

NEW ILLINOIS EMPLOYMENT LAWS

2017 Labor & Employment Law Conference

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COOK COUNTY PAID LEAVE ORDINANCE

- Ordinance passed on October 5, 2016 and took effect on July 1, 2017
- Chicago has similar city Ordinance that went into effect on July 1, 2017 as well
- Ordinance mandates that “employers” in Cook County allow eligible employees to accrue up to 40 hours of sick leave in each 12-month period of their employment
- Employers are those that:
 - Employ at least one “covered employee”
 - Have at least one “place of business” within Cook County
 - Corporate headquarters and primary place of business do NOT have to be in Cook County
 - Any fixed location where the employer transacts business may be considered a “place of business”

COOK COUNTY PAID LEAVE ORDINANCE

- Employees will accrue one hour of paid leave for every 40 hours worked
- Individuals are covered by the Ordinance if they:
 - Perform two hours of compensated work within Cook County in any two-week period
 - Work at least 80 hours in any 120-day period
- Ordinance does not apply to government entities, employees covered under a collective bargaining agreement entered into prior to July 1, 2017 and remain in effect after July 1, 2017 and independent contractors
- The Commission will NOT consider the following to constitute compensated work while present in Cook County:
 - Traveling through Cook County without stopping for a work purpose
 - “Work purpose” would include making deliveries or sales calls
 - Stopping for a work related purpose would not include making only incidental stops (e.g. gas or buy food)

COOK COUNTY PAID LEAVE ORDINANCE

- A covered employee begins to accrue earned paid sick leave on the “date of initial accrual,” which is the later of: (a) July 1, 2017; (b) the first calendar day after the start of his/her employment; or (c) the covered employee’s date of coverage
 - *E.g.* Employee began work on January 1, 2017 (before effective date of the Ordinance) and worked 80 hours over the next 120 days, then the employee’s earned leave would start to accrue on July 1, 2017
- A covered employee is entitled to accrue up to a maximum of 40 hours of earned sick leave in any 12-month period
- Non-Exempt Employees – Earns paid sick leave based on actual hours worked, including overtime
- Exempt Employees – Assumed they work 40-hour work week

COOK COUNTY PAID LEAVE ORDINANCE

- The limit on the amount of unused paid sick leave that may be carried over to the next 12-month period and how that amount is calculated varies depending on whether the employer is a FMLA-covered employer
- **Non-FMLA covered employers** must permit their employees to carry over **half** of his/her total unused but accrued paid sick leave into the next 12-month period, up to a maximum of 20 hours
- Employee of a Non-FMLA Employer has nine hours of unused sick leave at the end of the accrual period, he/she can carry over five of those hours into the next accrual period (*i.e.* half of 9 is 4.5, rounding to the next whole hour increment is 5)
- Employee of a non-FMLA employer has 44 hours of unused sick leave at the end of the accrual period, he/she can carry over 20 of those hours into the next accrual period (*i.e.* half of 44 is 22, there is a 20 hour maximum)

COOK COUNTY PAID SICK LEAVE ORDINANCE

- FMLA-employer, like a non-FMLA eligible employer, must permit the employee to carry over **half** of his/her accrued but unused paid sick leave, up to a maximum of 20 hours. These 20 hours can be used for any purpose permissible under the Ordinance.
- If the employee has any *additional* unused but accrued sick leave that was not carried over, then the employer must permit the employee to carry over any such remaining paid sick leave up to a maximum of 40 hours. These hours can only be used for FMLA-related absences.
- Employee of an FMLA-Employer has 70 hours of unused sick leave at the end of the accrual period, he/she can carry over 20 “Ordinance restricted” hours (max. carry over is 20) and another 40 “FMLA restricted” hours (max. carry over is 40) into the next 12-month accrual period

COOK COUNTY PAID SICK LEAVE ORDINANCE

- Employees may take leave in the following circumstances:
 - For an illness or injury of the employee or the employee’s family member, including receiving medical care, treatment, diagnosis, or preventive medical care
 - Where the employee or the employee’s family member is a victim of domestic violence or a sex offense
 - When the employee’s place of business is closed due to a public health emergency, or the employee needs to care for a child whose school or place of care is closed due to a public health emergency
- The term “family member” is broadly defined to include a child, legal guardian or ward, spouse under the laws of any state, domestic partner, parent, parent of a spouse or domestic partner, sibling, grandparent, step and foster relationships, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship
- Notice must be provided to new hires by the later of each employee’s date of coverage or date of eligibility AND at least once per calendar year

ILLINOIS EMPLOYEE SICK LEAVE ACT

- Effective January 1, 2017, under the Illinois Employee Sick Leave Act (“ESLA”), if an employer allows employees to use personal sick leave benefits for their own illnesses or injuries, the employer must allow employees to use those benefits (on the same terms) for the illness, injury or medical appointment of an employee’s:
 - 1) child or grandchild;
 - 2) spouse or domestic partner;
 - 3) parent or stepparent;
 - 4) mother-in-law or father-in-law;
 - 5) sibling; and
 - 6) step children
- Employers may limit the amount of paid time used for absences related to the health of a family member to half of employee’s sick time earned, accrued, or given on a lump sum basis
- The ESLA does not extend an employee’s FMLA leave entitlement

ILLINOIS EMPLOYEE SICK LEAVE ACT

- The rights provided under ESLA “are in addition to any other rights...afforded under other provisions of law”
- Thus, the ESLA does not relieve employers in Cook County or Chicago of their compliance obligations under each of those paid sick leave ordinances
- Indeed, although the ESLA allows employers to limit use of personal sick leave benefits to the amount of leave an employee would normally accrue in six months, that limit would not apply to the sick leave benefits an employee accrues under the Cook County and Chicago paid sick leave ordinances, which entitle employees to use up to 40 hours of accrued paid sick leave in a 12-month period for the illness or injury of these family member

VETO ON SALARY HISTORY INQUIRY BAN

- Governor Bruce Rauner vetoed amendments to the Illinois Equal Pay Act
- Had the bill been signed into law, Illinois employers would not have been permitted to:
 - Require an employee to sign a contract in which they agree to keep their wages secret
 - Screen applicants based on their wage or salary history
 - Ask an applicant's current or former employer about their prior wages
- Had the amendments not been vetoed, plaintiffs would have been required to show only that the performance of the jobs in question required “substantially similar” skill, effort, etc.

VETO ON SALARY HISTORY INQUIRY BAN

- The amendments also would have restricted employers' ability to defend against equal pay claims on the grounds that the payment at issue was "made under a differential based on any factor other than (i) sex or (ii) a factor that would constitute unlawful discrimination under the Illinois Human Rights Act"
- Had the bill become law, employers would have borne the additional burden of showing that the other factor was not related to a pay differential based on sex or another protected characteristic, was job-related and consistent with business necessity, and accounted for the entire differential in question
- Given the teeth that the amendments would have had in the form of the potential for fines, compensatory damages, punitive damages, injunctive relief, and attorney's fees and costs, as well as its hefty five-year statute of limitations, Governor Rauner's veto is good news for Illinois employers

ILLINOIS FREEDOM TO WORK ACT

- Signed into law by Governor Bruce Rauner on August 19, 2016
- Freedom to Work Act bans certain employers from entering non-compete agreements with “low-wage employees”
- “Employer” defined as any individual, partnership, association, corporation, limited liability company, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year
 - Only applies to “employers” who have four or more employees

ILLINOIS FREEDOM TO WORK ACT

- Defines “low-wage employee” as any employee who earns the applicable federal, state or local minimum wage
 - Does not apply to those individuals who are employed as “outside salesman” (i.e. duties performed away from the office)
- Currently, \$7.25 per hour under federal law, \$8.25 per hour under Illinois state law, \$11.00 per hour in Chicago
 - Minimum wage will increase in Chicago to \$12.00 on July 1, 2018; \$13.00 on July 1, 2019
- **Any agreement** entered into *after* January 1, 2017 with “low-wage employee” is illegal and void, which prohibits an employee from performing:
 - Work for another employer for a specified period of time
 - Any work in a specified geographical area
 - Work for another employer that is similar to employee’s job

ILLINOIS RESPONSIBLE JOB CREATION ACT

- Becomes effective June 1, 2018 and amends the Day and Temporary Labor Services Act
- An agency must notify a day or temporary laborer in writing, at the time of dispatch, of his or her schedule and length of assignments. Must include:
 - Name of laborer
 - Nature of the work and the types of equipment, protective clothing, and training that are required
 - Wages offered
 - Name and address of the work destination
 - Terms of transportation
 - Whether a meal or equipment, or both, are provided either by the day and temporary labor service agency or the third party client and the cost of meal and equipment

ILLINOIS RESPONSIBLE JOB CREATION ACT

- Statement of Wages must include:
 - The name, address, and telephone number of each third party client at which the laborer worked
 - the number of hours he or she worked and the rate of pay
 - All deductions made from the laborer's compensation either by the third party client or by the agency, and the purpose for the deductions, including for the laborer's transportation, food, equipment, withheld income tax, withheld social security payments, and every other deduction
- Penalty:
 - \$500 for each violation that may increase to \$2,500 for a second violation

CHICAGO FAIR WORK WEEK ORDINANCE

- Ordinance *proposed* by the Chicago City Council in June 2017, and if passed will go into effect in July 1, 2018
- Applies to Chicago employers, not just those in the hospitality industry, who (1) maintain a business in the City of Chicago; (2) obtained a license from the City to operate the business; and (3) employ one or more individuals in Chicago
- If passed, Chicago employers would be required to provide **notice** in writing to Covered Employees for the following:
 - 14 days of notice of work schedules
 - Notice of availability of additional hours before hiring staff to take on those hours
 - Notice can be made by email or an internal website, or post the schedule in a conspicuous location
- Covered Employees:
 - Anyone who works in any particular two-week period for at least two weeks and while physically present in Chicago
 - “Salaried” employees (earning a salary greater than \$50,000 or \$962 per week) are not covered

CHICAGO FAIR WORK WEEK ORDINANCE

- Ordinance also requires additional compensation be provided to Covered Employees for *changes* (e.g. add or subtract hours, move shift to another time or date, or cancel a shift) to their shifts, known as “predictability pay” under the Ordinance. Predictability pay is in addition to regular pay the employee receives for working a shift
- How much predictability pay is required depends on the notice given by the employer in regards to these changes
 - One hour of pay if changes are made with less than 14 days’ notice but more than 24 hours notice
 - Four hours or the number of in the shift, whichever is less, when the number of hours are cancelled or reduced with less than 24 hours’ notice
 - One hour pay for all other changes, including when a real time request is made to the employee to extend the shift
- Right to Rest Provision:
 - Employees can decline to work a shift that occurs less than 11 hours from their last shift
 - If employee agrees to take that shift, they are to be paid 1.5 times their hourly wage

ILLINOIS RELIGIOUS GARB LAW

- Signed into law on August 11, 2017 and amends the Illinois Human Rights Act
- Makes it a violation for an employer to impose a requirement that would cause an employee to “violate or forgo a sincerely held practice of his or her religion including, attire, clothing or facial hair in accordance with the requirements of his or her religion”
- However, the employers may enact a dress code or grooming policy to maintain workplace safety or food sanitation
- Employers may still prohibit attire, clothing, and facial if failing to do so would be an undue hardship to the employer’s business

RIGHT TO PRIVACY IN THE WORKPLACE ACT

- Became effective January 1, 2017
- Amends Section 10 of the Right to Privacy in the Workplace Act by expanding the online accounts that employers and prospective employers are prohibited from accessing
- An employer or prospective employer is prohibited from:
 - Requesting, requiring or coercing any employee or prospective employee to authenticate or access an account while the employer is present
 - Require or coerce an employee to invite an employer to join a group affiliated with the personal online account
 - Require or coerce the employee to join an online account established by the employer or add the employer to the employee's list of contacts in employee's personal account
- Adds an anti-retaliation provision prohibiting an employer from discharging, disciplining, failing to hire an employee who refuses access or participation in the above referenced prohibited activities
- Employers can access accounts which are paid for or accounts created at the direction of the employer in connection with the employment

RIGHT TO PRIVACY IN THE WORKPLACE ACT

- Employers have the ability to request or require an employee or applicant to share specific content that has been reported to the employer, without requesting or requiring an employee or applicant to provide a user name and password or other means of authentication that provides access to the personal online account
- An employer may only engage in the above activity if:
 - Ensuring compliance with applicable laws or regulatory requirements
 - Investigating an allegation of unauthorized transfer of an employer's proprietary or confidential information to an employee or applicant's personal account
 - Investigating a violation of applicable laws or work-related employee misconduct
 - Prohibiting an employee from using a personal account for business purposes
 - Prohibiting an employee or applicant from accessing or operating a personal account during business hours

VICTIM'S ECONOMIC SECURITY AND SAFETY ACT

- The Victims' Economic Security and Safety Act (VESSA) allows employees who are victims of domestic or sexual violence or who have family or household members who are victims of such violence to take a leave of absence
- The existing law provides employees with eight workweeks of unpaid leave in any 12-month period if they work for an employer with 15 to 49 employees, and 12 workweeks of unpaid leave in any 12-month period if they work for an employer with 50 or more employees
- Effective January 1, 2017, employees who work for an employer with no more than 14 employees will be entitled to four workweeks of unpaid leave in any 12-month period to address issues related to domestic or sexual violence

ILLINOIS CHILD BEREAVEMENT ACT

- Effective July 29, 2016, Illinois employers with at least 50 or more employees must provide employees who suffered the loss of a child with up to two weeks (10 work days) of unpaid leave
- Employee must be eligible to leave under the Family Medical Leave Act in order to be eligible for unpaid leave under the Illinois Child Bereavement Act
- Employee must use leave within 60 days after the employee receives notice of the death of his or her child
- Employee may use unpaid bereavement leave to:
 - Attend the funeral of a child
 - Make arrangements necessitated by the death of a child
 - Grieve the death of the child

ILLINOIS CHILD BEREAVEMENT ACT

- Child is defined as a son or daughter who is:
 - Biological
 - Adopted
 - Foster child
 - Stepchild
 - Legal ward
 - Standing in loco parentis
- Employee must provide at least 48 hours advance notice of his or her intention to take leave under the Act
- Employers may require documentation substantiating the need for the leave (e.g. death certificate, published obituary)

PROPOSED DEPARTMENT OF LABOR OVERTIME RULE

- The proposed rule would have raised the salary threshold for exempt employees from \$23,660 (or \$455 per week) to \$47,476 (or \$913 per week) per year for executive, administrative and professional overtime-exempt employees
- The proposed was scheduled to go into effect in December 2016, but was enjoined from being enforced in November 2016
- On August 31, 2017 a Federal District Court in Texas invalidated the proposed overtime rule
- So, salary threshold for exempt employees remains \$23,660.00 or \$455 per week

TITLE VII AND SEXUAL ORIENTATION DISCRIMINATION

- Seventh Circuit Court of Appeals (IL, WI and IND) held that adverse or discriminatory actions taken because of an individual's "sexual orientation" constitute unlawful discrimination on the basis of "sex" under Title VII of the Civil Rights Act of 1964
 - *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017)
- Holding:
 - “A person who alleges that she experienced employment discrimination on the basis of her sexual orientation has put forth a case of sexual discrimination for Title VII purposes”
 - The court reasoned “[T]he common sense reality [is] that it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex”

ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT

- Enacted in 2008, BIPA was passed to protect against the risk of identify theft resulting from the growing use of biometric technology to facilitate financial transactions and security screenings
- Under BIPA, biometric information means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's *biometric identifier*, and used to identify an individual
- Biometric identifiers:
 - Retina or iris scan
 - Fingerprint
 - Voiceprint
 - Scan of a hand
 - Face geometry
- Biometric identifiers do not include, for example, written signatures, photographs, tattoo descriptions, or physical descriptions such as height, weight, hair or eye color

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ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT

- The BIPA has five key components:
 - Informed consent prior to collection
 - Permits a limited right to disclosure
 - Mandates protection obligations and retention guidelines
 - Prohibits profiting from biometric data
 - Creates a private right of action for individuals harmed by BIPA violations. Statutory damage can reach up to \$1,000 (for negligence violations) or \$5,000 (for intentional violations) and attorneys' fees.

QUESTIONS?



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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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