

Responding to and Preparing for Pending Legislation

Labor & Employment Law Update

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As the Trump administration looks to unburden employers through the rollback of employment-related regulations and Executive Orders, one of the likely results will be an increase in state and local employment legislation and regulation—especially in so-called “blue states.”

Employers have long been forced to consider state and local laws—in addition to federal—regulating their workforces. Many state and local laws already serve to increase employee protections over and above those contained in federal law counterparts—*i.e.*, adding additional protected classes to EEO laws, or making such laws apply to smaller employers. However, since January 20, 2017, there has been a significant increase in proposed legislation and regulation at the state and local level. Such activity is especially prevalent in Illinois, and the proposed changes would place additional and significant burdens and restrictions on Illinois employers.

One such piece of proposed legislation—an amendment to the Illinois Equal Pay Act (HB2462)—already has been passed by the Illinois House of Representatives. Among other changes, the bill would prohibit employers from seeking wage and salary history from job applicants. The bill is similar to a Philadelphia ordinance we discussed previously. The bill must be passed by the Illinois Senate before advancing to the Governor.

While many cities, counties, and taxing districts (like airports and special economic zones) already have passed mandated sick leave laws, a bill requiring statewide paid sick leave has advanced from the Illinois House to the Senate (HB2771). This proposed legislation, similar to the Chicago and Cook County Earned Sick Leave Ordinances, would apply to nearly every employer in the state and mandate up to five paid sick days per employee. Employees would accrue one hour of leave per 40 hours worked, with an employee becoming eligible to take such leave after 180 days of employment. While the purpose of this bill is to provide some paid leave to employees at the marginal edges, unintended consequences likely could be that employers further restrict hiring, or will be less willing to keep or train marginal employees past the 180-day mark, in order to avoid additional costs associated with providing such mandated leave. This could result in an increase in gig and contingent labor.

Examples of other bills pending in Illinois include HB2802, requiring employers with 25 or more employees within a regional transit area to provide a transportation benefit program, and SB1720, amending the Illinois Wage Payment & Collection Act to increase criminal and other penalties for violation of federal, state, and local wage and hour laws.

What is an employer to do?

First, without employers voicing their concerns, organized labor and other purported workers'-rights groups have the ears of their legislators. Call, email, and mail your representatives.

Second, evaluate your benefits, including your vacation and other leaves. Consider how they will be impacted by proposed mandated benefits, such as paid sick/family leave, transportation benefits, and minimum wage laws.

Third, review your employment and pay policies. With increased scrutiny and penalties in the wage and hour arena, it is imperative that employers take steps to properly classify employees/independent contractors and exempt/nonexempt workers, prohibit off-the-clock work and missed meal breaks, and mandate early reporting by employees of any wage and hour errors.

Finally, consult experienced employment counsel to develop a dynamic, strategic plan to keep your business ahead of the curve—rather than scrambling to react to a government audit or charge, or a civil lawsuit.

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