Illinois employment law roundup: Employers' guide to recent employment law amendments

Miriam L. Rosen | Thursday, July 7, 2022

The Illinois legislature has been busy over the last few months amending and fine-tuning several existing employment laws. As a result, employers in Illinois will now find themselves busy in the coming months updating policies and practices to comply with the new requirements. This roundup summarizes four recent amendments to Illinois employment laws and an amendment to the sexual harassment provisions in the Chicago Human Rights Ordinance.

CROWN Act amendment prohibits hairstyle discrimination

What's the amendment? On June 30, 2022, Illinois Gov. J.B. Pritzker signed the CROWN Act, which amends the Illinois Human Rights Act (IHRA), to prohibit employers from discriminating against employees because of race-based hairstyles and hair textures. With this new law, Illinois joins a growing number of cities and states enacting laws that Create a Respectful and Open Workplace for Natural Hair (CROWN).

What are the details? The CROWN Act broadens the definition of "race" in the IHRA to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists."

The IHRA also provides 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.

When is this effective? The Crown Act amendment is effective January 1, 2023.

What should employers do now? Employers should review dress code and grooming policies to ensure compliance with the CROWN Act. A key aspect of compliance will also include training managers and supervisors about the new law and how to respond to concerns and complaints.

Family Bereavement Leave Act

What's the amendment? On June 9, the Family Bereavement Leave Act (FBLA) amended the Child Bereavement Leave Act to expand bereavement time off previously limited to the death of an employee's child to additional covered family members and for additional reasons. Note that the Child Bereavement Leave Act and FBLA apply to employers with at least 50 employees who have worked 1,250 hours during the prior 12-month period.

What are the details? Expanded Leave Requirements. The FBLA expands covered "family members" to include: an employee's "stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent." The amendment also expands leave availability by providing for up to 10 workdays of unpaid leave to covered employees who are absent due to any of the following events:

- Attend the funeral or alternative to a funeral of the covered family member
- Make arrangements necessitated by the death of the covered family member
- Grieve the death of the covered family member
- Be absent from work due to:
  - A miscarriage
  - An unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer)
  - A failed adoption match or an adoption that is not finalized because it is contested by another party
  - A failed surrogacy agreement
  - A diagnosis that negatively impacts pregnancy or fertility
  - A stillbirth

Employers may request "reasonable documentation" to support an employee's request for pregnancy- or adoption-related bereavement leave, but may not require the employee to identify the specific event related to a pregnancy- or adoption-related leave.

When is this effective? The FBLA amendment is effective January 1, 2023.

What should employers do now? Employers should review and update bereavement policies in anticipation of this new law. Again, training for managers, supervisors, and Human Resource professionals administering the law will be critical to compliance.

Amendments to One Day Rest In Seven Act

What's the amendment? The May 13, 2022 amendments to the Illinois One Day Rest In Seven Act (ODRISA) will modify timing options for the required day of rest and add an additional meal break requirement for extended work days.

What are the details? Under the existing ODRISA provisions, employers must provide covered employees with "at least twenty-four consecutive hours of rest in every calendar week." The calendar week timing allowed employers to schedule employees to work 12 consecutive days by scheduling the day of rest on Sunday one week and Saturday of the following week, which was not considered consistent with the law's intent.

- **New definition of work period for day of rest requirement**. The ODRISA amendments refine the timing of the day of rest to avoid the scheduling "loophole" described above. The amendment removes the term "calendar week" from the ODRISA. Employers must now require "at least twenty-four consecutive hours of rest in every consecutive seven-day period."

  The change gets at the intent of the ODRISA by requiring 24 hours of rest after six consecutive work days without regard to the calendar week.

- **New meal period requirements over 12 hours**. The ODRISA provides for a meal period of at least 20 minutes no later than 5 hours after the start of the work period" for all employees who work 7½ continuous hours." The amended ODRISA requires employers to provide "[a]n employee who works in excess of 7½ continuous hours [with] . . . an additional 20-minute meal period for every additional 4½ continuous hours worked."

- **Note on exclusions coverage.** The ODRISA and the amendments apply to employers with one or more employees in Illinois. The ODRISA excludes certain categories of employees from coverage, including part-time employees whose total hours worked for one employer do not exceed 20 per week and employees who are employed as executive, administrative, professional or outside sales under the FLSA. Employers should note that the amendments add a new category of employees excluded coverage: "Employees for whom work hours, days of work, and rest periods are established through the collective bargaining process."

- **Compliance requirement and penalties.** Employers must "conspicuously" post a notice stating the ODRISA requirements and information regarding filing a complaint. For remote or traveling employees, the employers can provide the notice by email or on a website "regularly used by the employer to communicate work-related information, that all employees are able to regularly access, freely and without interference." The Illinois Department of Labor will make a notice available prior to the amendment's effective date.

  The amendments increase penalties and damages for ODRISA violations based on employer's size. Employers with fewer than 25 employees may be fined up to $250 in penalties and damages up to $250 payable to the affected employee(s) per offense. Employers with 25 or more employees face penalties up to $500 and damages up to $500 to the affected employee(s) per offense.

When is this effective? The ODRISA amendment is effective January 1, 2023.

What should employers do now? The ODRISA amendment could significantly impact employer scheduling practices – which may be particularly difficult to address in the current labor market. Employers should

start the process of reviewing scheduling options now to avoid a crisis situation at the beginning of the year. And, once again, training for managers, supervisors, and Human Resource professionals administering the law will be critical to compliance.

Employee Sick Leave Act Amendment

What's the amendment? This May 13 amendment sets the provisions of the Employee Sick Leave Act (ELSA) as the minimum standard for rights under a negotiated collective bargaining agreement.

What are the details? While Illinois employers are not required to provide sick leave or paid time off, when an employer does so, it must permit employees to use at least half of that time to care for certain covered relatives "on the same terms upon which the employee is able to use personal sick leave benefits for the employee's own illness or injury."

The ELSA amendment now sets this general standard as a required floor for sick time use negotiated under a collective bargaining agreement.

When is this effective? The ELSA amendment is effective January 1, 2023.

What should employers do now? Employers with employees covered by a CBA should plan for this modification as part of their collective bargaining negotiations.

Chicago modifies sexual harassment policy and training requirements

What's the amendment? In addition to action on the state level, the City of Chicago amended its Human Rights Ordinance (HRO) to provide broader protections for sexual harassment victims, a new written policy, and training requirements applicable to all employers in the City.

What are the details?

- **Expanded definitions broaden protection.** The amendments to the Chicago HRO expand key definitions to broaden the scope of the law. The definition of "sexual harassment" is expanded to include "sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual's employment position." In addition, "sexual orientation" is now defined as "a person's actual or perceived sexual and emotional attraction, or lack thereof, to another person."

- **Written policy and written notice requirements.** Under the amendments, all Chicago employers must have a written policy prohibiting sexual harassment. Employers must provide the policy to employees in their primary language within the first calendar week of employment. Employers may access model sexual harassment policies in English, Spanish, Polish, Simplified Chinese, Arabic and Hindi on the city's website. Employers must also display a poster, available on the website, in both English and Spanish.

  The written policy prohibiting sexual harassment must minimally include:
  - A statement that sexual harassment is illegal in Chicago
  - The definition of sexual harassment as defined above
  - A requirement that all employees annually participate in sexual harassment prevention training
  - Examples of prohibited sexual harassment
  - Details on how an individual can report an allegation of sexual harassment, including, as appropriate, instructions on how to make a confidential report, with an internal complaint form, to a manager,

employer's corporate headquarters or human resources department, or other internal reporting mechanism
  - Details on legal and governmental services that are available to employees who may be victims of sexual harassment
  - A statement that retaliation for reporting sexual harassment is illegal in Chicago

- **New training requirements.** The amendments also require employers to provide sexual harassment prevention training annually. All employees must receive the required training by June 30, 2023 and annually after that. Employers may use Illinois' one hour training program for all employees or prepare their own program that is equal to or exceeds the state requirements. The City of Chicago has issued training materials for the additional hour of supervisor training and for the bystander training.

  The annual training should be as follows:
  - One hour of sexual harassment prevention training to all employees.
  - Supervisors/managers must a total of two hours of sexual harassment prevention training.
  - One additional hour of bystander training for all employees.

- **Increased Penalties.** The amendments substantially increase penalties for a violation of the law. Penalties will be not less than $5,000 and not more than $10,000 for each offense (previously $100 to $1,000). Every day that a violation continues constitutes a separate and distinct offense.

When is this effective? The Chicago HRO amendments are effective July 1, 2022. As noted above, required training must be provided by June 30, 2023.

What should employers do now? Employers with employees in Chicago should take prompt action to modify their harassment policy to comply with the City's new requirements. Employers should also ensure compliance with the notice, posting, and training requirements required by these amendments.

Roundup wrap-up

While the changes summarized above relate to existing state and city employment laws, they each come with additional compliance obligations and, in some cases, significantly increased penalties for violations. Employers should review and become familiar with the changes, assess how they may impact operations, modify policies and practices as necessary, and ensure that managers and HR professionals are also well-versed in the new requirements.

The McDonald Hopkins Labor & Employment Team is available to assist employers in reviewing requirements of the amended laws, revising policies, and providing training to meet these new compliance obligations. Please reach out to your McDonald Hopkins attorney for assistance or with any questions.

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