

EMPLOYMENT LAW UPDATE

New Laws Impacting Illinois Employers in 2015

GOA REGIONAL BUSINESS ASSOCIATION

LUNCH & LEARN

MARCH 17, 2015

AGENDA

- 1. Ban the Box Legislation**
- 2. Illinois Human Rights Act Amendments – Pregnancy and Unpaid Interns**
- 3. Illinois Secure Choice Savings Program**
- 4. Minimum Wage Increase (Chicago)**
- 5. Illinois Wage Payment and Collection Act Amendments**

BAN THE BOX LEGISLATION

(State Law)

- **Called the “Jobs Opportunities for Qualified Applicants Act” (Eff. 1/1/15)**
- **Requires private employers (who employ at least 15 employees) to evaluate an applicant’s skills and qualifications before inquiring into applicant’s criminal history**

BAN THE BOX LEGISLATION

(Exceptions)

- **Applicants licensed under the Emergency Medical Services (EMS) Systems Act**
- **Employers that are subject to federal or state laws that require applicants with certain convictions to be excluded**
- **Employers that require a standard fidelity bond where an applicant's criminal conviction would disqualify the individual for a bond**

BAN THE BOX LEGISLATION

- **Still can ask about criminal history but must wait until an interview has been granted or, if no interview, until a conditional offer of employment has been extended**

BAN THE BOX LEGISLATION

(Chicago Ordinance)

- **Similar to Illinois law but applies to all Chicago employers**
- **Effective 1/1/15**
- **Similar exceptions to state law**
- **Note: If employer does not hire applicant based on criminal record or history, the employer is required to inform the applicant of the basis of decision**

BAN THE BOX – PRACTICAL IMPACT

- 1. Modify job applications to remove criminal history question**
- 2. Conduct criminal background checks later in the hiring process**
- 3. Ask about criminal history in the interview**
- 4. Carefully consider the defensibility of decisions not to hire applicants based on criminal record**

PREGNANCY FAIRNESS LAW

- Amends the IHRA to include “pregnancy” as a protected class (Eff. 1/1/15)
- “Pregnancy” is defined as “pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth” (broadly construed to cover pre and post childbirth issues)

PREGNANCY FAIRNESS LAW

- Prohibits discrimination throughout entire employment process (hiring to termination)
- Like the ADA, it also requires a broad range of accommodations (e.g., frequent, longer bathroom breaks, assistance with manual labor, light duty, seating accommodations, part-time or modified work schedule, etc.)

PREGNANCY FAIRNESS LAW

- Like sexual harassment and retaliation claims, disability claims apply to small employers (1 or more employees, as opposed to 15 employees)
- Posting requirements – published by the IDHR

PREGNANCY FAIRNESS LAW – PRACTICAL POINTERS

- 1. Post notice/poster issued by IDHR and place in handbook**
- 2. Understand reasonable accommodation obligations – much like ADA and PDA analysis**
- 3. Add protected class to handbook policies**

UNPAID INTERNS NOW PROTECTED

- IHRA protects unpaid interns from sexual harassment (Eff. 1/1/15)
- Test for an unpaid intern is virtually same as DOL test
- Deviation from normal rule that protection is afforded only to employees

UNPAID INTERNS – PRACTICAL POINTERS

- **Modify handbook policies on harassment/discrimination**
- **Make sure interns get a copy of policy and acknowledge receipt of same**
- **Have interns attend harassment training, if offered**

ILLINOIS SECURE CHOICE SAVINGS PROGRAM

- **Mandates Illinois employers (25+) to provide a retirement savings program**
- **First legislation in country**
- **Applies to employers with 25+ employees who have been in business for 2+ years**

ILLINOIS SECURE CHOICE SAVINGS PROGRAM

- Covered employer must provide a retirement savings plan to employees or automatically enroll employees in state run retirement plan
- Employees can opt out but must affirmatively do so in writing
- Covered employers must deduct 3% of employee's compensation into the state plan

ILLINOIS SECURE CHOICE SAVINGS PROGRAM

- **Effective 6/1/15 but employers have until 6/1/17 to provide a retirement plan**
- **No fiduciary relationship – employer is simply pass thru entity**
- **Program is not yet operational; possible legal challenges – stay tuned!**

CHICAGO MINIMUM WAGE

7/1/15 = \$10.00/hour

7/1/16 = \$10.50/hour

7/1/17 = \$11.00/hour

7/1/18 = \$12.00/hour

7/1/19 = \$13.00/hour

CHICAGO MINIMUM WAGE

- Eff. 7/1/20, minimum wage will increase on annual basis indexed for inflation
- No increase if unemployment rate is 8.5% or higher
- Any increase capped at 2.5% regardless of inflation

ILLINOIS WAGE PAYMENT COLLECTION ACT AMENDMENTS

- **Significant changes effective 8/22/14 – no notice or comment period**
- **IWPCA has a 10-year statute of limitations that governs the payment of wages, wage deductions, payment of vacation and bonuses and other final compensation**

IWPCA – AMENDMENTS

- **IDOL has jurisdiction over non-resident corporate officers (300.440e)**
- **IDOL has jurisdiction over an employer that does not have a physical office in Illinois but has an employee who is performing services in Illinois (300.440c)**

IWPCA – AMENDMENTS

- Expands the scope of the IWPCA to enforce “promises” contained in employee handbook, despite contract disclaimers to the contrary (300.450)
- Provides for payment of a “severance” if by agreement of the parties or “established practice of the employer” (300.530)

IWPCA – AMENDMENTS

- **Can't obligate employee to accept direct deposit or payroll card (300.600)**
- **Employers who pay in cash must obtain signed receipts from employee indicating date of payment and amount received (300.600a)**

IWPCA – AMENDMENTS

- Employers must now give employees written notice of their rate of pay at the beginning of employment and at any time the rate of pay changes (300.630d)
- Codifies that individual liability is based on “economics realities” test (300.620a)
- Takes away “inability to pay” defense that used to exist (300.620c)

IWPCA – AMENDMENTS

- **Allows for requested deductions in equal amounts over a period of time (300.720b)**
- **Failure of employer to respond to wage claim within 21 days deems the claimant's allegations as admitted (300.941c)**

THANK YOU

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