

New Illinois Laws for 2019: What Employers Should Know

All employers with operations in Illinois should be aware of these new laws, understand how these laws may affect their operations and consult with counsel to address any compliance questions. All laws are effective January 1, 2019, unless otherwise noted.

Equal Pay Protections for African-Americans

The Illinois Equal Pay Act has been expanded to include pay discrimination of African Americans. Previously, the Act was limited to different pay based on gender. Now, the Act states that it is illegal for Illinois employers to pay African Americans different rates than other ethnicities for the same work or substantially similar work. The substantially similar work is defined as work that requires “equal skill, effort, and responsibility” and that is performed under similar working conditions. Employers should review employee compensation across demographic groups to ensure compliance.

Employee Reimbursement Policies for Business Expenses

The Illinois Wage Payment Collection Act requires employers to refund employees for expenses that they sustain within the scope of their employment. The expenses must be directly related to services performed for the employer. However, reimbursement is not mandatory when the expenses are due to the employee’s negligence, due to normal wear and tear, or are the outcome of theft (unless the theft resulted from the employer’s negligence). Additionally, reimbursement is not necessary if the employee fails to abide by the employer’s written expense reimbursement policy or if the expense was not authorized by the employer. To limit potential exposure for unapproved expenses, employers should implement written reimbursement policies. Policies should at least include:

- The types of expenses that are reimbursable;
- The amount or proportion of the expense eligible for reimbursement;
- The type of documentary evidence (receipts, invoices, etc.) required for reimbursement; and
- The time period in which employees have to submit documents.

Paid Breaks for Nursing Mothers

Employers must provide reasonable paid break time for nursing mothers, no matter how long it takes or how often it needs to occur, for up to one year after the birth of the child. Employers must provide breaks to nursing mothers unless they can prove that doing so would create an “undue hardship” for the employer. Employers should review their current lactation and break policies to confirm compliance and further ensure that employees’ pay is no longer being deducted for nursing breaks.

Protections for Military Service Members

Under the Illinois Service Member Employment and Reemployment Rights Act, any service member who leaves his or her job to serve either the state or country will be entitled to protection of their employment and benefits. Illinois employees serving in the military are now entitled to:

- Leaves of absence for military service;
- The right to have employment reinstated after military service;
- Protections against employment discrimination based on military service.
- Employees on military leave must be granted at least an average performance evaluation rating based on the three years preceding the military leave;
- Employers must continue to pay service member salaries during annual training service for up to 30 non-consecutive days per calendar year;
- When a service member is on active duty, the employer is required to continue contributions to the employee's group health insurance premium if the employee chooses to continue receiving the benefits while on military leave.

Under ISERRA, employers are required to post a notice of employee rights and should review their policies governing military leave to ensure compliance. This notice can be found online as well as through your local counsel.

Amendments to the Illinois Human Rights Act

Employees now have 300 days (as opposed to 180 days in the past) to file a charge with the Illinois Department of Human Rights. Additionally, employees may now opt out of the administrative process and instead file a lawsuit in state court before there is any administrative investigation into their charge of discrimination.

The amendments to the Illinois Human Rights Act also update the posting and notice requirements to include specific information about employee rights to be free from sexual harassment. Therefore, employers must post the notice issued by IDHR and, importantly, include the same content covered in the notice in their employee handbooks. The IHRA applies to employers with one or more employees in cases involving allegations of sexual harassment, disability discrimination, pregnancy discrimination, and retaliation. Moreover, the new posting and handbook requirements extend to all employers operating in Illinois.

Emergency Medical Services Employees Exempt from One Day of Rest Act

The One Day Rest in Seven Act mandates that employers afford employees with at least one day off in a seven-day period. If an employee works at least 7.5 continuous hours, they must be given a 20-minute meal break no more than 5 hours after starting their shift. The Act was amended to create an exception for emergency medical service employees who are required to be on call for 8-hour periods. However, employers are still required to ensure EMS employees are given time to eat a meal at some point while they are on call.

Hutchinson Law

All companies that make a bid or offer for a state contract must have a sexual harassment policy in place. Further, the new law mandates that companies who claim EDGE tax credits must include their sexual harassment policy in their annual report to the state of Illinois.

New Laws on the Horizon

Minimum Wage Increase in Chicago and Cook County

Effective July 1, 2019, the minimum wage in Chicago increases to \$13 per hour and the Cook County minimum wage increases to \$12 per hour.

Recreational Marijuana Use Legislation

Illinois Governor Pritzker and Illinois House Speaker Madigan have announced their support for fast-track legislation to legalize recreational use of marijuana by adults. While the effect of such potential legislation on employers remains uncertain, any legalized recreational use of marijuana likely would complicate Illinois workplaces.

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