



Annual Employment Law Update:

What you need to know to be prepared for 2024!

SEPTEMBER 21, 2023

Agenda for Today:

- **NLRB GETS VERY ACTIVE**
- **SUPREME COURT & FEDERAL DEVELOPMENTS**
- **RESTRICTIVE COVENANTS UNDER ATTACK**
- **PAY TRANSPARENCY CHANGING COMPENSATION AS WE KNOW IT**
- **ILLINOIS GETTING IN THE GAME**
- **“WHAT’S OLD IS NEW AGAIN” INDEPENDENT CONTRACTOR STANDARDS**
- **AI AND DATA PRIVACY IN THE WORKPLACE**
- **OTHER STATE LAW DEVELOPMENTS WORTH WATCHING**



The National Labor Relations Board

What all employers (including non-union employers) need to know

NLRB Developments

New Prohibitions on Overbroad Agreements and Policies

NLRB Decision in *McLaren Macomb* (Feb 21, 2023)

- Employers violate NLRA by offering severance agreements to employees that have overly broad confidentiality or non-disparagement provisions
- Agreement is unlawful if it has reasonable tendency to restrain, coerce, or interfere with the exercise of Section 7 rights by employees, regardless of the surrounding circumstances



NLRB Developments

GC Enforcement Guidance (March 22, 2023)

- More than just severance agreements – offer letters, employee agreements
- Non-disparagement with broad provisions that apply to any comments about employer, affiliates, employees etc. and have no temporal limitation unlawful
- Permissible to have narrowly tailored clause applying only to statements which are maliciously untrue, such that they are made with knowledge of their falsity or with reckless disregard for their truth or falsity
- Confidentiality clauses should be narrowly tailored, such as to protect proprietary or trade secret information
- Does not apply to supervisors
- Solution for NLRB may be to sever unlawful provisions, but could take other action
- Savings clauses may not be enough



NLRB Developments

NLRB Decision in *Stericycle, Inc.* (August 2, 2023)

- Workplace rules and policies governing employee conduct may be unlawful if an employee “would reasonably construe” the applicable rule or policy as chilling protected conduct under Section 7 of the National Labor Relations Act.
- To avoid a violation, employers must now show that workplace conduct rules are narrowly tailored to special circumstances justifying any infringement on employee rights.
- Civility policies, policies regarding access to workplace, policies regarding recordings/cameras.



NLRB Developments

What now?

- Remember scope of these rulings extends beyond unionized workplaces
- Revise severance and other agreements for non-supervisory employees. Two choices...
 - Remove overbroad confidentiality and non-disparagement provisions
 - Add a very specific savings provisions covering protected, concerted activity
- Review handbooks and add specific saving provision if not already present



NLRB Developments

New NLRB Election Developments

NLRB Issues New Final Rule Changing Election Timing - Effective December 26, 2023

- Return to Obama-era “quickie election” timetable – three weeks from petition to election
- If your workforce isn’t already trained on union avoidance, it may be too late by the time petition is received



NLRB Developments

New NLRB Election Developments (cont.)

NLRB Decision in *Cemex Construction Materials* – August 25, 2023

- Union with claim of majority support can make demand for recognition from employer
- It will be up to employer to either bargain with union or file its own petition for election
- If employer commits ULPs in pre-election period that previously would have resulted in new election, now Board may issue bargaining order



Supreme Court & Federal Law Update

Supreme Court Update

Two significant Supreme Court cases this term for employers:

RELIGIOUS ACCOMMODATION

Groff v. DeJoy, Postmaster General

AFFIRMATIVE ACTION

*Students for Fair Admissions, Inc. v. University of North Carolina and
Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*



Supreme Court Update – Religious Accommodation



GROFF V. DEJOY, POSTMASTER GENERAL

- Reversed prior “more than de minimis” burden standard for when employer can deny request for religious accommodation in favor of “substantial increased costs” standard
- Expands situations where religious accommodations need to be granted
- Analysis will remain very fact specific

Supreme Court Update – Affirmative Action

STUDENTS FOR FAIR ADMISSIONS, INC. V. UNIVERSITY OF NORTH CAROLINA AND

STUDENTS FOR FAIR ADMISSIONS, INC. V. PRESIDENT AND FELLOWS OF HARVARD COLLEGE

- 6-3 Decision
- Affirmative action programs used by UNC and Harvard violate U.S. Constitution's Equal Protection Clause



Supreme Court Update – Affirmative Action

What does this mean for businesses?

- Multiple lawsuits filed citing this decision in challenging diversity programs in private businesses
- Rethink how diversity programs are delineated and structured
 - Minority recruitment events
 - Special fellowships and internships



Federal Developments

Key federal law developments (in addition to NLRB):

DOL PROPOSED RULE ON MINIMUM SALARY FOR EXEMPT STATUS

PREGNANT & LACTATING EMPLOYEE PROTECTIONS

PUMP Act

Pregnant Workers Fairness Act



Federal Developments

DOL Proposed Rule would increase salary threshold to *potentially* be exempt from overtime requirements.

CURRENTLY:

\$684 / week (\$35,568 per year)

PROPOSED:

\$1,059 / week (\$55,000 per year)



Federal Developments

Also increases minimum salary
for Highly Compensated
Employee Exemption

CURRENTLY:

\$107,432 per year

PROPOSED:

\$143,988 per year



Federal Developments

But remember

SALARY IS COST OF ADMISSION -- STILL NEED TO SATISFY JOB DUTIES TEST

It isn't enough for someone to be paid the minimum salary; they also need to satisfy one of the job duties tests

CHECK STATE & LOCAL REQUIREMENTS

Some states (including Illinois, New York, Pennsylvania & California) don't recognize Highly Compensated Employee exemption

Some states (Alaska, California, Colorado, New York & Washington State) have a higher minimum salary to be considered for exempt status



New Federal Protections for Pregnant Employees



PUMP Act

- Employers must provide reasonable time and private space for nursing parents for up to 1 year after birth.
- Breaks can't be “one size fits all” – frequency, duration and timing will vary based on employee.
- Pumping space cannot be a bathroom – must be private & functional.
- Employers with <50 employees may be exempt, but only if can show “undue hardship.” (significant difficulty or expense)

Federal Developments

New Federal Protections for Pregnant Employees (cont.)

Pregnant Workers Fairness Act

- Applies to employers with 15+ employees.
- Must make reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
- Examples: ability to sit; receive closer parking; have flexible hours; receive appropriately sized uniform and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and to be excused from strenuous activities.



Restrictive Covenants

Restrictive Covenants

Federal Trade Commission Notice of Proposed Rulemaking January 5, 2023



- Prohibit employers from entering into or enforcing non-competes with employees or independent contractors
- Employers would need to rescind existing agreements and notify workers subject to non-competes
- Sale of business covenants excluded
- Non-solicits of customers and employees excluded unless so broad as to be functional non-compete
- Expected to be voted on by FTC in April 2024. Will be subject to legal challenge

NLRB Developments

New Crackdown on Non-Competes

GC Enforcement Memo – May 30, 2023

- Non-compete agreements with non-supervisory employees may interfere with employee Section 7 rights.
- Provisions only allowed when “narrowly tailored to special circumstances justifying the infringement on employee rights.”
- Suggests “make whole relief” may be appropriate where employees have lost out on other jobs because of unlawful provision.
- Employers should reconsider use of non-competes for lower-level employees.



Restrictive Covenants

States focus on ensuring agreements limited to employees at higher levels

COLORADO – AUGUST 2022

- Revised requirements for non-compete and non-solicit agreements
- Non-competes limited to “highly compensated employees” (\$101,250+)
- Non-solicits only for employees making 60% or more of HCE (\$60,750)
- Employee non-solicits not covered

WASHINGTON D.C. – JULY 2022

- Non-Compete Clarification Act
- Allows use of non-competes for “highly compensated employees” (\$150k in total compensation enough for most - \$250k for “medical specialists”)
- Must be provided in writing 14 days before start date or when existing employee asked to sign
- Notice with specific language must be provided



Restrictive Covenants

However, momentum picking up for outright bans by states on non-competes

MINNESOTA – JULY 2023

- Prohibits non-competes for employees and independent contractors, regardless of pay level
- Does not apply to non-solicit agreements. What about those falling in between?
- Does not apply to agreements with sellers of a business
- Applies to employees who primarily work/reside in MN

NEW YORK – PROPOSED LAW

- Passed by legislature – now awaiting governor's signature
- Only applies to non-competes, not non-solicits
- No carve out for sale of business
- Significant remedy provisions – private cause of action, atty fees, lost wages, liquidated damages



Pay Transparency

Pay Equity & Pay Transparency Requirements

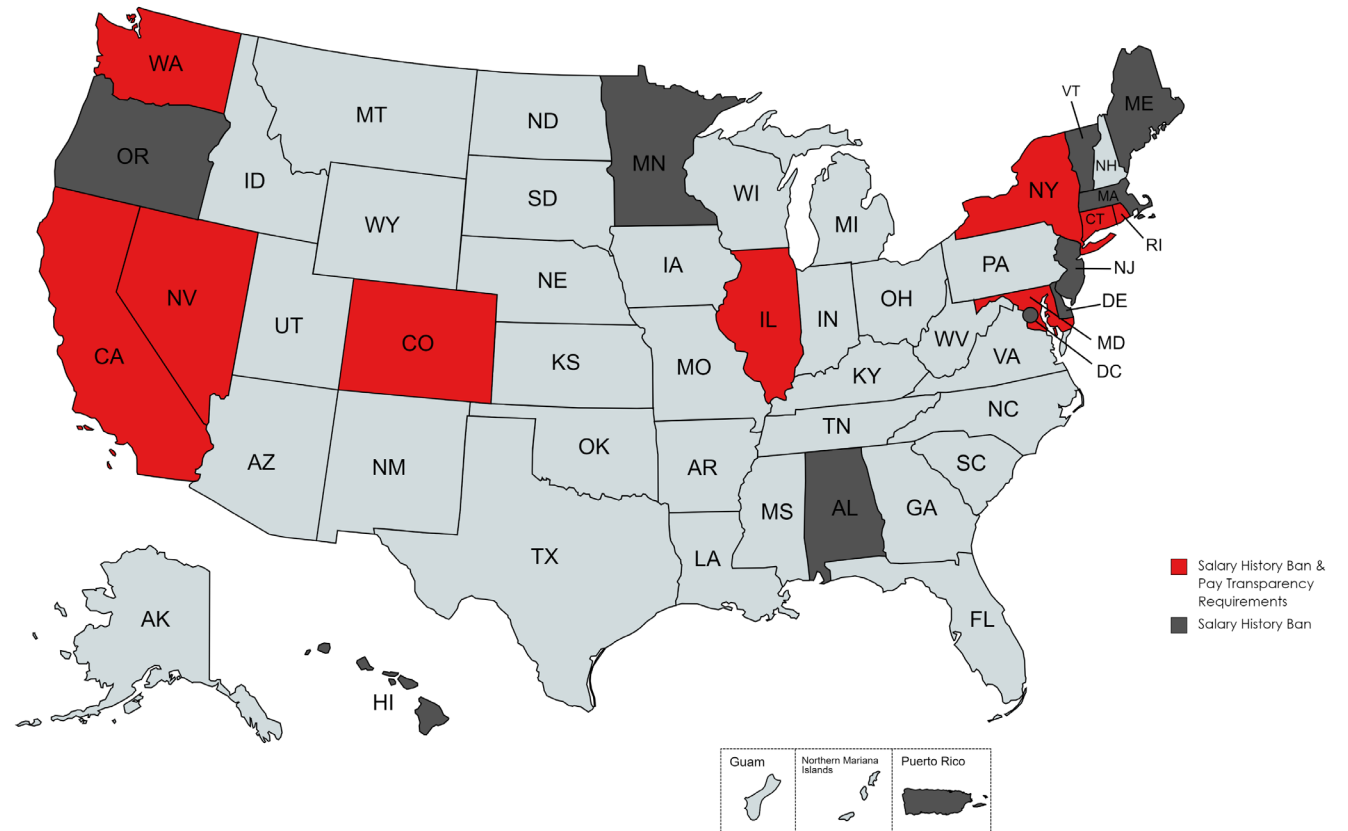
Pay transparency is the #1 change coming for many employers

Salary History Ban & Pay Transparency Requirement:

California, Colorado, Connecticut, Illinois, Maryland, Nevada, New York, Rhode Island, Washington

Salary History Ban:

Alabama, Delaware, Washington DC, Hawaii, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Puerto Rico, Vermont



Pay Equity & Pay Transparency Requirements

Illinois Has Two Requirements

EQUAL PAY CERTIFICATION & INFORMATION AVAILABILITY (2021 EQUAL PAY ACT AMENDMENTS)

All employers with 100+ employees must submit application for Equal Pay Certificate by 3/24/24, with anonymized information becoming available to employees through DOL

NEW JOB POSTING REQUIREMENT EFFECTIVE 1/1/2025 (2023 EQUAL PAY ACT AMENDMENTS)

Requirement to include “pay scale and benefits” in job postings or, if no posting, upon applicant request or before discussion of compensation



Pay Equity & Pay Transparency Requirements

2021 Illinois Equal Pay Act Amendments

- Applies to employers with 100+ employees in Illinois
- Must apply for an “equal pay registration certificate” from the Illinois Department of Labor (IDOL)
 - Comprehensive certification of legal compliance, non-discriminatory practices, non-discriminatory results, and efforts to ensure equal pay
 - Submission of most recent EEO-1 and very detailed demographic and wage information
- Timing for submission
 - IDOL is supposed to provide each employer with deadline for initial submission (bet 3/24/2022 and 3/24/2024), then every two years
 - **MUST SUBMIT BY MARCH 24TH IF DON'T RECEIVE NOTICE**
 - Failure to receive date from IDOL isn't a defense, but there is a 30-day cure opportunity after notice from DOL if you fail to submit
- Employees will be able to request anonymized information about their role



Pay Equity & Pay Transparency Requirements

Key steps for employers with **100+** Illinois employees to be prepared for reporting requirements.

- **MAKE SURE YOU KNOW HOW YOU'LL RESPOND TO THE EQUAL PAY REGISTRATION CERTIFICATE CERTIFICATIONS**
 - **WHAT STEPS ARE YOU TAKING TO ENSURE EQUAL PAY?**
 - **HOW IS PAY SET?**
 - **MAKE SURE YOU KNOW WHAT NUMBERS LOOK LIKE!**
- **CONFIRM PROPER EEO-1 SUBMISSIONS AND THAT YOU HAVE THE DATA YOU'LL BE REQUIRED TO SUBMIT**
- **KEEP AN EYE OUT FOR YOUR SUBMISSION NOTICE**
- **IF YOU DON'T GET THE NOTICE, SUBMIT BY MARCH 24TH!**
- **CONSIDER INTERNAL AUDIT TO CONFIRM EQUITY**
- **CONSIDER INTERNAL MOVE TOWARD PAY TRANSPARENCY**



Pay Equity & Pay Transparency Requirements

2023 Illinois Equal Pay Act Amendments

- Applies to employers with 15+ employees
- Applies to postings for jobs that will be physically performed, at least in part, in Illinois OR that report to a supervisor, office or worksite in Illinois
- Must include “pay scale and benefits” in job postings
 - Wage or salary range (based on pay scale, previously determined range for the position, actual range of others currently holding equivalent positions, or the budgeted amount for the position)
 - General description of benefits and other compensation, including bonuses, stock options and other incentives (can include link to description on website instead)
 - If posted externally, must inform current employees of the opportunity within 14 days
- If no posting, must disclose pay scale and benefits upon applicant’s request or prior to discussion of compensation/offer
- Significant record keeping requirements



Pay Equity & Pay Transparency Requirements

Key steps for employers with **15+ employees** to be prepared for disclosure requirements.

- **NORMALIZE PAY TRANSPARENCY**
- **START MAPPING PAY BY ROLE SO WILL BE ABLE TO REPORT**
- **AUDIT PAY ACROSS BUSINESS TO AVOID EMPLOYEE RELATIONS ISSUES WHEN INFORMATION BECOMES AVAILABLE**
- **CONFIRM/ESTABLISH PROCESS FOR ESTABLISHING PAY RANGES AND SHARING OF INFORMATION**



Pay Equity & Pay Transparency Requirements

Other Pay Transparency Updates

CALIFORNIA

- Effective 1/1/2023
- 15+ employees and at least one employee working in California (even if remote)
- Must disclose a pay range in every job posting that could be performed in California (including remotely by an employee living in California)

WASHINGTON STATE

- Effective 1/1/2023
- 15+ employees with at least one Washington-based employee (even if remote).
- Must disclose wage scale or salary range and a general description of all benefits and other compensation to be offered



Pay Equity & Pay Transparency Requirements

Other Pay Transparency Updates

NEW YORK CITY

- Effective 11/1/2022
- 4+ employees (or 1 or more domestic workers) one of whom works in NYC
- All postings of job, promotion and transfer opportunities must include a good faith range of salary or hourly rate (providing minimum and maximum)

NEW YORK STATE

- Effective 9/17/2023
- 4+ employees
- Must include annual salary or hourly wage range in postings (employment, promotion, etc.)
- Applies to advertisements for positions that will either:
 - physically be performed, at least in part in New York
 - physically be performed outside of New York but report to a supervisor, office or other work site in New York.



Pay Equity & Pay Transparency Requirements

Other Pay Transparency Updates

COLORADO

- Originally effective 1/1/2021; Amendment effective 1/1/2024.
- Applies if one or more employee in Colorado.
- Existing requirement to include rate or range of compensation and general description of bonus/commissions/other compensation and all benefits offered in job postings.
- Under Amendment, the closing date of application window needs to be disclosed in the job posting.
- Must make reasonable efforts to notify employees of job opportunities BUT under Amendment, from 1/1/2024 through 7/1/2029, employers without a physical CO location and with <15 remote employees only need to advise of remote jobs.
- Under Amendment, job opportunities doesn't include professional progression.



Pay Equity & Pay Transparency Requirements

Other Pay Transparency Updates

RHODE ISLAND

- Effective 1/1/2023
- Upon request by an applicant, employers must provide wage range for the position for which the applicant is applying
- Employers must provide a wage range at the time of hire
- Employers must provide wage range to current employees upon request
- Also adds posting requirement
- Affirmative defense through June 2026 if can show conducted good faith self-audit within last 2 years and eliminated all disparities found within 90 days



Illinois Developments

Illinois Developments

New Paid Leave for All Workers Act (PLAWA)

- Will go into effect on 1/1/24
- 40 hours of paid leave for any reason – accrued 1 hour per 40 hours worked
- Employees can use in as little as 2-hour increments
- Employer can designate leave year – calendar, work anniversary, etc.
- Employees can begin taking after 90 days of employment



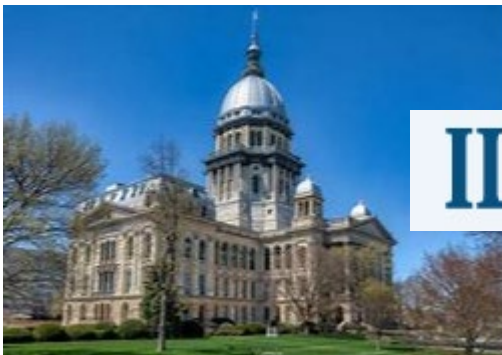
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Illinois Developments

PLAWA (cont.)

- 7 days' notice can be required where need for leave is foreseeable
- Employers can't ask reasons for leave
- If accrual, then must allow carryover but can cap at 40 hours. If frontload, then no carryover required.
- No pay at separation required unless employer meets requirements with other types of leave (e.g., vacation pay)
- Notice will need to be posted; policies revised



Illinois Developments

PLAWA (cont.)

- Exempts employers that are covered by a “municipal or county ordinance that is in effect on the effective date of this act that requires employers to give any form of paid leave, including paid sick leave or paid leave.” Thus, the law would not apply to employers subject to the Cook County or Chicago paid sick leave ordinances.
- What about employees elsewhere in Illinois for same employers?



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Illinois Developments

How to Incorporate With Existing Policies?

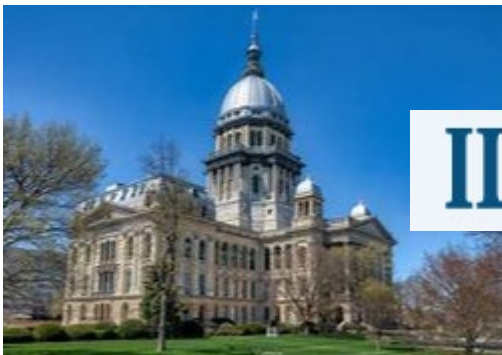
- If you provide unlimited time off, then no changes needed provided use and notice comply with PLAWA
- If you have separate sick/personal leave, you will want to redesignate as PLAWA and conform to PLAWA requirements
- PTO – will have to decide whether you track separately from PLAWA



Illinois Developments

New Guidance on Expense Reimbursement for Employees

- Employer must cover “necessary expenditures and losses incurred by the employee within the employee’s scope of employment and directly related to services performed for the employer.”
- The IWPCA defines “necessary expenditures” as all reasonable expenditures required of the employee in the discharge of their employment and expenditures made to the primary benefit of the employer.
- Five factor test to determine if expense was for primary benefit of employer.



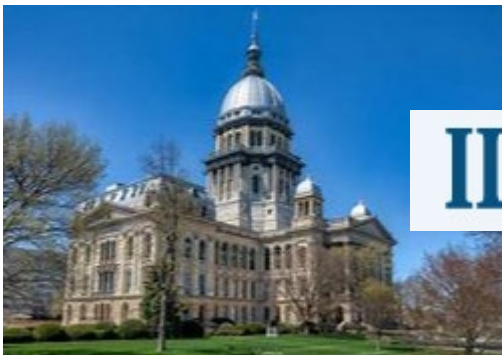
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Illinois Developments

Expense Reimbursement for Employees (cont.)

1. Whether the employee has an expectation of reimbursement
2. Whether the expense is required or necessary to perform the employee's job duties
3. Whether the employer is receiving a value that it would otherwise need to pay for
4. How long the employer is receiving the benefit
5. Whether the expense is required of the job



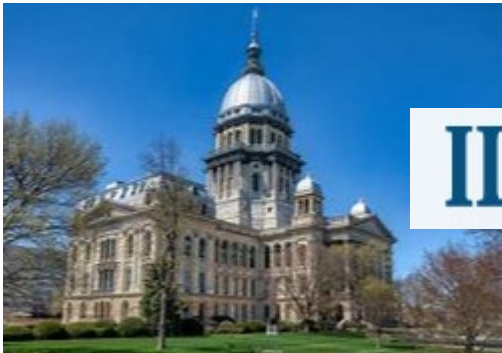
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Illinois Developments

Expense Reimbursement for Employees (cont.)

- Maintain certain records for three years
 - All policies regarding reimbursement
 - All employee requests for reimbursement
 - Documentation showing approval or denial of reimbursement
 - Documentation showing actual reimbursement and supporting documents



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Illinois Developments

Amendments to Day and Temporary Labor Act

- Effective August 4, 2023.
- Does not apply to professional and clerical temporary workers.
- Temporary laborers assigned to work at a third-party company for more than 90 calendar days (whether consecutively or intermittently) within any 12-month period must be paid at least the same wage as the lowest-paid comparable direct-hire employee and must receive equivalent benefits as comparable direct-hire employees.
- Temporary agencies may choose to pay the temporary laborer the cash equivalent of the actual cost of the benefits rather than providing the benefits.
- Businesses that use a temporary laborer for more than 90 days must provide the agency with the necessary information related to job duties, pay, and benefits of direct-hire employees to enable the agency to meet its obligations related to equal pay and benefits.



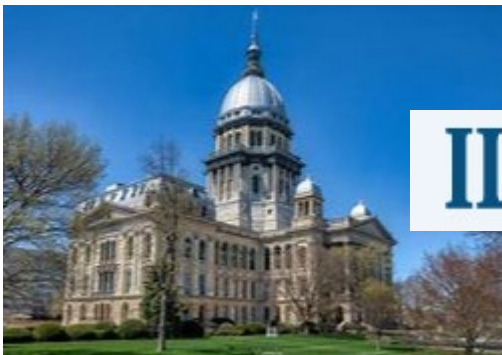
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Illinois Developments

Amendments to Day and Temporary Labor Act (cont.)

- Temporary agencies cannot send temporary laborers to third-party clients engaged in a strike, lock-out, or similar labor dispute without notifying the temporary laborer, in writing, of the labor dispute and the laborer's right to refuse the assignment.
- Before assigning a temporary laborer to a third-party company, the agency must inquire about safety and health practices at the worksite, provide training on general safety and recognized industry hazards, transmit a general description of the safety program at the start of the contract with the third-party client, provide IDOL's safety hotline number to the temporary laborer, and inform the temporary laborer of how to report safety concerns.



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Illinois Developments

Family Bereavement Leave Act - Reminder

- Effective 1/1/23, used to be Child Bereavement Leave Act
- Applies to employers/employees covered by FMLA
- 2 weeks of unpaid leave for death of family member, stillbirth, miscarriage, unsuccessful reproductive procedure, failed adoption match, failed surrogacy agreement, a diagnosis that negatively affects fertility or pregnancy
- Max of 6 weeks in one year
- Must be completed within 60 days of event
- 48 hours notice required if practicable
- May not be taken in excess of FMLA time



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Illinois Developments

New Commuter Benefit Requirement

- Effective 1/1/24
- Only applies to certain specified counties in Illinois (including Cook County)
- To be covered, employer must employ more than 50 “Covered Employees” at an address that is no more than one mile away from a fixed route transit service
- “Covered Employers” must have a pre-tax transportation benefits program that allows Covered Employees the ability to pay a for a transit pass with pre-tax dollars up to the amount determined by the IRS under 26 USC 132(f)(1)(B). In 2023, the monthly limit for excludable income used to purchase a transit pass is \$300.



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Illinois Developments

Amendments to Labor Disputes Act – June 2023

- Limits recovery for damages stemming from labor disputes
- Potential NLRA conflict?

Workers Rights Amendment – November 2022

- Enshrines right to collectively bargain in Illinois constitution
- Will be more difficult for legislature to make right to work state
- May prevent legislative override of collectively bargained public pension rights



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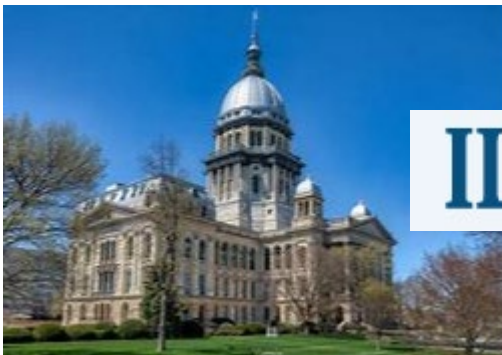
Illinois Developments

Evanston Fair Workweek Ordinance – September 1, 2023

- Two-week notice of schedule changes and compensate them if any changes occur after (must pay Predictability Pay on top of regular wages)
- A minimum of 11 hours between shifts and compensate if less (1.5 hourly rate)
- Covers restaurants and food service businesses with at least 200 employees and 30 locations globally. It also applies to businesses with 100 or more employees globally in retail, hospitality, manufacturing, and warehouse service.

Don't Forget Chicago Anti-Harassment Training

- Annually 1 hour of anti-harassment training and 1 hour of bystander training
- Supervisors also must receive additional 1 hour of training



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Independent Contractors

What's old is new again....

Independent Contractor Changes

Department of Labor Proposed Rule

BACKGROUND

- January 2021: Trump administration issues Final Independent Contractor Rule (“2021 Rule”), which was set to go into effect March 8, 2021
- February 2021: Biden administration tries to delay and then withdraws the 2021 Rule saying that it’s inconsistent with prior court decisions
- March 14, 2021: Federal court reinstates the 2021 Rule, saying the Biden administration couldn’t withdraw it
- October 11, 2022: Biden DOL proposes new independent contractor rule (“Proposed Rule”)
- Final rule anticipated in October 2023



Independent Contractor Changes

2021 RULE

Two Core Factors
(plus 3 if they aren't determinative):

1. Nature and degree of control over the performance of the work
2. Opportunity for profit and loss

PROPOSED RULE

Return to historically used multi-factor economic realities test, including:

1. Opportunity for profit or loss depending on managerial skill
2. Investments by the worker and the employer
3. Degree of permanence of the work relationship
4. Nature and degree of control
5. Extent to which the work performed is an integral part of the employer's business
6. Skill and business-like initiative of the worker



Independent Contractor Changes

NLRB Decision in Atlanta Opera

- Overruled decision in *SuperShuttle* (2019) which had emphasized “entrepreneurial opportunity” over other factors
- Returned to employee status-friendly *FedEx II* (2014) common law test
- Moving forward, key is whether the common law factors, taken as a whole, establish that the worker was operating an independent business
- With respect to “entrepreneurial opportunity” – NLRB said focus needs to be on actual (not theoretical) opportunity

Independent Contractor Changes

New Written Agreement Requirements

LOS ANGELES

*Any contract between a hiring entity and an independent contractor for work valued at \$600 or more **must be in writing**. Must retain written records for 4 years.*

Note: does not apply to those that hire app-based transportation and delivery drivers to provide prearranged services.

COLUMBUS, OHIO

*A hiring party must provide the freelance worker with a **written contract for services** valued at \$250 or more, which can be from either a single engagement or from services provided over a 120-day period. Must retain for a minimum of 5 years.*



Data Privacy & Artificial Intelligence in the Workplace

EEOC Enforcement Emphasis

- Oct 2021 – Initiative on AI and Algorithmic Fairness
- May 2022 – Guidance Issued on ADA and AI
- April 2023 – Joint Statement of EEOC, DOJ, CFPB, and FTC
- May 2023 – Guidance Issued on AI and Disparate Impact

Data Privacy and AI

- EEOC concerned about use of software, algorithmic decision-making tools and AI to assist employers in hiring workers, monitoring worker performance, determining pay or promotions, and establishing the terms and conditions of employment.
- Examples
 - resume scanners that prioritize applications using certain keywords
 - employee monitoring software that rates employees on the basis of their keystrokes or other factors
 - “virtual assistants” or “chatbots” that ask job candidates about their qualifications and reject those who do not meet pre-defined requirements
 - video interviewing software that evaluates candidates based on their facial expressions and speech patterns
 - testing software that provides “job fit” scores for applicants or employees regarding their personalities, aptitudes, cognitive skills, or perceived “cultural fit” based on their performance on a game or on a more traditional test



Data Privacy and AI

- Issues
 - Failure to provide reasonable accommodations for employee or applicant to be rated fairly
 - Algorithms screen out disabled candidates who can perform essential job functions
 - Tools violate prohibition on disabled-related inquiries
 - Tools use criteria which an adverse impact on protected classes
- Employers responsible for impact of tools they use even if developed by outside vendors
- “Promising practices” for avoiding ADA issues include training staff, having alternative evaluation tools available, making sure employees and applicants know that accommodations can be requested, using tools designed with range of disabilities in mind, making sure that tools measure essential functions, etc.
- To avoid adverse impact issues, employers will want to analyze selection/rating outcomes and use 4/5 rule to flag concerns.



Reminder: Illinois Artificial Intelligence Video Interview Act – Effective January 1, 2020

- Notify applicants before doing interviews with AI
- Provide info about how AI works and general characteristics
- Obtain applicant consent
- Maintain confidentiality of interviews
- Destroy copies of interviews within 30 days of requests



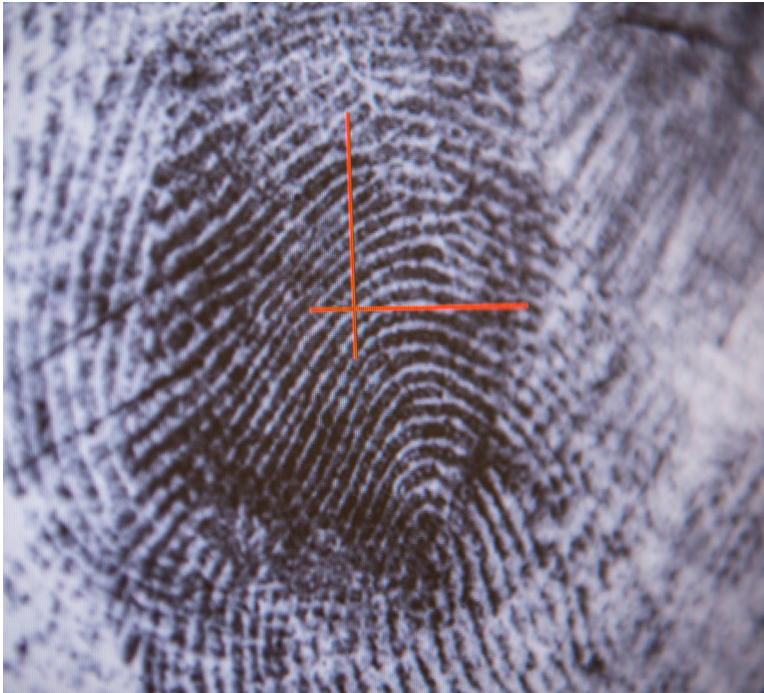
Data Privacy and AI

New York City issues final rule implementing local law 144 on use of AEDT

- Law 144 passed in 2021 prohibits employers or employment agencies from using an Automated Employment Decision Tool (AEDT) to make an employment decision unless the tool is audited for bias annually; the employer publishes a public summary of the audit; and the employer provides certain notices to applicants and employees who are subject to screening by the tool
- Final Rule issued April 2023, compliance began July 5, 2023



Illinois Biometric Information Privacy Act (BIPA)



- Aug 2022 - Snap settles for \$35m and Tik Tok \$92m
- *Tims v Blackhorse Carriers* – Ill. Supreme Court – Feb 2023 – five-year statute of limitations for claims under BIPA
- *Cothron v White Castle* – Ill. Supreme Court – Feb 2023 – separate claim arises from each use of biometric info – impacts statute of limitations and damages (\$1000/violation or \$5000/intentional or reckless). Court said damages in statute were discretionary and court could fashion appropriate remedy without ruining a business.
- Court in N.D. of Ill. vacates \$228m award in *Rogers v BNSF Railway* based on *Cothron*. New trial on damages ordered.

Other State Updates

Other State Updates

Leave Laws

Colorado

Up to 12 weeks of leave in 12-month period for serious health condition, bonding with a new child, or qualifying exigencies.

Nevada

Companies with 50+ must provide FT employees with 40 hours paid leave for any reason. PT get 0.01923 hours of leave per hour worked

Minnesota

Starting in 2026, 12 weeks caregiver leave PLUS 12 weeks leave for own serious illness, up to maximum of 20 weeks per year

Other State Updates

Marijuana Updates

New Jersey

Prohibits employers from taking negative employment action based on positive marijuana test (unless show under influence at work)

Washington

Starting 1/1/2024, pre-employment testing for marijuana is prohibited with limited exceptions

Minnesota

No pre-employment marijuana testing or refusal to hire based on test. Testing ok if safety-sensitive or reasonable suspicion under influence

Other State Updates

New York Developments

Height & Weight Discrimination

NYC employers can't deny job opportunities or take adverse action based on height or weight

Mini-WARN

Effective 6/21/2023 NY Mini-WARN Act is amended to require notification of additional gov't officials, add remote employees, add information to be provided & clarify obligations in M&A

Nursing Mothers

Must provide reasonable unpaid break time or paid rest/meal breaks for up to 3 years following birth of child, and must provide private room close to workstation

Other State Updates

Minnesota Developments

Pregnancy Accommodation

Amended accommodation requirement to apply to all employers (not just 15+); expanded examples of reasonable accommodations to include temporary transfer to a less strenuous or hazardous position, temporary leave of absence, modification in work schedule or job assignments, seating, or longer break periods, and limits to heavy lifting

Nursing Mothers

Mothers may now be entitled to lactation protection for more than 1 year (prior law capped at 1 year); Amendment also removed exception to lactation requirements where providing would cause “undue disruption”

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LP

Three things to know, read, and do.

SEPTEMBER 13, 2023

We know your time is tight, so we share focused, bite-sized information to help you run your business. In this week's LP3, we share information on: (1) the new Corporate Transparency Act; (2) steps commercial landlords should take when a lease is assigned; and (3) an invitation to learn more about non-traditional relationships with outside lawyers at the upcoming ACC conference.



Corporate Transparency Act Goes Into Effect January 1, 2024: What You Need to Know

The new Corporate Transparency Act goes into effect January 1, 2024, and requires reporting of company ownership information to the U.S. Financial Crimes Enforcement Network (FinCEN). The Act applies to most business entities, including corporations, limited liability companies, and other entities formed by filing with a secretary of state or similar office, with a few exemptions.

LEARN MORE

What Commercial

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Any questions?

Ask us anything. We're happy to answer now,
or connect with us later if you prefer.

Connect with us



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Purpose in practice

We cultivate deep business relationships that last and have seen our clients thrive beyond their expectations.

Who we are

We've always seen ourselves as much more than a law firm. Since 1999, we've been focused on a single purpose: helping our clients achieve amazing things.



Our services

Across service areas, we've structured our team to offer knowledge, experience, and creative thinking that puts our clients' goals within reach.

- **REAL ESTATE**
- **CORPORATE**
- **TRUSTS AND ESTATES**
- **EMPLOYMENT & EXECUTIVE COMPENSATION**
- **INTELLECTUAL PROPERTY**
- **FINANCIAL SERVICES AND RESTRUCTURING**
- **COMMUNITY ASSOCIATION**
- **TAX PLANNING AND LITIGATION**
- **LITIGATION**



Our services

Employment & Executive Compensation

We routinely advise employers on compliance with the full range of federal, state, and local employment laws, and assist companies in implementing sound policies, practices, and programs to avoid problems in the future. We have experience handling virtually every type of employment matter and the know-how to help you effectively resolve even the most complicated issues.

