Insights: Alerts

Recent Changes to Illinois Employment Law: What Employers Need to Know

SEPTEMBER 6, 2024 Written by Jeralyn H. Baran, Samera S. Ludwig and Robert H. Smeltzer

Summer provided more than hot weather for Illinois; there were notable changes to Illinois employment law. Employers with Illinois employees should review their policies and employee handbooks to address these new changes.

Illinois Human Rights Act (IHRA)

There were four significant amendments to the IHRA.

1. Longer Period to File Charges

First, effective January 1, 2025, employees will have 2 full years rather than just 300 days to bring a charge of workplace discrimination, harassment or retaliation under the IHRA to the Illinois Department of Human Rights. The IHRA applies to nearly all employers in Illinois, including those employing less than 15 employees.

Federal claims under Title VII of the Civil Rights Act must be presented to the Equal Employment Opportunity Commission within 300 days. Title VII and other federal employment statutes apply to employers with at least 15 employees. With this change in the IHRA, an employee who misses a federal deadline or works for a small employer can still seek protection under the IHRA.

2. Protecting Employees Making Reproductive Health Decisions

Doubling down on protections for reproductive freedom, Illinois added a new category to its list of protected groups under the IHRA. Illinois already has a large set of protected groups. Besides the federally protected groups, which include race, color, sex, age, religion, national origin and mental and physical disability, Illinois also protects employees based on their ancestry, sexual orientation, including gender-related identification, pregnancy, military status, unfavorable military discharge, order of protection status, marital status, citizenship status, work authorization status, language, conviction record and arrest records. Starting on January 1, 2025, Illinois will also prohibit discrimination against employees based on their "reproductive health decisions," including the use of contraception, fertility or serialization care, assisted reproductive technologies, miscarriage management care, healthcare related to the continuation or termination or pregnancy or prenatal, intranasal or postnatal care.

3. Protecting Employees with Family Responsibilities

Illinois also amended the IHRA (effective January 1, 2025) to prohibit discrimination, harassment or retaliation against employees based on their "family responsibilities" or providing "personal care" to a "family member." "Personal care" includes an employee providing transportation to or attending a covered family member's medical appointment or even staying home from work to care for a sick child or parent. This amendment expressly does not

require employers to accommodate an employee's request for time, etc. to provide this personal care or require employers to modify their existing policies and rules. It simply restricts employers from treating these employees differently because of their family responsibilities to provide personal care to family members.

4. Guardrails on Employers' Use of Artificial Intelligence

Illinois amended the IHRA to prohibit employment discrimination by an employer using artificial intelligence (AI) tools in making its hiring and employment decisions, should the AI tools have a discriminatory effect. Starting on January 1, 2026, employees will need to notify employees and applicants when they are using AI for "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment." Additionally, employers will not be able to use zip codes as a proxy for protected classes. This is intended to prevent employers from using AI algorithms to exclude applicants whose zip code may contain high concentration of minority populations.

Illinois Personnel Record Review Act

Illinois also made changes to the Illinois Personnel Record Review Act. Illinois permits employees to request the opportunity to inspect their personnel file and to review documents that relate to decisions an employer took against them. The Personnel Record Review Act has been amended, effective January 1, 2025, to permit employees to access more categories of documents and to reduce the period of time for employers to provide those documents.

Employees will be able to request records related to their benefits, employee handbooks, employee policies and procedures and employment agreements. These new categories of documents will provide employees with additional information that could help support possible employment related claims. It also is important for employers when complying with these Personnel Record Review Act changes to be as complete as possible as employees can argue that documents not produced cannot later be used in any subsequent litigation with the employer. Employers, however, will be able to protect (and not turn over) records related to an employer's trade secrets, client lists, sales projections or financial data.

Employees will be permitted to make two requests per calendar year. Employers will be unable to charge employees for their time in responding to the request and have seven working days to provide these documents. If an employer required additional time to make the production, they used to have seven additional working days. Post-amendment, they will have only seven calendar days.

In addition, employees will be requesting the documents by email. If an employee files a complaint about their employer's failed response to their Personnel Record Review Act request and the Illinois Department of Labor has failed to resolve the complaint within 180 days, the employee will be able to file a lawsuit in state court and request to recover their costs and attorney's fees.

Illinois Day and Temporary Labor Services Act (IDTLSA)

Last year, Illinois made significant amendments to the Illinois Day and Temporary Labor Services Act, including requiring staffing companies to provide longer term staffing workers with the same rate of pay and benefits (although it could offer the staffing employee the monetary equivalent of those benefits). This equal pay and benefit mandate was subject to court challenge, which resulted in a stay of the equal benefits piece. The legislature amended the IDTLSA in November 2023, and, has made a significant new modification, effective on August 4, 2024.

Clarifying When Equal Pay Begins

The latest amendment clarified when a temporary worker was due equal pay by clarifying the assignment period. A temporary worker that has been working on an assignment with a third-party client for more than 720 hours in a rolling 12-month period, starting on August 1, 2024, must receive equal pay and benefits (although the equal benefits requirement was halted by a federal court injunction) to the third-party client's regular employees.

Two Proposed Methods to Calculate Direct Hire Pay

The amendment offers staffing companies two methods for determining the required hourly rate of pay. Under the first method, a temporary worker could be paid at least the rate of pay of the user client's lowest paid, directly hired, non-exempt regular employee who is similarly situated and has the same or substantially the same seniority of the temporary worker. If no such directly hired employee exists, then the law says the lowest paid nonexempt employee with the closest level of seniority will do.

Under the second method, the temporary workers could be paid not less than the median base hourly rate of workers in the same or substantially the same job classification as reflected in the most recent Standard Occupational Classification System published by the US Department of Labor's Bureau of Labor Statistics for the same area of Illinois where the work is performed as selected in the most recent Occupational Employment and Wage Statistics Survey. If a staffing company uses the second method, a temporary worker working more than 4,160 hours within a 48-month period must be paid not less than the 75th percentile base hourly rate of such workers.

Additional Notice Requirements and Applicant Receipt Requirement

The amendment also updated the employee notice forms staffing companies must provide their workers. Temporary workers must be advised of the basic job duties, the country where the third-party client is located, the seniority and hourly wage of the comparable used to determine the worker's equal pay wages or the standard occupational classification used to determine the worker's equal pay rates.

In addition, the amendment requires a new applicant “receipt.” If an applicant seeks a work assignment through a staffing company and is not placed with a third-party client, the staffing company must provide the applicant with confirmation that the applicant sought work, which includes: the name and location of the staffing company; the name and address of the applicant; the date and the time the applicant sought the work assignment; the manner in which the applicant sought the work assignment (e.g. in person, online, or using an app-based system); and the specific work sites or types of jobs sought by the applicant, if applicable.

If you have any questions about this Alert, please contact one of the authors or a member of our Labor and Employment team with whom you are regularly in contact.

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