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Employers Beware: Sweeping Changes to Illinois Employment Laws on the Horizon

by Erin E. McAdams

A FREEBORN & PETERS LLP CLIENT ALERT

ABOUT THIS CLIENT ALERT:

Starting in late September and continuing into the new year, several significant employment laws take effect that Governor Pritzker recently signed into law. Starting soon, Illinois employers will no longer be able to ask applicants about their prior salary and wage information. And in 2020, all private employers must provide annual sexual harassment training to all employees, and disclose adverse employment rulings to the Illinois Department of Human Rights. Employers should also revamp their arbitration, confidentiality, and separation agreements to conform to new requirements that will take effect January 1.

All Illinois employers should be aware of several new bills Governor Pritzker just signed into law: (1) effective September 29, 2019, employers may not ask about or use past wage and salary information to choose applicants for positions; (2) effective January 1, 2020, employers must provide harassment training to all employees, and also revisit their employment, arbitration, and settlement agreements to ensure they conform to new requirements; and (3) effective July 1, 2020, employers must make annual disclosures regarding the prior year's number of adverse judgments or rulings in sexual harassment and discrimination cases.

I. Inquiring into the Wage History of Job Applicants Prohibited as of September 29, 2019

Effective September 29, 2019, amendments to the Illinois Equal Pay Act bar employers from asking about an applicant's past wage and salary history or using such information to screen or choose applicants for positions. Under the amendments:

- Employers ***may not*** request that an applicant disclose his wage or salary history.
- Employers ***may*** ask the applicant what he desires to make in the new position.
- If an applicant voluntarily provides wage or salary history, the employer has not violated the law and will not be penalized. However, that salary information may not be used to make a hiring decision or to determine the applicant's salary.

Employers should be aware of Illinois' new Workplace Transparency Act ("WTA"), effective January 1, 2020. Under the WTA, employers must revamp their separation and settlement agreements with current, former, and prospective employees. Employers must also revisit their employment and arbitration agreements to ensure they are enforceable under the new law.

Employers may face monetary and other penalties for inquiring about an applicant's wage history. Looking ahead, employers should review their employment applications to ensure they do not ask for wage history, and train HR, hiring personnel, and managers on the new law.

II. The Workplace Transparency Act's Requirements as of January 1 and July 1, 2020

Employers should be aware of Illinois' new Workplace Transparency Act ("WTA"), effective **January 1, 2020**. Under the WTA, employers must revamp their separation and settlement agreements with current, former, and prospective employees. A confidentiality provision will only be enforceable if it includes certain provisions demonstrating the mutual benefit of the provision, and gives the employee 21 days to consider and 7 days to revoke the agreement. The WTA also bars employers from unilaterally including a clause in the agreement that prohibits the employee from making truthful statements regarding unlawful employment practices. Failure to follow these new provisions will render the confidentiality provision void.

The WTA also prohibits certain provisions in any agreement that create a "unilateral condition of employment or continued employment," such as in confidentiality, arbitration, or other employment agreements. Any agreement that has the purpose or effect of preventing an employee or applicant from making truthful disclosures about unlawful employment practices will be considered void. Further, any agreement that requires an employee or applicant to waive, arbitrate, or otherwise diminish any future claim for discrimination, harassment, or retaliation will be considered void. However, the above provisions may be enforceable if the agreement is in writing, demonstrates "actual, knowing, and bargained-for consideration from both parties," and acknowledges the employee or applicant's right to report and seek redress for unlawful employment practices.

The WTA also makes a number of changes to the Illinois Human Rights Act ("IHRA"). As of January 1, 2020:

- Harassment claims brought by an employer's independent contractors and consultants will be covered by the IHRA;
- Unlawful discrimination includes discrimination against a person based on his actual or perceived membership in a protected class;
- The phrase "working environment" is not limited to the place where the employee performs his duties;
- An employer can be responsible for harassment committed by nonmanagerial staff only if the employer becomes aware of the conduct but fails to take remedial action.

Annual Harassment Training Required of All Employers

The WTA also requires that all Illinois employers (except certain state employers) provide annual sexual harassment prevention training to all employees that meets or exceeds a model sexual harassment training that will be created by the Illinois Department of Human Rights ("IDHR"). Employers who fail to provide required training are subject to civil penalties based on the employer's size and history of offenses.

Starting January 1, 2020 all Illinois employers must provide annual sexual harassment training. In addition, as of July 1, 2020, employers must make annual disclosures to the IDHR regarding the number of adverse judgments or administrate rulings in sexual harassment and discrimination cases.

Further, Illinois bars and restaurants must provide all employees with a written sexual harassment policy in the first week of employment. The policy must include certain substantive information about harassment and employees' avenues for redress. In addition to the new sexual harassment training requirements for all employers, restaurants and bars must also provide a supplemental model training that meets or exceeds a training the IDHR will create that is specifically aimed at the prevention of sexual harassment in the restaurant and bar industry.

Annual Disclosures Regarding Adverse Judgments or Administrative Rulings Required

Starting **July 1, 2020**, employers must make annual disclosures to the IDHR regarding the number of adverse judgments or administrate rulings in sexual harassment and discrimination cases. Further, if the IDHR is currently investigating a charge, the employer may be required to submit the total number of settlements entered into during the preceding 5 years that relate to sexual harassment or discrimination. Employers may also be required to submit a breakdown of the total number of settlements by harassment or discrimination type.

The IDHR will publish an annual report covering the amount of adverse judgments or administrative rulings in the previous year. However, the information will be aggregated to avoid exposing individual employer data to the public, and the information provided to the IDHR to create the report will be exempt from the Freedom of Information Act.

If you have questions about these notable changes to Illinois' employment laws, please reach out to Labor and Employment Partner Erin McAdams at emcadams@freeborn.com or (312) 360-6205.

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Erin is a Partner in the Litigation Practice Group, focusing her practice on employment litigation and counseling. Erin helps companies navigate employment laws, and defends employers in a wide range of class, collective, and single-plaintiff disputes before federal and state courts. She regularly counsels and litigates matters brought under state and federal antidiscrimination laws, the Fair Labor Standards Act, and the Employee Retirement Income Security Act.

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