ILLINOIS
EMPLOYMENT LAW GUIDE

Federal, state and local governments adopt labor and employment laws to protect the rights, health and compensation of workers.

As a general rule, federal laws supersede state and local laws. However, state and local laws can supplement or provide additional protections to employees and impose additional requirements that employers must follow. When a conflict exists between federal and local requirements, the U.S. Department of Labor instructs employers to follow the law that provides the highest protection or greater benefit to the employee.

This Employment Law Guide provides employers a reference of key state labor and employment laws. Employers can use the content in this guide to learn more about their obligations and liability under state law. When possible, this guide includes direct links to agency guidance and official posters, notices and forms.

Please note that this guide provides a high-level overview of labor and employment standards in the state. Additional requirements may apply or be adopted. Employers are encouraged to consult with knowledgeable legal professionals or to contact stage agencies for legal advice, authorized guidance and official interpretations of these or other employer requirements.

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RECRUITMENT AND HIRING

In addition to complying with all applicable federal and state nondiscrimination laws, during the job application and interview process, Illinois employers must comply with the following laws.

SALARY HISTORY

Under the IEPA's provisions regarding salary history, employers are prohibited from:

- Screening applicants based on their current or prior wages or salary histories, including benefits or other compensationa, by requiring that the wage or salary history satisfy minimum or maximum criteria;
- Requesting or requiring wage or salary history from an applicant as a condition of employment, being considered for employment or an offer of compensation;
- Seeking an applicant's wage or salary history from any current or former employer (unless the applicant is a current employee, or the information is part of the public record under state or federal law); and
- Considering or relying on any past pay information (even if it has been voluntarily disclosed by an applicant) as a factor in determining whether to offer employment to the applicant, how much to offer the applicant for employment or how to compensate the applicant in the future.

Permitted Actions

The IEPA's salary history provisions do not prevent employers from:

- Providing an applicant with information about the wages, benefits, compensation or salary offered in relation to a position; or
- Engaging in discussions with an applicant about his or her salary expectations for a position.

Effective Aug. 12, 2021, the law clarifies that:

- Employers may also engage in discussion with an applicant about unvested equity or deferred compensation that the applicant would forfeit or have canceled by virtue of the applicant's resignation from the applicant's current employer; and
- If, during a discussion unvested equity or deferred compensation, an applicant voluntarily and without prompting discloses that the applicant would forfeit or have canceled by virtue of resignation from the applicant's current employer unvested equity or deferred compensation, the employer may request the applicant to verify the aggregate amount of that compensation by submitting a letter or document stating the aggregate amount of the unvested equity or deferred compensation from, at the applicant's choice, one of the following:
  - The applicant's current employer; or
  - The business entity that administers the funds that constitute the unvested equity or deferred compensation.

Enforcement

Individuals who believe an employer has violated the IEPA's prohibitions against inquiring about or using their past pay information may file a civil lawsuit against the employer within five years of the violation. If a court finds that an employer has violated these prohibitions, it may impose an injunction and order the employer to pay:

- Special damages of up to $10,000;
- Actual damages;
- Costs and reasonable attorney's fees; and
- Civil penalties of up to $10,000 per violation.

VIDEO INTERVIEWS

The Illinois Artificial Intelligence Video Interview Act went into effect on Jan. 1, 2020. The law applies to employers that ask applicants to record video interviews for positions based in Illinois and use artificial intelligence analysis on the video recording. Specifically, these employers must, before the interview:

- Notify each applicant that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position;
- Provide each applicant with information explaining how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants; and
- Obtain the applicant's consent to be evaluated by the artificial intelligence program as described in the information provided.

Consent

Employers cannot use artificial intelligence to evaluate applicants who have not consented to its use.

Video Sharing
Employers cannot share an applicant's video, except with persons whose expertise or technology is necessary to evaluate an applicant's fitness for a position.

Video Destruction
Employers must delete any recorded interview (including all electronically generated backup copies) within 30 days of receiving a request from the applicant to do so. Employers must also instruct any other person who has received copies of the video in question to delete the video, and all such persons must comply with the instruction.

BAN THE BOX LAW

Illinois is among the states that have "banned the box." The state's Job Opportunities for Qualified Applicants Act (JOQAA), which became effective on Jan. 1, 2015, prohibits employers from asking about applicants' criminal backgrounds before reviewing their qualifications for a position.

Covered Employers
The JOQAA applies to all private employment agencies and all private employers with 15 or more employees (in the current or preceding calendar year) in Illinois. The law does not apply to public employers.

Prohibitions
Under the JOQAA, employers may not inquire about, consider or require disclosure of an applicant's criminal record or history until after:

- The applicant has been determined qualified for the position; and
- The employer has notified the applicant that he or she has been selected for an interview.

If an employer does not conduct interviews for a particular position, the employer may not ask about an applicant's criminal background until after it extends a conditional offer of employment to the applicant.

Exemptions
An employer may be exempt from the JOQAA's prohibitions under certain circumstances. Specifically, the law allows an employer to ask about, consider and require the disclosure of an applicant's criminal history before extending an interview invitation or conditional job offer if:

- The employer is required to exclude applicants with certain criminal convictions from employment under state or federal law;
- The position requires a standard fidelity bond or an equivalent bond and an applicant's conviction of one or more specified offenses would disqualify him or her from obtaining the bond; or
- The position requires licensing under the Emergency Medical Services System Act.

Permitted Actions
The JOQAA does not prohibit employers from denying employment to applicants who have been convicted of certain offenses, as long as the process for inquiring about them has been followed.

In addition, the JOQAA does not prohibit employers from notifying applicants in writing of any specific offenses that would disqualify them from employment in a particular position. These disqualifications may be due to federal or state law or the employer's policy.

Enforcement
The JOQAA is enforced by the Illinois Department of Labor, which provides an online complaint form that individuals may submit if they believe an employer has violated the law.

If the Illinois Department of Labor agrees that an employer has violated the law, it may impose penalties ranging from a written warning for a first violation up to fines of $1,500 for repeated violations or failures to remedy a previous violation.

CONVICTION RECORDS — THE EMPLOYEE BACKGROUND FAIRNESS ACT (EBFA)

The Illinois Employee Background Fairness Act (EBFA), enacted in March of 2021, makes it unlawful for an employer to take any adverse employment action against an individual on the basis of the individual's conviction record.

However, exceptions to this prohibition are available for situations in which:

- An adverse action based on a criminal conviction is otherwise authorized by law;
- There is a substantial relationship between an individual's previous criminal offenses and the employment the individual seeks or holds; or
- Hiring or continuing to employ an individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

The EBFA also requires employers to take certain actions before relying on either of the latter two exceptions. Specifically, before determining that either of those exceptions apply for a particular individual, an employer must consider certain factors and perform an interactive assessment regarding any conviction that the employer deems to be disqualifying for employment.

Interactive Assessment
The factors that an employer must consider before using a conviction as a basis for an adverse employment action are:

- The length of time since the conviction;
- The number of other convictions on the individual's record;
- The nature and severity of the conviction and its relationship to the safety and security of others;
- The facts or circumstances surrounding the conviction;
- The age of the employee at the time of the conviction; and
- Evidence of rehabilitation efforts.

Preliminary Decision Notice
After making a preliminary decision that an individual's conviction record disqualifies the individual from employment based on these factors, an employer must provide written notice to the individual. This notice must include:

- A statement indicating that the conviction is the basis for the employer's preliminary decision;
- An explanation of the employer's reasoning for the disqualification;
- A copy of the conviction history report on which the decision is based; and
- An explanation of the individual's right to respond before the employer's preliminary decision becomes final (this must inform the individual that the response may include evidence challenging the accuracy of the conviction record or information about mitigating evidence, such as rehabilitation).

An employer that provides this written notice must allow at least five business for the individual to respond. If the employer receives a timely response, it must consider the information submitted before making a final decision.

Final Decision Notice

If the employer's final decision is to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer must provide written notice that includes:

- The disqualifying conviction or convictions and the employer's reasoning for the disqualification;
- Any existing procedure the employer has for the individual to challenge the decision or request reconsideration; and
- The right to file a charge with the DHR.

Chicago Ordinance

Employers in Chicago should be aware that the city has enacted its own ban the box law. The city's ordinance applies to all employers (regardless of size) that maintain a facility in Chicago or are required to have a Chicago license for their business.

VERIFYING EMPLOYMENT ELIGIBILITY

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or foreign citizens who have the necessary authorization. To comply with the law, employers must verify the identity and employment authorization of each person they hire by completing and retaining Form I-9 (Employment Eligibility Verification).

Employers may choose to voluntarily enroll in an electronic employment verification system, including the federal E-Verify system. Those who do are urged to consult the Illinois Department of Labor's (IDOL) website for current information on the accuracy of E-Verify and to review and understand their legal responsibilities relating to the use of the voluntary E-Verify program.

Under the state Right to Privacy in the Workplace Act, an employer using the E-Verify Program must attest on a form prescribed by IDOL that:

- The employer has received the Basic Pilot or E-Verify Program training materials and that all employees who will administer the program have completed the Basic Pilot or E-Verify Computer Based Tutorial (CBT).
- The employer has posted in a place that is clearly visible the required notice from the U.S. Department of Homeland Security (DHS) indicating that the company is enrolled in the Basic Pilot or E-Verify Program.
- The employer has posted in a place that is clearly visible the required anti-discrimination notice issued by the federal Office of Special Counsel for Immigration-Related Unfair Employment Practices.

The employer must maintain the signed original of the attestation form prescribed by the IDOL, as well as all CBT certificates of completion and make them available for inspection or copying by the IDOL at any reasonable time.

EMPLOYEE COMPENSATION AND WAGES

MINIMUM WAGE

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is $7.25 per hour for nonexempt employees. The Illinois Minimum Wage Law (IMWL) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow.

The Illinois Department of Labor (IDOL) enforces compliance with the IMWL.

Minimum Wage Rate

The table below provides an overview of scheduled minimum wage rate increases for the state of Illinois. The state wage rate is set to increase gradually until it reaches $15 per hour on Jan. 1, 2025.

To determine an employee's wage rate, employers must consider that employee's entire compensation, including wages, gratuities and any credit the IDOL allows for meals, lodging and other facilities. Allowances for supply, maintenance or laundering of required uniforms are not permitted as part of the calculation of an employee's minimum wage rate.

State Rates	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025
State Rate	$11	$12	$13	$14	$15
Tipped employees	$6.60	$7.20	$7.80	$8.40	$9
Youth wage	$8.50	$9.25	$10.50	$12	$13
Chicago	**July 1, 2021**	**July 1, 2022**	**July 1, 2023**	**July 1, 2024**	**July 1, 2025**
21+ employees	$15 $9*	$15.40 $9.24*	$15.80 $9.48*	TBA	TBA
4 - 20 employees	$14 $8.40*	$14.50 $8.70*	$15 $9*	TBA	TBA
Youth wage	$11 $6.60*	$12	$13.50 $8.10*	$15	TBA
City contracts or concessionaire agreements	$14.75	$16	$16.80 $8.80*	TBA	TBA
Cook County	**July 1, 2021**	**July 1, 2022**	**July 1, 2023**	**July 1, 2024**	**July 1, 2025**
County rate	$13 $6.60*	$13.35 $7.40*	$13.70 $8*	TBA	TBA

**Tipped employee rate.*

Tipped Employees and Gratuities

The tipped rate applies to employees who customarily receive at least $20 in gratuities per month.

The gratuities patrons or clients give to employees are considered the property of the employees. Employers are prohibited from keeping these gratuities and need to deliver them to their employees no later than 13 days after the end of the pay period in which the gratuities are earned.

However, when gratuities are paid by credit card, employers are allowed to withhold an amount proportionate to the processing fee the employer must pay in connection with the credit card transaction. This withholding cannot exceed the tip-to-bill ratio. This means that the employer's transaction fee withholding for a 10% tip cannot be more than 10% of the fee the employer will pay for processing that credit card transaction.

Finally, these regulations do not restrict an employer's ability to establish a tip pooling program within the state.

Youth Wage

The youth wage applies to employees under 18 years of age working fewer than 650 hours per calendar year. Minors who work more than 650 hours during any calendar year must be paid the state regular wage rate.

New Employee Wage

The IMWL allows employers to pay new employees over the age of 18 a minimum wage rate that is 50 cents per hour lower than the state minimum wage rate during the employees' first 90 days of employment. After this initial employment period, employees must receive wages at or above the minimum wage rate, unless an exception applies.

The new employee wage rate does not apply to individuals who are 18 years of age or older if they:

- Are day laborers or temporary workers; or
- Have occasional or irregular employment that requires more than 90 days to complete.

Learners

Employers may pay learners over the age of 18 a wage rate as low as $5.77 per hour (or 70% of the applicable minimum wage rate) if they have a learner subminimum wage license. Employers can pay these wages to a learner employee for up to six months or as long as the employee is still considered a learner (whichever comes first).

Learners are individuals who are participating in a training program for an occupation for which they were hired. These programs usually include formal instruction or on-the-job training during a predetermined period of limited responsibility and regular supervision or guidance. Student learners are individuals who receive course credit for participation in a school-approved work-study program.

An individual is not a learner after he or she completes the training required for his or her position. After learners complete their training, they must receive wages at or above the state minimum wage rate. The IDOL may extend a training period over the six-month period for employers that can prove that sufficient proficiency in a particular occupation cannot be acquired within six months.

Subminimum wage learner licenses are available to employees that can prove to the IDOL that a learning program:

- Exists to allow employees to acquire the skill necessary for their occupation of choice;
- Does not displace other workers; and
- Does not tend to impair or depress the wage rates or working standards established for experienced workers that perform similar work to the learners.

Individuals Impaired by Age or with a Physical or Mental Disability

The IMWL requires employers to obtain a license to pay subminimum wages to individuals with disabilities. Subminimum wage licenses for these individuals are valid for one year and must be signed by the employer and the employee. Employers can pay employees with disabilities a subminimum wage only through the period specified in the license.

Subminimum wage licenses for individuals with disabilities are not available for employees who, in spite of their disability, maintain a production level within the limits required of other employees. The IDOL will allow employers to recommend a subminimum wage rate for employees with disabilities commensurate to the employees' productivity. The IDOL will consider the average wage paid to employees with no disabilities and who have similar responsibilities and work under similar conditions to determine whether the proposed subminimum wage is reasonable.

Employers can apply for license renewal every year. The renewal follows the same process and uses the same criteria as the application process.

Minimum Wage Exemptions

In general, minimum wage laws in Illinois do not apply to:

- Employers with fewer than four employees (employees cannot be immediately related to the employer);
- Agricultural and aquacultural employees who:
- Work for employers that did not use more than 500 man-days of labor during the preceding calendar year;
- Are immediately related to their employer;
- Are hand harvest laborers and are paid on a piece rate basis (if the method of payment is customary for the industry);
- Commute daily from their permanent residence to the farm where they are employed; or
- Have been employed in agriculture or aquaculture for fewer than 13 weeks during the preceding calendar year;
- Domestic service employees who work in or about a private home;
- Outside sales personnel;
- Members of a religious corporation or organization;
- Students employed by the accredited state college or university where they study; and
- Motor carriers subject to state or federal regulations on qualifications and maximum hours of service.

Lodging and Meal Credits for Domestic Workers

An employer may take lodging and meal credits from its domestic workers' wages if:

- The domestic worker voluntarily and freely chooses the lodging or meals;
- The lodging is private, safe, sanitary and otherwise complies with federal, state and local laws, ordinances or prohibitions including (but not limited to):
- A room with a door with a lock;
- At least a twin-sized bed, or larger, and other basic accommodations; and
- Unrestricted access to the kitchen, laundry, bathroom and potable water.
- The employer maintains accurate records on a workweek basis of any lodging and meal credit taken for that workweek, including records demonstrating:
- The costs incurred including itemized accounts of the nature and amounts of the expenditures; and
- Any deductions from wages, including overtime wages;
- The resulting credit for lodging is the lesser of the fair market value of the accommodations provided or seven and one-half times the statutory minimum hourly wage for each week lodging is furnished (minimum wage X 7.5); and
- The employer takes a credit based on the reasonable cost of the meals and the resulting credit for meals is the lessor of $2 for breakfast, $3 for lunch, and $3 for dinner or the actual cost.

Employers cannot take lodging or meal credits for domestic workers if:

- They require that these workers reside on at the employers' premises or in a particular location; or
- The domestic workers maintain a separate place of residence and sleep at the employers' premises for the benefit of the employer and for purposes of performing job duties.

PROHIBITED PRACTICES

The IMWL prohibits employer discrimination, retaliation and interference with IDOL wage investigations.

Discrimination

The IMWL prohibits employers from discriminating against employees on the basis of sex, mental capacity or physical disability. Employees who perform the same or substantially similar work on jobs that require levels of skill, effort and responsibility under similar working conditions should receive comparable wages. Employers can differentiate employee wages using a system based on seniority, merit, production or any other lawful factor.

Retaliation

In addition, employers may not retaliate against employees for making any complaint or testifying in any proceeding or investigation under the IMWL.

Interfering with a Wage Investigation

Employers are subject to IDOL investigations if employees file wage complaints within one year of separation from employment or when the alleged violation took place. The IDOL may investigate payments up to three years prior to the date when the complaint was filed.

Employers are prohibited from hindering or delaying an investigation by:

- Refusing to admit IDOL officers into a place of employment;
- Failing to create and maintain adequate records;
- Falsifying records; or
- Refusing to make records or other information required for the investigation available to IDOL personnel.

POSTING REQUIREMENT

Every employer employing "employees" as defined by Illinois' minimum wage laws are required to post and keep posted a notice that summarizes the state's minimum wage laws and information on how to file a wage complaint.

The notice must be displayed in a conspicuous place on the employers' premises, where notices to employees are customarily posted. The official notice employers must use to comply with this requirement is prepared (or approved) and published by IDOL in various languages.

OVERTIME PAY

The IMWL requires employers to compensate their employees with one and one-half times their regular wage rate for any overtime hours worked. Overtime hours are hours worked in excess of 40 hours in a workweek. The hours an employee works during one workweek cannot be averaged with the hours worked on any other workweek.

Domestic Workers

Domestic workers must be compensated at the overtime rate for all hours worked in excess of 40 in a workweek, regardless of the nature of the services provided.

Overtime base rates must be calculated by including all credits taken by the employer for lodging and meals in a workweek as well as any deductions taken by the employer. Where two or more employers share services, the hours worked by the domestic worker for each employer must be included in calculating total hours worked in the workweek for overtime purposes.

The Illinois legislature has provided the following illustrative examples:

- A worker is hired jointly by two families with an agreement to provide nanny services for two separate households. The worker provides services for a combined 50 hours during the week: 30 hours for Family A and 20 Hours for family B. The worker is entitled to 10 hours of pay at overtime rates for time worked over 40 hours.
- A cashier at a family-owned restaurant is asked by the restaurant owner to take care of the owner's children a couple of days a week. The worker works a combined 60 hours during the week: 40 hours as a cashier at the restaurant and 20 hours taking care of the owner's children. The worker is entitled to 20 hours of pay at overtime rates.

Calculating the Regular Wage Rate

An employee's regular rate is the actual rate of pay he or she receives for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before they can determine applicable overtime wages. An employee's regular wage rate can vary from week to week and may be different from the employee's contractual rate of pay.

To calculate an employee's regular rate for a specific work period, employers must divide the employee's entire compensation for a workweek by the number of hours the employee worked during that period.

An employee's total compensation is all compensation paid to the employee. This includes the employee's wages, gratuities and any allowances authorized by the IDOL for meals and lodging actually used by the employee. Total compensation does not include:

- Business expenses;
- Bona fide gifts;
- Discretionary bonuses;
- Overtime pay;
- Employer investment contributions; and
- Payment for non-working hours (for example, pay for vacation, sick leave or jury duty).

A workweek in Illinois is a fixed period of 168 hours, or seven consecutive 24-hour workdays. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. By default, the IDOL will assume that the workweek coincides with the calendar week. However, employers are free to determine the beginning and the end of their workweek. Once established, employers cannot alter the workweek period to avoid paying overtime wages.

Exemptions from Overtime Payment Laws

Overtime wage laws in Illinois do not generally apply to:

- Agricultural workers;
- Government employees (as defined in the FLSA);
- Bona fide executive, administrative or professional employees (as defined by the FLSA);
- Employees paid on commission (as defined by the FLSA);
- Replacement employees (employees covering other shifts due to a work-time exchange agreement);
- News editors (as defined by the FLSA);
- Chief engineers (as defined by the FLSA);
- Sales personnel working for a nonmanufacturing establishment primarily engaged in the business of selling automobiles, trucks, trailers, boats, farm equipment and aircraft vehicles to ultimate purchasers;
- Mechanics and service personnel working for a nonmanufacturing establishment primarily engaged in the business of selling automobiles, trucks, trailers, boats, farm equipment and aircraft vehicles to ultimate purchasers;
- Crew members of any uninspected towing vessel operating in any navigable waters in or along the boundaries of the state; or
- Nonprofit, educational or residential childcare employees who:
- Live in the residential facilities of the institution and are directly involved in educating or caring for orphan, foster, homeless, abused, neglected or abandoned children; and
- Receive at least $13,000 in wages ($10,000 if room and board are provided free of charge at the facility where they reside).

HOURS OF WORK

In general, Illinois work hour requirements are regulated by the One Day Rest in Seven Act (ODRISA).

Rest Periods

The ODRISA requires employers to give employees at least 24 consecutive hours of rest per calendar week. However, this requirement does not apply to:

- Part-time employees working up to 20 hours per week for one employer;
- Employees required to work in the case of a machinery or equipment breakdown or another emergency, if the employees' immediate labor is necessary to prevent injuring others, damaging property or suspending the employer's vital operations;
- Agricultural workers;
- Coal miners;
- Employees engaged in the canning and processing of perishable agricultural products, if they are employed on a seasonal basis for up to 20 weeks during any calendar year or 12-month period;
- Watchmen and security guards;
- Bona fide executive, administrative or professional employees;
- Outside salesmen; or
- Crew members of any uninspected towing vessel operating in any navigable waters in or along the boundaries of Illinois.

Break Time for Nursing Mothers

The Nursing Mothers in the Workplace Act requires employers to provide nursing mothers with a reasonable break time during the workday each time employees have the need to express breast milk for or nurse their infant children. The break time must, if possible, be added to a break time already provided for the employee.

Employers may not reduce their employees' compensation for time used for the purpose of expressing milk or nursing a baby.

Employers must make reasonable efforts to provide a location close to the employee's work area where the employee may take this break in privacy. Federal requirements dictate that this accommodation must be available for up to one year after the child is born and that the break's location must be:

- A place other than a bathroom;
- Shielded from view; and
- Free from coworker and public intrusion.

An employer is not required to provide this break if it would create an undue hardship as defined by item (J) of Section 2-102 of the Illinois Human Rights Act.

Meal Breaks

Under the ODRISA, every employer that requires employees to work for seven and one-half hours or more must be given at least 20 minutes for a meal period, beginning no later than five hours after the start of the work period.

Employers do not have to pay employees for this mealtime, provided the mealtime is spent for something other than the employer's benefit. This requirement does not apply to employers that provide meal periods to their workers under a collective bargaining agreement.

In addition, employers are not required to provide time off for a meal if their employees:

- Monitor individuals with diagnosed mental illnesses or developmental disabilities; and
- Are required to be on call for an entire eight-hour period.

In addition, employers must provide their employees with additional 20-minute meal periods for every additional 4.5 continuous hours of work. State law also requires that meal periods do not include reasonable time spent using restroom facilities.

Required Postings

Employers are required to post a summary of the IWPCA on their premises in a place that is accessible to all employees. The IDOL provides a model poster that employers can use to satisfy this requirement.

Additionally, employers must post a work schedule with a list of any employees that are required or allowed to work on Sundays. The schedule must be posted on the first day of each week in a conspicuous place at the employer's principal place of business. The schedule must provide a list of the employees' designated days of rest.

Finally, employers subject to ODRISA must post and maintain a poster that summarizes ODRISA requirements and information on how employees can submit a complaint. The poster must be displayed in an area where other required workplace posters are displayed. Employers may provide this poster to remote or traveling employees via email or a website that employers regularly use to communicate work-related information.

Prohibited Retaliation

Employers are prohibited from retaliating against employees for making any complaint, instituting a proceeding or testifying in any proceeding or investigation under the IWPCA.

Hours of Work – Domestic Workers

Domestic workers must be paid for all hours worked, excluding bona fide meal breaks, rest periods, and sleep periods. For domestic workers, "hours worked" includes all time during which a domestic worker is not completely relieved of all work-related duties, regardless of the location where the domestic work is performed. A domestic worker is a person employed to perform domestic work, including:

- Housekeeping;
- House cleaning;
- Home management;
- Nanny services including childcare and child monitoring;
- Caregiving, personal care or home health services for elderly persons or persons with an illness, injury, or disability who require assistance in caring for themselves;
- Laundering;
- Cooking;
- Companion services;
- Chauffeuring; and
- Other household services for members of households or their guests in or about a private home or residence or any other location where the domestic work is performed.

For domestic worker exceptions, employers should consult the Illinois Domestic Worker's Bill of Rights Act.

Meal Breaks

A bona fide meal break is a period in which a domestic worker is completely relieved from duty for the purposes of eating regular meals. Ordinarily 20 minutes or more is long enough for a bona fide meal break. A domestic worker is not completely relieved from duty if the domestic worker is required to perform any duties, whether active or inactive, while eating.

Rest Periods

Similarly, a rest period is a period of time in which a domestic worker has

complete freedom from all work-related duties and during which a domestic worker may either leave the location where the domestic work is performed without an obligation to be on call or remain at the location the domestic work is being performed for purely personal pursuits. Rest periods of less than 20 minutes must be counted as "hours worked."

Sleep Periods

A sleep period is a regularly scheduled, uninterrupted sleeping time of not more than eight hours. Domestic workers must be able to sleep during this entire period in their sleeping quarters without work-related interruptions.

Any period of interrupted sleep to perform work-related duties must be compensated. If a domestic worker cannot get at least five hours of uninterrupted sleep, completely relieved of work-related duties, that time period cannot be considered a sleep period and must be compensated as working time.

Hours of Work - Chicago

As published by the city of Chicago, the Fair Workweek Ordinance requires certain employers to provide workers with predictable work schedules and compensation for changes. Employees are covered by the ordinance if they work in one of seven "covered" industries (building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services), earn less than or equal to $29.35 per hour or earn less than or equal to $56,381.85 per year, and the employer has at least 100 employees globally (250 employees and 30 locations for a restaurant). Covered employees are given:

- Advance notice of work schedule (14 days beginning July 1, 2022)
- Right to decline previously unscheduled hours
- One hour of Predictability Pay for any shift change within 10 days
- Right to rest by declining work hours less than 10 hours after the end of previous day's shift

WAGE PAYMENTS

In Illinois wage payment requirements are regulated by the Illinois Wage Payment and Collection Act (IWPCA).

Under the IWPCA, employers must pay their employees at least semi-monthly or bi-weekly no later than 13 days after the end of the pay period in which payable wages were earned. However, employers may pay executive, administrative and professional employees monthly. Commissions may also be paid once a month.

Upon employee request, employment or labor placement agencies must make either weekly or semi-monthly wage payments if employees earn a daily wage "in the ordinary course of business."

Employment and labor placement agencies that make daily wage payments must provide written notification to all daily wage payment employees of the right to request weekly or semi-monthly checks. These employers may provide this notice by conspicuously posting the notice at the location where the wages are received by the daily wage employees.

Weekly pay must be provided no later than seven days after the end of the week in which payable wages were earned and daily pay no later than 24 hours after the day in which payable wages were earned.

Permissible Deductions from Employee Compensation

Employers are prohibited from making any deduction from their employee's wages or final compensation, unless the deduction is:

- Required by law;
- For the employee's benefit;
- Made with the employee's express written consent, given freely at the time the deduction is made;
- Required by a wage assignment or deduction order; or
- For the repayment of an outstanding debt with certain governmental organizations.

Before deducting any amount of an employee's wages for the repayment of a debt to a governmental organization, the employer must receive proof that the employee:

- Had an opportunity to dispute the debt;
- Received notice of a wage deduction order; and
- Had an opportunity to contest the order.

When making these deductions, an employer can withhold no more than 25% of the net amount of the employee's wages. The maximum deduction amount may be reduced to 15% for a debt owed to communities with populations of less than $500,000.

If the legitimacy of a deduction is in question, an employer may withhold funds after notifying the IDOL of the deduction and its justification. The employer will then have to follow any instructions it receives from the IDOL.

In case of a dispute over wages, an employer must pay any undisputed compensation without condition and within the time frame set by the IWPCA. An employee's acceptance of this partial payment is not a waiver of his or her right to pursue the balance by legal means.

Expense Reimbursements

Employers must reimburse employees for work expenses that are primarily for the benefit of the employer. To determine whether an expense is "to the primary benefit of the employer," employers must consider:

- Whether the employee has any expectation of reimbursement;
- Whether the expense is required or necessary to perform the employee's job duties;
- Whether the employer is receiving a value that it would otherwise need to pay for;
- How long the employer is receiving the benefit; and
- Whether the expense is required of the job.

No single factor is dispositive in this analysis. The main focus of this analysis is "the extent to which the expense benefits the employer and its business and business model."

State law allows employees to file a claim against their employers with IDOL if employers fail to respond to a request for reimbursement or inform their employees that they are not entitled to seek reimbursement for a reimbursable expense.

Employers that fail to reimburse their employees during the course of employment must include unpaid reimbursable expenses in their employee's final payment.

Finally, under state law, employers must maintain for at least three years a record of:

- All policies regarding reimbursement;
- All employee requests for reimbursement;
- Documentation showing approval or denial of reimbursement; and
- Documentation showing actual reimbursement and supporting documents.

Employers that through direct authorization or practice allow for reimbursement amounts in excess of their written expense reimbursement policies, specifications or guidelines may be found liable for (and ordered to pay) full reimbursements if a claim is filed.

Final Wage Payments

In the event of termination, employers must pay their employees' final compensation in full no later than the next regularly scheduled payday. If employees request it, final compensation must be paid by check and mailed to them.

In final compensation payments, employers must pay the monetary equivalent of all unused earned vacation. Employers may not take away an employee's right to payment of unused earned vacation time through an employment contract or employment policy.

EMPLOYEE LEAVE

Illinois employers must provide their employees with certain types of paid and unpaid leave required by state law, in addition to complying with federal leave laws not addressed here, such as the Family and Medical Leave Act (FMLA).

Illinois state law includes the following employee leave mandates. Please note that the information below focuses on statewide laws. Cities, towns and counties across the country have also enacted ordinances that require employers to provide leave to employees (including Chicago and Cook County). Employers must generally comply with local and statewide law that applies.

PAID LEAVE FOR ANY REASON

Effective Jan. 1, 2024, the Illinois Paid Leave for All Workers Act requires covered employers to provide eligible employees with one hour of paid leave for every 40 hours worked, up to 40 hours per year. The leave may be used for any reason, and employers may not request a reason or verification for the leave.

The requirement applies to all employers except public schools, public park districts and employers that provide leave under a local paid leave law. Note that Cook County and Chicago have local paid leave laws. If a locality has opted out of the local law, however, employers within the locality must provide leave under the state law.

All employees are eligible except short-term employees of higher education institutions, temporary part-time student workers in higher education, collectively bargained construction or delivery workers and certain railroad workers.

Employers may limit employees' accrual of paid leave for any reason to 40 hours per year, and they may prohibit employees' use of paid leave during their first 90 days of employment.

VOTING LEAVE

Employers must provide employees with up to two hours of paid leave to vote in a general or special election or an election where propositions are submitted for a vote. The employer may specify the hours during which the employee may take leave to vote.

To qualify for two hours of voting leave, the employee's working hours must begin less than two hours after the polls open and end less than two hours before the polls close. An employee must apply for the leave with the employer prior to the day of the election.

JURY DUTY AND JUDICIAL WITNESS LEAVE

Employers must provide unpaid leave to employees summoned to jury duty if they are legally qualified to serve on a jury. Employees must provide notice within 10 days after the summons is issued. An employer may not punish or penalize an employee who is a witness to a crime and takes unpaid time off from work to testify at a criminal proceeding pursuant to a subpoena.

CIVIL AIR PATROL LEAVE

Employers with 15 or more employees must provide unpaid leave to eligible employees who are members of the civil air patrol performing a civil air patrol mission.

To be eligible, employees must have been employed by the same employer for at least 12 months and must have at least 1,250 hours of service during the 12-month period before the leave.

The amount of leave depends on employer's size, as follows:

- Between 15 and 50 employees—Up to 15 days of leave.
- More than 50 employees—Up to 30 days of leave.

Employers cannot require employees to exhaust other types of leave before taking civil air patrol leave. Employees must give advance notice of the leave, and employers may require certification to verify eligibility for the leave.

MILITARY LEAVE

In addition to protections under USERRA, the Illinois Service Member Employment and Reemployment Rights Act (ISERRA) provides service members with the right to take a military leave of absence and protects them from discrimination and retaliation. Service members include members of the armed forces of the U.S., the National Guard of any state or territory, and the State Guard. ISERRA also applies to members of the Military Auxiliary Radio System, United States Coast Guard Reserve, Civil Air Patrol and the Merchant Marines when performing official duties in support of an emergency, as well

as employees absent from employment to receive medical care by the Department of Defense for a condition, injury or illness sustained while they were engaged in military service.

Military service is protected if it is active or reserve, and includes state active duty. Reemployment rights as provided under federal USERRA apply to service members covered under ISERRA. Continuation of health insurance provisions apply. Employer notice requirements also apply.

In addition, it is unlawful for employers with 15 or more employees to discriminate against employees based on their military status. Separate nondiscrimination provisions apply to members of the National Guard or Reserves.

FAMILY MILITARY LEAVE

Employers with 15 or more employees must provide eligible employees with unpaid family military leave. To be eligible, an employee must:

- Be the spouse, parent, child or grandparent of a person called to military service lasting longer than 30 days; and
- Have been employed by the same employer for at least 12 months, and have worked at least 1,250 hours in the 12-month period before the leave.

The maximum amount of leave depends on the employer's size, as follows:

- Between 15 and 50 employees—Up to 15 days of leave.
- More than 50 employees—Up to 30 days of leave.

Before taking family military leave, employees must exhaust all other types of accrued leave, except sick or disability leave. The number of days provided may be reduced by the number of days the employee receives under the federal FMLA due to a qualifying exigency based on a spouse or child's service. Employees must provide advance notice. Employers may require certification to verify eligibility for leave. Job protections apply.

LEAVE FOR VICTIMS OF VIOLENT CRIME

Employers must provide unpaid leave for employees who are victims of domestic violence, sexual violence, gender violence, or any other crime of violence (as defined by law) or have a family or household member who is such a victim.

Employers are required to post a notice summarizing this type of leave.

Eligible employees may take leave to:

- Seek medical attention;
- Obtain services from a victim services organization;
- Obtain counseling;
- Participate in safety planning; or
- Seek legal assistance.

The maximum amount of leave depends on the employer's size, as follows:

- Employer with no more than 14 employees – up to four workweeks of leave during any 12-month period.
- Between 15 and 49 employees—up to eight workweeks of leave during any 12-month period.
- 50 or more employees—up to 12 workweeks of leave during any 12-month period.

Employers cannot require the substitution of another type of leave, except employees are not entitled to leave that exceeds, or is in addition to, the leave time permitted under the federal FMLA.

Employees must provide advance notice of the leave, unless it is not practicable to do so. Employers may require certification to determine eligibility for leave. Job protections apply to employees taking leave.

SCHOOL VISITATION LEAVE

Employers with 50 or more employees must provide leave to eligible employees to attend their children's school conferences or behavioral or academic meetings when the events cannot be rescheduled during nonwork hours.

To be eligible, an employee must have:

- Worked for the employer for at least six consecutive months before making the leave request; and
- Been employed on at least a half-time basis during that six-month period.

Employers must provide eligible employees with up to eight hours of school visitation leave per school year, but no more than four hours can be taken on one day.

Employers are not required to pay employees for the leave; however, they must make a good faith effort to allow employees to make up the time missed.

Before taking school visitation leave, an employee must use all other accrued leave, except sick or disability leave.

Employees must provide advance notice of leave. Employees should submit a verification form to employers following the leave. Job protections apply to employees taking leave.

BLOOD DONATION LEAVE

Leave requirements apply to employers with more than 50 employees. With employer approval, full-time employees who have been employed for six months or longer are eligible for paid blood donation leave.

After obtaining employer approval, an employee may use up to one hour (or more if authorized by the employer) to donate blood every 56 days, in accordance with appropriate medical standards.

Employers may require employees to provide confirmation of blood donation from a blood bank.

Eligible employees cannot be required to use accumulated or future sick or vacation time for the period used to donate blood.

FAMILY BEREAVEMENT LEAVE

Employers covered under the federal FMLA (those with 50 or more employees) must provide eligible employees with up to two weeks (10 working days) of unpaid bereavement leave due to the loss of a family member, and for reasons relating to family planning.

Eligible employees are those who suffer a qualifying loss and meet the eligibility requirements under the federal FMLA. Leave must be used within 60 days of the employee being notified of the child's/family member's death.

Leave may be used to:

- Attend the funeral or alternative of a covered family member;
- Make arrangements necessitated by the death of the covered family member;
- Grieve the death of the covered family member; or

Be absent from work due to a miscarriage, unsuccessful round of intrauterine insemination or assisted reproductive technology procedure, failed adoption match or adoption that is not finalized because it is contested, failed surrogacy agreement, diagnosis that negatively impacts pregnancy or fertility, or a stillbirth.

If an employee experiences the loss of more than one family member during a 12-month period, the employee is entitled to six weeks of leave during the 12-month period.

"Covered family member" means an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent.

Unless it is not reasonable or practicable, an employee must provide their employer with 48 hours' notice of the intention to take leave.

Employers may require documentation, such as a death certificate or published obituary. For leave resulting from an event listed under category 4, above, reasonable documentation is limited to a form to be provided by the Illinois Department of Labor, to be filled out by a treating health care provider of the employee's spouse, domestic partner or surrogate, or documentation from an adoption or surrogacy organization certifying that the employee or their spouse or domestic partner has experienced an event listed under category 4. The employer may not require that the employee identify which category of event the leave pertains to.

Employees must be permitted (but not required) to substitute any available paid or unpaid leave for bereavement leave.

The law does not create a right for an employee to take unpaid leave that exceeds, or is in addition to, unpaid leave provided under the federal FMLA.

EMPLOYEE SICK LEAVE

Illinois does not have a statewide law that requires employers to provide paid sick leave to employees. However, the Employee Sick Leave Act (ESLA) requires Illinois employers that currently provide personal sick leave benefits to employees to permit employees to use available sick leave benefits to care for family members.

"Personal sick leave benefits" include any paid or unpaid time available to an employee under an employer's plan or policy to cover an employee's absence from work due to personal illness, injury or medical appointment. Short- and long-term disability benefits (and other comparable insurance policies) are specifically excluded from the definition of personal sick leave benefits.

The ESLA requires employers to allow employees to use personal sick leave benefits to care for the employee's child, stepchild, spouse, domestic partner, sibling, parent, parent-in-law, grandchild, grandparent or stepparent, on the same terms that the employee is able to use personal sick leave benefits for his or her own illness or injury. Personal sick leave benefits must also be allowed to be used for a covered family member's "personal care." Personal care means helping meet basic medical, hygiene, nutrition and safety needs, and related transportation and emotional support.

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DISCRIMINATION

In addition to the workplace discrimination protections provided to employees under federal laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA) and the Equal Pay Law (EPA), Illinois law makes it unlawful for employers to engage in certain discriminatory employment practices.

In Illinois, the Human Rights Act, Pregnancy Accommodation Act, Minimum Wage Law, Equal Pay Act, Equal Wage Law, Right to Privacy in the Workplace Act and Genetic Information Privacy Act provide discrimination protections for employees.

HUMAN RIGHTS ACT

The Illinois Human Rights Act (IHRA) provides broad workplace discrimination protections to employees in the state. This document provides a general overview of the IHRA and includes information about changes to the law that went into effect in 2020.

Covered Employers

As of July 1, 2020, the IHRA applies to all employers in Illinois. Before that date, many portions of the law applied only to employers with at least 15 employees in the state. However, all employers were, and continue to be, subject to the IHRA's prohibitions against discrimination based upon physical or mental disability, sexual harassment, pregnancy and retaliation.

Unlawful Practices

The IHRA prohibits employers from taking adverse employment actions against an employee or applicant based on a "protected trait." Effective Jan. 1, 2020, this includes not only actions that are based on an individual's actual protected trait, but also those that are based on an individual's perceived protected trait. Protected traits include the following:

- Race
- Military status
- Sexual orientation
- Color
- Sex
- Pregnancy
- Religion
- Marital Status
- Unfavorable discharge of military status
- National origin
- Order of protection status
- Citizenship status
- Ancestry
- Disability
- Age (40 or older)
- Work authorization status (effective Aug. 2, 2021)
- Association with a person with a disability (effective Jan. 1, 2022)

The following details may prove helpful when evaluating compliance with the IHRA:

- **Order of protection status**: A person's status as being protected under an order of protection issued pursuant to the Illinois Domestic Violence Act or by a court of another state.
- **Sexual orientation:** Actual or perceived heterosexuality, homosexuality, bisexuality or gender-related identity, whether or not traditionally associated with the person's designated sex at birth.
- **Unfavorable discharge from military status:** Any discharge from the U.S. Armed Forces, their Reserve components or any National Guard or Naval Militia which is less than "honorable," but not "dishonorable."
- **Citizenship status:** The status of being: (1) a born U.S. citizen; (2) a naturalized U.S. citizen; (3) a U.S. national; or (4) a person born outside of the United States, and not a U.S. citizen who is not an unauthorized alien and who is protected from discrimination under federal law.
- **National origin discrimination:** Includes denial of equal employment opportunity because of national origin or a physical, cultural or linguistic characteristic or a name which identifies a person's national origin.
- **Age:** Generally means age 40 or older.
- **Pregnancy:** Includes pregnancy, childbirth or medical or common conditions related to pregnancy or childbirth.
- **Work authorization status:** The status of being a person born outside of the United States, and not a U.S. citizen, who is authorized by the federal government to work in the United States.

Actions that are unlawful when based on a protected trait generally include any actions affecting the terms or conditions of an individual's employment.

Effective Jan. 1, 2020, "harassment" is a new category of unlawful employment practices that is separate and distinct from the law's existing prohibitions against allowing or engaging in "sexual harassment."

Under this provision, unwelcome conduct that is based on any of the protected traits listed above is unlawful when it has the purpose or effect of:

- Substantially interfering with an individual's work performance; or
- Creating an intimidating, hostile or offensive working environment.

By contrast, the law's existing definition of "sexual harassment" includes any unwelcome sexual advances or requests for sexual favors and any conduct of a sexual nature when it has either of the above purposes or effects, or when submission to or rejection of it affects the victim's employment.

For purposes of both definitions, the amendments clarify that the phrase "working environment" is not limited to a physical location where an employee is assigned to perform his or her duties.

Nonemployee Protections

The amendments that went into effect in 2020 also added prohibitions against engaging in or allowing harassment or sexual harassment of nonemployees. Specifically, the IHRL permits contractors, consultants and any other person who provides services under a contract with an employer to hold an employer liable for any unlawful harassment that occurs on or after Jan. 1, 2020.

However, the changes also state that when any harassment or sexual harassment is committed by an employer's nonmanagerial or nonsupervisory employees (regardless of whether the victim is an employee, applicant or nonemployee), the employer may be held liable only if it became aware of the conduct and failed to take reasonable corrective measures.

Language Restrictions

Under the IHRA, an employer may not impose a restriction that has the effect of prohibiting employees from speaking a particular language in communications that are unrelated to the employees' duties. "Language" means a person's native tongue, such as Polish, Spanish or Chinese. It does not include things such as slang, jargon, profanity or vulgarity.

Age Discrimination In Apprenticeship And Training Programs

Employers are prohibited from discriminating against a person based on age in employment and in the selection, referral for or conduct of an apprenticeship or training program. For most purposes of the IHRA, "age" generally means age 40 and older. However, for purposes of prohibiting age discrimination in apprenticeship and training programs, "age" means at least age 18 but not yet age 40.

Immigration-related Practices

For purposes of verifying that an employee is not an unauthorized alien under federal law (IRS Form I-9), an employer may not request additional or different documents than those required to establish employment authorization and identity. Also, an employer may not refuse to honor any document that appears to be genuine on its face.

Employers participating in the Basic Pilot Program (now called E-Verify) through the U.S. Department of Homeland Security and U.S. Social Security Administration for purposes of establishing employment eligibility may not refuse to hire, segregate or act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment without following the procedures under the Basic Pilot Program.

Arrest Records

Unless otherwise permitted by law, it is a civil rights violation for an employer to inquire into or to use an arrest or criminal history record that has been ordered expunged, sealed or impounded as a basis to refuse to hire, segregate or act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment. However, an employer is not prohibited from obtaining or using other information indicating that a person actually engaged in the conduct for which he or she was arrested.

Unlawful Retaliation

An employer may not retaliate against an individual because he or she has reasonably and in good faith opposed a practice of unlawful discrimination, sexual harassment or discrimination based on citizenship status, or has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under the IHRA.

Exceptions

The IHRA does not prohibit an employer from:

- **Bona Fide Qualification**—Hiring or selecting between persons for bona fide occupational qualifications (for example, speech for a radio announcer or hearing for an air traffic controller) or any other permissible reason;
- **Veterans**—Giving preferential treatment to veterans and their relatives, as required by federal, state or local laws;
- **Unfavorable Discharge from Military Service**—Using unfavorable discharge from military service as a valid employment criterion when authorized by federal law or regulation or when a position of employment involves the exercise of fiduciary responsibility (that is, where the nature of employment requires that the employee be entrusted with the discretionary safekeeping or disposition of currency, negotiable instruments or other valuable property, without supervision and under circumstances where great trust, confidence and good faith are necessarily associated with the position);
- **Ability Tests**—Giving or acting upon the results of any professionally developed ability test, provided that the test is not used as a subterfuge for or does not have the effect of unlawful discrimination;
- **Merit or Retirement Systems**—
- Applying different standards of compensation or different terms, conditions or privileges of employment pursuant to a merit or retirement system, provided that the system is not used as a subterfuge for or does not have the effect of unlawful discrimination; or
- Requiring the retirement of an employee who has attained age 65 and who, for the past two-year period immediately before retirement, was employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, non-forfeitable annual retirement benefit of a certain amount upon retirement;
- **Training or Apprenticeship Program**—Establishing an educational requirement as a prerequisite to selection for a training or apprenticeship program, provided the requirement does not operate to discriminate on the basis of any prohibited classification except age; or
- **Citizenship Status**—Making legitimate decisions based on citizenship status, if specifically authorized or required by federal or state law.

In addition, the IHRA does not require employers to employ individuals who are not able to lawfully work in the United States. However, the IHRA's protec-

tions extend to all individuals, regardless of their ability to lawfully work in the United States. Thus, individuals who are not able to lawfully work in the United States are allowed to file discrimination charges with the Illinois Department of Human Rights (IDHR).

Hiring Practices

In addition to the IHRA's general prohibition on unlawful discrimination summarized above, the following specific restrictions apply to an employer's hiring practices:

- **Disabling Conditions**—An employer may not require a job applicant to list or disclose all of the disabling conditions that he or she is exhibiting. However, employers may uniformly inquire of all applicants for employment or admission to an apprenticeship or training program whether they have physical or mental disabilities that may impair their abilities to acceptably perform the required duties or to successfully complete the apprenticeship or training program.
- **National Origin or Ancestry**—An employer may not require a job applicant to disclose his or her national origin or ancestry, unless it can show a bona fide occupational qualification. Similarly, an employer may not require a job applicant to disclose his or her citizenship where a citizenship requirement would have the purpose or effect of discriminating against a person based on national origin. It is not a violation of the IHRA for employers to uniformly ask all applicants whether they are able to lawfully work in the United States.
- **Gender Preference**—Unless sex is a bona fide occupational qualification for the job involved, employers may not directly or indirectly express a preference, limitation or specification for persons of one sex in:
- Any listing, advertisement or request for referrals; or
- An application form or other inquiry made of an applicant for employment or for an apprenticeship program.

An employer may conduct pre-employment physical or psychological examinations, as follows:

- An employer may require all applicants who have been found otherwise qualified for selection to submit to pre-employment physical or psychological examinations in order to determine whether they are capable of acceptably performing the activities necessary to the job or training at issue.
- An employer may use examinations to determine the nature of any reasonable accommodation needed to enable an applicant to perform acceptably, but not to disqualify an applicant who is revealed as having a condition or characteristic presenting a risk of future injury.
- Examinations can be conducted prior to the determination that an applicant is fully qualified if the practice is followed consistently with all applicants and if it can be demonstrated that each substitute evaluative procedure is more expense or burdensome.
- Employers must make the results of any pre-employment examinations available to applicants upon request.

PROHIBITED HARASSMENT

Sexual Harassment

The IHRA prohibits all employers, employees and agents of an employer from engaging in sexual harassment. An employer may be responsible for the sexual harassment committed against its employees by non-employees (for example, customers) or by non-managerial or non-supervisory employees if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

"Sexual harassment" means any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:

- Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting such individual; or
- The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

National Origin Harassment

Under the IHRA, employers have an affirmative duty to maintain a working environment that is free from harassment on the basis of national origin. Employers are held responsible for both its own acts and the acts of their agents and supervisory employees with respect to national origin harassment, regardless of whether the complained-about acts were authorized or even forbidden by the employer, and regardless of whether the employer knew or should have known of their occurrence. An employer may also be held responsible for the national origin harassment of its employees by nonemployees (for example, customers) or fellow employees if the employer becomes aware of the conduct and fails to take immediate and appropriate corrective action.

Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when it:

- Has the purpose or effect of creating an intimidating, hostile or offensive working environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

DISABILITY DISCRIMINATION

Under the IHRA, a "disability" is:

- A determinable physical or mental characteristic, including (but not limited to) a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog;
- The history of these characteristics; or
- The perception of these characteristics, which may result from disease, injury, congenital condition of birth or functional disorder and which are unrelated to the person's ability to perform the duties of a particular job or position.

A person's condition is related to his or her ability to perform the duties of a particular job or position if it would make his or her employment in the particular position hazardous to the health or safety of the person or others, or if it results in behavior that fails to meet acceptable standards, such as absenteeism, poor quality or quantity of work or disruptiveness. An employer must explore reasonable accommodations to determine whether an individual's condition prevents acceptable or safe performance of the activities related to the person's job.

A person's alcoholism or drug dependence that results in intoxication or excessive absence or tardiness at work is presumptively related to the person's ability to perform.

Effective Jan. 1, 2022, discrimination based on disability also includes unlawful discrimination against an individual because of the individual's association with a person with a disability.

Reasonable Accommodation

Employers must make reasonable accommodation of the known physical or mental limitations of otherwise qualified applicants or employees who have disabilities, unless the employer can demonstrate that accommodation would be prohibitively expensive or would unduly disrupt the ordinary conduct of business. Accommodation may include:

- Alternation of the facility or worksite;
- Modification of work schedules or leave policy;
- Acquisition of equipment;
- Job restructuring;
- Provision of readers or interpreters; and
- Other similar actions.

Employers are not required to provide accommodations of a personal nature, such as eyeglasses or hearing aids. Likewise, it is not necessary for employers to provide superfluous accommodations (for example, providing a driver to accommodate a blind person's traveling difficulties). An employer is also not required to hire two full-time employees to perform one job in order to accommodate a disabled individual.

Illegal Use of Controlled Substances and Drug Testing

In general, a person's illegal use of drugs or alcohol is not considered a "disability" when an employer acts on the basis of that illegal use. Exceptions apply for employees who are involved in drug rehabilitation programs or who are successfully rehabilitated and no longer using illegal drugs, as well as for employees who are erroneously regarded as engaging in illegal drug use.

The IHRA does not prohibit an employer from:

- Adopting or administering reasonable policies or procedures, including drug testing, designed to ensure that an individual who is involved with a drug rehabilitation program or has been successfully rehabilitated is no longer illegally using drugs;
- Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;
- Requiring that employees not be under the influence of alcohol or illegally using controlled substances at the workplace;
- Requiring employees to behave according to the requirements established under the federal Drug-Free Workplace Act; or
- Holding an employee who is an alcoholic or who engages in the illegal use of any controlled substance to the same qualification standards for employment or job performance to which other employees are held, even if any unsatisfactory performance or behavior is related to an employee's illegal drug use or alcoholism.

SEX DISCRIMINATION

Compensation and Benefits

It is a violation of the IHRA for an employer to discriminate based on the sex of an employee, or on the predominant sex of a group of employees, in negotiating and establishing the wages, benefits or other compensation for those employees. When determining employees' wages and benefits, an employer may not differentiate based on sex among employees performing the same or substantially the same work under similar working conditions.

Seniority Rosters and Lines of Progression

An employer may not classify jobs by sex or establish a system of classification, seniority or progression that operates as a form of classification by sex or that impedes the advancement of one sex into certain jobs. An exception applies if the criteria involved in a classification are bona fide occupational qualifications for a job.

Pregnancy

Employers are prohibited from having any written or unwritten policy or practice that excludes applicants or employees from employment because of pregnancy. Employers are also prohibited from discharging an employee because she becomes pregnant. However, an exception may apply if pregnancy renders an individual physically unable to be trained for or perform the duties of a position.

If an employer offers leaves for other temporary disabilities, temporary disability resulting from pregnancy, miscarriage, abortion, childbirth and recovery must be a justification for a leave of absence for a female employee. The terms and conditions of pregnancy-related disability leave cannot be more restrictive than those applied to disability leave for other purposes.

Likewise, non-disability leave for childrearing must be granted on the same terms and conditions applied to other non-disability leaves of absence, and must be applied equally to female and male employees. In addition, illness or disability caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery must be treated as any other temporary disability under a disability or medical benefit plan available in connection with employment.

Pregnancy Accommodation Act

Effective Jan. 1, 2015, the IHRA was amended by the Illinois Pregnancy Accommodation Act (IPAA) to provide additional protections for pregnant employees. In addition to including "pregnancy" as a protected characteristic under the IHRA, the law requires employers to provide reasonable accommodations to pregnant employees and applicants, if requested. Examples of reasonable accommodation include:

- More frequent or longer bathroom breaks;
- Breaks for increased water intake;
- Breaks for periodic rest;
- Private, non-bathroom space for expressing breast milk and breastfeeding;
- Assistance with manual labor;
- Light duty;
- Temporary transfer to a less strenuous or hazardous position;
- Provision of an accessible worksite;
- Acquisition or modification of equipment;
- Job restructuring;
- Part-time or modified work schedule;
- Reassignment to a vacant position; or
- Time off to recover from conditions related to childbirth and leave necessitated by pregnancy, childbirth, or medical or common conditions resulting from pregnancy or childbirth.

Reasonable accommodations must be requested and mutually agreed to by the employee and employer. Employers may not force an employee to take leave if another reasonable accommodation can be provided. It is important for employers to engage in a good faith and meaningful exchange with an employee or applicant to determine effective accommodations.

Employers must reinstate an employee affected by pregnancy or childbirth to her original position, or to a position with equal pay, seniority, retirement, fringe benefits and other applicable service credits, upon her intent to return to work or when the need for any reasonable accommodation ends.

Medical Certification

An employer may require documentation from an employee's health care provider concerning the need for a requested reasonable accommodation, in

the same manner the employer requires documentation for other disability conditions. However, an employer is limited to obtaining:

- Medical justification for the requested accommodation(s);
- A description of the reasonable accommodation(s) medically advisable;
- The date the reasonable accommodation(s) became medically advisable; and
- The probable duration of the reasonable accommodation(s).

Exceptions

An employer is not required to create additional employment opportunities, discharge or transfer another employee or promote an unqualified employee as a reasonable accommodation for a pregnant employee. In addition, an employer does not have to implement a reasonable accommodation if it would impose an undue hardship on the ordinary operation of the employer's business. The burden of proving undue hardship lies with the employer, and multiple factors are taken into consideration including the nature and cost of the accommodation, the overall financial resources of the employer and the type of operation the employer has.

Notice Requirements

The IPAA requires employers to conspicuously post a notice to inform employees of their rights and how to file a charge under the Pregnancy Accommodation Act. In addition, employers who maintain handbooks must include information on employee rights regarding pregnancy accommodation.

WAGE DISCRIMINATION

As of Jan. 1, 2004, the Illinois Equal Pay Act of 2003 (IEPA) protects certain employees in the state from being paid less than other employees based on their sex or race. In 2019, the IEPA was amended to prohibit employers from asking about, seeking or using past pay information to screen applicants for employment. This Employment Law Summary provides an overview of the IEPA, as amended.

Covered Employers

The IEPA applies to all employers in Illinois. Under the law, the term "employer" includes:

- All private individuals or entities for whom employees are gainfully employed in the state; and
- The state government and all other public employers within the state, such as local governments and school districts.

Overview of Prohibited Actions

Subject to certain conditions and exceptions, the IEPA generally prohibits:

- Paying an employee less than another employee who is of the opposite sex for the same or substantially similar work;
- Paying an African-American employee less than another employee who is not African-American for the same or substantially similar work;
- Screening applicants based on their current or past pay information (salary history);
- Seeking salary history from applicants or their current or former employers;
- Considering applicants' salary history in any employment decisions;
- Taking adverse actions against employees for disclosing their compensation;
- Requiring employees to agree not to disclose their compensation; and
- Preventing employees from, or retaliating against them for, exercising any rights under the law.

General Enforcement

The IEPA is administered and enforced by the Illinois Department of Labor (IDOL), which has the power to investigate and gather data from employers regarding their employee wages, employee hours and other conditions and practices of employment.

Employers must allow the IDOL to enter and inspect their workplaces and employment records at reasonable times during regular business hours. The IDOL also has the authority to question employees and perform other investigative actions as it deems necessary to enforce the law. These powers may be delegated to the Illinois Department of Human Rights (IDHR) in certain cases.

An individual that believes an employer has violated the IEPA may initiate an IDOL or IDHR investigation by filing a complaint with the IDOL within one year after an alleged violation.

Reporting Requirement for Large Employers

Employers with 100 or more employees in Illinois must submit an application to obtain an Equal Pay Registration Certificate by providing certain pay, demographic, and other data to the IDOL every two years. The IDOL uses the submitted information help identify and respond to potential IEPA violations.

Unequal Pay Based on Sex or Race

The IEPA's prohibitions against paying different wages based on sex or race apply if:

- The employees involved perform the same or substantially similar work;
- Performance of the work requires substantially similar skill, effort and responsibility; and
- The work is performed under similar working conditions.

An employer that pays wages in violation of the IEPA's equal pay provisions may not reduce any employee's wages in order to comply.

Exceptions

Employees of opposite sexes or of different races who meet the criteria listed above may nevertheless be paid differently if:

- They work in different counties;
- The payments are made under a seniority system, merit system or system that measures earnings by quantity or quality of production; or

The differential is based on a factor other than sex, race, or any other trait that is protected under the Illinois Human Rights Act, as long as that other factor:

- Is not based on or derived from a prohibited differential;
- Is job-related with respect to the position and consistent with a business necessity; and
- Accounts for the differential.

Enforcement

An employee who believes he or she has been paid less than the wage to which he or she is entitled under the IEPA may also file a civil lawsuit against the employer within five years from the date of the underpayment. In this type of lawsuit, a court may impose an injunction on the employer and order it to pay:

- The entire amount of the underpayment, plus interest;
- Compensatory damages (if it acted with malice or reckless indifference);
- Punitive damages;
- Costs and reasonable attorney's fees; and
- Civil penalties of up to $10,000.

Salary History Provisions

Under the IEPA's provisions regarding salary history, employers are prohibited from:

- Screening applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history satisfy minimum or maximum criteria;
- Requesting or requiring wage or salary history from an applicant as a condition of employment, being considered for employment or an offer of compensation;
- Seeking an applicant's wage or salary history from any current or former employer (unless the applicant is a current employee or the information is part of the public record under state or federal law); and
- Considering or relying on any past pay information (even if it has been voluntarily disclosed by an applicant) as a factor in determining whether to offer employment to the applicant, how much to offer the applicant for employment or how to compensate the applicant in the future.

Permitted Actions

The IEPA's salary history provisions do not prevent employers from:

- Providing an applicant with information about the wages, benefits, compensation or salary offered in relation to a position; or
- Engaging in discussions with an applicant about his or her salary expectations for a position.

Effective Aug. 12, 2021, the law clarifies that:

- Employers may also engage in discussion with an applicant about unvested equity or deferred compensation that the applicant would forfeit or have canceled by virtue of the applicant's resignation from the applicant's current employer; and
- If, during a discussion unvested equity or deferred compensation, an applicant voluntarily and without prompting discloses that the applicant would forfeit or have canceled by virtue of resignation from the applicant's current employer unvested equity or deferred compensation, the employer may request the applicant to verify the aggregate amount of that compensation by submitting a letter or document stating the aggregate amount of the unvested equity or deferred compensation from, at the applicant's choice, one of the following:
- The applicant's current employer; or
- The business entity that administers the funds that constitute the unvested equity or deferred compensation.

Enforcement

Individuals who believe an employer has violated the IEPA's prohibitions against inquiring about or using their past pay information may file a civil lawsuit against the employer within five years of the violation. If a court finds that an employer has violated these prohibitions, it may impose an injunction and order the employer to pay:

- Special damages of up to $10,000;
- Actual damages;
- Costs and reasonable attorney's fees; and
- Civil penalties of up to $10,000 per violation.

Retaliation And Wage Disclosure Provisions

In addition to the above, the IEPA makes it illegal for employers to:

- Interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the law;
- Discharge or in any other manner discriminate against any individual for:
- Inquiring about, disclosing, comparing or otherwise discussing any employee's wages; or
- Aiding or encouraging any person to exercise his or her rights under the law; or
- Require an employee to sign a contract or waiver that would prohibit him or her from disclosing or discussing information about his or her wages, salary, benefits or other compensation.

Exception

Employers may prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage or salary information from disclosing that information without prior written consent from the employee whose information is sought or requested.

Enforcement

Employers that violate the IEPA's retaliation or wage disclosure provisions may be ordered to pay the following to an employee who is affected by the violation:

The value of any lost benefits, backpay and front pay as appropriate (as long as the employee has made reasonable efforts to mitigate his or her damages); and

An additional, equal amount as liquidated damages.

Recordkeeping Requirements

The IEPA requires all employers to make and preserve records that document the following for each of their employees:

- Name;
- Address;
- Occupation; and
- Wages paid.

These records must be kept and made available for inspection by the IDOL for a period of at least five years. However, any of these records that relate to an ongoing investigation or enforcement action under the IEPA must be maintained until their destruction is authorized by the IDOL or a court order.

EMPLOYEE PRIVACY LAWS

In addition to the Human Rights Act and wage discrimination laws, Illinois prohibits employment discrimination under the Right to Privacy in the Workplace Act (Workplace Privacy Act) and the Genetic Information Privacy Act (Genetic Privacy Act).

Workplace Privacy Act

The Workplace Privacy Act prohibits employers from discriminating against employees or prospective employees who use lawful products outside the workplace during nonworking or on-call hours, if the use does not impair an employee's ability to perform his or her assigned duties. As of June 25, 2019, the law defines lawful products as products that are legal under state law. This includes marijuana, as legalized under the state's Cannabis Regulation and Tax Act.

The Workplace Privacy Act also makes it unlawful for employers to make pre-employment inquiries regarding workers' compensation and occupational disease claims and benefits. The Workplace Privacy Act applies to all Illinois employers, regardless of size.

Lawful products include tobacco products, alcoholic beverages, food products, over-the-counter drugs and drugs lawfully prescribed by an employee's physician. The Workplace Privacy Act is enforced by the IDOL.

Genetic Privacy Act

The Genetic Privacy Act restricts an employer's use of genetic tests and genetic information. Employers are required to treat genetic information in a

manner that is consistent with federal law, including the federal Genetic Information Nondiscrimination Act (GINA), and they are also required to comply with specific nondiscrimination requirements. While GINA applies to employers with 15 or more employees, the Genetic Privacy Act applies to all Illinois employers, regardless of size.

Under Illinois law, "genetic information" means, with respect to any individual, information about the individual's genetic tests, the genetic tests of a family member of the individual and the manifestation or possible manifestation of a disease or disorder in a family member of the individual. Genetic information does not include information about an individual's age or sex.

Individuals may bring lawsuits in order to enforce their rights under the Genetic Privacy Act. Among other possible consequences, employers that violate the Genetic Privacy Act may be required to pay actual damages, liquidated damages and attorney's fees and costs.

COMPLIANCE STEPS FOR EMPLOYERS

In general, state employment nondiscrimination laws provide similar, but not identical, protections to employees as the federal employment nondiscrimination laws. For example, state laws may protect different individuals, cover small employers who are not subject to the federal provisions or provide different exemptions from their discrimination prohibitions. Employers should become familiar with how both federal and state laws apply to their employment practices.

Additionally, employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of working environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up to date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict "no tolerance" policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.

SEXUAL HARASSMENT PREVENTION AND TRAINING LAWS

As of Jan. 1, 2020, all employers in Illinois must provide annual employee training on workplace sexual harassment prevention. In addition, as of July 1, 2020, all provisions of the Illinois Human Rights Act (IHRA) apply to every employer in the state, regardless of size (previously, the law applied only to those with 15 or more employees).

These changes, among others, were made under new laws that the state enacted in August 2019 to expand existing protections against workplace discrimination and harassment. This document provides an overview of the law's prohibitions and requirements related to sexual and other types of unlawful workplace harassment.

TRAINING REQUIREMENTS

Every employer that has employees working in Illinois must either adopt the Illinois Department of Human Rights' (IDHR) model sexual harassment prevention training program as its own or use a different program that meets or exceeds the model's minimum standards and present it to each of its employees.

Every employee (regardless of status, such as short-term, part-time or intern) must receive the training at least once every calendar year. New employees should be trained as soon as possible after hire, but no later than the Dec. 31 of the year they were hired.

At minimum, the law requires an employer's training program to include:

- An explanation of sexual harassment under Illinois law;
- Examples of conduct that constitutes unlawful sexual harassment;
- A summary of relevant federal and state statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and
- A summary of responsibilities of employers in the prevention, investigation and corrective measures of sexual harassment.

Employers must also keep a record of all trainings they provide. These records, which may be in the form of written or electronic certificates, signed employee acknowledgements or course sign-in worksheets, must be made available for IDHR inspection upon request.

Restaurants, bars, hotels and casinos in the state are subject to additional training requirements, as described later in this document.

EXPANDED PROTECTIONS AGAINST HARASSMENT

Illinois' existing IHRA protects employees and applicants from employment discrimination based on certain protected traits. Effective Jan. 1, 2020, amendments to the IHRA clarify that the term "unlawful discrimination" includes actions based on an individual's actual or perceived:

- Race;
- Color;
- Religion;
- National origin;
- Ancestry;
- Military status;
- Sex;
- Marital status;
- Disability;
- Order of protection status;
- Age;
- Sexual Orientation;
- Pregnancy; or
- Unfavorable discharge from military status.

HARASSMENT PROHIBITION

Also effective Jan. 1, 2020, "harassment" is a category of unlawful employment practices that is separate and distinct from "sexual harassment." Under this provision, unwelcome conduct that is based on any of the protected traits listed above, plus any unwelcome conduct that is based on an individual's actual or perceived citizenship status, is unlawful when it has the purpose or effect of:

- Substantially interfering with an individual's work performance; or
- Creating an intimidating, hostile or offensive working environment.

By contrast, the law's existing definition of "sexual harassment" includes any unwelcome sexual advances or requests for sexual favors and any conduct of a sexual nature when:

- It has either of the above purposes or effects; or
- Submission to or rejection of it affects the victim's employment.

For purposes of both definitions, the amendments clarify that the phrase "working environment" is not limited to a physical location where an employee is assigned to perform his or her duties.

Nonemployee Protections

The amendments added prohibitions against engaging in or allowing harassment or sexual harassment of nonemployees. Specifically, the IHRL now permits contractors, consultants and any other person who provides services under a contract with an employer to hold the employer liable for any unlawful harassment or sexual harassment that occurs on or after Jan. 1, 2020.

However, the changes also state that when any harassment or sexual harassment is committed by an employer's nonmanagerial or nonsupervisory employees (regardless of whether the victim is an employee, applicant or nonemployee), the employer may be held liable only if it became aware of the conduct and failed to take reasonable corrective measures.

Contracting Restrictions

Amendments to the IHRL made under the Workplace Transparency Act (WTA) made certain types of contractual provisions void and unenforceable. These amendments also allow individuals to recover reasonable attorney's fees and costs from employers that violate the law by including the newly prohibited provisions in a contract.

CONFIDENTIALITY AGREEMENTS

First, any settlement or termination agreement that an employer enters into with an employee, former employee or applicant on or after Jan. 1, 2020, may not include any promises of confidentiality related to any alleged unlawful employment practices, unless:

- Confidentiality is the documented preference of the employee, former employee or applicant, and is mutually beneficial to both parties;
- The employer notifies the employee, former employee or applicant, in writing, of that individual's right to have an attorney or representative of the individual's choice review the settlement or termination agreement before it is executed;
- There is valid, bargained-for consideration in exchange for the confidentiality; and
- The settlement or termination agreement does not waive any future claims of unlawful employment practices.

In addition, when an employee, former employee or applicant prefers to include a confidentiality provision, the employer must first provide a written copy of the proposed contract to the individual, and a 21-day waiting period applies. The employee, former employee or applicant may sign the agreement any time within those 21 days, as long as the individual knowingly and voluntarily waives any further time for consideration. After executing the contract, the employee, former employee or applicant has the right to revoke it for seven days, and the agreement does not become effective or enforceable until the revocation period expires.

CLAIM WAIVERS AND ARBITRATION AGREEMENTS

Second, any agreement an employer makes with an employee or applicant on or after Jan. 1, 2020, may not unilaterally condition the individual's employment on the individual being:

- Prevented from making truthful statements or disclosures about alleged unlawful employment practices; or
- Required to waive, arbitrate or otherwise diminish any existing or future claim, right or benefit related to an unlawful employment practice.

However, employers and individuals may mutually agree to conditions described above, as long as the mutual agreement is in writing, demonstrates actual, knowing and bargained-for consideration, and acknowledges the employee or applicant's rights to:

- Report any good faith allegation of unlawful employment practices to any appropriate enforcement agency or official;
- Participate in a proceeding with any appropriate enforcement agency;
- Make any truthful statements or disclosures required by law, regulation or legal process; and
- Request or receive confidential legal advice.

ANNUAL REPORTING OBLIGATIONS

Beginning July 1, 2020, and by each July 1 thereafter, every employer in the state that had an adverse judgment or administrative ruling against it in the preceding calendar year must file a report with the IDHR. For this purpose, the phrase "adverse judgment or administrative ruling" means any final and non-appealable judgment or administrative ruling entered in favor of a claimant in which there was a finding of sexual harassment or unlawful discrimination under either the IHRA, Title VII of the federal Civil Rights Act, or any other federal, state or local law that prohibits sexual harassment or unlawful discrimination.

An employer's report must include the following information:

- The total number of adverse judgments or administrative rulings during the preceding year;
- Whether any equitable relief was ordered against the employer in those judgments or rulings;
- How many of the judgments or rulings were for claims of sexual harassment; and
- How many of the judgments or rulings were for claims of discrimination or harassment based on each of the following categories:
- Sex;
- Age;
- Religion;
- Disability;
- Race, color or national origin;
- Sexual orientation or gender identity;
- Military status or unfavorable discharge from military status; and
- Any other characteristic protected under the IHRL.

In addition, any employer that is under investigation by the IDHR may be required to provide information about any settlements it made for claims of unlawful employment practices in the preceding five years.

INDUSTRY-SPECIFIC REQUIREMENTS

Effective Jan. 1, 2020, every restaurant and bar that operates in Illinois must:

- Provide additional annual training on sexual harassment prevention, as a supplement to required training described above, to every employee, regardless of employment classification;
- Establish a written sexual harassment prevention policy;
- Provide a written copy of its policy to each employee within the first calendar week of hire; and
- Post a copy of its policy in the workplace.

The new law lists specific provisions that restaurants and bars must include in their written policies and also directs the IDHR to produce a model program that employers may use to provide the supplemental training.

Effective July 1, 2020, every hotel and casino operating in the state must:

- Provide a safety or notification device to each employee who is assigned to work in a guest room, restroom or casino floor under circumstances where no other employee is present;
- Develop, maintain and comply with a written anti-sexual harassment policy to protect employees against sexual assault and sexual harassment by guests;
- Provide all employees with a current copy of its policy in both English and Spanish (and make a good-faith effort to provide it in any other language spoken by a predominant portion of its employees); and
- Post a current copy of its policy, in both English and Spanish, in conspicuous places where employees can reasonably be expected to see it.

The Hotel and Casino Employee Safety Act, also makes it unlawful for a hotel or casino to retaliate against an employee for reasonably using a safety device or notification device or taking any other actions allowed under the law. A hotel or casino employee who believes an employer has violated these requirements may sue the employer in the circuit court and obtain various remedies including reinstatement, compensatory damages, and reasonable attorney's fees and costs.

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WORKPLACE VIOLENCE PREVENTION

Workplace violence is a serious safety and health issue. While no federal law specifically addresses violence in the workplace, several laws impose a duty on employers to maintain a safe workplace.

For example, the Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws make employers responsible for injuries sustained by employees at the workplace.

In addition, two Illinois laws specifically workplace violence issues. One of them is the Illinois Workplace Violence Prevention Act (WVPA), which allows employers to obtain a workplace protection restraining order to prevent further workplace violence or threats of workplace violence. The other state law is the Illinois Health Care Workplace Violence Prevention Act (HC-WVPA), which addresses workplace violence in health care settings. The purpose of the HC-WVPA is to ensure that patients, visitors and employees of health care facilities are guaranteed a reasonably safe and secure environment.

WORKPLACE VIOLENCE PREVENTION ACT (WVPA)

The WVPA applies to employers that have at least 15 employees during any work week. Under this law, an employer may seek a workplace protection restraining order against a person in order to prohibit further violence or threats of violence if:

- An employee has suffered unlawful violence and the person has made a credible threat of violence to be carried out at the employee's workplace;
- An employee believes the person has made a credible threat of violence to be carried out at the employee's workplace;
- An unlawful act of violence has been carried out at the workplace; or
- A person has made a credit threat of violence at the workplace.

"Unlawful violence" means any act of violence, harassment or stalking, as defined by Illinois law. "Credible threat of violence" means a statement or course of conduct that causes a reasonable person to fear for the person's safety at his or her workplace or for the safety of others at his or her workplace.

HEALTH CARE WORKPLACE VIOLENCE PREVENTION ACT (HC-WVPA)

The HC-WVPA requires all health care workplace facilities to adopt and implement a plan that is reasonably directed at preventing and protecting employees.

A "health care workplace" means a mental health facility or developmental disability facility, other than a hospital or unit of a hospital. It does not include the office of a licensed medical physician, advanced practice nurse or physician assistant.

Each healthcare employer must evaluate its own unique circumstances and appropriately tailor its workplace violence plan. All plans must address security considerations related to:

- The physical attributes of the health care workplace;
- Staffing, including security staffing;
- Personnel policies;
- First aid and emergency procedures;
- The reporting of violent acts; and
- Employee education and training.

The law allows for some flexibility in the creation of workplace violence plans under the HC-WVPA, as it recognizes that each workplace has its own unique circumstances and ways in which health care services are delivered. However, the law also requires all health care employers to conduct a security and safety assessment to identify potential hazards for violence and determine the necessary preventative measures to address those hazards. The assessment must also include a measure of the frequency of violent acts in the workplace during at least the preceding five years (or during any preceding years for which records are available) and must identify the causes and consequences of those violent acts.

Plan Reporting Requirement

As soon as a healthcare employer completes and adopts its workplace violence prevention plan, it must file a copy of it with the Illinois Department of Human Services (Department). The employer must then conduct a review of the plan

at least once every three years and report each review to the Department. These reports must include a statement about whether any changes were made to the plan, along with details about any changes that were made. If an employer makes any changes to its plan between its scheduled reports, it must promptly send notification of the changes to the Department.

Violence Prevention and Training

The HC-WVPA also requires health care employers to give workplace violence prevention training to all employees who are affected by a violence prevention policy. The law does not specify the manner in which training must take place, but it does indicate that follow-up training must be provided as appropriate. The law also provides examples of training methods for employees, including classes, videotapes, brochures, verbal training and other verbal or written training that is determined to be appropriate under a plan.

Training must include the following topics:

- General and personal safety procedures;
- The violence escalation cycle;
- Violence-predicting factors;
- Obtaining patient history from a patient with a history of violent behavior;
- Verbal and physical techniques to de-escalate and minimize violent behavior;
- Strategies to avoid physical harm;
- Restraining techniques;
- Appropriate use of medications to reduce violent behavior;
- Documenting and reporting incidents of violence;
- The process whereby employees affected by violence may debrief or be calmed down in order to reduce the tension of the situation;
- Any resources available to employees for coping with violence;
- The workplace violence prevention plan adopted by the employer; and
- Protection of confidentiality in accordance with HIPAA and other related laws.

Record Of Violent Acts

All employers subject to the HC-WVPA must keep records of any violent act that occurs that the work place and involves an employee, a patient, or a visitor. The record must include at least the following information:

- The health care workplace's name and address;
- The date, time, and specific location at the health care workplace where the violent act occurred;
- The name, job title, department or ward assignment, and staff identification or other identifier of the victim, if the victim was an employee;
- A description of the person against whom the violent act was committed as either a patient, employee, visitor or a party not included in one of those categories;
- A description of the person committing the violent act as committed as either a patient, employee, visitor or a party not included in one of those categories;
- A description of the type of violent act as one of the following:
- A verbal or physical threat that presents imminent danger;
- A physical assault with major soreness, cuts, or large bruises;
- A physical assault with severe lacerations, a bone fracture, or a head injury;
- A physical assault with loss of limb or death; or
- A violent act requiring employee response, in the course of which an employee is injured;
- An identification of any body part injured;
- A description of any weapon used;
- The number of employees in the vicinity of the violent act when it occurred; and
- A description of actions taken by employees and the health care workplace in response to the violent act.

FIREARM CONCEALED CARRY ACT

The Illinois Firearm Concealed Carry Act (IFCCA), which went into effect in 2013, grants Illinois residents and certain residents of other states the right to carry concealed firearms within the state.

The Illinois State Police Department (ISPD) administers the concealed carry permit licensing process.

Concealed Firearms

The IFCCA defines a concealed firearm as a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle. A handgun is any device that is designed to:

- Eject a projectile by explosion, gas expansion or escape of gas; and
- Be held and fired by use of a single hand.

The IFCCA's definition of a handgun does not include:

- Stun guns;
- Tasers;
- Machine guns;
- Short-barreled rifles or shotguns; or
- Any pneumatic gun, spring gun, paint ball gun or B-B gun that expels a single globular projectile that:
- Is less than 0.18 in. in diameter;
- Has a maximum muzzle velocity of less than 700 feet per second; or
- Expels breakable paintballs containing washable marking colors.

Concealed Carry Licenses (CCL)

Individuals who wish to carry a concealed firearm in Illinois must first obtain a CCL. Once issued, a CCL is valid for five years.

CCL holders must carry their licenses whenever they carry a concealed firearm, except when they:

- Carry the firearm on their land, abode, legal dwelling or fixed place of business;
- Have received the permission of another to carry the firearm on the other's land, abode, legal dwelling or fixed place of business;
- Have been authorized to carry a firearm by the Illinois Criminal Code of 2012 (this includes peace officers, wardens, prison superintendents and keepers, members of the Armed Services, Reserve Forces or the Illinois National Guard, special agents hired by public utility entities to perform police functions, licensed private security contractors, private detectives and security guards); or
- Have a broken-down handgun that is enclosed in a case, non-functioning, not immediately accessible and not loaded.

Eligibility

To be eligible for a CCL, an individual must:

- Complete a CCL application;

- Be at least 21 years of age;
- Have a current, valid Firearm Owner's Identification Card (FOID Card) issued by the ISPD; and
- Complete a firearms training and education course provided by a certified firearms instructor. The ISPD maintains a list of certified firearms instructors the public can contact to satisfy the training requirement.

Meeting these requirements does not exempt CCL holders from having to complete a criminal background investigation before purchasing a firearm. This additional screening exists to verify that the applicant is still eligible and has not been disqualified from holding a CCL. If certain criteria are met, qualified retired law enforcement officers may also qualify for a CCL.

Disqualifications

Individuals are disqualified from obtaining a CCL if they are:

- Prevented by federal or state law from possessing or receiving a firearm;
- Subject to a pending arrest warrant, prosecution or proceeding for an offense or action that could lead to a disqualification to own or possess a firearm;
- Convicted or found guilty of a misdemeanor involving the use or threat of physical force or violence to any person within the five years prior to the date of the license application;
- Convicted or found guilty of two or more violations related to driving while under the influence of alcohol, drugs or any other intoxicant within the five years prior to the date of the license application; or
- Participating in a residential or court-ordered treatment for alcoholism, alcohol detoxification or drug treatment within the five years prior to the date of the license application.

Objections by Law Enforcement Agencies

Any law enforcement agency may object to a CCL application based on a reasonable suspicion that the applicant is a danger to himself, herself or others. This objection must be made within 30 days of the date when the application is submitted.

An applicant can be reasonably considered to pose a threat to the public if, within the seven years prior to the CCL application, the applicant:

- Has been arrested five or more times, regardless of the reason; or
- Has been arrested three or more times for any combination of gang-related offenses.

Concealed Weapons in The Workplace

Employers may prohibit the carrying of concealed firearms on their real property if they own the property in question and the property is under their control. Employers that prohibit carrying concealed weapons must post a sign indicating that firearms are prohibited on the property, unless the property is a private residence. However, employers should note that this prohibition applies to all individuals within the premises and not only to the employers' workers. Employers that wish to ban only their employees from carrying concealed firearms within their premises should consult with a legal professional and consider whether implementing appropriate employment policies is valid and necessary.

Posting Requirement

The sign indicating that carrying concealed firearms is prohibited on the premises must be displayed clearly and conspicuously at the entrance of the building, premises or real property where firearms are prohibited (unless the building or property is a private residence). The ISPD has adopted a uniform sign that private property owners must use to comply with the posting requirement. Employers can download the sign from the ISPD website.

Universities and Colleges

Universities and community colleges, whether public or private, can also prohibit individuals from carrying firearms within a vehicle owned, leased or controlled by the college or university. These educational institutions can develop student, employee and visitor resolutions, regulations or policies regarding:

- Firearm misconduct and discipline (including suspension and expulsion);
- The storage or maintenance of firearms;
- Designated areas where CCL holders can park vehicles that carry firearms;
- The carrying or use of firearms for instructional and official curriculum programs, including military science and law enforcement programs; and
- Designated areas used for hunting or target shooting.

Certain educational administrators have an obligation to notify the ISPD when it is determined that a student poses a clear and present danger to himself, herself or another. This notice must take place within 24 hours of when the danger is determined.

A clear and present danger exists when a student communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to himself, herself or another (as determined by a physician, clinical psychologist or qualified examiner). Clear and present danger also exists when a student demonstrates threatening physical or verbal behavior, such as violent, suicidal or assaultive threats, actions or other behavior (as determined by a physician, clinical psychologist, qualified examiner, school administrator or law enforcement official).

Educational administrators (or their designees) cannot be held criminally, civilly or professionally liable for making a determination of whether a student poses a clear and present danger, except for cases of willful or wanton misconduct.

Prohibited Areas

The IFCCA prohibits CCL holders from knowingly carrying a concealed firearm on or into:

- Any building (or portion of a building) or real property and parking area under the control of:
- A public or private elementary or secondary school;
- A pre-school or child care facility (CCL holders that operate a child care facility in a family home can still own and possess a firearm in the home if no child under child care at the home is present or the firearm in the home is stored in a locked container when a child under child care at the home is present);
- An officer of the executive or legislative branch of government (CCL holders can still carry a firearm into any designated public hunting area or building where firearm possession is permitted);
- A unit of local government;
- An adult or juvenile detention or correctional institution, prison or jail;
- A public or private hospital or hospital affiliate, mental health facility or nursing home;
- An establishment that serves alcohol on its premises, if more than 50 percent of the establishment's gross receipts within the prior three months is from the sale of alcohol (these establishments are subject to a business offense with a fine of up to $5,000 if they knowingly fail to prohibit or make a false statement or record to avoid the prohibition of concealed firearms on their premises);
- A gaming facility licensed under the Illinois Gambling Act or the Illinois Horse Racing Act, including inter-track wagering location licensees;

- A public library;
- An airport;
- An amusement park;
- A zoo or museum; or
- A public transportation facility paid in whole or in part with public funds;
- Any areas where firearms are prohibited under federal law;
- Any building designated for use of a circuit, appellate or Supreme Court or any building under the control of the Supreme Court;
- Any bus, train or form of transportation paid in whole or in part with public funds;
- Any public gathering or special event conduct on property that is open to the public and requires a local government permit (CCL holder can still walk through a public gathering while carrying a firearm to access his or her residence, place of business or vehicle);
- Any building or real property with a Special Event Retailer license for the sale of alcohol (applies only during the time the license designates for the sale of alcohol);
- Any public playground;
- Any public park, athletic area or athletic facility under the control of a municipality or park district (restriction does not apply to CCL holders while on a trail or bikeway, if only a portion of the trail or bikeway includes a public park);
- Any real property under the control of the Cook County Forest Preserve District;
- Any building, classroom, laboratory, medical clinic, hospital, artistic venue, athletic venue, entertainment venue, officially recognized university-related organization property (whether owned or leased) and any real property, including parking areas, sidewalks and common areas under the control of a public or private community college, college or university;
- Any stadium, arena or the real property or parking area under the control of a stadium, arena or any collegiate or professional sporting event; and
- Any street, driveway, parking area, property, building or facility owned, leased, controlled or used by a nuclear energy, storage, weapons or development site or facility regulated by the federal Nuclear Regulatory Commission (in addition, a CLD holder cannot, under any circumstance, store a firearm or ammunition in his or her vehicle or in a compartment or container within a vehicle located anywhere in or on the street, driveway, parking area, property, building or facility owned, leased, controlled or used by a nuclear energy, storage, weapons or development site or facility regulated by the federal Nuclear Regulatory Commission).

Parking Lot Exception

The IFCCA allows CCL holders to store a firearm (or ammunition) in a vehicle and to drive that vehicle into the parking lot of an otherwise restricted area. Firearms and ammunition may be stored within a vehicle if concealed within a case or locked container that is out of plain view. The vehicle storing the firearm or ammunition must also be locked. A vehicle's glove compartment, console (if it completely encloses the firearm), trunk, firearm carrying box, shipping box and other containers qualify as a "case" under this exception.

A CCL holder can also carry a concealed firearm on or about his or her person in a vehicle and drive that vehicle into the parking lot of an otherwise prohibited area. A CCL holder is also allowed to carry a firearm in the immediate area surrounding his or her vehicle for the limited purpose of storing or retrieving the firearm within the vehicle's trunk. This exemption is valid if the CCL holder ensures that the firearm is unloaded before exiting the vehicle. However, this exception does not apply to any area where firearms are prohibited under federal law, or to property regulated by the federal Nuclear Regulatory Commission.

Similarly, CCL holders do not violate the IFCCA if they carry a concealed firearm when travelling along a public right-of-way that touches or crosses a prohibited area if the concealed firearm is carried on their person or is being transported in a vehicle in accordance with all other applicable provisions of the IFCCA.

WORKPLACE SMOKING RESTRICTIONS AND DRUG TESTING

SMOKE FREE ILLINOIS ACT

A growing number of states have passed laws requiring employers to prohibit smoking in the workplace. The Smoke Free Illinois Act (the Act) regulates smoking in public places and places of employment.

The Act defines "smoke" or "smoking" as carrying, smoking, burning, inhaling or exhaling any kind of lighted pipe, cigar, cigarette, hookah, marijuana, herbs or any other lighted smoking equipment. "Smoke" or "smoking" does not include smoking that is associated with a native-recognized religious ceremony, ritual or activity by American indigenous people that is in accordance with the federal American Indian Religious Freedom Act.

Electronic Smoking Devices

On July 28, 2023, Illinois amended the Act to include the use of electronic smoking devices, including electronic cigarettes. The amendments become effective on Jan. 1, 2024.

"Electronic cigarette" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. "Electronic cigarette" includes any such product, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor.

Where Is Smoking Prohibited?

The Act prohibits smoking in public places, places of employment and government vehicles. Specifically, under the Act, no person is allowed to smoke in a public place or any place of employment or within 15 feet of any entrance to a public place or place of employment. The Act includes a responsibility to ensure that tobacco smoke does not enter a smoke-free area through entrances, exits, open windows or other means.

In addition, no person may smoke in any vehicle owned, leased or operated by the state or a political subdivision of the state. Vehicle owners must reasonably ensure that smoking is prohibited in indoor public places and workplaces unless specifically exempted by the Act.

The Act defines "place of employment" as any area under the control of a public or private employer that employees are required to enter, leave or pass through during the course of employment. Places of employment include but are not limited to:

- Entrances and exits to places of employment, exits, windows that open and ventilation intakes that serve an enclosed area where smoking is prohibited;
- Offices and work areas;
- Restrooms;
- Conference and classrooms;
- Break rooms and cafeterias; and
- Other common areas.

Employer means "a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons." Enclosed area means "all space between a floor and a ceiling that is enclosed or partially enclosed with solid walls or windows, exclusive of doorways, or solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors."

Employers should note that a private residence or home-based business is not a "place of employment" unless it is used to provide licensed child care, foster care, adult care or other similar social service care on the premises. Similarly, "place of employment" does not include enclosed laboratories that are not open to the public and are in an accredited university or government facility where smoking is exclusively conducted for the purpose of medical or scientific health-related research.

Designating Nonsmoking Areas

The Act authorizes employers, owners, occupants, lessees, operators, managers and any person in control of any public space or place of employment to designate specific nonenclosed areas as nonsmoking areas.

Individuals that designate nonsmoking areas must conspicuously post signs prohibiting smoking.

Exemptions

Although certain conditions apply, the Act provides some exceptions to the state's smoke-free laws and allows smoking in:

- Private residences or dwelling places, except when used as a child care, adult day care, or health care facility or any other home-based business open to the public;
- Retail tobacco stores;

- Hotel and motel sleeping rooms;
- Enclosed laboratories that are excluded from the definition of "place of employment";
- Common smoking rooms in long-term care facilities operated under the authority of the Illinois Department of Veterans' Affairs or licensed under the Nursing Home Care Act; and
- Cannabis-dispensing organizations.

Retail tobacco stores must file an annual report with the Illinois Department of Public Health (IDPH) by Jan. 31. The report must include an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, herbs and cigars, cigarettes, pipes, other smoking devices for smoking tobacco and related smoking accessories.

Retail tobacco stores that begin operation after the effective date of the Act qualify for an exemption only if they are located in a free-standing structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited. Retail tobacco stores may, with authorization or permission from a unit of local government, allow the consumption of cannabis in their premises in specially designated areas. Retail tobacco stores that derive at least 80% of their gross revenue from the sale of electronic cigarettes and electronic cigarette equipment and accessories in operation before Jan. 1, 2024, qualify for this exemption for electronic cigarettes only.

Retail tobacco stores claiming an exemption for electronic cigarettes must also file annual reports with the IDPH by Jan. 31, stating the percentage of its gross income during the prior calendar year that was derived from the sale of electronic cigarettes.

Hotels and motels may designate up to 25% of their sleeping rooms as smoking rooms if these rooms are:

- Rented to guests;
- Located on the same floor and contiguous to other smoking rooms; and
- Set so that smoke from these rooms does not infiltrate into nonsmoking rooms or other areas where smoking is prohibited.

Once designated as smoking rooms, the status of the establishment's rooms as smoking or nonsmoking may not be changed except to permanently add additional nonsmoking rooms.

Finally, dispensing organizations, as defined in the Cannabis Regulation and Tax Act, qualify for an exemption from the Act if they:

- Are authorized or permitted by a unit local government to allow on-site consumption of cannabis;
- Maintain a specially designated area or areas for the purpose of heating, burning, smoking or lighting cannabis;
- Limited to individuals 21 or older; and
- Maintain a locked door or barrier to any specially designated areas for the purpose of heating, burning, smoking or lighting cannabis.

Posting Signs

Employers are required to post, at every entrance to a public place and place of employment where smoking is prohibited, a conspicuous sign clearly stating that smoking is prohibited. The sign may either say "No Smoking" or display the international no-smoking symbol.

Employers must also remove all ashtrays from any area where smoking is prohibited.

Local Regulations

The Act allows local government agencies to regulate smoking in public places, but only if local regulations are at least as restrictive as state law. This authority, also known as the home rule, allows local governments to regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a "public place" under this Act.

Prohibited Discrimination

Employers cannot discriminate against individuals who exercise their rights under the Act.

In addition, Illinois employment law generally prohibits employment discrimination based on employee use of lawful products off the employer's premises during nonworking hours.

DRUG AND ALCOHOL TESTING

Although Illinois does not have a statute or regulation that addresses workplace drug or alcohol testing by private employers in general, the state's Human Rights Act includes some guidance on workplace drug policies for employers. In addition, employers in certain industries may be subject to testing requirements under laws specific to their industries or projects. For example, Illinois' Substance Abuse Prevention on Public Works Project Act imposes requirements on employers that have public works contracts.

Illinois Human Rights Act

The Illinois Human Rights Act makes it unlawful for employers with 15 or more employees to discriminate against individuals based on race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation or unfavorable discharge from military service. The law also prohibits all employers in the state from discriminating against individuals based on disability.

The Human Rights Act does not specifically encourage, prohibit or authorize employers to conduct workplace testing or to make employment decisions based on test results. It does, however, authorize employers to:

- Prohibit illegal use of drugs and alcohol at the workplace by all employees; and
- Require employees to comply with all federal regulations regarding alcohol and drug abuse.

In addition, employers may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the employer holds other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism.

Requirements For Public Works Contractors

Employers are subject to the Illinois' Substance Abuse Prevention on Public Works Project Act (Public Works Act) if they are contractors or subcontractors performing a public works project. Under the Public Works Act, an employer must have a written substance abuse prevention program in place before beginning work on a public works project. This written program must:

- Prohibit employees from using, possessing, distributing, delivering or being under the influence of any drug or alcohol while performing work on a public works project; and
- Require employees who perform work on the public works project to submit to pre-hire, random, reasonable suspicion and post-accident drug and alcohol testing.

The program must also include a procedure for notifying an employee that he or she may not perform work on the public works project until meeting certain conditions, when the employee:

- Violates the program;
- Test positive for a drug; or
- Refuses to submit to required testing.

An employer must file its written program with the public body engaged in the construction of the public works and also make it available to the general public.

Testing Procedures
Under the Public Works Act, all drug and alcohol testing must be performed by a laboratory that is certified for Federal Workplace Drug Testing Programs by the Substance Abuse and Mental Health Service Administration of the federal Department of Health and Human Services. All substance abuse prevention programs must contain at least a 9-panel urine drug test plus a test for alcohol. Testing an employee's blood may only be used for post-accident testing, but blood testing is not mandatory where a urine test is sufficient.

Reasonable Suspicion Testing
The Public Works Act requires employees to undergo testing if their supervisors have reasonable suspicion that they are under the influence of alcohol or a drug at work. "Reasonable suspicion" means a belief, based on behavioral observations (such as slurred speech or decreased motor skills) or other evidence, that is sufficient to lead a prudent or reasonable person to suspect that the employee is under the influence.

When reasonable suspicion exists, the employee who is suspected of being under the influence must be removed from the job site and placed on inactive status pending the employer's receipt of his or her test results. During this time, the employee may not be allowed to operate a vehicle or other equipment for any purpose. The employer must provide the employee with transportation to the testing facility and may send a representative to accompany him or her. The employee also has a right to request that a representative or designee be present at the time of testing.

If the test result is positive for drugs or alcohol, the employee must be subject to termination. If the test result is negative, the employee must be placed on active status and put back to work. Following a negative test result, the employee must be paid for all lost time, including all time needed to complete the testing and any overtime according to the employee's contract.

Post-Accident Testing
Under the Public Works Act, an employer must perform substance abuse testing on any employee who caused, contributed to or was otherwise involved in an accident. The law defines an accident as an incident that:

- Occurs while the employee is performing work on a public works project; and
- Results in death, personal injury or property damage.

Cost Of Testing
An employer is responsible for the cost of developing, implementing and enforcing its substance abuse prevention program, including the cost of drug and alcohol testing of its employees under the program, except when these costs are covered under a collective bargaining agreement.

Employee Access to Projects
An employer must immediately remove an employee from work on a public works project if:

- The employee is found to have used, possessed, distributed, delivered or be under the influence of any drug or alcohol while performing work on a public works project;
- The employee tests positive for a drug or refuses to submit to required drug or alcohol testing; or
- An officer or employee of the contracting agency has a reasonable suspicion that the employee is under the influence and requests that the employer immediately remove the employee for reasonable suspicion testing.

An employee who is barred or removed from work on a public works project may return to work only after the employer provides the contracting agency with documentation showing that:

- The employee has tested negative for drugs and is not under the influence of alcohol;
- The employee has been approved to return to work; and
- Drug and alcohol testing and the handling of test specimens were conducted in accordance with federal guidelines.

Upon successfully completing a rehabilitation program, an employee must be reinstated to his or her former employment status if suitable work is available.

Other Drug Testing Laws
In addition to state law, transportation employees in Illinois, such as drivers of commercial motor vehicles, must comply with federal law. The U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration's (FMCSA) drug and alcohol testing regulations govern workplace drug testing for these employees. For more information on the FMCSA's alcohol and drug testing regulations, visit the FMCSA website.

LEGALIZED MARIJUANA AND DRUG TESTING LAWS
Though all marijuana use remains illegal under the federal Controlled Substances Act, Illinois has adopted laws that allow certain individuals to purchase, possess, use and grow limited amounts of marijuana in the state.

This Employment Law Summary provides a high-level overview of Illinois' medical and recreational marijuana laws and their impact on employers.

Overview
As of Jan. 1, 2014, Illinois' Compassionate Use of Medical Cannabis Program Act (Compassionate Use Act) allows individuals with certain medical conditions, called registered qualified patients (RQPs), to obtain the state's permission to possess and use medical marijuana.

Effective Jan. 1, 2020, the Illinois Cannabis Regulation and Tax Act (CRTA) also allows individuals who are age 21 and over to use marijuana for recreational purposes in the state.

Although both of these laws include employment protections for employees and applicants, they also make clear that employers may still:

- Conduct drug testing for marijuana; and
- Have reasonable workplace policies that restrict marijuana use.

Medical Marijuana
Under the Compassionate Use Act, employers are prohibited from penalizing an individual solely based on his or her status as an RQP, unless failing to do so would:

- Put the employer in violation of federal law; or
- Cause the employer to lose a monetary or licensing-related benefit under federal law or rules.

However, the Compassionate Use Act does not prohibit or limit an employer from:

- Adopting reasonable regulations regarding the consumption, storage or timekeeping requirements for RPQs related to the use of medical marijuana;
- Enforcing a policy regarding drug testing, zero-tolerance or a drug free workplace, as long as the policy is applied in a nondiscriminatory manner;
- Disciplining an RQP for violating a workplace drug policy; or

- Disciplining an employee for failing a drug test when failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.

The Compassionate Use Act also specifies that is does not create a defense for any party who fails a drug test, and that it does not it create a cause of action against an employer for:

- Taking actions based on its good faith belief that a RQP:
- Used or possessed marijuana while on its premises or during the hours the RQP's employment; or
- Was impaired while working on the employer's premises during the hours of employment; or
- Injury or loss to a third party caused by an employee's impairment, where it did not know (nor had reason to know) that the employee was impaired.

For these purposes, an employer may consider a RQP to be impaired if he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of his or her job. These may include:

- Symptoms affecting speech, physical dexterity, agility, coordination or demeanor;
- Irrational or unusual behavior;
- Negligence or carelessness in operating equipment or machinery;
- Disregard for the safety of the employee or others;
- Involvement in an accident that results in serious damage to equipment or property;
- Disruption of a production or manufacturing process; or
- Carelessness that results in any injury to the employee or others.

If an employer elects to discipline an employee who is an RQP because of the employer's good faith belief that he or she was impaired, it must afford the employee a reasonable opportunity to contest the basis of the determination.

Recreational Marijuana

Effective Jan. 1, 2020, the CRTA allows individuals who are age 21 and over to:

- Purchase and possess up to 30 grams of marijuana;
- Purchase and possess up to five grams of marijuana concentrate or marijuana-infused products containing up to 500 milligrams of THC;
- Consume marijuana on private property outside of public view; and
- Grow up to five marijuana plants per household, in a locked room out of public view, with the landowner's permission.

The CRTA also amended the Illinois Right to Privacy in the Workplace Act (RPWA), which prohibits most employers from taking adverse employment actions against individuals because of their use of lawful products outside of work. Under the CRTA's amendments, the term "lawful products" is defined as "products that are legal under state law."

However, the CRTA also specifies that:

- It does not prohibit employers from adopting either of the following, as long as they are applied in a nondiscriminatory manner:
- "Reasonable zero tolerance or drug free workplace policies;" or
- "Employment policies concerning drug testing, smoking, consumption, storage or use of marijuana in the workplace or while on call;"
- It does not prevent employers from disciplining or firing an employee for violating their employment or workplace drug policies; and
- It does not create or imply a cause of action against an employer for taking adverse employment actions against an employee based on a good faith belief that the employee used or possessed marijuana in the employer's workplace while performing job duties or while on call in violation of the employer's employment policies.

In general, this means that employers may prohibit employees from using, being impaired by or under the influence of marijuana while they are in the workplace, performing job duties or on call. For these purposes:

- A "workplace" includes any area used by an employee while he or she is performing job duties and any vehicles, buildings, real property or parking areas that are under the employer's control, regardless of whether they are leased, rented or owned; and
- An employee is "on call" when he or she is scheduled with at least 24 hours' notice to be on standby or otherwise responsible for performing employment-related tasks either at the employer's premises or another previously designated location.

In addition, an employer may consider an employee to be impaired by or under the influence of marijuana if the employer has a good faith belief that the employee manifests specific, articulable symptoms "while working" that decrease or lessen his or her performance of the duties or tasks of his or her job. This may include symptoms affecting an employee's speech, physical dexterity, agility, coordination or demeanor, such as:

- Irrational or unusual behavior;
- Negligence or carelessness in operating equipment or machinery;
- Disregard for the safety of the employee or others;
- Involvement in any accident that results in serious damage to equipment or property;
- Disruption of a production or manufacturing process; or
- Carelessness that results in any injury to the employee or others.

However, if an employer disciplines an employee on the basis that he or she was under the influence of or impaired by marijuana, the employer must afford him or her a reasonable opportunity to contest the basis of the determination.

Because the terms "reasonable zero tolerance" and "drug-free workplace" policies were not defined in the CRTA when it was enacted, there was some uncertainty as to how restrictive employers may be in their policies.

On Dec. 4, 2019, however, the state amended the CTRA (under SB 1557) to clarify that it does not create or imply a cause of action against an employer for taking actions pursuant to its reasonable workplace drug policy and that these actions include, but are not limited to, the following:

- Subjecting an employee or applicant to reasonable drug and alcohol testing;
- Conducting reasonable and nondiscriminatory random drug testing; and
- Disciplining, terminating employment or withdrawing a job offer due to a failure of a drug test.

NOTICES AND POSTERS

This document provides direct links to the workplace posters employers are required to display under state law. These posters, including official translated versions, are created and updated by state agencies. Employers must also comply with all applicable federal posting requirements.

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may apply to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster.

ALL ILLINOIS EMPLOYERS

The following posters are required for all employers in Illinois:

Consumer Coverage Disclosure Act

The Consumer Coverage Disclosure Act requires all Illinois employers to distribute information to all employees regarding whether their insurance plan covers specified medical benefits. Employers must also maintain documentation of having provided this information to employees.

English | Spanish

Discrimination and sexual harassment poster

English | Spanish | Additional Languages

Illinois Service Member Employment and Reemployment Rights Act poster

English

Pregnancy nondiscrimination poster

English version must always be posted

English | Spanish

Rights under Illinois employment laws poster

Includes requirements for minimum wage, domestic or sexual violence leave, equal pay, wage payment, meal and rest periods and child labor.

English | Spanish | Additional Languages

Smoke-free notice poster

English | Spanish

Unemployment insurance notice

English | Additional Languages

Victims' Economic Security and Safety Act poster (VESSA)

English | Spanish | Additional Languages

Workers' compensation poster

Blank spaces in the model notice must be completed

English | Spanish

CONSTRUCTION CONTRACTORS

A construction contractor must post the following notice in a conspicuous place in each of its offices and on each job site where individuals perform services for the contractor:

Employee classification poster

English/Spanish/Polish

Public-sector employers

State and local agencies must post the following poster where their employees will see it:

Job safety and health poster

English | Spanish | Additional Languages

OTHER INDUSTRY-SPECIFIC POSTERS

Day and temporary labor service agencies poster

For day and temporary labor service agency. In addition, these agencies must provide to each day or temporary laborer a notice containing certain items listed in the law (§ 10(a)). The notice must be provided at the time an agency dispatches the temporary worker. The notice must also list the equipment, protective clothing and training required for the task. A sample notice is available and see "Forms/Links" to check for updates.

English | Spanish | Additional Languages

Emergency care for choking poster

For food service establishments.

English

Defense Contract Employment Discrimination Act

Defense contractors must prominently display a copy of the Defense Contract Employment Discrimination Act inside employment offices and rooms where applicants for employment or training are interviewed.

Human trafficking notice

Required for hotels, motels, liquor stores, adult entertainment facilities, airports, bus stations, rail stations, truck stops, emergency rooms, urgent care centers, farm labor contractors, and privately-operated job recruitment centers. The notice must include the National Human Trafficking Resource Center hotline number in a conspicuous place. The notice must be at least 8.5 by 11 inches in size and written in a 16-point font. The notice must be printed in English, Spanish, and in any other language that are widely spoken by personnel in the establishment as mandated by the federal Voting Rights Act. Click here for the poster in additional languages.

English | Spanish | Additional Languages

RECORDKEEPING REQUIREMENTS

Federal laws, such as the Federal Insurance Contributions Act, the Fair Labor Standards Act, the Equal Pay Act and the Civil Rights Act, impose recordkeeping duties on employers. Recordkeeping duties include creating, updating and preserving information.

This Employment Law Summary provides an overview of general recordkeeping requirements that apply to employers in Illinois. Additional requirements may exist for specific industries.

PAYROLL RECORDS

Employers must maintain payroll records for each employee for at least **five years** from the time the records are made.

Payroll records must include each employee's name, birthdate, Social Security number, occupation (or employment classification) and place of employment.

In addition, employers must maintain records of the following for each pay period:

- Each employee's wage rate;
- The number of hours each employee worked during the pay period;
- The beginning and ending date of the pay period;
- The gross amount of wages each employee earned during the pay period;
- An itemized list of deductions made from each employee's wages; and
- The net amount of wages paid to each employee.

Additional payroll requirements may apply for contractors who participate in government-funded projects.

TIME RECORDS

Every employer is required to keep a time book showing the names and addresses of all employees and the hours worked by each of them on each day. This may be any accurate record, such as a time clock card, time card, time book, time sheet or other suitable record.

These records must be open to inspection at all reasonable hours by the state Director of Labor.

CHILD LABOR

Employers with underage workers must keep a copy of each minor's employment certificate and any applicable waiver at the exact place and address where the minor is employed.

Each of these records must be:

- Retained for at least **three years** from the date of employment, regardless of whether an employee has been terminated;
- Available for inspection and transcription by state agents; and
- Kept at the minors' places of employment.

TIPPED EMPLOYEES

Illinois law requires employers to keep records of the following for each tipped employee:

- An identifying symbol, letter or number for the employee's payroll record, indicating that the employee receives tips or gratuities as part of his or her wages;
- A report (generated and signed by the employee) of the tips or gratuities the employee earned during each workday;
- The employee's adjusted wage after reportable tips are calculated;
- The number of hours the tipped employee worked on "non-tip" occupations and the total daily or weekly wages paid to the employee for that time; and
- The number of hours the tipped employee worked on "tipped" occupations and the total daily or weekly wages paid to the employee for that time.

EQUAL PAY IN EMPLOYMENT

The Illinois Equal Pay Act prohibits employers with four or more employees from paying women and men different wages for similar work. As of Jan. 1, 2019, this law also prohibits these employers from paying wages to an African American employee that are lower than the wages they pay to another employee who is not African American for the same or substantially similar work.

Employers must keep records that are sufficient to prove compliance with these prohibitions. For example, employers should keep records of every

employee's compensation and their dates of hire, promotion and pay increases. These records must be maintained for at least **five years**.

HUMAN RIGHTS ACT

Under the Illinois Human Rights Act, employers must maintain the following records for **one year**:

- Each employee's personnel file, including performance evaluations, attendance/tardiness records, and other employment and disciplinary actions;
- Applications for employment, resumes, and other documents, application materials and results from qualifying examinations; and
- Records for one year following any change in job descriptions, production standards and other records of job duties.

CONTRACTORS

Contractors and subcontractors must maintain records for all individuals performing services for them, regardless of how those individuals are classified, for a period of **three years**. Records that must be maintained for each individual performing services include, but are not limited to:

- The individuals' names, addresses, phone numbers, Social Security numbers, Individual Tax Identification Numbers and Federal Employer Identification Numbers;
- The type of work performed and the total number of days and hours worked;
- The method, frequency, and basis on which wages were paid or payments were made;
- All invoices, billing statements or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made;
- Copies of all contracts, agreements, applications, and policy or employment manuals; and
- Any federal and state tax documents.

EMPLOYEE LEAVE

Employers must keep records regarding employees who are on leave because they (or their family or household members) are victims of domestic or sexual violence. These records must be kept for at least **three years** and, for each employee on leave, must include:

- Payroll records;
- All dates leave is used;
- Copies of employee requests, if in writing, for leave;
- Copies of any written notices regarding leave given to employees;
- Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves;
- Documentation of any dispute between the employer and the employee regarding designation of leave, including documentation of the reasons for the disagreement;
- Personnel records, employee qualifications for promotion, transfer, discharge or other disciplinary action, wage rates, skills testing certifications, job evaluations, job descriptions, merit systems, seniority systems, individual employment contracts, collective bargaining agreements, description of practices, or other matters that describe or explain the basis for any use of any type of paid and unpaid time off;
- Paid time off records indicating the amount of time earned for each year and the dates on which paid time off was taken or paid; and
- Records and documents relating to certifications, medical histories of employees or employees' family and household members, created for purposes of the act, shall be maintained in conformance with all state and federal laws, including, without limitation, all confidentiality requirements.

WORK-RELATED INJURIES AND ILLNESSES

Employers must maintain OSHA 300 logs of all recordable occupational injuries and illnesses for and in each workplace. These logs must be retained for **five years**. Employers must also maintain a supplementary record of each recordable occupational injury and illness for each workplace.

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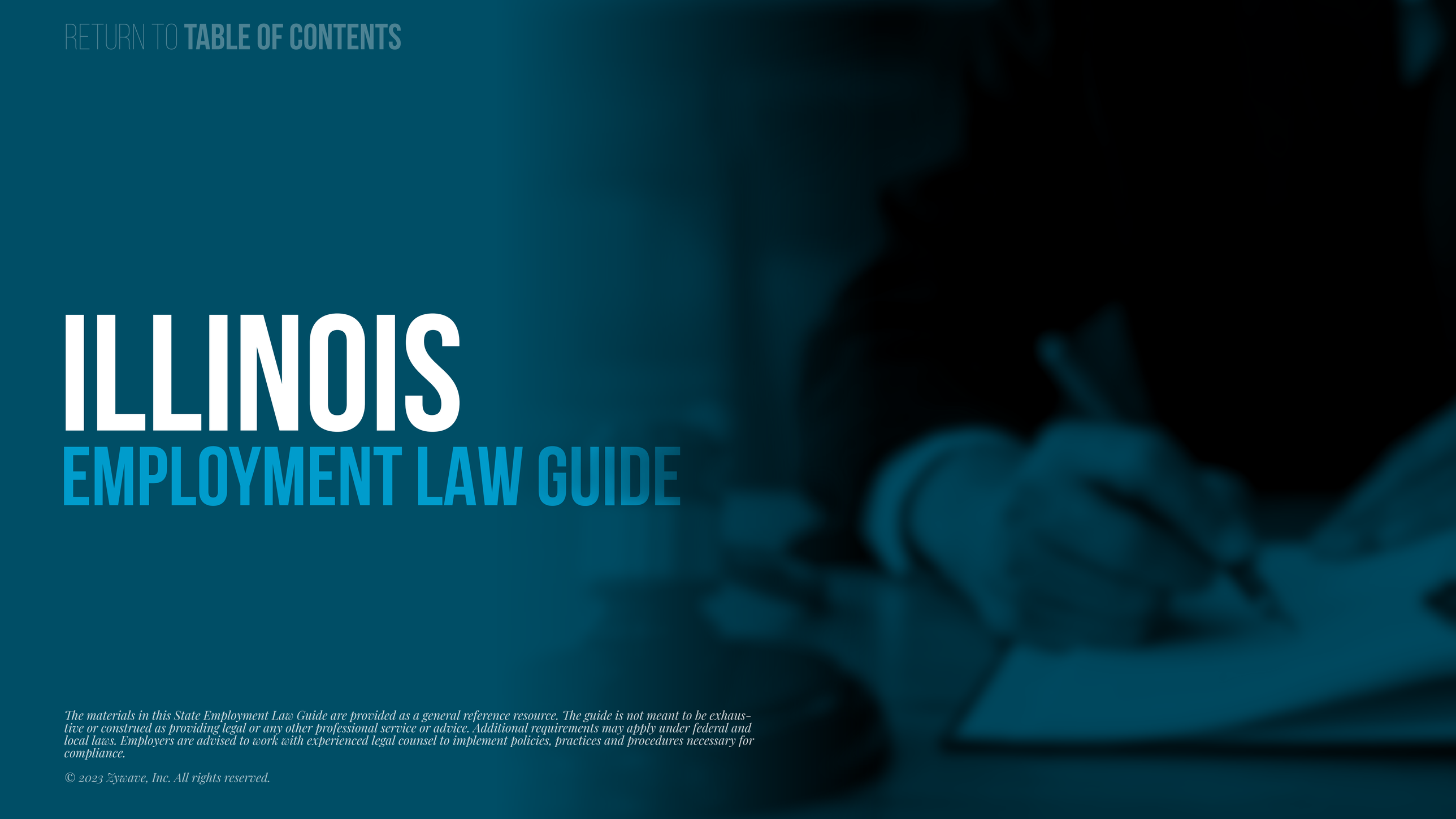
ILLINOIS
EMPLOYMENT LAW GUIDE



The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.