
2021 Employment Law Changes That Illinois and Chicago Employers Need to Know About

By Paul E. Starkman / Jan 04, 2021

The beginning of 2021 saw the advent of new employment laws for employers with operations and employees located in the State of Illinois and the City of Chicago. Here are some of the new state and local laws that employers in Illinois and/or Chicago need to be aware of. Developments involving the Illinois Human Rights Act, the Illinois Biometric Information Privacy Act, the Chicago Anti-Retaliation Ordinance, and the Chicago Fair Workweek Ordinance are discussed.

Illinois Law Expands Coverage of Employers and Reporting of Discrimination Judgments in 2021

Effective July 1, 2020, Illinois employers with one or more employees were covered by the Illinois Human Rights Act. Previously, only employers with 15 or more employees were subject to state discrimination/retaliation claims under the Illinois Human Rights Act. Illinois employers should keep this important change in mind in 2021 and moving forward.

Additionally, before July 1 of 2021, and each subsequent year, Illinois employers must report to the Illinois Department of Human Rights any final, adverse discrimination or harassment judgments or administrative rulings entered against them in the preceding calendar year.

In 2021, Class Actions Under Illinois Biometric Information Privacy Act (BIPA) Expected to Continue to Surge

In 2021, Illinois employers should be aware that if they use employees' fingerprints, facial recognition, voice, or retina scans, and other forms of biometric information for attendance or security purposes without complying with the procedural requirements of the Illinois Biometric Information Privacy Act (BIPA), they may be subject to a class action lawsuit under BIPA.

The Illinois BIPA is the only biometric law of its kind in the US that provides employees with a private cause of action for liquidated damages of up to \$5,000 for each willful violation and attorneys' fees. Noncompliance with the BIPA's procedural requirements is enough to give rise to a BIPA class action and the Illinois workers compensation law is no defense. BIPA class actions have been filed against Facebook, Southwestern Airlines, Google, and other large and small companies.

Chicago's "Fair Workweek" Predictive Scheduling Ordinance Allows a Private Cause of Action as of Jan. 1, 2021

Beginning on Jan. 1, 2021, Chicago's "fair workweek" scheduling ordinance allows covered workers to bring private lawsuits for violations of the scheduling rules issued under the ordinance. This ordinance generally requires employers in covered industries to give covered workers at least 10-days advance notice of their schedules, compensation for last-minute schedule changes, premium pay if employees have to work with fewer than 10 hours between shifts, and extra pay if workers are required to change their schedule on short notice.

Under the Chicago ordinance, before filing a private lawsuit, covered employees must exhaust their administrative remedies with the City of Chicago Department of Business Affairs and Consumer Protection. However, an employee will be able to file a private action regardless of the results of the City's investigation. A private cause of action under this ordinance must be filed within two years of the alleged conduct resulting in the complaint. A covered employee who prevails in a civil action is entitled to an award of compensatory damages resulting from a violation of the ordinance, including litigation costs, expert witness fees, and reasonable attorneys' fees.

The Chicago Fair Workweek Ordinance applies to employers in any "Covered Industry," including building services, healthcare, hotels, manufacturing, retail, or warehouse services, with more than 100 employees globally (250 in the case of non-profits) with at least 50 covered employees. The ordinance also applies to a business (i.e., restaurants) with 30 locations globally and at least 250 employees. Lastly, the ordinance applies to all covered employees in those industries who make less than \$26 per hour or receive a salary of under \$50,000 per year.

Chicago Employers with Employees Who Refuse to Return to Work for COVID-19-Related Reasons Must Be Aware of Chicago's Anti-Retaliation Ordinance

In 2021, all Chicago employers will need to consider the Chicago Anti-Retaliation Ordinance if a covered employee refuses to return to the workplace for COVID-19-related reasons. This Chicago ordinance went into effect on May 20, 2020, and prohibits Chicago employers from demoting or terminating a covered employee for complying with a stay-at-home order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or a treating healthcare provider. The ordinance also protects covered employees who are staying at home to care for an individual subject to such an order.

Under the ordinance, a "covered employee" is any employee "who, in any particular two-week period, performs at least two hours of work for an employer while physically present within the geographical boundaries of the City."

In addition to citations of up to \$1,000 for each violation per day, the ordinance provides a private cause of action in which covered employees may recover: reinstatement to their previous position or to an equivalent position; damages equal to three times the full amount of wages lost; any other actual damages caused by the retaliatory action; and costs and reasonable attorney's fees.

If you have any questions about the contents of this article, please contact Paul Starkman at pstarkman@clarkhill.com or your Clark Hill attorney.

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