



Recent Pro-Employee Legislation in Illinois

Insights

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This past summer, Illinois became only the 12th state in the nation to establish a minimum wage above the \$5.15/hour federal standard. Under legislation Governor Rod Blagojevich signed into law on August 28, 2003, Illinois workers over age 18 will see the minimum wage increased to \$5.50 an hour in January 2004 and to \$6.50 an hour in January 2005. Public Act 93-0581. This will make Illinois the **only** state in the Midwest with a minimum wage that is higher than the federally prescribed minimum. Although this legislation will put more money in workers' pockets, it will put more strain on small businesses trying to compete with businesses in surrounding states. This type of pro-employee legislation has been proliferating in Illinois as of late, and employers should be aware of the new Illinois laws that will add to the spectrum of employee rights and impose new obligations on Illinois employers.

In addition to raising the minimum wage, on August 25, 2003 Illinois enacted the Victims' Economic Safety and Security Act (VESSA), which requires private-sector employers with 50 or more employees, as well as public sector employers, to provide up to 12 weeks of unpaid leave within a 12-month period to employees who are victims of domestic or sexual violence, and to a family or household member of a victim of such abuse. Specifically, VESSA allows employees who provide proper notice and certification to take leave to: (1) permanently or temporarily relocate; (2) seek medical or psychological attention; (3) obtain victim services; (4) participate in safety planning or other actions to increase the safety of the victim; or (5) seek legal assistance or remedies to ensure the victim's safety, including time off for civil or criminal hearings. Like the FMLA, VESSA requires employers to restore an employee to the same or equivalent position, continue health insurance benefits during leave, and provide reasonable accommodations to a victim of domestic or sexual abuse or a family or household member of a victim. VESSA also contains an anti-discrimination and retaliation provision. Finally, every employer is required to post and maintain documentation provided by the Illinois Department of Labor summarizing the requirements of VESSA and an employee's rights under it.

In addition to VESSA, two new laws that take effect on January 1, 2004, will greatly expand the rights of public sector employees. First, the Illinois Civil Rights Act of 2003 prohibits any unit of state, county, or local government from excluding a person from participation in, denying a person the benefits of, or subjecting a person to discrimination under any program or activity because of a person's race, color, or national origin. The Illinois Civil Rights Act also allows challenges to governmental policies or programs that have a disparate impact on racial and ethnic minorities.

Second, the Illinois Lawsuit Immunity Act allows state employees to bring claims under the federal Age Discrimination in Employment Act, the Family and Medical Leave Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the Fair Labor Standards Act in either state or federal court.

Employers should also take note of other important Illinois laws that will affect many of their policies and practices:

- The Illinois Criminal Identification Act was amended to require employers who inquire into an applicant's criminal history to add specific language to their applications which states that the applicant is not obligated to disclose sealed or expunged records of convictions or arrests, and prevents employers from asking whether an applicant has had records expunged or sealed. Public Act 93-0211.
- The Illinois Human Rights Act was amended to make it a civil violation for an employer to impose a restriction that has the effect of prohibiting a language from being spoken by an employee in communications that are unrelated to the employee's duties. Public Act 93-0217.
- The Whistleblower Act, effective January 1, 2004, will prohibit private employers of every size from creating rules or policies preventing employees from disclosing violations of law to state or federal law enforcement agencies. The Act will also bar employers from retaliating against employees engaged in legitimate whistleblowing activities. Public Act 93-0544.
- A new amendment to the Employment of Strike Breakers Act, effective January 1, 2004, will prevent employers from contracting with day and temporary labor service firms to replace workers during a strike or lockout. Additionally, the Act bars labor service agencies from sending workers to job sites where a strike, lockout or other labor problem exists. Public Act 93-0375.
- Under the new Family-Friendly Workplace Initiative, employers selected by the Department of Commerce and Community Affairs may receive "family-friendly workplace" awards, and become the subject of a statewide information and advertising campaign publicizing the employer's award and contributions to family-friendly child care. Public Act 93-0478.
- The Illinois Prohibition of Goods from Forced Labor Act provides that each contract entered into by a State agency for the procurement of equipment, materials, or supplies must specify that any foreign-made goods under the contract were not produced by forced, convict or indentured labor. Public Act 93-0307.

- The Illinois legislature has clearly addressed a variety of concerns facing employers and employees alike. Employers should be aware of this recent legislation and prepare to make changes to existing policies, and adopt new policies and procedures, where applicable, to comply with the changing legal landscape in Illinois.