

Legal Update

January 2020

SIGNIFICANT CHANGES IN THE LAW

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We wish our clients and friends a healthy, happy, and prosperous 2020. Our January *Legal Update* highlights new laws and amendments that may be of interest to Illinois businesses and individuals. We encourage all those potentially affected by these developments to consult with legal counsel to ensure they are in compliance with, or consider taking advantage of, new provisions in these laws.

New Laws and Amendments Effective January 1, 2020

Illinois Cannabis Regulation and Tax Act (CRTA)

The CRTA legalizes cannabis in Illinois. The CRTA also prevents employers from terminating or disciplining an employee for the employee's lawful use of cannabis. As a result, employers must re-examine their drug-free workplace policies to avoid violating the new law as well as to help limit an employer's liability due to an employee's use of cannabis. Fortunately, the CRTA allows employers to enact a reasonable drug-free workplace policy that prohibits the use and possession of cannabis in the workplace. Employers may also prohibit an employee from being impaired or under the influence of cannabis while at work or while performing his or her job duties; however, testing and making that determination are more complicated by virtue of the CRTA. It is therefore advisable for employers to train managers and supervisors how not to run afoul of the CRTA. For more information, see our [July 2019 Legal Update](#).

Illinois Workplace Transparency Act (WTA)

As discussed in our [August 2019 Legal Update](#), Governor Pritzker signed sweeping legislation intended to address workplace harassment in response to the #MeToo movement. The WTA generally prohibits employers from using agreements that restrict certain employee rights in connection with discrimination, harassment, or retaliation claims, including the employee's ability to report allegations of unlawful conduct (such as clauses or agreements that contain non-disclosure, confidentiality, or non-disparagement provisions), with certain exceptions. Employers may need to update their standard confidentiality, termination, arbitration, and other employment agreements based on the WTA. Additionally, employers still remain subject to the federal Tax Cuts and Jobs Act of 2017 regarding tax deductions for certain types of settlements of certain harassment and discrimination claims.

Amendments to the Illinois Human Rights Act (IHRA)

Our [August 2019 Legal Update](#) also provided an overview of the new responsibilities for employers and other developments under the recently expanded IHRA. Beginning this year, all employers with any employees who work in Illinois must provide sexual harassment prevention training to employees at least once a year or face civil penalties of up to \$5,000, depending on the employer's history of offenses and size. Beginning July 1, 2020, employers must also comply with new reporting requirements and submit annual

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disclosures about adverse judgments or administrative rulings against them for unlawful employment practices. For a compliance checklist for Illinois employers, see our [November 2019 Legal Update](#).

Amendments to the Illinois Victims' Economic and Security Act (VESSA)

As discussed in our [August 2019 Legal Update](#), VESSA now also provides employees with certain leave rights due to gender violence (in addition to domestic and sexual violence). All Illinois employers must comply with VESSA, which generally allows employees to take unpaid, job-protected leave from work if an employee, or employee's family/household member, is a victim of domestic, sexual, or gender violence and is experiencing an incident of such violence or needs to address such violence (e.g., to seek medical attention, obtain counseling, participate in legal proceedings, etc.).

Amendments to the Illinois Equitable Restrooms Act

Illinois now requires every single-occupancy restroom in a place of public accommodation or public building to be identified as all-gender by exterior signage that must not indicate any specific gender. For example, instead of "male" or "female," the signage should say "all-gender," "gender neutral," or something similar. The amendments apply to any existing or future places of public accommodation or public buildings.

New Minimum Salary Requirements for Exempt Employees

The federal Department of Labor (DOL)'s final overtime rule increases the minimum salary thresholds necessary for executive, administrative, or professional (EAP) employees to be exempt from federal minimum wage and overtime pay requirements. The new minimum standard salary level is now \$684 per week (or \$35,568 per year) for exempt EAP employees, and the new annual compensation level for highly compensated employees has increased from \$100,000 to \$107,432 per year. The new final rule allows employers to apply nondiscretionary bonus, commission, and incentive payments towards satisfying up to 10% of the new standard salary level. The DOL estimates that an additional 1.2 million workers will now be entitled to minimum wage and overtime pay as a result of its rule. Employers still remain subject to state laws that may impose more stringent overtime requirements (e.g., California).

Wage Amendments to the Illinois Minimum Wage Law

Illinois has increased the statewide minimum wage to \$9.25 per hour. Illinois last increased its minimum wage, to \$8.25 per hour, in 2010. The state minimum wage will increase again to \$10.00 per hour on July 1, 2020, and will further increase by an additional \$1.00 per hour every year until it reaches \$15.00 per hour in 2025. The Illinois Department of Labor has published a yearly state minimum wage chart, which is available [here](#). Small employers may be eligible for a new minimum wage tax credit to offset some of the cost of the wage increases. Notably, the minimum wage in Cook County is already \$12.00 per hour, and the minimum wage in the City of Chicago is currently \$13.00 per hour. Cook County and Chicago will each increase their minimum wages by \$1.00 per hour effective July 1, 2020.

Gratuities Amendment to the Illinois Wage Payment and Collection Act

The Illinois Wage Payment and Collection Act now prohibits employers from keeping employees' gratuities and requires employers to promptly pay gratuities owed to employees within 13 days after the end of the pay period in which such gratuities are earned. Employers may still withhold, up to a certain extent, a proportionate amount of any credit card processing fees from gratuities paid by credit card, and the amended Act does not prohibit tip pooling as permitted by law.

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Illinois Artificial Intelligence Video Interview Act

This act regulates employers' use of artificial intelligence (AI) interviewing in the recruiting process. It applies to applicants for positions based in Illinois and requires employers that ask job applicants to record video interviews and use AI analysis of the videos to: (1) provide notice to each applicant that AI may be used to analyze the interview and consider the applicant's fitness for the position, (2) provide information explaining how the AI works and what general types of characteristics it uses to evaluate applicants, and (3) obtain the applicant's consent to be evaluated by AI. The Act also prohibits employers from using AI to evaluate an applicant without consent and from sharing an applicant's video except with those whose expertise or technology is necessary to evaluate the applicant's fitness for a position. Finally, the Act requires employers to delete an applicant's video interview, including any copies, within 30 days of an applicant's request.

Amendments to the Illinois Personal Information Protection Act

Illinois has a new reporting requirement for companies that are victims of a data breach. In addition to other existing requirements, the new law requires companies to notify the Illinois attorney general of a data breach if the breach affects 500 or more Illinois residents. The notice must contain (a) a description of the breach, (b) the number of Illinois residents affected and when the company provided them notice, and (c) the steps the company plans to take relating to the incident. The Illinois Personal Information Protection Act applies to any business that collects the personal information of Illinois residents.

Illinois Limited Worker Cooperative Association Act (LWCAA)

Illinois now recognizes a new type of business entity called a "limited worker cooperative association." The LWCAA recognizes worker cooperatives as a legitimate form of business entity for the first time in Illinois. A worker cooperative is a business organized and run by those who provide services to the business and is popular for individuals engaged in skilled trades. Under the LWCAA, a worker cooperative must have at least one class of members that perform labor for the cooperative. Moreover, the LWCAA requires at least three members for a limited worker cooperative association to begin business. The LWCAA provides additional rules on formation, articles of organization, bylaws, members, community investors, voting, and more for the worker cooperative.

Illinois Trust Code

The Illinois Trust Code (ITC) replaces the Illinois Trust and Trustees Act (ITTA) and codifies Illinois trust law. Previously, Illinois trust law was largely contained in case law, which caused inconsistent interpretation of trust law across Illinois. The ITC contains several new features not found in the ITTA. For example, the ITC allows for the creation of a silent trust by allowing a settlor to waive the duty to account to certain beneficiaries for a period of time, during which the trustee need not disclose the existence, terms, or assets of a trust to the beneficiaries. Moreover, the ITC allows a trustee to consider whether a certain trust asset has a special relationship to one or more of the beneficiaries when considering whether to dispose of or retain the asset.

Setting Every Community Up for Retirement Enhancement Act (SECURE) Act

The federal SECURE Act makes some big changes to retirement planning. Some are taxpayer friendly while others may disadvantage taxpayers. For example, for those born after June 30, 1949, the SECURE Act increases the age that a person must take required minimum distributions from an IRA or an employer sponsored retirement plan, from 70.5 to 72. The SECURE Act also allows individuals over 70.5 to contribute to an IRA in place of the rule that workers over 70.5 could not contribute to a tax-deductible

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IRA. Moreover, the SECURE Act makes it easier for small businesses to set up retirement accounts by teaming up with other small businesses to offer what are called multiple employer plans (this section of the SECURE Act does not go into effect until next year). One significant downside to the SECURE Act is that it changes the life expectancy payout of inherited IRAs to a ten-year payout for all categories of a designated beneficiary, except for a surviving spouse and certain other beneficiaries. The act effectively kills the popular estate planning technique of using a trust as a beneficiary for IRA proceeds.

Change in Estate and Gift Tax Exclusion

The Internal Revenue Service has increased the estate and gift tax exclusion in 2020 from \$11.40 million to \$11.58 million, representing an increase of \$180,000 per person. The annual gift tax exclusion (\$15,000) remains unchanged. For more information on estate planning in general, see our [October 2019 Legal Update](#).

New Laws and Amendments Effective Later This Year

Illinois Hotel and Casino Employee Safety Act

As discussed in our [August 2019 Legal Update](#), beginning July 1, 2020, the new Hotel and Casino Employee Safety Act will require hotel and casino employers to protect employees against sexual assault and harassment by guests by providing “panic buttons” and written anti-sexual harassment policies in English and Spanish, among other requirements.

Amendments to Illinois School Visitation Rights Act

Effective August 1, 2020, the amended School Visitation Rights Act expands employees’ school conference and activity leave rights to grant employees leave to attend behavioral or academic meetings related to their children. This act generally provides a leave entitlement of up to eight hours per school year (but no more than four hours per day) for employees who need to attend their children’s school conferences, behavioral meetings, or academic meetings when they cannot be scheduled during non-work hours. The amended Act will also prohibit employers from terminating an employee’s employment for an absence from work if the absence is due solely to the employee’s attendance at a school conference, behavioral meeting, or academic meeting related to the employee’s child.

Chicago Fair Workweek Ordinance

Effective July 1, 2020, large employers (i.e., those with more than a total of 100 employees and at least 50 “covered employees”) in the building services, healthcare, hotel, manufacturing, restaurant, retail and warehouse services industries will need to comply with new work schedule requirements. Employees who work in Chicago and earn less than \$26 per hour (\$50,000 per year) are generally considered “covered employees.” With certain exceptions, employers covered by this ordinance must provide these “covered employees” with ten days’ advance written notice of work schedules, predictability pay for shift changes, and a good faith written estimate of the projected work for new employees, among other requirements. The ordinance is currently being challenged by the Building Owners & Managers Association of Chicago, which has filed a federal lawsuit alleging that the ordinance is unconstitutional.

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Amendments and New Laws Effective Since the Last FVLD Annual Update

Other Amendments to the Illinois Minimum Wage Law (IMWL)

As of February 19, 2019, the amended IMWL now authorizes the Illinois Department of Labor (IDOL) to conduct random audits of employers to determine compliance with the IMWL. The amended IMWL increases the penalties that the IDOL may recover from employers for various violations (including penalties of \$100 per employee for failures to keep proper payroll records), and severely increases the amount of money that employees may recover from their employers for violations of the IMWL, including up to triple the amount of any underpayments that an employee may be owed. Employers may want to consider conducting an audit of their wage-and-hour practices and payroll records for compliance with the IMWL amendments.

Amendments to the Illinois Equal Pay Act

As of September 29, 2019, Illinois joined a number of other states and amended the Equal Pay Act to prohibit employers from inquiring about a job applicant's wage or salary history, including benefits or other compensation. Employers also generally may not seek such information from the job applicant's current or former employers. Employers may need to update their reference and interviewing policies to provide that only position(s) held and dates of employment—and not wage, salary, benefit, or other compensation information—will be provided or sought in connection with interviews, reference checks or requests. Employers may still engage in discussions with an applicant regarding the applicant's expectations with respect to wages or salary, benefits, or other compensation and provide information about the compensation and benefits offered in relation to a position. The Illinois Department of Labor has released a FAQ regarding the salary history ban, which is available [here](#).

Please note that this *Legal Update* discusses only a small sample of new Illinois and federal laws, provides an overview for informational purposes only, and is general in nature. It is not intended to take into account all of the exceptions, exemptions, and nuances that may apply to you or your business, and it does not constitute legal advice. Certain laws that we do not mention, including laws in other states, may nonetheless affect you or your business. You should consult with your legal and other advisors about the entire legal landscape impacting you or your business.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Cecilia M. Suh 312.701.6841 csuh@fvldlaw.com, Paul M. King 312.701.6842 pking@fvldlaw.com, or your regular FVLD contact.

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