

SB 75: NEW Anti-Harassment Law – A Serious Game Changer for Illinois Employers

Labor & Employment Law Update

By Julie Proscia and Jeffrey Risch on August 9, 2019

MAJOR CHANGES TO ILLINOIS EMPLOYMENT LAWS: NEW MANDATORY SEXUAL HARASSMENT TRAINING, REPORTING AND DISCLOSURE REQUIREMENTS, RESTRICTIONS ON EMPLOYMENT AGREEMENTS, & SEVERAL OTHER MANDATES

ATTENTION Illinois employers of ALL sizes... Are you ready? Today (August 9, 2019), Governor Pritzker signed Senate Bill 75 – the Workplace Transparency Act – into law. Effective January 1, 2020, major new changes will forever alter how Illinois employers manage harassment and discrimination issues as well as other workplace controversies.

In fact, the changes will require ALL employers to update their training practices, key policies, personnel forms, severance agreements and arbitration agreements. The changes will also impact how (and IF) employers will voluntarily resolve employment disputes or litigate such disputes not only in Illinois but anywhere in the United States.

MAJOR changes coming to Illinois include:

- **Limits the use of employment policies or other agreements intended to prevent an employee from reporting sexual harassment, such as non-disclosure agreements, arbitration clauses, and non-disparagement clauses for cases involving harassment, discrimination and retaliation.** No such agreement can prevent an applicant, employee or former employee from reporting unlawful or criminal conduct to a government agency. Also, a mandatory arbitration provision is void if it's a compulsory, unilateral condition of employment or continued employment. Finally, strict confidentiality in any settlement or severance agreement is only valid IF: the provision is expressly preferred by the individual; expressly allows the individual to have the document reviewed by an attorney of their choosing; valid consideration is provided; there is no waiver of claims following the effective date; and it provides 21 days to the individual to consider the agreement and 7 days to revoke signature after execution (regardless of age).

- **Makes harassment and discrimination against bona fide independent contract workers illegal under the IL Human Rights Act.**
- **Clarifies that it is illegal to discriminate against an employee if they are perceived to be part of a protected class (i.e. gender, sexual orientation, ethnicity), even if they are not.**
- **Expands the Victims Economic Security & Safety Act (VESSA) to allow victims of gender violence to take unpaid leave from work to seek medical help, legal assistance, counseling, safety planning and other assistance.** Therefore, workplace harassment could, in theory, trigger VESSA rights in ways not contemplated before.
- **Prevents a union representative from representing both a victim of sexual harassment and the alleged harasser in a disciplinary proceeding.**
- **Requires ALL employers, labor organizations and units of local government to disclose the number of final, non-appealable adverse administrative or judicial decisions of sexual harassment and discrimination against them (entered anywhere in the U.S.) to the Illinois Department of Human Rights beginning July 1, 2020 and each July 1 thereafter.**
- **Requires ALL employers, labor organizations and units of local government to disclose the number of private settlements that involve sexual harassment and discrimination claims, entered anywhere in the U.S. in the previous 5 years, to the Illinois Department of Human Rights if requested to do so.**
- **Requires ALL employers to annually train their employees on preventing sexual harassment.** The Department of Human Rights is required to make a model sexual harassment training program available for employers to provide to their employees. Training shall include: an explanation of sexual harassment; examples of conduct that constitutes unlawful sexual harassment; a summary of relevant federal and state statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment.
- **Creates mandatory anti-harassment and discrimination policy distribution to ALL employees of restaurants and bars (NOTE: “restaurants” and “bars” are broadly defined) within the first week of starting employment, as well as, anti-harassment training.** The anti-harassment training that restaurants and bars must conduct differs from that of other sectors and must include sections on conduct, activities, and/or videos related specifically to the restaurant and bar industries; an explanation of manager liability and responsibility under the law; and be available in both English and Spanish.
- **Creates the Hotel and Casino Employee Safety Act which will require ALL hotels and casinos to adopt anti-sexual harassment policies and make safety devices aka panic buttons available to certain employees by July**

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1, 2020. The anti-sexual harassment policies must have specific language and provisions that include language, amongst other items, that the complaining employee is permitted to cease work and leave the immediate area if he/she perceives danger until hotel or casino personnel or the police arrive to provide assistance, as well as, provisions that give the employee paid time off to file a police report or criminal complaint against the offending guest and/or testify as a witness against the offending guest.

SB 75 is a BIG game changer for employers in Illinois and requires a review and revision of employment contracts, arbitration, severance and settlement agreements, employee handbooks and training programs. It is imperative that companies and HR professionals work with their legal team to develop policies, procedures and strategies to ensure compliance. Also, litigation risk tolerance and one's general appetite to resolve controversies should be evaluated closely as well in light of the new disclosure and reporting obligations.

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