CLIENT ALERTS & INSIGHTS

New Legal Obligations for Chicago and Illinois Employers

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Amendments to Chicago Ordinance Impose Additional Obligations Relating to the Prevention of Sexual Harassment

As of July 1, 2022, amendments to the Chicago Human Rights Ordinance went into effect, requiring employers with at least one employee working within the city's boundaries to update sexual harassment policies; display new posters; and augment their sexual harassment training. Employers who fail to comply could face fines of up to $10,000 per day.

Employers' sexual harassment policies must now track the City of Chicago's model policy, which, among other requirements, includes a statement that sexual harassment is illegal in Chicago and provides a definition and examples of prohibited conduct that constitutes sexual harassment. The Chicago Commission on Human Rights provides a City of Chicago Sexual Harassment Model Policy as well as a Sexual Harassment Model Poster.

All employers with at least one employee working within the city of Chicago's boundaries also must provide a Sexual Harassment Prevention Training and a Bystander Intervention Training. Supervisors and managers must complete two hours of the Sexual Harassment Prevention Training annually, while all other employees must complete one hour of such training annually. All employees must complete one hour of the Bystander Intervention Training annually.

Supervisors/managers not located in Chicago but who supervise/manage employees in Chicago must also complete the newly required training.

Employers must retain written records to show compliance with the Ordinance, including records of the policies and training provided to employees for five years. The statute of limitations for violations of the Ordinance has increased from 300 days to 365 days.

Benesch attorneys are ready to assist with compliance with the amended Ordinance.

Recent Amendments to the Illinois Equal Pay Act: Under recent amendments to the Illinois Equal Pay Act (IEPA), employers with at least 100 employees in Illinois, that were authorized to do business in Illinois as of March 23, 2021, must apply for an Equal Pay Registration Certificate by March 23, 2024. Employers authorized to do business in Illinois after March 23, 2021 must apply within three years of commencing business operations, but not before January 1, 2024. The Illinois Department of Labor will assign employers a specific deadline to apply.

In the application for an Equal Pay Registration Certificate, employers must provide a list of all employees employed during the past calendar year. The list must: 1) separate the employees by

gender, race, and ethnicity as reported in the employer's most recently-filed EEO-1; 2) include the start dates for each employee; 3) include the county in which each employee works; 4) include "any other information the Illinois Department of Labor deems necessary to determine if pay equity exists among employees"; and 5) report the total wages paid to each employee over the past calendar year, rounded to the nearest $100. The Illinois Department of Labor has provided a template spreadsheet, which indicates what information should be reported in the list of employees.

In addition to the list of employees, employers must also provide a certification statement. The Illinois Department of Labor has provided a template certification statement, which includes all required information as well as blank spaces for employers to complete with information specific to them.

Employers are not exempted from compliance if the Illinois Department of Labor fails to provide a deadline. Employers should contact the Illinois Department of Labor if they do not receive a deadline but believe they should have received one. If an employer has not incurred any penalties for violating the Illinois Equal Pay Act's reporting/certification requirements, the employer is entitled to 30 calendar days to submit an application/recertification if they failed to do so initially.

Employers would be wise to gather employee information and conduct pay audits in order to prepare for assembling their applications. The Illinois Department of Labor has posted a list of Frequently Asked Questions, as well as helpful PowerPoint slides, to its website.

Amendments to the One Day Rest in Seven Act: Governor Pritzker signed SB 3146 into law on May 13, 2022, amending ODRISA in four distinct ways, which go into effect January 1, 2023:

Seven-Day Period vs. Calendar Week. First, the amendments to ODRISA provide a new definition of the period covered by the Act. The new amendment replaces the term "calendar week" with "seven-day period." Thus, starting January 1, 2023, ODRISA will apply to any employee who works six consecutive days regardless of where those days fall on the standard Sunday to Saturday workweek.

Additional Meal Period for Shifts of at Least 12 Hours. Next, the amendments will require an additional meal period for employees when their shifts are 12 or more hours. Starting January 1, 2023, employers will have to provide an additional 20-minute meal period for every 4.5 hours worked beyond the initial 7.5 hours. If an employee works 12 consecutive hours, they are entitled to two 20-minute meal breaks. The amendment also clarifies that meal breaks do not include "reasonable time spent using the restroom facilities."

New Notice Requirements. The amendments will require that employers conspicuously post a notice that summarizes ODRISA requirements and provides information as to how an employee may file a complaint. For remote employees or employees who frequently travel, employers must provide the notice via email or on a website that the employees regularly use to communicate work-related information. The Illinois Department of Labor will make this notice available on its website before January 1, 2023.

New Penalties for Noncompliance. Starting January 1, 2023, employers with fewer than 25 employees may be fined $250 in penalties, payable to the Illinois Department of Labor, as well as $250 in damages, payable to the affected employee(s), per offense. Employers with twenty-five or more

employees may be fined $500 in penalties, payable to the Illinois Department of Labor, as well as $500 in damages, payable to the affected employee(s), per offense.

Illinois employers should review and, where applicable, revise employee work schedules to ensure that they comply with the Act's amendments.

Creation of the Family Bereavement Act: Governor Pritzker signed SB 3120 into law on June 9, 2022. Also known as the Family Bereavement Leave Act, this Act amends the Child Bereavement Leave Act and will go into effect on January 1, 2023. As with the Child Bereavement Leave Act, the Family Bereavement Leave Act tracks the eligibility requirements in the federal Family and Medical Leave Act ("FMLA"). To be eligible for leave under the Family Bereavement Leave Act, an employee must have: 1) been employed by the employer for at least one year; 2) worked at least 1,250 hours for the employer during the prior 12-month period; and 3) worked at a worksite with at least 50 employees within a 75-mile radius.

The Family Bereavement Leave Act requires that covered employers provide up to 10 workdays of unpaid leave to eligible employees who are absent due to any of the following: a miscarriage; an unsuccessful intrauterine insemination or assisted reproductive technology procedure; a failed adoption; an adoption match that is not finalized because it was contested; a failed surrogacy agreement; a diagnosis that negatively impacts pregnancy or fertility; or a stillbirth.

The Family Bereavement Leave Act will also require employers to provide 10 workdays of unpaid leave for employees attending the funeral of, grieving the death of, or making arrangements due to the death of a "covered family member." Under the Act, "covered family member" includes children, stepchildren, spouses, domestic partners, siblings, parents, parents-in-law, grandchildren, grandparents, or stepparents.

Illinois employers should review and, where applicable, revise policies to ensure that they comply with the requirements of the Family Bereavement Leave Act.

Illinois and Chicago employers should seek legal counsel to ensure continuing compliance with employment laws. For more information, please contact Benesch's Labor & Employment Law attorneys listed below.

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