



PROGRAM MATERIALS

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What Illinois Employers Can Expect in 2020

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WHAT ILLINOIS EMPLOYERS CAN EXPECT IN 2020



Recent Legislation

- **Workplace Transparency Act**
- **Hotel and Casino Employee Safety Act**
- **Cannabis Regulation and Tax Act**
- **Artificial Intelligence Video Interview Act**
- **Amendments to Illinois Minimum Wage Law and Illinois Tax Act**
- **Chicago Fair Workweek Ordinance**
- **Business Expense Reimbursement Reminder**
- **Illinois Equal Pay Act Amendment Reminder**

Workplace Transparency Act

- **Limitations on Employee Related Agreements**
- **Expanded Application of the Illinois Human Rights Act**
- **Training and Reporting Requirements**
- **Expanded Definition of Violence for VESSA**

Workplace Transparency Act

- **Limitations on Employee Related Agreements**
 - Employment Agreements
 - Arbitration Agreements

Limitations on Employment Agreements

- **The WTA prohibits employers from entering into employee agreements (including separation or settlement agreements) that contain nondisclosure and/or non-disparagement clauses for claims of harassment or discrimination.**
- **However, employers can enter into separation or settlement agreements with nondisclosure and/or non-disparagement clauses if certain conditions are present.**

Limitations on Arbitration Agreements

- **Although employers are still permitted to use arbitration agreements, they may only do so if the arbitration agreement excludes discrimination and harassment claims.**



Workplace Transparency Act

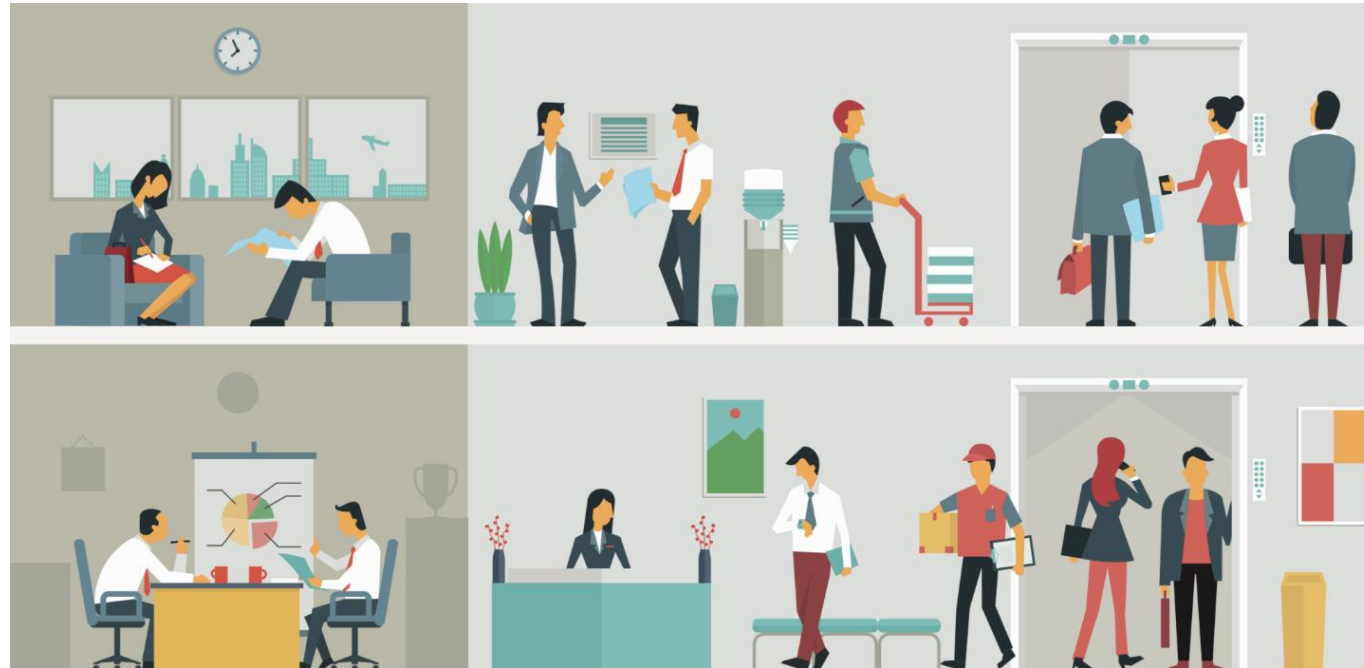
- **Expanded Application of the Illinois Human Rights Act**
 - Expanded Definitions of Discrimination, Harassment, and Working Environment
 - Expanded Application of IHRA to Contractors
 - Liability for Nonmanagerial and Nonsupervisory Employees

Expanded Definitions of Discrimination and Harassment

- **The IHRA now prohibits actual or perceived discrimination and/or harassment based on a protected characteristic under the IHRA.**
- **“Perceived” discrimination or harassment claims allow employees to allege that they were subject to unwelcome conduct based on a protected characteristic their employee “perceived” them to have, regardless of whether the individual actually has that characteristic.**

Expanded Definition of Working Environment

- **The WTA defines the phrase “working environment” as not limited to a physical location an employee is assigned to perform his or her duties.**



Expanded Application of IHRA to Contractors

- **The WTA further amends the IHRA to specifically provide protections to “nonemployees”, such as contractors and consultants.**
- **Consequently, employers could be held liable for harassing conduct that substantially interferes with contractors’ work performance or creates an intimidating, hostile or offensive working environment for them as members of a protected class.**

Liability for Employer's Nonmanagerial and Nonsupervisory Employees

- **An employer is responsible for harassment or sexual harassment by the employer's nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.**

Workplace Transparency Act

- **Training and Reporting Requirements**
 - Employer Disclosure Requirements
 - Annual Sexual Harassment Prevention Training

Workplace Transparency Act

- **Employer Disclosure Requirements**
- **Beginning July 1, 2020, employers and parties to a public contract in Illinois are required to disclose annually to the Illinois Department of Human Rights (IDHR):**
 - Total number of settlements entered into during the preceding year by the employer or corporate executive of the employer that relate to any alleged act of sexual harassment or unlawful discrimination
 - Breakdown of the number of settlements based on protected characteristics
 - Total number of adverse judgments or administrative rulings during the preceding year
 - Whether any equitable relief was ordered against the employer in any adverse judgment or administrative ruling
 - Total number of adverse judgments or administrative rulings based on protected characteristics

Workplace Transparency Act

- **Annual Sexual Harassment Prevention Training**
- **Employers are now required to provide annual sexual harassment prevention training to all employees.**
- **The IDHR will make available a model sexual harassment prevention training program that meets these criteria. Employers must either use the model program or establish training that exceeds the minimum standards provided by the model training.**

Workplace Transparency Act

- **Expanded Definition of Violence for VESSA**

Expanded Definition of Violence Includes Gender

- **The WTA amends VESSA to require employers to grant leave to employees who are gender violence victims, or with families or household members who are gender violence victims. “Gender violence” is an act of violence on the basis of a person’s actual or perceived sex or gender.**
- **The amendment will also prohibit employers from discriminating against gender violence victims.**

Hotel and Casino Employee Safety Act

- **Safety or notification device requirement**
- **Develop, maintain, and comply with written anti-sexual harassment policy**
- **Offer employees temporary work assignments to accommodate them if they complain about guests who have engaged in sexual harassment**
- **Provide employees with paid time off to make police reports about offending guests and to attend legal proceedings regarding any such complaints**

Cannabis Regulation and Tax Act

- **What the Bill Allows**

- Residents ages 21 and older to legally possess 30 grams of cannabis, five grams of cannabis concentrate or 500 milligrams of THC contained in a cannabis-infused product.
- Nonresidents could possess 15 grams of cannabis.

- **How Employers Are Impacted**

- The Act allows employers to enforce a “zero tolerance” policy for cannabis in the workplace and explicitly states that it does not require an employer to permit an employee to be under the influence of cannabis in the workplace or while performing job duties while on call.
- Employer policies may restrict cannabis use and possession in the workplace, defined in the Cannabis Act to include any buildings, land, and parking areas under the employer’s control or any area used by an employee while doing his or her job as well as areas where workplace vehicles are located.

Cannabis Regulation and Tax Act

- **An employer may consider an employee to be “impaired” or under the influence of cannabis if the employer has a “good faith belief” that an employee:**
 - Manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery
 - Demonstrates a disregard for the safety of oneself or others, or involvement in any accident that results in serious damage to equipment or property
 - Creates disruption of a production or manufacturing process or carelessness that results in any injury to the employee or others

Cannabis Regulation and Tax Act

- **Discipline**

- The employer affords the employee a reasonable opportunity to contest the basis of the determination.
- The employer may then make a final determination on whether to issue discipline once the employee provides an explanation, but
 - The employer must still have a “good faith belief” that the employee reported to work under the influence of cannabis if the employer decides to discipline.

Artificial Intelligence Video Interview Act

- **Notify each applicant that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the job.**
- **Provide each applicant with information before the interview explaining how the artificial information system works and the general types of characteristics it uses to evaluate applicants.**
- **Before the interview, employers must obtain an applicant's consent that artificial intelligence may be used to evaluate the applicant.**
- **Further, upon request from the applicant, an employer must delete the applicant's interview within 30 days after the receipt of the request.**

Minimum Wage Related Amendments

Illinois' \$15 minimum wage far exceeds neighboring states

Minimum wage in Illinois and neighboring states by 2025



*Phase-in to \$12.05 by 2030

**Phase-in to \$12 by 2023, followed by annual cost-of-living adjustments

Source: U.S. Department of Labor, National Conference of State Legislatures

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Minimum Wage Related Amendments

- **The amendments to the Illinois Minimum Wage Law and Illinois Income Tax Act provide with certain exceptions for gradual increases in the minimum hourly wage, starting on January 1, 2020:**
 - January 1, 2020 - \$9.25
 - July 1, 2020 - \$10.00
 - January 1, 2021 - \$11.00
 - January 1, 2022 - \$12.00
 - January 1, 2023 - \$13.00
 - January 1, 2024 - \$14.00
 - January 1, 2025 - \$15.00

Minimum Wage Related Amendments

- **The amendments provide a tax credit to qualifying employers against the increased compensation (compared to the prior year) paid to employees due to the higher minimum wage.**
- **The tax credit is available to employers with 50 or fewer full-time employees whose total average wages for employees earning less than \$55,000 per year increased from the prior year.**
- **The credit decreases as the minimum wage increases.**

Chicago Fair Workweek Ordinance

- **Effective July 1, 2020, employers must provide employees a minimum of 10 days' notice of their work schedules**
- **Starting July 1, 2022, employers must provide employees with a minimum of two weeks' notice of their work schedules**
- **Health care, warehouse services, hotels, building services, retail, restaurants and manufacturing employers**

Business Expense Reimbursement

- **Effective January 1, 2019**
- **The Illinois Wage Payment and Collection Act now expressly requires employers to reimburse employees for “all necessary expenditures or losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer.”**
- **Employers should adopt a business expense reimbursement policy, if they have not already done so, to ensure proper expenses are submitted for reimbursement within a reasonable time period (not less than 30 days to submit expenses).**

Illinois Equal Pay Act Amendments

- **Changes to the Illinois Equal Pay Act went into effect on September 29, 2019.**
- **Employers and employment agencies are prohibited from requesting or requiring applicants to disclose prior wage, salary, benefit or other compensation history as a condition of an application process or of employment.**
- **Employers may not prohibit employees from discussing their wages, salary, benefits or other compensation with others (except that employers may still prohibit human resources employees, supervisors, and other employees who have access to wage or salary information from disclosing that information without the written consent of the employee whose information is sought or requested).**

Illinois Equal Pay Act Amendments

- **The IEPA has a new standard for comparator consideration that expands protection for employees. The IEPA will allow employees to look at jobs the performance of which requires “substantially similar” skill, effort, and responsibility, instead of “equal” skill, effort, and responsibility found in the previous version.**
- **Damages under the IEPA now include actual damages incurred, special damages up to \$10,000, injunctive relief as may be appropriate, possibly punitive and compensatory damages, and costs and reasonable attorneys’ fees as necessary to make the employee whole. (Prior damages included only lost wages and attorneys’ fees and costs.)**

Questions



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