



Update on Illinois Labor & Employment Law – What Employers Need to Know

Agenda

- Introduction (Tracy Billows)
- EEO Update (Erin Dougherty Foley)
- Wage & Hour Issues (Kara Goodwin, Kyle Petersen)
- Sick Leave & Paid Leave (Sara Eber Fowler, Christopher Kelleher)
- Q&A



Unique Leave Issues/EEO Update

Illinois “Sick Leave” Act (Really, Kin Care)

Legal Requirements	Illinois Sick Leave Act
Effective Date	1/1/2017
Coverage	Illinois employers who already provide personal sick leave benefits to their employees, including time accrued and available to employees to be used for absences related to personal illness, injury, or medical appointments, must also allow them to take such leave for absences due to the illness, injury, or medical appointments of the employee’s child, spouse, sibling, parent, mother or father-in-law, grandchild, grandparent, or stepparent on the same terms as the personal leave benefits.
Limitations	Employers may limit sick leave benefits for absences due to family members to ½ of the employee’s annual sick leave entitlement. The Act does not impose any new leave requirements on employers – it only requires that employers who currently allow leave not discriminate.
Other Provisions	<ol style="list-style-type: none">1. Retaliation prohibited.2. IDOL to administer enforcement.

Illinois Pregnancy/Child Birth Laws

Legal Requirements	Illinois Sick Leave Act
Effective Date	1/1/2015
Provisions	<ol style="list-style-type: none"> 1. Applies to current employees and applicants (where 1 or more EE) 2. Includes pregnancy, childbirth, medical conditions related to either 3. Now a “civil rights violation” to consider pregnancy in making employment decision (hiring, promotion, training, discharge, etc.) 4. Employers must provide reasonable accommodations (but upon request only) unless it would result in an “undue hardship”
Accommodations to Consider	<ol style="list-style-type: none"> 1. More frequent or longer bathroom/rest breaks 2. Hydration (water breaks) 3. Private non-bathroom space for breast milk expression or feeding 4. Seating modifications 5. Assistance with manual labor (i.e., lifting or strenuous activity) 6. Light Duty assignment (?) 7. Job restructuring/part-time/modified work schedule
Other Provisions	<ol style="list-style-type: none"> 1. Retaliation prohibited. 2. IDHR to administer enforcement. 3. May request documentation regarding need for reasonable accommodation 4. Reinstatement

Pregnancy Accommodation

- Practical Points to Consider

- Given the broad expansion of covered disabilities under the ADAAA, many more pregnancy-related impairments now likely rise to the level of a disability.
- Consider including “pregnancy” as a protected characteristic in EEO policies.
- Consider training managers on how to have conversations with employees on a variety of pregnancy-related topics.
- Consider as a policy providing accommodations that would not necessarily be legally required, but that are otherwise reasonable to support and retain talent.



Illinois Child Bereavement Leave Act

Legal Requirements	Illinois Child Bereavement Leave Act
Effective Date	7/29/2016
Employee Eligibility	Employees otherwise eligible to take leave under the federal Family and Medical Leave Act are eligible to take leave under the Act are eligible to take Child Bereavement leave. The law does not create an entitlement to additional leave; that is, an employee who has exhausted his or her FMLA time is not entitled to take additional child bereavement leave.
Leave Entitlement	Employees are permitted to take two (2) weeks of unpaid leave for each applicable child (up to 6 weeks) during any 12 month period.
Leave Purpose	<ol style="list-style-type: none"> 1. to attend the funeral, or an alternative to a funeral, of a child; 2. to make arrangements necessitated by the death of the child; or 3. to grieve the death of the child.
Other Provisions	<ol style="list-style-type: none"> 1. The Act includes an anti-retaliation provision. 2. IDOL or civil claim for enforcement. 3. 60-Day Statute of Limitations! 4. \$500 for first offense, \$1000 for subsequent offenses.

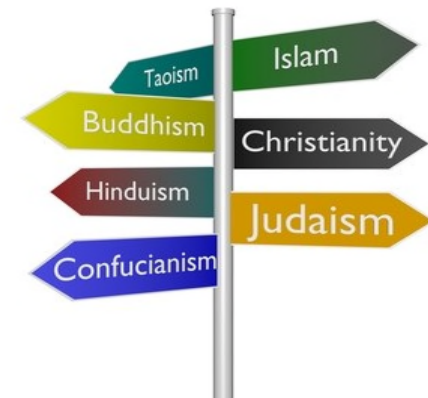
Illinois “Religious Garb” Law

Legal Requirements	Illinois Religious “Garb” Law
Effective Date	August 11, 2017
Act Provisions	Cannot impose as a condition of employment a requirement that an employee violate or forego a sincerely held practice of their religion
Examples	Attire, clothing, facial hair in accordance with the requirements of their religion
Undue Burden?	May not have to accommodate IF after engaging in a <i>bona fide</i> effort, the employer can demonstrate that is it unable to reasonably accommodate the ... sincerely held religious belief, practice or observance without undue hardship on the conduct of the employer’s business.
Other considerations	<ol style="list-style-type: none">1. Amends the Illinois Human Rights Act2. Does not prohibit the enactment of a dress code that may include restrictions on attire, closing or facial hair to maintain workplace safety or food sanitation

Religious Garb Considerations

- Employer Takeaways

- Review uniform, dress and grooming policies.
- Articulate a commitment to providing reasonable accommodations.
- Carefully evaluate when a religious accommodation would or would not be an undue hardship.
- Have a process in place for addressing religious accommodation requests and train supervisors regarding potential religious accommodation requests or objections to uniform, dress or grooming requirements.



IHRA (additional) considerations

- Can still bring litigation in state court
 - starting to see slight uptick
- Illinois Human Rights Commission (appellate level from Department)
 - significant back log (cases pending for review 5-6 years!)
- May not always recognize private settlement agreements
 - Laws allow for continued agency involvement
 - IDHR can take the position that the contract (settlement agreement) is not enforceable in their Agency, so will proceed with charge investigation





Update on Illinois Labor & Employment Law – Wage and Hour Issues



State/City Minimum Wage Increases



State Minimum Wage Increases

- **State of Illinois**
 - **Current Illinois state minimum wage is \$8.25 (and has been since 2010)**
 - **In May 2017, the Illinois House and Senate approved a proposal that would raise the state's minimum wage to \$15 an hour incrementally over 5 years (until 2022)**
 - **On August 25th, Governor Rauner vetoed the bill**
 - **Illinois minimum wage remains at \$8.25**
- **Federal minimum wage is \$7.25 (has not been raised since 2009)**

City/County Minimum Wage Increases



- More than 40 localities across US have adopted minimum wages above state minimum (2 in Illinois)
- Cook County
 - Minimum wage increase to \$13 by July 2020
 - More than 50 municipalities have opted out of minimum wage increase
- City of Chicago
 - December 2014 ordinance raised minimum wage for Chicago workers to \$13 per hour by 2019.
 - Effective July 1, 2017, Chicago's minimum wage is \$11
 - Effective July 1, 2018, Chicago's minimum wage will be \$12
 - Effective July 1, 2019, Chicago's minimum wage will be \$13

Interplay Between State/Local Minimum Wage And Minimum Wage Takeaways

- State legislatures and city/county governments are battling over who gets to set the minimum wage
 - City/County governments vote to raise local minimum wage and states respond by passing laws requiring cities to abide by statewide minimums
- Having a patchwork of different city and county minimum wage laws can be an administrative headache for employers



Proposed and Enacted Predictive Scheduling Laws

Fair/Predictive/Predictable Scheduling Laws

- Fair scheduling laws – sometimes referred to as “predictive” or “predictable” scheduling – are popping up in city councils and state legislatures across the nation.
- Theory behind these laws = uncertainty in scheduling and last-minute scheduling changes wreak havoc on employees’ ability to plan, hold second jobs, or attend school.
- San Francisco (effective July 2015) was the first to pass a law of this kind. Oregon became the first state to pass a fair scheduling law.
- Other states and municipalities (including Congress) have passed or are considering similar legislation.

Chicago Fair Workweek Ordinance



- Introduced June 28, 2017. If passed, would go into effect July 1, 2018.
- Proposed legislation would require **all** employers to:
 - Provide good faith estimate of work schedule;
 - Give 2 weeks advance notice of work schedules;
 - Compensate employees for adding/subtracting hours from, moving, or cancelling a previously-scheduled shift;
 - Offer additional hours to existing employees before hiring; and
 - Maintain records for 5 years
- Employees have the right to decline:
 - Previously unscheduled hours added to schedule w/o 14 day notice;
 - Work hours that occur 11 hours following end of shift (and if they accept hours w/in that time, must be paid 1.5 times regular rate)



Update on Federal FLSA Exempt Status Regulations

December 1: The Day That Wasn't



Old (But Current) Rule

- Exempt executive, administrative, and professional employees can earn a salary of **\$23,660**
- Exempt “highly compensated” employees can earn a total of **\$100,000** per year
- These salary levels remained in place for over a decade, until being **affirmatively updated** by the DOL

vs.

Proposed (But Recently Struck Down) Rule

- Exempt executive, administrative, and professional employees must earn salary of at least **\$47,476** (though 10% can be non-discretionary bonus)
- Exempt “highly compensated” employees must earn at least **\$134,004**
- These levels are set to **automatically increase** for inflation **every three years**, starting in January 2020
- The change is intended to extend overtime to **4.2 million workers**

The new rule was set to take effect on December 1, 2016. It was preliminarily enjoined by a federal judge in Texas on November 22, 2016 (which is on appeal to the 5th Cir.), and struck down by the same federal judge/court on August 31, 2017.

Federal Court Cases Against the Proposed Rule

In late November, 2016, two sets of plaintiffs sought to stall or kill the new overtime pay rules (which were set to go into effect December 1, 2016). Both cases were filed in federal court in East Texas.

- In one case, the plaintiffs (states) asked the court to issue a preliminary injunction that would stall the new rules' effective date.
- On November 22, 2016, federal judge granted the states' motion and issued preliminary injunction.
- US Government appealed to 5th Circuit (still pending); oral argument scheduled for October 3, 2017.
- In the other case, the plaintiffs (various trade associations and chambers of commerce) asked the court to enter judgment against the federal government, finding that the new rules are unlawful for various reasons.
- On August 31, the federal judge granted the motion for summary judgment, finding the 2016 exemption revisions to be invalid.

So, what now?



- Since the 2016 rule is now invalidated, the 2004 rule and the salary threshold it implemented remains in place (*i.e.*, employees making \$455 per week - \$23,660 per year – and whose primary duty satisfies the executive, administrative, or professional duties test may be classified as exempt)
- Remains unclear whether either side will appeal the August 31 ruling and whether the ruling renders the injunction appeal moot.
- The Department of Labor may issue a new rule regarding the administrative, executive, and professional exemptions.
 - Request for information on ways to revise the 2016 rule
 - Responses due September 25, 2017



Class Waivers and Arbitration Agreements

Arbitration Agreements and Class and Collective Action Waivers at the Supreme Court



- US Supreme Court set to hear oral argument on first day of term
 - Whether arbitration agreements that waive employees' rights to participate in class or collective actions against their employers are enforceable
- Reading the Supreme Court tea leaves
- What will the future hold if the Supreme Court rejects the D.R. Horton theory and finds mandatory arbitration programs containing class and collective waivers to be enforceable?



Sick Leave & Paid Leave Update

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
Accrual Rate	1 hour of paid sick leave for every 40 hours worked; no fractional accrual
Accrual Cap	40 hours in any 12-month period

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
Effective Date	7/1/2017
Employee Eligibility Requirements	<p>Covers any individual permitted to work by an employer, including domestic workers and regardless of the number of individuals in the employer's workforce, who (1) works in Chicago/Cook County for at least 80 hours in any 120-day period; and (2) in any particular 2-week period, EE must perform at least 2 hours of work for ER while physically present within the geographic boundaries of the City/County.</p> <p>**Chicago: Time spent traveling in the City that is compensated time, including, deliveries, sales calls, and travel related to other business activity taking place within the City shall constitute work while physically present within the geographic boundaries of the City; however, time spent traveling in the City that is uncompensated commuting time shall NOT count.</p>
Start of Accrual	7/1/2017 or first day of employment, whichever is later

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
<p style="text-align: center;">Year-End Carryover</p>	<p>(1) General Standard: At the end of a Covered EE's 12-month accrual period, he or she shall be allowed to carry over to the following 12-month period half of his or her unused accrued Paid Sick Leave, up to a maximum of 20 hours.</p> <p>(2) FMLA Exception: If ER is subject to the FMLA, each of the ER's covered EEs shall be allowed, at the end of his or her 12-month Paid Sick Leave accrual period, to carry over up to 40 hours of his or her unused accrued Paid Sick Leave, in addition to the general carryover allowed, to use exclusively for FMLA eligible purposes.</p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
<p style="text-align: center;">Avoiding Carryover and Accrual – Lump Sum Grants</p>	<p>Chicago: Employers subject to the FMLA can avoid accrual and carryover requirements if they (a) grant covered employees 40 hours of paid sick leave no later than 180 days after the covered employee began working for the employer, and (b) make available an additional 20 hours of paid sick leave at the beginning of each subsequent benefit year to be used for FMLA purposes. In other words, the Final Rules state that employers that frontload their employees with 60 hours of paid sick leave at the start of each year will be able to avoid the PSLO’s carryover and accrual requirements.</p> <p>Cook County: To avoid tracking accrual, an employer must award an employee the maximum amount of sick leave the employee could accrue during the accrual period. Similarly, to avoid year-end carryover, FMLA covered employers must award at least 20 hours of Ordinance-Restricted Earned Sick Leave and at least 40 hours of FMLA-Restricted Earned Sick Leave at the start of each accrual period. Therefore, to avoid both accrual and year-end carryover, an FMLA covered employer must award its employees 60 hours of Ordinance-Restricted Earned Sick Leave and 40 hours of FMLA-Restricted Earned Sick Leave, or a total of 100 total hours of paid leave at the start of each accrual period/year.</p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
Reasons for Use	<p>(1) Employee or a covered family member** is ill or injured, or is receiving medical diagnosis, care, or treatment, or preventive medical or health care;</p> <p>(2) Absences of the employee or the employee’s family member related to his/her status as a victim of domestic violence or “a sex offense” as defined in the Illinois Criminal Code of 2012; and</p> <p>(3) Closure of the employee’s place of business or the employee’s child’s school or place of care by order of a public official due to a public health emergency</p> <p>**Cook County: Defines “Public health emergency” is an event that is defined as such by a Federal, State or Local government, including a school district</p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago/Cook County Sick Leave
Annual Usage Limits	<p>(1) General Standard: EE can use no more than 40 hours of PSL per 12-month period (ER can set higher limit);</p> <p>(2) FMLA Exception: If an EE carries over 40 hours of FMLA leave pursuant to subsection 1-24-045(b)(6) and uses that leave, he or she is entitled to use no more than an additional 20 hours of accrued PSL in the same 12 month period.</p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago & Cook County Sick Leave
Usage Waiting Period	<p>EE is entitled to use paid sick leave after 180 calendar days of employment; The law is silent on whether this 180-day usage waiting period applies to employees who work for the employer on July 1, 2017.</p>
Employer Request for Confirmation	<p>May require documentation** to substantiate the need for leave only after an EE has used more than three (3) consecutive days of sick leave</p> <p>**Cook County: ER Cannot require that such documentation specify the nature of the Covered EE's or the Covered EE's family member's injury, illness, or condition</p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago & Cook County Sick Leave
<p style="text-align: center;">Employee Notice to ER</p>	<p>(1) Foreseeable: If a Covered Employee's need for Paid Sick Leave is reasonably foreseeable**, an Employer may require up to seven days' notice before leave is taken;</p> <p>(2) Unforeseeable: If the need for Paid Sick Leave is not reasonably foreseeable, an Employer may require a Covered Employee to give notice as soon as is practicable on the day the Covered Employee intends to take Paid Sick Leave by notifying the Employer via phone, e-mail, or text message;</p> <p>(3) No notice requirement if: EE is unable to give notice because EE is unconscious or medically incapacitated</p> <p style="text-align: center;"><small>**<u>Cook County</u>: Notice must be in accordance with the FMLA IF EE's leave is one that is covered under the FMLA</small></p>

Chicago & Cook County Sick Leave Ordinances

Legal Requirements	Chicago & Cook County Sick Leave
<p style="text-align: center;">Employer Notice Requirements</p>	<p>(1) Posting: ER shall post in a conspicuous place at each facility where any Covered EE works that is located within the geographic boundaries of the City/County a notice advising the EE of the current minimum Wages under this chapter**, and of his or her rights under this chapter, including his or her right to Paid Sick Leave;</p> <p>(2) Posting Exclusions: ERs that do not maintain a business facility within the geographic boundaries of the City/County and households that serve as the worksites for Domestic Workers**;</p> <p>(3) Notice: Every ER shall provide with the first paycheck subject to this chapter issued to a Covered EE a notice advising the EE of the current minimum Wages under this chapter, and of his or her rights under this chapter, including his or her right to Paid Sick Leave.</p> <p style="text-align: center;">** Cook County: Does not require notice advising the Covered Employee of the current minimum Wages under this chapter; Does not exclude households that serve as the worksites for Domestic Workers.</p>
<p style="text-align: center;">Payment of PSL</p>	<p style="text-align: center;">EE must be compensated at the same rate and with the same benefits, including health care benefits, that the Covered Employee regularly earns during hours worked</p>



Practical Considerations for Chicago and Cook County Employers

Administering Paid Sick Leave in Chicago and Cook County

- Lump sum versus accrual
- General carryover versus FMLA carryover
- Increment usage – 4 hours versus other increment use
- Other considerations



Administering Paid Sick Leave – General Considerations

- **Don't:**

- retaliate
- interfere with ability to take leave (not subject to 'approval')
- make employee find own replacement
- worry (for now) about leave balance reporting

- **Do:**

- treat “covered family member” BROADLY
- maintain confidentiality of records
- post rights (ala minimum wage notice) in Chicago
- provide notice with first paycheck issued to covered employee
- maintain records 3-4 years for Cook County; 5 for Chicago



PTO, Vacation and Other Leave Policies as PSL Compliance Options

- Can employers use PTO, vacation, and other paid leave policies for paid sick leave compliance?
- Can employers use “unlimited” PTO policies for paid sick leave compliance?



Seyfarth Shaw

Paid Sick Leave Resources

Is America's paid sick leave patchwork giving you a headache??

- [If so, Seyfarth has the cure:](#)
- ***Comprehensive PSL Survey*** breaking down the specific requirements of ***each*** existing law.
- **Paid Sick Leave Mailing List** to automatically receive our PSL client alerts
- [For more information on our PSL survey contact:](#)
sickleave@seyfarth.com
- To join our PSL Mailing List go to: **<http://tinyurl.com/zbtwdrp>**





Questions?