay for it. *Vialpando v. Ben's Automotive Services and Redwood Fire Casualty*, 2014-NMCA-32,920 (N.M. Court of Appeals, May 19, 2014).

In 2015, employers should also be aware of the following national topics due to the increased changes in laws affecting these topics:

- **Minimum Wage** – Many states and local governments, including the City of Chicago have implemented laws that will impact minimum wage in 2015.
  - States with minimum wage changes effective January 1, 2015 include: Alaska (\$7.75 to \$8.75 per hour), Arizona (\$7.90 to \$8.05 per hour), Arkansas (\$6.25 to \$7.50 per hour), Colorado (\$8.00 to \$8.23 per hour), Connecticut (\$8.70 to \$9.15 per hour), Delaware (\$7.75 to \$8.25 per hour), Florida (\$7.93 to \$8.05 per hour), Hawaii (\$7.25 to \$7.75 per hour), Maryland (\$7.25 to \$8.00 per hour), Massachusetts (\$8.00 to \$9.00 per hour), Missouri (\$7.50 to \$7.65 per hour), Montana (\$7.90 to \$8.05 per hour), Nebraska (\$7.25 to \$8.00 per hour), New Jersey (\$8.25 to \$8.38 per hour), New York (\$8.00 to \$8.75 per hour), Ohio (\$7.95 to \$8.10 per hour for workers older than 16 years old who work for employers grossing at least \$297,000), Oregon (\$9.10 to \$9.25 per hour), Rhode Island (\$8.00 to \$9.00 per hour), South Dakota (\$7.25 to \$8.50 per hour), Vermont (\$8.73 to \$9.15 per hour), Washington (\$9.32 to \$9.47 per hour) and West Virginia (\$7.25 to \$8.00 per hour). (NOTE: this does not reflect changes for tipped employees, which varies by each state as well).
- **Paid Sick Leave** – California, Washington D.C., Connecticut, Massachusetts, Seattle, WA, Portland, OR, New York City, Newark and Jersey City, NJ, Eugene, OR, and Oakland, CA are state and local governments that have instituted paid sick leave laws. Employers that operate in areas that have a paid sick leave law should make sure that their vacation and sick leave policies are compliant.
- **U.S. Department of Labor 2015 Targets and Changes to the FLSA** – Three issues identified by the DOL as targets in 2015 are: (1) violations of federal and state minimum wage and overtime laws; (2) misclassification of workers as independent contractors instead of employees; and (3) issuance of a new proposed rule on the FLSA overtime exemption for "white collar" employees, which is anticipated as soon as February 2015.

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