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BLOGS

Employment Law Updates

Key Illinois Employment Updates

We will undoubtedly remember 2020 for reasons completely unrelated to employment law. However, the State of Illinois experienced a few changes that went into effect on January 1, 2020. This post intends to provide a quick reminder of a few of the new requirements facing employers since the start of the new year.

Workplace Transparency Act

Candidly, the Workplace Transparency Act (WTA) deserves a post all its own, but since this is a blog post and not a treatise, I offer a few (but importantly, not all) of the highlights of the new WTA:

- The WTA expanded the definition of discrimination under the Illinois Human Rights Act to cover an individual's actual and perceived protected characteristic;
- The Illinois Human Rights Act was also expanded to apply to non-employees, such as contractors, vendors and consultants, and to provide that employers may be held liable for discrimination against these individuals;
- Non-disclosure or non-disparagement language may only be included in separation and release agreements with employees if a number of requirements are met, including (but not limited to) the written preference for such a clause from the employee, the clause is mutually beneficial, the employee is knowingly waiving their right to disclosure and a 21-day review period allowed for the employee, following by an allowed 7-day revocation period (akin to those requirements previously afforded to employees who were age 40 and older under federal law). These requirements of the WTA do not appear to apply, however, if a non-disclosure clause speaks only to the terms of the agreement or settlement.
- The WTA also incorporated a requirement that all covered employers must conduct annual sexual harassment training for all employees, starting in 2020. In so doing, Illinois joined the likes of California, New York, Maryland, Delaware and New Jersey (Everything's legal in New Jersey! for you Hamilton fans). Note this requirement is not specific to only Illinois-based employers, but to all employers who have employees working in the state. Bars and restaurants have heightened requirements.

Mandatory Reporting Requirements of Adverse Judgments and Possibly, Settlement Agreements

Hold on to your hats, folks, because starting July 1, 2020, and by July 1 of all succeeding years, Illinois employers are required to submit an annual disclosure report to the Illinois Department of Human Rights containing certain information as to adverse judgments which have been entered against them. Employers may also be asked to disclose



settlement agreements entered into with employees over claims of unlawful discrimination and/or harassment as part of investigations undertaken by the IDHR following receipt of charges of discrimination levied against the employer.

Nearly All Employers Covered by Illinois Human Rights Act.

Next time you want to give your younger sibling some real-world experience at your small business, remember them that as of January 1, 2020, their employment could bring your small business under the purview of the Illinois Human Rights Act. As of January 1, 2020, all businesses who employ one or more individuals for 20 or more weeks are covered under the Act. The Act previously encompassed employers who had 15 or more employees.

Employers Can No Longer Ask for Salary History.

Using an old application or interview script which asks for an applicants current or previous salary? Time to amend your documents. Illinois Equal Pay Act was amended to prohibit employers from inquiring into an applicants salary history. The amendment, which went into effect on September 29, 2019, put Illinois in line with a number of other states (and some municipalities including Chicago) which prohibit such information being requested of the applicant.

Other Developments

Other important laws, such as the Illinois Nursing Mothers in the Workplace Act, a graduated raise in minimum wage requirement, an expansion of the term workplace for a hostile workplace claim, and cannabis in the workplace aren't discussed in detail in this post. Nonetheless, Illinois employers should be aware of these changes, and the others as they navigate these issues for themselves and their employees. Our employment law team is available to assist should employers have questions.