

Illinois Employers: Summer Roundup of Even More Employment Laws

Labor & Employment Law Update

By Beverly Alfon on August 31, 2023

This summer seemed to fly by as quickly as the Illinois Legislature and Governor J.B. Pritzker enacted a dizzying slew of more new employment laws between the months of June and August. These changes are sweeping and require your attention now.

1. Employer Liability Under the Gender Violence Act – Effective 1/1/2024

Recent amendments to the Illinois Gender Violence Act applies the law to employers, opening an avenue for victims of gender-related violence to sue employers whose employees or agents commit gender-related violence in the workplace, if the violence arises “out of and in the course of employment with the employer.”

The law defines “gender-related violence” as a form of sex discrimination and includes acts of physical aggression, physical intrusions or invasions of a sexual nature, and threats of gender-related violence. The law broadly defines “workplace” to include “the employer’s premises, including any building, real property, and parking area under the control of the employer, or any location used by an employee while in the performance of the employee’s job duties.” “Workplace” also includes “activities occurring off-premises at employer-sponsored events where an employee is not performing the employee’s job duties.”

Section 11 of the amended Act imposes liability on the employer if the gender-related violence occurs “(i) while the employee was directly performing the employee’s job duties and the gender-related violence was the proximate cause of the injury; or (ii) while the agent of the employer was directly involved in the gender-related violence and the performance of the contracted work was the proximate cause of the injury.” If the employer has acted in a manner inconsistent with how a reasonable person would act under similar circumstances, it will be liable.

However, an employer will only be liable for the gender-related violence if the employer (a) failed to supervise, train, or monitor the employee who engaged in the gender-related violence; or (b) failed to investigate and remediate complaints

or reports directly provided to a supervisor, manager, owner, or another person designated by the employer of similar conduct by an employee or agent of the employer. Notably, an employer that provides the sexual harassment prevention training required by Section 2-109 of the Illinois Human Rights Act has an affirmative defense that it provided adequate training to the employee.

The law provides for potential injunctive relief and the recovery of actual damages, including damages for emotional distress, punitive damages, and the recovery of attorney's fees and costs.

2. New and Expanded Leave Laws

Paid Leave for Any Reason – Effective 1/1/2024

This law was previously covered in our Labor and Employment Law Update. The Illinois Paid Leave for All Workers Act requires all private employers to provide all (full-time, part-time, seasonal, and temporary) employees with up to 40 hours of paid leave per year to be used for any reason. The Illinois Department of Labor (IDOL) is the enforcing agency. Despite the approaching effective date of this law, however, the IDOL has not yet issued regulations. For now, employers and their counsel are left to grapple with certain ambiguities in the law, while trying to develop compliant leave plans.

Expanded Leave Under the Illinois Victims' Economic Security and Safety Act (VESSA) – Effective 1/1/2024

VESSA applies to all Illinois employers. It provides up to 12 weeks (depending on the size of the employer) of unpaid, job-protected leave per year. The recent amendments expand the qualifying reasons for leave to the following, with some additional restrictions for use: (a) to attend a funeral, alternative to a funeral, or the wake of a family or household member killed in a crime of violence; (b) to make arrangements for a family or household member killed in a crime of violence; and (c) to grieve a family or household member killed in a crime of violence.

Expanded Bereavement Leave – Effective 1/1/2024

The Child Extended Bereavement Leave Act (CEBLA) will require employees with 50 or more full-time employees in Illinois to provide unpaid, job-protected leave to grieve for loss of a child (biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in loco parentis) by suicide or homicide. The amount of available leave depends on the size of the employer (250+ employees = 12 weeks per year; 50-249 employees = 6 weeks per year). Employees must use their CEBLA leave within one year of notifying their employer of the death of their child. Employers may require advanced notice and reasonable documentation. Notably, use of leave under CEBLA will preclude the employee from also using leave under the Illinois Family Bereavement Leave Act where related to the death of the same child.

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Expanded, Paid Donation Leave – Effective 1/1/2024

The current law requires all employers with 51 or more employees to allow eligible employees (full-time employees who have been employed for at least 6 months) to use 1 hour of paid leave every 56 days to donate blood. Under the new amendment, the Employee Blood and Organ Donation Leave Act will also give eligible employees up to 10 days of paid leave in a 12-month period to donate an organ or bone marrow.

3. Job Posting Salary, Benefits, and Promotion Opportunity Disclosure Obligations – Effective 1/1/2025

An employer with 15 or more employees that announces, posts, publishes, or otherwise makes known an opening for a job that will either (a) be performed in part or entirely in Illinois or (b) report to a supervisor, office, or worksite in Illinois, must provide the pay scale, benefits and “other compensation” (e.g., bonuses and incentives) in the posting (or a hyperlink to the information).

This requirement applies whether the employer posts the job on its own or through a third party.

Regardless of an employer’s size, if the job posting does not include the compensation and benefit information, the employer must disclose that information both (a) upon an applicant’s request for the information and (b) before any offer or discussion of compensation with the applicant.

Regardless of an employer’s size, an employer must also disclose to its current employees all promotional opportunities for covered Illinois positions, within 14 days of externally posting the opportunity.

Employers must maintain records of the job posting for each position, pay scales and benefits for each positions, for 5 years.

The IDOL will enforce the law, with authority to initiate an investigation on its own or upon receiving a complaint from prospective employees, current employees, or former employees. The IDOL will give an opportunity to employers to cure violations, unless the employer has had two previous violations. The penalties for each violation may not exceed \$250-10,000.

4. Expanded Protection for Temporary Workers – Effective Now

Amendments to the Illinois Day and Temporary Labor Services Act focus on providing new rights and protections to temporary workers related to wages and benefits, safety, and protected refusal of work upon notice of a labor dispute. These amendments, emergency regulations which took effect on August 7, 2023, and proposed permanent regulations are covered in previous articles from our blog on June 26 and August 9.

5. Expanded Access to Personnel Records and Electronic Distribution of Employee Notices – Effective 1/1/2024

As discussed in a prior article, House Bill 3733 creates new obligations for employers to electronically distribute notices required by the IL Minimum Wage Law, Illinois Equal Pay Act, Illinois Wage Payment and Collection Act, and Illinois Child Labor Law. The law establishes additional notice obligations for staffing agencies. The law also amends the Illinois Personnel Record Review Act and now requires employers to provide employees with copies of their personnel records by email or mail, regardless of whether the employee can establish that they are unable to inspect the records in person.

6. Commuter Benefits – Effective 1/1/2024

The Transportation Benefits Program Act requires “covered employers” (an employer with 50 or more “covered employees”) in Cook County and numerous surrounding townships outlined in the Act, to provide pre-tax commuter benefits to covered employees that allow them to purchase a public transit pass with pre-tax dollars. The Act defines “covered employees” as employees who work for the employer for at least 35 hours per week on a full-time basis. The covered employer must provide the pre-tax benefit to covered employees by their first full pay period after the employee’s 120th day of employment.

7. Expanded Protection for Striking Workers – Effective 1/1/2024

The Illinois Labor Dispute Act currently prohibits Illinois courts from enjoining peaceful picketers who are “recommending, advising, or persuading others” to cease work. Among other things, the law provides access to most employer locations by broadly defining the public right of way on which picketers are allowed to post temporary signs, park multiple vehicles, and even create temporary shelter for the well-being of the picketers. These amendments now (a) prohibit state courts from awarding monetary damages, except for damage to an employer’s property, under limited circumstances and (b) makes it a Class A misdemeanor with a minimum fine of \$500 for anyone to place an object in the public way with the intention of interfering with, obstructing, or impeding a picket or other demonstration or protest. These amendments limit an employer’s options in response to picketing activity.

8. New Protections for Independent Contractors – Effective 7/1/2024

The Freelance Worker Protection Act (FWPA) defines “freelance workers” as independent contractors who contract with any non-governmental person or entity to provide products and/or services in Illinois or with an entity located in Illinois that is worth at least \$500 (either in a single contract or the aggregate of all contracts with a single entity) within a 120-day period. However, the FWPA specifically excludes: (a) workers performing construction services; (b) workers performing services as an employee for a contractor who engages in construction; (c) workers engaged in the traditional employer-employee

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relationship as defined by the Illinois Wage Payment and Collections Act; and (d) all foreign, federal, state, and local government entities including school districts. In addition, the law defines “freelance worker” as a “natural person,” which the law defines as an “individual human being.”

If the worker falls within the definition of “freelance worker,” the Act imposes two requirements for the engagement of the freelance worker: (a) the terms of agreement must be memorialized in contract; and (b) the contracting entity must pay the freelance worker within 30 days of the completion of services or delivery of product.

In addition, the Act prohibits the contracting entity from engaging in any discriminatory, retaliatory, or harassing behavior toward the freelance worker. This prohibition extends to threats, intimidation, discipline, deterrence, denial of work opportunities, and other conduct that penalizes a freelance worker who exercises their rights under the Act. Notably, this law gives freelance workers the right to *either* file a complaint with the IDOL or file a complaint in state court.

If payments are untimely, freelance workers can recover double the amount of any underpayment, injunctive relief, costs of suit, and all reasonable attorneys’ fees. For violations of the written contract requirement, freelance workers may recover statutory damages equal to the value of the underlying contract or \$500, whichever is greater, in addition to the other remedies provided. For violations of the nondiscrimination requirement, freelance workers can recover damages equal to the value of the related contract, for each violation, plus costs and all reasonable attorneys’ fees.

Action Items:

- Review and revise all leave policies for compliance with new and expanded leave laws.
- Review and revise all contracts with staffing agencies to ensure clear definition of responsibilities under the IL Day and Temporary Workers Services Act, including specific indemnification provisions.
- Assess pay scale and benefits for all positions to determine where adjustments may need to be made before disclosure obligations begin on January 1, 2025.
- Assess internal processes for job postings and announcement of opportunities for promotion.
- Continue to provide anti-harassment training in accordance with IL Human Rights Act requirements and document the same. Be sure that all HR professionals and supervisors are aware of their responsibilities upon receiving a complaint and/or observing behavior that violates your company’s policies.
- Map out locations/departments/job positions for which temporary workers are obtained through staffing agencies. Develop required safety training,

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methods for delivery and documentation of same, for compliance with the Illinois Day and Temporary Labor Services Act.

- Review current independent contractor agreements to determine where updates will be necessary for compliance with the Freelance Worker Protection Act by July 1, 2024.
- Review internal processes for responding to requests for personnel records and distribution of legally required notices to remote and all other employees.

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