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ILLINOIS

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1–Dec. 31, 2013)

Topics

I. Discrimination

The Illinois Human Rights Act was amended to make it a civil rights violation for an employer to discriminate against or take adverse action against an employee on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other employees for all employment-related purposes, including fringe benefit programs. A new law also amends procedural requirements relating to Illinois Department of Human Rights charges (PA 596, S. 1122, 775 ILCS 5/2-102, 517A-102, effective Aug. 26, 2011).

The term "disability" for the purposes of the public accommodations provisions includes any mental, psychological, or developmental disability, including autism spectrum disorders (H. 3010, effective Jan. 1, 2012).

The Illinois Religious Freedom Protection and Civil Union Act permits both heterosexual and same-sex couples to enter into a civil union, affording the same state rights and protections already entitled to married couples. These rights include automatic hospital visitation rights and the ability to make emergency medical decisions for partners, adoption, and parental rights (PA 96-1513, S. 1716, effective June 1, 2011).

No new laws or regulations enacted in 2012.

The Illinois Human Rights Act was amended to change references to "Basic Pilot Program" to "the E-Verify Program." (PA 98-212, 775 ILCS 5/2-102, effective August 9, 2013).

II. Pre-Employment Inquiry Guidelines

Recognizing the increasing impact of the economic downturn on employees' credit histories, Illinois enacted the Employee Credit Privacy Act (H.B. 4658) on August 10, 2010, and the Act took effect on January 1, 2011. The Act prohibits most employers from using an applicant's or employee's credit history or other credit information as a factor in any employment decision (e.g., hire, discharge, terms of employment). The Act also prohibits employers from inquiring into an applicant's or employee's credit history, obtaining a credit history report from a consumer reporting agency, and using a broad range of credit information regardless of the source of such information. The Act excludes certain employers, including many governmental employers, as well as banks,

savings and loan associations, other financial institutions, debt collectors, insurance companies, and surety businesses. The Act also sets forth limited exceptions for other employers. In particular, it allows employers to use credit information where such information is related to a "bona fide occupational requirement" for a particular position or group of employees. The "bona fide occupational" qualification generally applies to positions that involve money-handling or other confidential job duties, including for example, positions that require bonding by state or federal law; have unsupervised access to cash or certain assets valued at $2500 or more; have signatory power of $100 or more per transaction; are in a managerial position that involves setting direction or control of the business; or involve access to confidential information, financial information, or trade secrets.

Illinois amended the Right to Privacy in the Workplace Act making it unlawful for an employer to ask a potential or current employee for social media passwords, to demand access to accounts, or to request or require any employee to provide a password or account information in order to gain access to an account or profile on a social networking site (HB 3782 effective Jan. 1, 2013).

The Right to Privacy in the Workplace Act was amended to provide that the restriction on an employer's request for information concerning an employee's social networking profile or website applies to only the employee's personal account, and to provide that employers are not prohibited from complying with the rules of self-regulatory organizations. (PA 98-501, 820 ILCS 55/10, effective January 1, 2014).

III. Family and Medical Leave

A knowing violation of the Service Member's Employment Tenure Act is now a misdemeanor with fines ranging from $5,000 to $10,000 (PA 580, H. 2095, effective Aug. 26, 2011).

No new laws or regulations enacted in 2012 or 2013.

IV. Wage and Hour Laws

The Equal Pay Act was amended to impose a civil penalty of up to $5,000 per violation for each employee affected by an employer's interference with rights under this law. New regulations under this Act also implemented statutory record retention requirements and filing deadlines for complaints filed under the Act. Other regulations under the Act streamlined the notice provisions and provided confidentiality for individuals filing complaints (S. 115, PA 512, 820 ILCS 112/30, effective Jan. 1, 2012). The Victims' Economic Security and Safety Act (VESSA) rules were amended to implement a statutory change that provides VESSA coverage to individuals working for employers with 15 or more employees (rather than those with 50 or more employees) (S. 115, PA 512, 820 ILCS 112/30, effective Jan. 1, 2012).

No new laws or regulations enacted in 2012.

The Illinois Wage Payment and Collection Act was amended to authorize the Department of Labor to establish administrative procedures to adjudicate claims of any amount (removing a provision limiting the Department's authority to claims of $3,000 or less). (PA 98-527, 820 ILCS 115/11, effective January 1, 2014).

V. Drug Testing

Employers of school bus driver permit holders may conduct reasonable suspicion drug and alcohol testing (H. 147, 625 ILCS 5/6106.1, effective Jan. 1, 2012).

No new laws or regulations enacted in 2012 or 2013.

VI. Noncompete and Other Employment Agreements

The Illinois Supreme Court rejected the notion that an employer's legitimate business interest was not a factor in deciding the enforceability of a noncompete agreement. The Illinois Supreme Court held that reasonableness must be considered on an ad hoc basis and may expand the scope of enforceability of noncompetes (*Reliable Fire Equipment Co. v. Arrendindo*, Dec. 1, 2011).

No new laws or regulations enacted in 2012 or 2013.

VII. Workplace Safety

No new laws or regulations enacted in 2011 or 2012.

Workplace Violence Prevention Act: was enacted to assist employers in protecting its workforce, customers, guests and property by limiting access to workplace venues by potentially violent individuals. The Act provides that an employer may seek an order of protection to prohibit further violence or threats of violence by a person if: (1) the employee has suffered unlawful violence or a credible threat of violence from the person; and (2) the unlawful violence has been carried out at the employee's place of work or the credible threat of violence can reasonably be constructed to be carried out at the employee's place of work by the person. The Act provides that an employer may obtain an order of protection under the Illinois Domestic Violence Act of 1986 if the employer: (1) files an affidavit that shows, to the satisfaction of the court, reasonable proof that an employee has suffered either unlawful violence or a credible threat of violence by the defendant; and (2) demonstrates that great or irreparable harm has been suffered, will be suffered, or is likely to be suffered by the employee. The Act provides that employer remedies under the Act are limited to an order of protection, but that nothing in the Act waives, reduces, or diminishes any other

remedy available to an employer under any other mechanism. The Act does not apply to cases involving or growing out of a labor dispute governed by other State or federal law. Provides that issues of jurisdiction, venue, procedure, and enforcement shall be governed by the Illinois Domestic Violence Act of 1986, and that law enforcement personnel shall have the same responsibilities as provided in that Act. (PA 98-430, effective January 1, 2014).

VIII. Workers' Compensation

The Workers' Compensation Act was amended giving employers the ability to more closely monitor the costs associated with the treatment of injured workers. Specifically, an employee's right to choose a medical provider has been limited and the medical providers' fee schedule has been cut by 30%. Under the amended Act, an injured employee is limited to two separate choices of medical provider: (1) to participate in the employer or its representative (insurance company) network of medical providers; or (2) decline to be treated within the employer's network and select a physician of his or her choice. However, if the employee declines to be in the employer's network of providers, that constitutes a choice, leaving the employee with only one remaining choice for a medical provider.

The wage loss differential was limited and now provides that an employee is entitled to his or her wage loss differential only until age 67 or five years from the date of the final award, whichever is longer. Additionally, the recovery for hand injuries has also been limited, reducing the number of weeks for a hand injury to a maximum of 190, down from 205 weeks. It also limits carpal tunnel permanency to 15% of the loss of the hand unless there is clear and convincing evidence of more disability.

The Act codified the case law governing causation and required that an employee seeking recovery under the Act must show that his or her accident "arose out of" and "in the

course of" his or her employment. The determination of the level of permanent partial disability on the amount of impairment is now based on guidelines from the American Medical Association, but must also consider factors such as the occupation of the injured employee, the age of the employee at the time of the injury, the employee's future earning capacity, and evidence of the disability has been corroborated by medical records.

Further, the employer-sought review (or utilization review) of the employee's treatment to determine whether treatment is excessive will now be based upon recognized treatment guidelines. An employer may only deny payment of medical services if the review finds that the treatment is excessive. The employee must then show by a preponderance of the evidence that the treatment is reasonable. The Act also provides an "intoxication defense" for the employee, whereby an employee will not be entitled to benefits under the Act if his or her intoxication was the proximate cause of the injury or he or she was so

intoxicated when the injury occurred that it constituted a departure in employment (HB 1698, effective Sept. 1, 2011).

No new laws or regulations enacted in 2012.

The Workers' Compensation Act and Workers' Occupational Diseases Act was amended to restrict specific rebuttable presumptions to firefighters and emergency medical technicians or paramedics who are cross-trained as firefighters. (PA 98-291, 820 ILCS 305/6, 310/1, effective January 1, 2014).

Miscellaneous

The Personnel Record Review Act was amended to prohibit disclosure of performance evaluations under the Freedom of Information Act (H. 5154, 820 ILCS 40/11, effective Dec. 1, 2011).

The data breach notification law was amended to require additional information in breach notifications, including the toll-free numbers and addresses for consumer reporting agencies, the toll-free number, address, and Web site for the Federal Trade Commission, and a statement that the individual can obtain information from these sources about fraud alerts and security freezes. Amendment also provides for data collectors and a new mandate for disposing of materials containing personal information (HB 3025, 815 ILCS 530/5 et. seq., effective Jan. 1, 2012).

The Street Trades Law and Industrial Work Act was repealed (820 ILCS 215, PA 97-416, H. 3428, effective Aug. 16, 2011).

The Employee Classification Act was amended to include an individual within the scope of the term "contractor," and to provide for notice to employer of violations and penalties and for a time within which an employer may request a hearing; the amendment also provides for a formal administrative hearing. (PA 98-0106, effective January 1, 2014).