Updates
January 24, 2023

2023 Illinois Employment Law Changes

Illinois employers will face a host of new requirements in 2023. Below are updates and reminders regarding certain aspects of the new labor and employment landscape in Illinois.

CROWN Act

As of January 1, 2023, the Illinois Human Rights Act's (IHRA) definition of "race" has been amended to include "traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists." The amendment is called the CROWN Act, which stands for Create a Respectful and Open Workplace for Natural Hair.

Although the open-ended wording of the amendment raises the possibility of employees pressing for additional traits to be protected under the umbrella of "race," this much is certain: Harassment or adverse employment actions taken on the basis of an employee's traditional hairstyles now risk discrimination claims.

The IHRA states, however, that nothing in its list of prohibited forms of discrimination "prohibits an employer from enacting a dress code or grooming policy that may include restrictions on attire, clothing, or facial hair to maintain workplace safety or food sanitation." The IHRA also includes a bona fide qualification exemption that permits hiring or selecting between persons for bona fide occupational qualifications.

Illinois joins a growing number of jurisdictions that have passed similar legislation, including California, Colorado, Connecticut, Louisiana, Maine, Massachusetts, Nebraska, New Jersey, New York, Oregon, Tennessee, Virginia, and Washington, as well as more than 40 localities such as Ann Arbor, Michigan; Austin, Texas; Charlotte, North Carolina; Cincinnati, Ohio; and Tucson, Arizona.

Review of hiring processes and appearance or grooming policies is highly recommended to ensure compliance with the CROWN Act. The amendment further provides an opportunity for employers to train supervisors and employees regarding equal employment opportunity (EEO) compliance.

Family Bereavement Leave Act

The Illinois Family Bereavement Leave Act (FBLA) also took effect on January 1, which amended and expanded on the existing Child Bereavement Leave Act (CBLA). Under the CBLA, employees could take up to 10 workdays of unpaid leave related to the death of their child. The FBLA expanded the reasons for leave to now include the death of the employee's child, stepchild, spouse, domestic partner, sibling, parent or stepparent, mother- or father-in-law, grandchild, or grandparent.

Leave may be used (1) to attend the family member's funeral (or similar event), (2) to make arrangements necessitated by and/or grieve the family member's death, or (3) for reasons due to a failed pregnancy, birth, assisted insemination procedure, or adoption match or surrogacy agreement, or after receiving a diagnosis that negatively impacts pregnancy or fertility. Leave must be taken within 60 days of the date when the employee receives notice of the family member's death (or other qualifying event) but is limited to six total weeks of

FBLA leave in a 12-month period.

Importantly, the FBLA applies only to employers who are subject to and employees who are eligible to take leave under the federal Family Medical Leave Act (FMLA). Thus, employers must have at least 50 employees and an employee must have worked at the same employer for at least 12 months, have worked at least 1,250 hours for the employer in the previous 12 months, and must work at a location where the employer employs at least 50 employees within 75 miles of the employee's worksite. Further, leave under the FBLA does not give the employee the ability to take unpaid leave that exceeds the amount of leave provided under the FMLA.

Employers may request reasonable documentation from employees to grant requested FBLA leave. Where leave is sought as the result of a family member's death, reasonable documentation includes a death certificate, published obituary, or other written verification of death, burial, or memorial services. Where an employee seeks leave due to pregnancy, adoption, or fertility, the Illinois Department of Labor (IDOL) has adopted a form for the employee's healthcare practitioner or adoption or surrogacy organization to complete.

Employers are encouraged to review their policies to ensure they are compliant with the FBLA and to ensure managers, supervisors, human resources personnel, and other relevant staff are trained on the FBLA's requirements.

One Day Rest in Seven Act Amendment

Illinois also amended its "One Day Rest in Seven" Act (ODRISA), greatly modifying day of rest compliance requirements for employers throughout Illinois. Under the old rule, employers were required to give employees one day of rest per "calendar week;" now, employees must be given at least 24 hours of consecutive rest each "consecutive seven-day period." In addition, where employers previously could schedule employees for up to 12 consecutive days, this practice is no longer permissible: At least one day of rest will need to be provided to covered employees every seven days, and each noncompliant seven-day period will be treated as a separate offense.

ODRISA now also requires additional meal periods during longer shifts. For employees working beyond their first 7.5 continuous hours, the amendment requires an additional 20-minute meal break to be provided for every additional 4.5 continuous hours worked. Employers will not be able to designate "time spent using the restroom facilities" for the purpose of fulfilling that break requirement. Further, conspicuous postings related to the new meal break rule—along with the new day-of-rest requirement—will need to be placed where such notices are ordinarily kept.

Finally, ODRISA violations now bring enhanced damages of up to $500 per offense in combined penalties and damages for employers with fewer than 25 employees, and up to $1,000 per offense in combined penalties and damages for employers with 25 or more employees. In light of the various changes to ODRISA, employers are strongly encouraged to review existing day-of-rest and meal-break policies.

Illinois Equal Pay Act Update

Larger Illinois employers should also pay careful attention to the new requirements under the Illinois Equal Pay Act (IEPA). Employers (1) with at least 100 employees in Illinois and (2) that are required to file an Annual Employer Information Report (EEO-1) with the federal Equal Employment Opportunity Commission (EEOC) must submit an application to IDOL to obtain an Equal Pay Registration Certificate (EPRC).

The EPRC application must include the following:

- The employer's most recent EEO-1 Report.
- A list of all employees during the previous 12-month calendar year, separated by gender and the race and ethnicity categories from the EEO-1 Report, the county in which the employee works, the employee's start date, the total number of hours the employee worked during the payroll year, and the total wages paid, rounded to the nearest $100.
- An Equal Pay Compliance Statement signed by a corporate office, legal counsel, or authorized agent that certifies:
    - That the employer is in compliance with the IEPA, Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Illinois Human Rights Act (IHRA), and the Illinois Equal Wage Act.
    - That the average compensation for the employer's female and minority employees is not consistently below the average compensation, according to the U.S. Department of Labor (DOL) rules, for its male and non-minority employees within each major job category from the EEO-1 Report.
    - That the employer does not restrict employees of one sex to certain jobs and makes retention and promotion decisions without regard to sex.
    - That the employer corrects wage and benefit disparities when identified.
    - How the employer evaluates wages and benefits.
    - The employer's approach to determine employees' wages and benefits.
- A $150 filing fee.

The IDOL provides a template compliance statement on its website. Employers are also encouraged to submit any other information that it believes is relevant to explain any pay disparities among employees.

Employers who were registered to do business in Illinois as of March 23, 2021, must submit the application before March 23, 2024. Those who registered to do business in Illinois after that date must submit the application within three years of starting business operations in Illinois, but not before January 1, 2024. IDOL will assign employers a due date and notify them at least 120 days before the application is due. Employers will be required to recertify every two years thereafter with an updated application; IDOL will notify employers at least 180 calendar days before recertification applications are due.

IDOL will analyze employer data within 45 days and provide employers with a response based on its review. Employers whose data raise concerns will be given 30 days to cure any deficiencies IDOL identifies.

Employers with fewer than 100 employees on December 31 of the year before recertification will only have to send IDOL a certification that the employer is exempt from the EPRC requirements instead of applying for recertification.

Noncompliant employers or those who submit false or misrepresented information as a part of their application face potentially severe penalties including fines of up to $10,000 per employee or suspension or revocation of the employer's EPRC. Further, if the data submitted shows that the employer is not paying equal wages to women and/or minority employees, IDOL may further investigate the employer's equal pay practices.

Employers are encouraged not to wait for the IDOL notice to audit its equal pay data and start preparing for applying for the EPRC.

Enhanced Chicago Sexual Harassment Training

Above and beyond the recent sexual harassment prevention training requirements Illinois adopted at the beginning of 2020, the City of Chicago imposed additional training requirements when it amended its Human Rights Ordinance in 2022. The amendments apply to all employers who maintain a business facility in Chicago or that are otherwise subject to Chicago's licensure requirements. All employees must be trained on or before June 30, 2023.

Under those amendments, Chicago requires employers to annually provide at least one hour of sexual harassment prevention and bystander training to all employees. Employers must further provide supervisors and management an additional hour of sexual harassment prevention training. Training provided to employees under Illinois' sexual harassment prevention training program satisfies Chicago's sexual harassment prevention training requirements for all employees, but not for bystander training or for the additional hour of sexual harassment prevention training required for supervisors and managers.

Sample training materials, in addition to a sample sexual harassment policy and workplace poster (other requirements under Chicago's Human Rights Ordinance amendment), are available on the city's website.

Chicago employers are encouraged to ensure their training aligns with the city's numerous detailed requirements.

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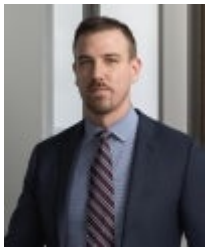

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