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Missouri and Illinois Employment Law Update

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Agenda

- **Recent Changes in Missouri Employment Laws:**
 - Amendment 3 (marijuana)
 - Minimum wage increase
- **Recent and Upcoming Changes in Illinois Employment Laws:**
 - Personnel Record Review Act
 - Crown Act
 - Victims' Economic Security and Safety Act (VESSA)
 - Illinois Freedom to Work Act
 - Family Bereavement Act amendment to the Child Bereavement Act
 - Minimum wage increase
 - Paid Leave for All Workers Act (PLFAW)

RECENT CHANGES IN MISSOURI LAW

Amendment 3

- **Marijuana is legal for adults ages 21 and over.**
- **Key takeaways for employers:**
 - The law does *not* permit public use of marijuana, use of marijuana in the workplace, or driving while under the influence of marijuana.
 - Employers are *not* required to permit or accommodate use or possession of marijuana on company property and may continue to prohibit employees from, and discipline or discharge employees for, working while under the influence of marijuana.
 - Employers are prohibited from discriminating against a person based on:
 - (i) their status as a qualifying patient or primary caregiver with a valid medical marijuana card, including lawful use of medical marijuana outside of work and during nonworking hours, or
 - (ii) a positive drug test for marijuana components or metabolites of a person who has a valid medical marijuana card, unless failure to do so would cause an employer to lose benefits under federal law. The anti-discrimination provision, however, still does *not* permit being under the influence of medical marijuana while on company property or during working hours. It also does not apply to employees in safety-sensitive positions.
 - Criminal records of marijuana offenses will be expunged for misdemeanors and most felony offenses.
 - After expungement, no person may be required to acknowledge the existence of such a criminal record or answer questions about the record in any application for employment, and individuals may deny the existence of the record.

Amendment 3 (cont'd.)

- Missouri employers should:
 - Take measures not to discriminate against employees or applicants who have valid medical marijuana cards, such as not having blanket “no hire” policies and not automatically screening out applicants who test positive for marijuana on a pre-hire drug test but possess a valid medical marijuana card.
 - To the extent employers use drug tests that include screening for marijuana, employers should afford the applicant or employee an opportunity to explain any positive marijuana result prior to taking an adverse action on the basis of the test result.
 - Consider ceasing any pre-hire inquiries about most past marijuana convictions, particularly to the extent any such records still appear on a criminal background check report.

Minimum Wage

- Effective Jan. 1, 2023, Missouri minimum wage is \$12 per hour.
- Tipped employees must be paid at least \$6 per hour, plus any amount necessary to bring total compensation up to at least \$12.00 per hour.

ILLINOIS: LAWS THAT WENT INTO EFFECT IN 2022

ILLINOIS RETIREMENT SAVINGS PROGRAM

- The Illinois Secure Choice Retirement Savings Program (SCRSP), effective July 19, 2022.
- Roth individual retirement account for private-sector employees who lack access to employer-sponsored retirement plans.
- Employers must automatically enroll each employee who has not opted out of participation in the program and deposit their payroll deductions on behalf of those employees. Employers who fail to take these steps could face fines of \$250 to \$500 per employee.
- The enrollment deadline for employers with 5-15 employees is Nov. 1, 2023. The deadline for larger employers has already passed.
- https://www.ilsos.gov/departments/index/register/volume46/register_volume46_issue_32.pdf (pgs. 14068 - 75)

SCRSP (cont'd.)

- Employers who have fewer than five employees, have been in business for less than two years, or who already offer an employer-sponsored retirement plan are exempt from facilitating the program.
- Employers may use their payroll services provider for registration.
- Noncompliant employers with 25 or more employees will see fines in 2023.

VICTIMS' ECONOMIC SECURITY AND SAFETY ACT (VESSA)

- *Effective Jan. 1, 2022*
- H.B. 3582 revised the Victims' Economic Security and Safety Act, which provides leave to employees who are victims or whose family or household members are victims of certain types of violence; prohibits discrimination, harassment or retaliation against those employees; and prohibits discrimination against applicants who are victims of such violence.
- The new legislation allows employees to take leave if they or a “family or household member” is a victim of “any crime of violence.”
 - “Crime of violence” means any conduct proscribed by various legislative provisions, specifically homicide, sex offenses, bodily harm, harassing and obscene communications, terrorism and armed violence.

VESSA (cont'd.)

- **“Family or household members” have been expanded to include:**
 - ✓ spouses or parties to a civil union
 - ✓ parents
 - ✓ grandparents
 - ✓ children
 - ✓ grandchildren
 - ✓ siblings
 - ✓ other persons related by blood or by present or prior marriage or civil union
 - ✓ other persons who share a relationship through a child
 - ✓ any other individuals whose close association with the employee is the equivalent of a family relationship as determined by the employee
 - ✓ persons jointly residing in the same household
- **The legislation also revises the certification and confidentiality requirements.**
 - <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0487>

VESSA (cont'd.)

- The amendments add a confidentiality provision requiring all information provided to the employer, including the employee's statement and any other documentation, record or corroborating evidence, and the fact that the employee requested or obtained an accommodation pursuant to VESSA, to be maintained as confidential.
- Employers may disclose information only if the disclosure is:
 - requested or consented to in writing by the employee; or
 - otherwise required by applicable federal or state law.

DISABILITY ASSOCIATION DISCRIMINATION

- *Effective Jan. 1, 2022*
- The Illinois Human Rights Act (IHRA) prohibits employers from discriminating on the basis of, among other things, an individual's physical or mental disability.
- Illinois H.B. 1838 has amended IHRA to specify that "discrimination based on disability includes unlawful discrimination against an individual because of the individual's association with a person with a disability."
- <https://www.ilga.gov/legislation/publicacts/102/PDF/102-0419.pdf>

ILLINOIS FREEDOM TO WORK ACT (IFWA)

- Applies only to noncompete and nonsolicit agreements entered into on after Jan. 1, 2022.
- Illinois S.B. 0672 amends the Illinois Freedom to Work Act by expanding restrictions on covenants not to compete. Key provisions of the revised regulations include:
 - Employers are prohibited from (1) entering into noncompete agreements with employees who earn \$75,000 per year or less, and (2) entering into nonsolicit agreements with employees who earn \$45,000 per year or less.
 - Employers must advise employees to consult with an attorney before entering into a noncompete or nonsolicit agreement, and also give employees at least 14 days to review and decide whether to sign the agreement.

IFWA (cont'd.)

- **Key provisions of the revised regulations also include:**

- Employers must provide “adequate consideration” (usually in the form of a financial benefit) at the time an employee signs the noncompete or nonsolicit agreement, or after the employee has worked for the employer for two years.
- Employers cannot enter into a noncompete or nonsolicit covenant with any employee who was terminated or furloughed due to the COVID-19 pandemic or to “circumstances that are similar to the COVID-19 pandemic,” unless enforcement of such agreements includes providing compensation equal to the employee’s base salary at the time of termination for the period of enforcement, minus any compensation earned through subsequent employment.
- An employee can recover attorneys’ fees and costs from an employer if the employee is the prevailing party in a civil lawsuit or arbitration filed by an employer to enforce a restrictive covenant.
- The Illinois Attorney General may investigate employer conduct when there is “reasonable cause” to believe that an employer is engaged in a pattern or practice prohibited by the IFWA.
- <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0358>

ARTIFICIAL INTELLIGENCE VIDEO INTERVIEW ACT

- *Effective Jan. 1, 2022*
- **Since Jan. 1, 2020, Illinois has regulated the use of artificial intelligence (AI) in the hiring process under the first-of-its-kind Artificial Intelligence Video Interview Act, requiring that employers:**
 - notify applicants before the interview that such technology may be used;
 - provide applicants with information before the interview on how the AI technology works and its general characteristics;
 - obtain applicants' prior consent to be assessed by AI technology;
 - maintain the confidentiality of such videos and share with only those whose expertise or technology is necessary in order to evaluate applicants' fitness for a position; and;
 - destroy all copies within 30 days of applicants' requests.
- **H.B. 53 now requires employers to collect and report data on the race and ethnicity of job applicants if an AI analysis of their video interview is the sole factor for determining whether they are selected for an in-person interview.**
- **<https://www.ilga.gov/legislation/publicacts/102/PDF/102-0047.pdf>**

EQUAL PAY ACT AMENDMENT

- *Effective July 1, 2022*
- Illinois H.B. 1207 amended the state's Equal Pay Act to specify that the Act does not prevent employers and applicants from discussing unvested equity or deferred compensation that the applicant would forfeit due to resigning from their current employment.
- It further specifies that if an applicant voluntarily and without prompting discloses that they will forfeit unvested equity or deferred compensation, employers may request that the applicant verify the aggregate amount of such compensation.
- <https://www.ilga.gov/legislation/publicacts/102/PDF/102-0277.pdf>

PERSONNEL RECORD REVIEW ACT AMENDMENT

- *Effective Jan. 1, 2022*
- The Personnel Record Review Act gives employees the right to inspect any personnel documents which are, have been, or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action.
- Under the Act, an employer or former employer cannot divulge disciplinary reports, letters of reprimand or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice.
- Illinois S.B. 2486 amends the Personnel Record Review Act to allow an employee to file a complaint or lawsuit for a disclosure violation within three years after the date of the disclosure.
- <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0562>

REVISED PREGNANCY RIGHTS POSTER

- *Effective July 1, 2022*
- Illinois revised and reprinted its pregnancy rights workplace poster.
- https://www2.illinois.gov/dhr/Publications/Documents/Pregnancy_Posting-Igl-ENG14.pdf

REVISED DEFINITION OF “CITIZENSHIP STATUS”

- *Effective May 27, 2022*
- Illinois SB 3865 moves to “remove the dehumanizing term ‘alien’ from all Illinois statutory provisions.”
- Among other things, the Bill replaces the term “alien” with “person” or “noncitizen.” Additionally, the Bill amends the definition of citizenship status under the Illinois Human Rights Act from “a person born outside the United States and not a U.S. citizen who is not an authorized alien” to “a person born outside the United States who is lawfully present.”
- <https://www.ilga.gov/legislation/publicacts/102/PDF/102-1030.pdf>

ILLINOIS: LAWS IN EFFECT IN OR AFTER 2023

MINIMUM WAGE INCREASES

- Effective Jan. 1, 2023, the minimum wage in Illinois increased to \$13/hour, and the minimum wage for qualified tipped employees increased to \$7.80 per hour.
- New employees (first 90 days of employment) over the age of 18 may be paid up to 50 cents less per hour.
- For the next several years, minimum wage rates will increase on an annual basis as follows:
 - Jan. 1, 2024
 - \$14/hr.
 - \$8.40/hr. for tipped employees
 - Jan. 1, 2025
 - \$15/hr.
 - \$9/hr. for tipped employees
- <https://www2.illinois.gov/idol/Laws-Rules/FLS/Pages/minimum-wage-rates-by-year.aspx>

CROWN (Create a Respectful and Open Workplace for Natural Hair) ACT

- *Effective Jan. 1, 2023*
- Illinois SB 3616 amends the state’s Human Rights Act to specify that prohibited discrimination on the basis of race includes “discrimination on the basis of traits associated with race, including hair texture and protective hairstyles such as braids, locks, and twists.” This amendment expands the definition of “race.”
- <https://www.ilga.gov/legislation/publicacts/102/PDF/102-1102.pdf>

FAMILY BEREAVEMENT LEAVE ACT

- *Effective Jan. 1, 2023*
- S.B. 3120 expands the definition of “covered family member” under the state’s bereavement leave law to include children, stepchildren, spouses, domestic partners, siblings, parents, parents-in-law, grandchildren, grandparents or stepparents.
- The Act requires employers to provide employees a maximum of two weeks (10 workdays) of unpaid leave to attend the funeral, make arrangements or grieve the death of a covered family member.
- The Act also allows employees to use bereavement leave when they are absent due to:
 - a miscarriage;
 - an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure;
 - a failed adoption match or an adoption that isn't finalized because it is contested;
 - a failed surrogacy agreement;
 - a diagnosis that negatively impacts pregnancy or fertility; or
 - a stillbirth.
- <https://www.ilga.gov/legislation/publicacts/102/PDF/102-1050.pdf>

THE “ONE DAY REST IN SEVEN” ACT (ODRISA)

- *Effective Jan. 1, 2023*
- **S.B. 3146 revises the state’s meal and rest break law to provide at least 24 consecutive hours of rest in every consecutive seven-day period (instead of every calendar week). This portion of the Act (Section 2) primarily provides protections for domestic workers and does NOT include:**
 - Part-time employees working less than 20 hours per calendar week
 - Employees needed in case of machinery breakdown or other immediate emergency services to prevent injury, damage or suspension of operations
 - Employees in agriculture or coal mining
 - Seasonal employees engaged in canning and processing perishable agricultural products
 - Security guards
 - Employees in a bona fide executive, administrative, professional, outside sales or supervisor capacity
- **At present, Section 3 of the Act grants employees who work 7.5 continuous hours with a minimum 20-minute meal break, to be taken no later than 5 hours after the start of their work period.**

ODRISA (cont'd.)

- **Starting Jan. 1, 2023, employees who work more than 7.5 hours will be entitled to an additional 20-minute meal break for every additional 4.5 consecutive hours worked beyond 7.5 consecutive hours.**
- **The following employees are NOT covered under Section 3 of the Act:**
 - Employees whose rest periods are established in a collective bargaining agreement
 - Employees who monitor individuals with developmental disabilities or mental illness who are required to be on-call for 8 hours
 - Emergency Medical Services employees who are required to be on-call for 8 hours
- **Employers who violate Sections 2 or 3 could face fines of \$250 to \$500 per offense.**
- **The Act also adds notification requirements for remote workers as well as revises the law's enforcement and penalty provisions.**
- **<https://www.ilga.gov/legislation/publicacts/102/PDF/102-0828.pdf>**

ODRISA (cont'd.)

- Employers may request an ODRISA Permit from the Illinois Department of Labor to schedule employees to work on the seventh day, provided that the employees have voluntarily elected to work.
- The request must contain the following:
 - a statement that all employees who will be working seven days in a row are in fact volunteers;
 - the anticipated number and skills of said employees;
 - a statement that no person possessing said skills is laid off; and
 - the number of days covered by the permit, including inclusive dates and hourly times starting on Sunday.
- An ODRISA Permit allows an employee to work all seven days of the week for *no more than eight weeks in any one year*. A permit for eight weeks of the year shall be granted without justification of necessity.
- To obtain an ODRISA Permit in excess of eight weeks in a year, the employer must show the following:
 - a statement that the necessity cannot be remedied by increasing the number of employees or by adjusting work scheduled; and
 - the business necessity and economic conditions making such a request necessary.
- The ODRISA Permit Application can be accessed at: <https://www2.illinois.gov/idol/Laws-Rules/FLS/Pages/ODRISA-Permit-Application.aspx>.
- The application must be received by IDOL no later than the Friday before the first effective day of the permit. The ODRISA Permit must be granted prior to adjusting employee schedules.
- If the employer fails to use a granted Permit (or any portion thereof), the Permit can be cancelled by written notification to the Director of Labor no later than seven working days after the expiration of the Permit.

EMPLOYEE SICK LEAVE ACT (ESLA) AMENDMENT

- *Effective Jan. 1, 2023*
- Under SB 645, Illinois has amended its Sick Leave Act to provide that “the rights afforded under ESLA serve as the minimum standard in a negotiated collective bargaining agreement.”

ESLA (cont'd.)

- To be clear, ESLA does not require Illinois employers to provide any sick leave to employees.
- However, if an Illinois employer provides sick leave or paid time off, the employee may use the benefit for:
 - absences due to an illness, injury or medical appointment of the employee's covered family member, or
 - personal care of a covered family member on the same terms upon which the employee is able to use personal sick leave for their own illness or injury.
 - “Covered family member” is defined under the Family Bereavement Leave Act.
 - “Personal care” includes:
 - activities to ensure that a covered family member's basic medical, hygiene, nutritional or safety needs are met;
 - providing transportation to medical appointments for a covered family member who is unable to meet those needs himself or herself; or
 - being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.
- <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0817>

Paid Leave for All Workers Act (PLFAW)

- **Effective Jan. 1, 2024**
- **Will provide nearly all Illinois workers with a minimum of 40 hours over a 12-month period.**
 - Limited exceptions.
- **Leave accrues one hour per 40 hours worked. Employer can have a policy limiting total accrual to 40 hours.**
 - No requirement that employee be paid out unused paid leave under PLFAW.
 - Employer can (in a written policy) have this leave applied against a PTO bank/account (in a written policy) but then an employee would be paid out of unused PLFAW leave at termination, per existing Illinois law (under the Illinois Wage Payment and Collection Act).
- **Once effective (Jan. 1, 2024) paid leave will be available the later of 90 days after Jan. 1, 2024, or 90 days after beginning their job (but leave begins to accrue immediately).**

Paid Leave for All Workers Act (PLFAW) (cont'd.)

- Employees on sales commissions must receive at least minimum wage as paid leave.
- No reason needed and employers will not be permitted to seek documentation.
- There will be “posting” requirements similar to other state and federal employment laws.
- Begin preparing: many employers’ existing paid leave policies (e.g., PTO policies) may already substantially comply, but will still likely need to devise policy language specifically addressing the PFLAW.



QUESTIONS



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