# Illinois Set To Impose New Restrictions And Requirements On Employers

Insights
3.04.21

Illinois is not only poised to join the ranks of states that either prohibit or limit employers' ability to evaluate applicants' and employees' criminal conviction records, but also implement a retaliation standard that more heavily favors employees. In February 2021, the Illinois legislature sent Governor J.B. Pritzker Senate Bill 1480 (SB 1480), which would amend the Illinois Human Rights Act and Illinois Equal Pay Act, among other state laws. The governor is likely to sign this bill into law in the very near future, so Illinois employers should expect to soon make substantial changes to their hiring and employment practices.

**How Does SB 1480 Affect The Illinois Human Rights Act?**

The Illinois Human Rights Act (IHRA) has undergone its fair share of amendments within the past few years, and SB 1480 (if signed by the governor) encompasses just the most recent set of such changes. By way of general background, the IHRA prohibits discrimination, harassment, and certain forms of retaliation. With SB 1480, it will be a state civil rights violation for employers to discriminate against individuals based upon their conviction record unless (1) there is a "substantial relationship" between the offense at issue and the individual's employment or (2) the individual's employment involves an unreasonable risk to property or the safety of specific individuals or the general public. If either of these criteria are met, then an employer may consider an individual's conviction record in making an employment decision.

However, SB 1480 goes to great lengths to limit what constitutes a "substantial relationship" or an "unreasonable risk." Under the proposed amendments, a "substantial relationship" considers whether the job offers an opportunity for the same offense to occur and whether the circumstances leading to the conduct for which the individual was convicted will recur in the job.

Further, the relevant factors to consider for either a substantial relationship or an unreasonable risk to property or safety are (1) the length of time since the conviction, (2) the number of convictions that appear on an individual's conviction record, (3) the nature and severity of the conviction and its relationship to the safety and security of others, (4) the facts or circumstances surrounding the conviction, (5) the age of the employee at the time of the conviction, and (6) evidence of rehabilitation efforts. Therefore, in order to determine whether evaluating an individual's conviction record in connection with their intended or current employment position may be lawful, an employer must first conduct a fact-specific inquiry and analyze all of the foregoing factors.

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Indeed, employers' new IHRA obligations under SB 1480 do not end with the aforementioned multifactor analysis. If a substantial relationship or unreasonable risk exists and you want to deny or terminate employment (or take some other adverse employment action), you must first notify the individual in writing of your intent to do so and provide the individual with a copy of the conviction report. Thereafter, the individual is entitled to a five-business-day waiting period, during which time you cannot make a final determination or finalize the adverse employment action. In addition, this five-business-day waiting period must provide the individual an opportunity to submit information to convince you not to take an adverse employment action. Then, if you want to take an adverse employment action after receiving the individual's explanation (if any), you must provide a written notice to the individual that (1) explains the basis for the determination, (2) advises the individual of any internal procedures for appealing the determination, and (3) gives notice of the individual's right to file a Charge of Discrimination with the Illinois Department of Human Rights.

Should the Governor sign SB 1480 as expected, you will want to be sure to comply with the new amendments to the IHRA. Penalties under this statute are stringent, as the IHRA allows uncapped compensatory damages, back pay, front pay, reinstatement, attorneys' fees and costs, and punitive damages. As such, before evaluating an employee's conviction record or implementing an adverse employment action as a consequence of an individual's conviction, you should consult with counsel.

**How Does SB 1480 Affect The Illinois Equal Pay Act?**

The IHRA is not the only statute affected by SB 1480, as the proposed law impacts the Illinois Equal Pay Act (IEPA) as well. The IEPA is the state's statute to ensure that individuals are compensated without regard to their sex or race. While SB 1480 does not add any protected categories to the IEPA's provisions, it does implement new requirements for employers.

For example, businesses with over 100 employees in Illinois would be required to obtain from the Illinois Department of Labor an equal pay registration certificate within three years after the governor signs SB 1480 (and recertify every two years thereafter). The certificate will be provided to employers that comply with the IEPA, antidiscrimination statutes, and other comparable laws.

Furthermore, if you are required to complete an EEO-1 Report, this report (including gender, race, ethnicity, and wage information) must be provided to the Illinois Department of Labor along with a valid equal pay registration certificate. Notably, the Illinois Department of Labor can investigate noncompliance with these provisions (including the failure to meet the criteria for an equal pay registration certificate) through audits, subpoenas, depositions, and other investigatory methods. These amendments require you to be mindful of your pay practices and ensure that you are not discriminating against employees in that regard.

The new amendments to the IEPA would also include broad whistleblower protections. Unlike some other antiretaliation statutes, the IEPA amendments would take an expansive interpretation of an "adverse employment action," which would include "reprimands" and termination (and employment actions in between). Of note, however, is the fact that a claim for IEPA retaliation is subject to a less

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These standards clearly favor employees and place employers at a disadvantage, even if an adverse employment action was not retaliatory in any respect. Combined with the IEPA's penalty provisions that provide for reinstatement, two times back pay, interest, and attorneys' fees and costs, you will need to continue to be vigilant in ensuring that your employees are treated fairly and consistently in accordance with company policy and the law.

**What Can Employers Do If SB 1480 Becomes Law?**

You should be cognizant of the new requirements imposed by SB 1480. As to the IHRA, the surface-level requirement of determining whether there is a substantial relationship between a criminal conviction and an employment position is not a simple task in light of SB 1480's strict provisions. Further, the IEPA contains new administrative requirements that can subject employers to burdensome audits other investigations, and the statute's antiretaliation provisions significantly favor employees. The implications of SB 1480 are vast, and you should consult with counsel to best ensure compliance.

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our Chicago office.

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