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Insights

Illinois Responds to the #MeToo Movement with New Sexual Harassment Legislation

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In the wake of the #MeToo Movement, the Illinois legislature and Governor J.B. Pritzker have enacted new legislation to prevent sexual harassment and unlawful discrimination in the workplace. The legislation changes existing laws and enacts ones, imposing additional requirements and limitations for employers. The legislation took effect on January 1, 2020.

The new legislation, among other things,

- imposes discrimination and sexual harassment disclosure requirements on Illinois employers,
- requires annual sexual harassment prevention training for Illinois employers,
- provides civil penalties for Illinois employers that fail to disclose or fail to train,
- limits permissible non-disclosure and non-disparagement clauses, and
- expands an employee's entitled leave to include gender violence.

Required Disclosures. Beginning on July 1, 2020, Illinois employers are required annually to disclose the total number of final and non-appealable adverse judgments and non-appealable administrative rulings that involve claims of sexual harassment or other discrimination brought by employees and nonemployees (i.e. independent contractors or consultants) to the Illinois Department of Human Rights ("IDHR").

Employers must also disclose whether any equitable relief was ordered against the employer and may be required to disclose settlements of alleged claims of sexual harassment or unlawful discrimination during a particular period. Employers are prohibited from disclosing the victims' names or other identifying information.

Annual Training. All employers(1) must use the IDHR's model sexual harassment prevention training program or establish their own program that meets or exceeds the same standards. Employers must make the sexual harassment prevention training program available to their employees annually.

The Risks of Noncompliance. Civil penalties based on the employer's size will apply against employers who fail to make the annual disclosure or provide the annual training and then do not respond to the IDHR's notice to show cause for those failures:

- Employers with less than 4 employees face penalties
  - Up to $500 for a first offense;
  - Up to $1000 for a second offense; and
  - Up to $3000 for a third or subsequent offense.
- Employers with 4 or more employees face penalties
  - Up to $1,000 for a first offense;
  - Up to $3,000 for a second offense; and

- Up to $5,000 for a third or subsequent offense.

Limitations on Non-Disclosure and Non-Disparagement Clauses. Under the legislation's new Workplace Transparency Act ("WTA"), Employers cannot prohibit employees from:

- reporting allegations of unlawful conduct, including unlawful employment practices.
- including a non-disclosure or non-disparagement clause in an employment contract that prevents an employee from making truthful statements or disclosures about the employer's unlawful employment practices.
- requiring an employee to waive rights related to an unlawful employment practice claim.

If an employer enters into an agreement with a non-disclosure or non-disparagement clause that violates the WTA, the clause is severable, and the rest of the agreement remains in full effect. A violation of the WTA constitutes a violation of the Illinois Human Rights Act ("IHRA").

Expanded Leave Entitlements. The legislation expands the Victims' Economic Security and Safety Act ("VESSA") to include leave entitlements due to gender violence, in addition to sexual violence and domestic violence, for employees and family or household members. VESSA leave is similar to leave under the Family Medical Leave Act.

Next Steps for Illinois Employers. The summarized changes above touch on just a few of the legislation's new requirements and limitations for Illinois employers. Illinois employers are advised to:

- develop a plan to track adverse judgments and administrative rulings to complete annual disclosures;
- revisit and update existing sexual harassment prevention training;
- evaluate and revise existing employment and settlement agreements; and
- edit policies related to VESSA leave to include gender violence.

[1] With the exception of employers subject to the requirements of the State Officials and Employees Ethics Act.