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AMUNDSEN DAVIS

Employment Law Update

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Political Pendulum – Big Swings

- Do NOT Ignore.
- Understand the Shift in Priorities on the Federal Level and its Impact on a Local & State Level.
- Pay Close Attention to LOCAL & STATE Mandates.
- Legislative Gridlock (or, lack thereof).

On the Federal Level

- DEI
- “Reverse” Discrimination
- Form I-9 Audits
- Religious Discrimination
- Administrative Agency Shifts --- EEOC, DOL, NLRB, OSHA
- Legislative Gridlock

On a Local & State Level

- State Run Paid Leave/Disability Benefits (***still on hold in IL for now)
- Diminishing the Use of Non-Compete/Non-Solicitation Agreements (***trend has been to focus on specific occupations vs. total, complete outright bans)
- Increasing Wage & Hour Penalties
- Expanding IL Human Rights Act Protections
- Workplace Safety Regulations
- E-Verification & Other Immigration Focus Legislation
- A Host of Laws Impacting the Workplace (notable example, the IL Transparency in the Workplace Act)
- Zero Legislative Gridlock (what BIG Labor and Plaintiff's Bar wants, they are getting)

Muldrow v. City of St. Louis, Missouri

(April 17, 2024 US Sup. Ct.)

Courts have long held that employees must prove that they suffered an adverse employment action to pursue a Title VII discrimination claim. In order for adverse action to be discriminatory, it must be (historically speaking) material. For example, demotion, termination, reducing compensation.

The issue in the *Muldrow* case was whether a job transfer without any change in position/title or compensation can be deemed an adverse employment action subject to Title VII protections if done due to race, religion, age, gender, etc…

Lower courts dismissed the complaint because the job transfer was found to be NOT SIGNIFICANTLY ADVERSE to the plaintiff.

However, the U.S. Supreme Court REVERSED – Unanimously. The Court held that to be actionable under Title VII, a "transfer must have left [the Plaintiff] worse off, but need not have left [the Plaintiff] significantly so."

BOTTOM LINE: Plaintiffs must still show some harm, but they don't have to prove that the identified harm was "significant," "substantial," or "material."

McNeal v. City of Blue Ash (September 23, 2024 - 6th Circuit Court of Appeals)

Since the Supreme Court's *Muldrow* decision, federal courts have applied the "some harm" standard to workplace harassment claims.

U.S. Court of Appeals for the Sixth Circuit held in *McNeal v. City of Blue Ash* that because "hostile-work-environment claims arise out of the same statutory language as disparate-treatment claims, *Muldrow*'s holding that Title VII does not require plaintiffs to show "significant" harm applies to both types of claims." More specifically, the Sixth Circuit held that plaintiffs alleging hostile work environment only have to prove that "**the work environment**—needs to produce some harm respecting an identifiable term or condition of employment."

The Sixth Circuit further stated that plaintiffs only have to show that the work environment would **reasonably be perceived** as hostile or abusive.

Neal can defeat summary judgment if the incidents and conduct he alleges, taken together, are pervasive enough to alter the conditions of his employment, even if each is only irritating in isolation.

?!?!

Ames v. OH Dept. of Youth Services
Sup. Ct. Decision… June 5, 2025

Marlean Ames contended that she lost out on a promotion that she wanted (given to a gay woman), and then was demoted (replaced by a gay man), because she is straight.

The district court dismissed her lawsuit, which was then affirmed by the Sixth Circuit Court of Appeals. The lower courts' decisions placed a *higher burden on her for being heterosexual*. The Sixth Circuit explained that she needed to prove her case by showing "background circumstances to support the suspicion that the defendant is that *unusual employer who discriminates against the majority*."

By **unanimous** decision, the U.S. Supreme Court reversed the Sixth Circuit Court of Appeals, which applied a standard of proof that required workers in a "majority group" to meet a more rigorous burden than others who have historically faced discrimination. By removing these extra hurdles, the Supreme Court made it easier for employees who are in the majority (i.e., white men and women and heterosexuals) to prove "reverse" discrimination claims.

Immigration Related Enforcement

ICE Raids and Warrants

- Employers should recognize that a criminal warrant issued through ICE will likely be focused on and targeting a specific individual and not the employer.
- While there is not a “one size fits all” approach here, any warrant should be carefully reviewed to identify exactly what the warrant is seeking and developing a responsible plan to appropriately respond to the warrant and cooperate with government officials.
- Management and all personnel for the employer should not panic, lie, mislead or interfere with the process. Employers should have a designated point person who is able to speak to the officer and immediately contact other appropriate members of management, if any, along with competent legal counsel. If there is a valid warrant, the employer must cooperate.

Immigration Related Enforcement

Form I-9 Audits

- Obviously, the more common practice of the DHS/HSI is to issue an employer a notice of audit and/or issuing a subpoena for Form I-9 documents. In response to any such notice, employers should not turn over their forms until they have talked to an experienced attorney that is intimately familiar with work authorization issues.
- Of course, employers striving to be more proactive may want to conduct their own internal Form I-9 audit. Obviously, conducting any internal review requires experienced and knowledgeable personnel to ensure compliance issues are properly identified and remedied where possible.
- Engaging legal counsel to assist can also help to not only identify potential legal issues, but also help ensure findings and remedial measures remain confidential and protected from disclosure to the extent greatest possible.

What's on the Horizon in IL --- Trying to "TRUMP PROOF" Illinois…

- Paid Leave Expansion (IL Disability Benefits/Paid Leave – a priority that did not get through last Session)
- E-Verify/Immigration Protections
- Union Only Contracting
- Expansion of Whistleblower and Anti-Retaliation Protections
- Expansion of Employer Penalties, Fines under Wage/Hour laws
- Expansion of Statute of Limitations
- Expansion of Controls on Employer Speech
- Expansion of Prevailing Wage/Union Only Construction Projects

IL HB3773 – Signed Into Law Aug. 12, 2024

- Amends the IL Human Rights Act; effective 1/1/2026
- IL ERs could face civil rights claims for using artificial intelligence tools in hiring and other employment decisions, if they have a **discriminatory effect**.
- It requires ERS to **notify EES and applicants** whenever they are using AI with respect to "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment."
- Discrimination based on all of the protected classes under IL law – as well as using "zip codes as a proxy for protected classes."

IL Drug Testing Case

In *White v. Timken Gears & Servs., Inc.*, a federal district court in Chicago reviewed plaintiff's claim of unlawful termination under the Illinois Right to Privacy in the Workplace Act ("Privacy Act"). On its face, the Privacy Act prohibits an employer from refusing to hire (or terminating) an individual based on the use of "lawful products" off premises. However, the Privacy Act specifically excludes from its "unlawful" prohibitions Section 10-50 of the Cannabis Act. That section of the Cannabis Act specifically excludes a cause of action against an employer for "actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing…or withdrawal of a job offer due to a failure of a drug test." 410 ILCS 705/10-50(e)(1).

IL Drug Testing Case (continued)

In *White* the court granted summary judgment for the employer where the plaintiff failed a drug test (after being randomly chosen pursuant to the company's policies) for marijuana and was ultimately fired. The plaintiff in *White* brought a claim under the Privacy Act and the court reviewed the plain language of that Act, while pointing to Section 10-50 of the Cannabis Act in finding that such a test and termination were lawful based on the plain language in both statutes. There, the employer had a clearly stated and consistently applied Drug and Alcohol policy, which prohibited testing positive for controlled substances. The plaintiff tested positive after a random drug screen, was given counseling pursuant to the employer's policies, and ultimately tested positive again, which resulted in his termination. There is nothing in the court's decision as to whether this was recreational or medical use, but it is assumed to be recreational based on the fact the employee received substance abuse counseling and there is no mention of medical use in the decision. The plaintiff then sued his employer under the Privacy Act.

The court then pointed out the "critical exemption" in the Privacy Act, in that it "excludes from its reach" Section 10-50 of the Cannabis Act. The court then looked at the defendant's drug free workplace policy, as enforced through drug testing. The court found that such a policy is permissible under the plain language of the Cannabis Act, so long as the testing is "reasonable and nondiscriminatory." **In looking at the facts of the case, the court determined that the policy was reasonable, was not applied in a discriminatory manner, and therefore the plaintiff had no cause of action under the Privacy Act.**

Beware of IL GIPA Law --- Finally Starting to See Lawsuits under this Law

- Passed in 1998, GIPA protects the genetic information and genetic testing results of individuals. It also prohibits discrimination by employers based on genetic information. Notably, genetic information is broadly defined as not only the results of genetic testing, ***but also*** the "manifestation or possible manifestation of a disease or disorder in a family member of an individual." This broad definition sits at the cornerstone of these lawsuits being filed. The statute provides that companies may not share genetic information without the individual's written consent, and companies cannot require genetic testing of applicants, or use genetic information to make personnel decisions.
- Wellness Programs and Employment Physicals, Medical Exams are under the Microscope for Potential GIPA Violations
- Damages are $2,500 per violation, with the possibility of $15,000 for intentional or reckless violations.

2025 Legislative Changes (so far)

HB1278 VESSA

Provides that an employer shall not retaliate against an employee or deprive an employee of employer-issued equipment because the employee used employer-issued equipment to record domestic violence, sexual violence, gender violence, or any other crime of violence committed against the employee or a family or household member of the employee. Provides that an employer shall grant an employee access to any photographs, voice or video recordings, sound recordings, or any other digital documents or communications stored on an employer-issued device relating to domestic violence, sexual violence, gender violence, or any other crime of violence committed against the employee or a family or household member of the employee. Provides that the provisions do not prohibit an employer from complying with an investigation, court order, or subpoena for a device, information, data, or documents. Provides that the provisions shall not be construed to relieve an employee of obligations to comply with an employer's reasonable employment policies or to perform the essential functions of employment.

HB1616 EE Blood & Organ Donation Leave Act

Amends the Employee Blood and Organ Donation Leave Act. Provides that a participating employee or part-time employee (rather than an employee) may use up to 10 days of leave in any 12-month period to serve as an organ donor. Provides that, for a part-time employee using leave to serve as an organ donor, the employer shall calculate the daily average pay the part-time employee received during his or her previous 2 months of employment and compensate the part-time employee in the amount of the daily average pay for the leave days used.

HB2978 Family Neonatal Intensive Care Leave Act

Creates the Family Neonatal Intensive Care Leave Act. Provides that an employee of an employer with 16 or more employees and no more than 50 employees shall be entitled to use a maximum of 10 days of unpaid neonatal intensive care leave while any child of the employee is a patient in a neonatal intensive care unit. Provides that an employee of an employer with 51 or more employees shall be entitled to use 20 days of unpaid neonatal intensive care leave while a child of the employee is a patient in a neonatal intensive care unit. Provides that, upon the conclusion of leave taken under the Act, an employee shall be reinstated to his or her former position or a substantially equivalent one with no loss of benefits held or accrued prior to taking leave. Sets forth provisions concerning unlawful employer practices; Department of Labor responsibilities; and enforcement. Amends the State Finance Act to create the Neonatal Intensive Care Leave Fund.

HB3638 IL Workplace Transparency Act

Amends the Workplace Transparency Act. Provides that no contract, agreement, clause, covenant, waiver, or other document shall prohibit, prevent, or otherwise restrict an employee, prospective employee, or former employee from engaging in concerted activities to address work-related issues. Provides that any agreement, clause, covenant, or waiver that is a mutual condition of employment or continued employment may include provisions that would otherwise be against public policy if it acknowledges the right of the employee or prospective employee to engage in concerted activities to address work-related issues. Provides that an employee, prospective employee, or former employee and an employer may enter into a valid and enforceable settlement or termination agreement that includes promises of confidentiality related to alleged unlawful employment practices if the confidentiality provision is supported by separate consideration. Provides for the recovery of compensatory damages incurred in challenging a contract for violation of the Act. Makes other changes.

SB212 IL Nursing Mothers in the Workplace Act

Amends the Nursing Mothers in the Workplace Act. Provides that an employer shall compensate an employee during the break time provided under the Act at the employee's regular rate of compensation. Provides that an employer shall not require an employee to use other paid leave during the break time or reduce an employee's compensation during the break time in any other manner. The employer must provide reasonable paid break times for such an employee, as needed, for up to 1-year following the birth of the child (unless to do so will create an undue burden).

SB220 IL Military Leave Act

Amends the Family Military Leave Act. Changes the name of the Act to the "Military Leave Act". Provides that an employee may use up to 8 hours per calendar month to participate in a funeral honors detail, up to a total of 40 hours per calendar year, or more if authorized by the employer or if provided for in a collective bargaining agreement. Provides for requirements to take leave for funeral honors details. Provides that an employee that takes leave may do so in lieu of, and without having exhausted, his or her vacation leave, personal leave, compensatory leave, or any other leave that may be granted to the employee, including sick leave and disability leave. Defines terms. Provides that the employer of an employee that takes leave must pay the employee his or her regular rate of pay for the leave taken to participate in a funeral honors detail.

SB1441 IL Secure Choice Act

Amends the Illinois Secure Choice Savings Program Act. Provides that the accounts established under the Secure Choice Savings Program shall be IRAs, into which enrollees contribute funds that are invested in investment options established by the Illinois Secure Choice Savings Board. Provides that a separate account shall be established for each enrollee and the accounts shall be owned by the enrollee. Provides that the savings accounts established under the Program shall be portable and allow for an enrollee to make contributions from multiple employers into a single account. Provides that an enrollee in the Program may have both a Roth IRA and a Traditional IRA through the Program. Provides that the Board shall have the duty to assess the feasibility of agreements with other governmental entities, including other states and their agencies and instrumentalities, to achieve greater economies of scale through shared resources and to enter into those agreements if determined to be beneficial. Provides that an employer who fails without reasonable cause to enroll an employee in the Program within the time provided and fails to remit their contributions (rather than fails without reasonable cause to enroll an employee in the Program within the time provided) shall be subject to a penalty. Makes changes in provisions concerning employer and employee information packets. Provides that, at the time of initial enrollment, employers shall automatically enroll in the Program each of their employees who have been employed for 120 days or more by the employer. Provides that, following initial enrollment, employers shall enroll new employees as soon as practicable, but no later than 120 days after the employee is first employed by the employer.

SB1976 IL Workers' Rights & Worker Safety Act

Creates the Workers' Rights and Worker Safety Act. Provides that, except as authorized by State law enacted after April 28, 2025, a State agency may not amend or revise the State agency's rules in a manner that is less stringent in its protection of workers' rights or worker safety than requirements established under federal wage and hour law or federal coal mine safety law as the federal law existed on April 28, 2025. Creates the Illinois Safe and Healthy Workplace Act. Provides that the Department of Labor shall adopt rules to incorporate federal occupational health or safety standards that are repealed or revoked to address occupational safety or health issues. Sets forth rights of action and penalties. Amends the Occupational Safety and Health Act. Provides that the Director Labor may adopt a standard that incorporates a federal occupational health or safety standard as it existed prior to being repealed, revoked, amended, or newly interpreted and addresses the occupational safety or health issue that the repealed, revoked, amended, or newly interpreted federal Occupational Safety and Health Act standard had addressed.

SB2164 IWPCA

Amends the Illinois Wage Payment and Collections Act. Amends 820 ILCS 115/11 by establishing that after that 35 days of the issuance of the final and binding administrative decision from IDOL from the ALJ the final and binding administrative decision is a debt due and owed to the State and may be collected using all remedies under the law, including but not limited to those found in Article XII of the Code of Civil Procedure. The findings, decision, and order of the Department may be enforced in the same manner as any civil judgment entered by a court of competent jurisdiction.
Amends penalties provision 820 ILCS 115/14 (a) by establishing that a claim filed with IDOL and adjudicated through an administrative hearing, **damages of 5% shall accrue for each month that the underpayments remain unpaid and another 1% per calendar day penalty will be owed** and (b) any employer who has been demanded or ordered by IDOL or the court to pay wages, final compensation, shall be required to pay a nonwaivable administrative fee to the IDOL in the amount of $500 rather than $250 if the amount order by IDOL as wages owed is $3K or less; 750 rather than $500 if the amount order by IDOL is more than 3K but less than 10K; and $1,250 rather than 1K if the amount ordered by IDOL is 10K or more.

SB2487 IHRA

Provides for the imposition of a civil penalty that may be imposed for each specific act constituting a civil rights violation as defined in the Act. Provides a penalty for each aggrieved party injured by the civil rights violation (i) in an amount not exceeding $16,000 if the respondent has not been adjudged to have committed any prior civil rights violation under the Act; (ii) in an amount not exceeding $42,500 if the respondent has been adjudged to have committed one other civil rights violation under the Act during the 5-year period ending on the date of the filing of the charge; and (iii) in an amount not exceeding $70,000 if the respondent has been adjudged to have committed 2 or more civil rights violations under the Act during the 7-year period ending on the date of the filing of the charge. Provides that if the acts constituting the civil rights violation that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a civil rights violation under the Act, then the civil penalties set forth in (ii) and (iii) may be imposed without regard to the period of time within which any subsequent civil rights violation under this Act occurred.

Provides that the Department, in its discretion may conduct a fact finding conference. Provides that if the complainant and respondent both submit a written request for a fact finding conference prior to 90 days after the date on which the charge was filed, the Department shall conduct a fact finding conference unless prior to the Department's receipt of both requests, the Department has issued its report. Provides that any request for a fact finding conference must include the party's written agreement to grant an extension of 120 days to the time period if requested by the Department to issue its report.

SB2339 IL Right to Privacy in the Workplace Act (DID NOT GET THROUGH LAST SESSION)

Still in flux… but, essentially, requires employers to take various action related to worker authorization issues/problems.

***It's still being worked out. Lots of movement --- aimed to try and curb the Trump Administration from enforcing Immigration Laws.

HB3094 IL Transportation Benefits Program Act

Significantly amends the Transportation Benefits Program Act, which was passed in bipartisan fashion in 2023. This underlying law took effect on Jan. 1, 2024.

The law requires employers to offer a pre-tax commuter benefit, in which employees are allowed to use pre-tax dollars for the purchase of a transit pass, via payroll deduction. The costs for such purchases may be excluded from the employee's taxable wages and compensation up to the maximum amount permitted by federal tax law, which is $300.

HB3094 expands the definition of a covered employer. Under current law, an employer is subject to the Act if they have 50 or more full-time employees. Under HB 3094, it would include any and all employees, regardless of full-time or part-time status. This would significantly expand the number of employers who are subject to the mandates under the Transportation Benefits Program.

HB 3094 exempts unionized construction industry employers from having to offer the transit benefit.

IL Prevailing Wage Amendments

- Severe Violations and Penalties for NOT Submitting a CTP with the IL DOL.
- Sewer INSPECTIONS are now covered work.
- Effective June 30, 2025.

2024 Initiatives --- REMINDER

IL Workplace Laws

SB 508 Enrolled: E-VERIFY LIMITS UNDER RIGHT TO PRIVACY IN WORKPLACE ACT

Amends the Right to Privacy Act prohibiting an employer from imposing work authorization verification or re-verification requirements greater than those required by federal law. If an employer is required to participate in the E-Verify program or a similar Electronic Employment Verification System and receives notification from the Social Security Administration of a discrepancy between an employee's name or social security number and the Social Security Administration's records, the employer must provide the employee with specified documents. Provides for additional rights and protections granted to an employee following the notification from the Social Security Administration of a discrepancy. Provides that an employer shall provide notice to current employees, by posting in the language the employer normally uses to communicate employment-related information to the employee, of any inspections of I-9 Employment Eligibility Verification forms or other employment records conducted by the inspecting entity within 72 hours after receiving notice of the inspection. Provides for additional notice requirements concerning obligations of the employer and the employee. Provides for violations and civil penalties.

IL Workplace Laws

SB 3208 ENROLLED: WAGE PAYMENT PAY STUBS

Requires every employer, upon an employee's request which the employer may require be in writing on a form supplied by the employer, permit the employee to inspect his or her pay stubs. Amends the Illinois Wage Payment and Collection Act to require employers to keep records of names and addresses of all employees and of wages paid each payday, and furnish each employee with a pay stub for each pay period (rather than shall furnish each employee with an itemized statement of deductions made from the employee's wages for each pay period). Requires an employer to maintain a copy of an employee's pay stub for a period of not less than 3 years after the date of payment, whether the pay stub is provided electronically or in paper form, and the employer must furnish the pay stub to the employee or former employee upon the employee or former employee's request. An employer who furnishes electronic pay stubs in a manner that is restricted to the employer's current employees must, upon an employee's separation from employment, furnish the employee or former employee with a paper or emailed electronic record of all of the employee's or former employee's pay stubs for up to 3 years prior to the date of separation, in the method specified by the employee or former employee. An employer who fails to furnish an employee with a pay stub or commits any other violation of this Act, except for specified violations, shall be subject to a civil penalty of $500 per violation payable to the Department of Labor. Defines "pay stub".

IL Workplace Laws

SB 3310 ENROLLED: EXTENDS HUMAN RIGHTS ACT STATUTE OF LIMITATIONS TO 2 YEARS

Amends the Illinois Human Rights Act. Extends the date to file a charge from 300 calendar days to 2 years for an alleged employment related violation under the Act.

- **NOTE:** EEOC charges must still be filed within 300 days.

IL Workplace Laws

SB 3649 ENROLLED: EMPLOYER GAG ACT

Creates the Worker Freedom of Speech Act to prohibit an employer or the employer's agent, representative, or designee to discharge, discipline, or otherwise penalize, threaten to discharge, discipline, or otherwise penalize, or take any adverse employment action against an employee: (1) because the employee declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to communications from the employer or the agent, representative, or designee of the employer if the meeting or communication is to communicate the opinion of the employer about religious or political matters; (2) as a means of inducing an employee to attend or participate in meetings or receive or listen to communications; or (3) because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, of a violation or a suspected violation of the Act. Provides for a private right of action to enforce the provisions of the Act. Sets forth the duties and powers of the Department of Labor under the Act. Provides that, within 30 days after the effective date of the Act, an employer shall post and keep posted a notice of employee rights under the Act where employee notices are customarily placed.

IL Workplace Laws

HB2161 ENROLLED: UNLAWFUL DISCRIMINATION-FAMILY RESPONSIBILITIES

Amends the Illinois Human Rights Act. Provides that it is the public policy of the State to prevent discrimination based on family responsibilities in employment. Defines "family responsibilities" as an employee's actual or perceived provision of care to a family member, whether in the past, present, or future. Provides that it is a civil rights violation for: (1) any employer to refuse to hire, to segregate, to engage in harassment, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of family responsibilities; (2) any employment agency to fail or refuse to classify properly, accept applications and register for employment referral or apprenticeship referral, refer for employment, or refer for apprenticeship on the basis of family responsibilities; and (3) any labor organization to limit, segregate, or classify its membership, or to limit employment opportunities, selection and training for apprenticeship in any trade or craft, or otherwise to take or fail to take, any action which affects adversely any person's status as an employee or as an applicant for employment or as an apprentice, or as an applicant for apprenticeships, or wages, tenure, hours of employment, or apprenticeship conditions on the basis of family responsibilities.

NOTE: However, nothing contained in the Act may be construed to obligate an employer, employment agency, or labor organization to make accommodations or modifications to reasonable workplace rules or policies for an employee based on family responsibilities, including accommodations or modifications related to leave, scheduling, productivity, attendance, absenteeism, timeliness, work performance, referrals from a labor union hiring hall, and benefits, as long as its rules or policies are applied in accordance with this Act. Nothing contained in the Act prevents an employer from taking adverse action or otherwise enforcing reasonable workplace rules or policies related to leave, scheduling, productivity, attendance, absenteeism, timeliness, work performance, referrals from a labor union hiring hall, and benefits against an employee with family responsibilities as long as its policies are applied in accordance with the Act.

IL Workplace Laws

HB3736 ENROLLED: EXPANDS PERSONNEL RECORD REVIEW ACT

Amends the Personnel Record Review Act to provide that every employee has a legal right to inspect and copy personnel-related documents. Requires an employee to make a written request to the employer before having a legal right to inspect, copy, and receive copies of specified documents, including any employment-related contracts or agreements that the employer maintains are legally binding on the employee. Modifies how requests must be made and the requirements of written requests. The right of the employee or the employee's designated representative to inspect personnel records does not apply to an employer's trade secrets, client lists, sales projections, and financial data. Modifies provisions on how the Act is administered and enforced, including requirements for commencing an action in circuit court. Prohibits an employer from including the imputed costs of time spent duplicating the information, purchasing or renting a copying machine, purchasing or renting computer equipment, or purchasing, renting, or licensing software in a fee for providing a copy of the documents. An employee may bring an action in circuit court regardless of whether that employee has filed a complaint concerning the same violation with the Department of Labor. Authorizes an employee to file a complaint with the Department regardless of whether the employee pursued or is pursuing an action for the same violation in circuit court.

IL Workplace Laws

HB 5561 ENROLLED: EXPANDS LIABILITY UNDER THE WHISTLEBLOWER ACT

Changes the definitions of “employer” and “employee”. Defines “adverse employment action”, “public body”, “retaliatory action”, and “supervisor”. Provides that an employer may not take retaliatory action against an employee who discloses or threatens to disclose information about an activity, policy, or practice of the employer that the employee has a good faith belief that such activity, policy, or practice violates a State or federal law, rule, or regulation or poses a substantial and specific danger to public health or safety. Includes additional relief, damages, and penalties for violation of the Act. Allows the Attorney General to initiate or intervene in a civil action to obtain appropriate relief if the Attorney General has reasonable cause to believe that any person or entity is engaged in a practice prohibited by the Act. Provides that the changes made by the amendatory Act apply to claims arising or complaints filed on or after January 1, 2025.

IL Workplace Laws

HB 3773 ENROLLED: LIMIT PREDICTIVE ANALYTICS USE

Amends the Illinois Human Rights Act prohibiting an employer that uses predictive data analytics in its employment decisions to consider the applicant's race or zip code when used as a proxy for race to reject an applicant in the context of recruiting, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. Allows the use of predictive data analytics to support the inclusion of diverse candidates in making employment decisions. Makes a civil rights violation: (1) with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment, for an employer to use artificial intelligence that has the effect of subjecting employees to discrimination on the basis of protected classes identified under the Article or to use zip codes as a proxy for protected classes identified under the Article; and (2) for an employer to fail to provide notice to an employee that the employer is using artificial intelligence. Defines “artificial intelligence” and “generative artificial intelligence”.

IL Workplace Laws

SB 2979 ENROLLED: AMENDS ILLINOIS' BIPA LAW

Amends the Biometric Information Privacy Act. Defines "electronic signature" as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Provides that "written release" includes an electronic signature. Provides that a private entity that more than once collects or discloses a person's biometric identifier or biometric information from the same person in violation of the Act has committed a single violation for which the aggrieved person is entitled to, at most, one recovery. Effective immediately.

Freelance Worker Protection Act

- The Governor signed HB 1122 into law as **PA 103-417.** Effective July 1, 2024, the **Freelance Worker Protection Act** requires a freelance worker to be paid the contracted compensation amount on or before the date the compensation is due under the terms of the contract. If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which the date will be determined, compensation shall be due no later than 30 days after the completion of the freelance worker's services under the contract. Once a freelance worker has commenced preparation of the product or performance of the services under the contract, a contracting entity shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation. Requires written contracts for services or products provided by a freelance worker. Sets forth the information such written contracts must include. The definition of "freelance worker" does not include an individual performing construction services or include bona fide corporations or limited liability companies.

Non-Compete & Non-Solicitation Updates

SB 2737 ENGROSSED: NON-COMPETE/NON-SOLICIT AGREEMENTS PROHIBITED FOR CERTAIN MENTAL HEALTH PROFESSIONALS

Amends the Illinois Freedom to Work Act. Provides any covenant not to compete or covenant not to solicit entered into after the effective date of the amendatory Act shall not be enforceable with respect to professionals licensed in this State who provide mental health services to veterans and first responders if the enforcement of the covenant not to compete or covenant not to solicit would result in an increase in cost or difficulty for any veteran or first responder seeking mental health services. Effective January 1, 2025.

SB 2770 ENROLLED: CONSTRUCTION NON-COMPETE/NON-SOLICIT AGREEMENTS PROHIBITIONS A covenant not to compete or a covenant not to solicit is void and illegal with respect to individuals employed in construction, regardless of whether an individual is covered by a collective bargaining agreement **unless** the construction employee primarily performs management, engineering or architectural, design, or sales functions for the employer or who are shareholders, partners, or owners in any capacity of the employer. Effective immediately.

IDTLSA – Amended Once Again (DAY & TEMPORARY LABOR)

SB 3650 ENROLLED: If an applicant seeks a work assignment as a day or temporary laborer with a day and temporary labor service agency, including in-person, online or through an app-based system, and is not placed with a third party client or otherwise contracted to work for that day by the day and temporary labor service agency, the day and temporary labor service agency shall provide the applicant with a confirmation that the applicant sought work that satisfies specified criteria. Sets forth compensation requirements for day or temporary laborers based on directly hired comparative employees of a third party. Provides that it shall be the responsibility and duty of a day and temporary labor service agency to calculate and determine the hourly rate of pay and the benefits it shall offer to a day or temporary laborer, including any cash equivalents. Makes changes in provisions concerning the right to refuse assignments due to a labor dispute and the duties of third party clients. The key amendment focuses on regulating the hourly rate and benefits once a temporary worker has worked 720+ hours for a specific third party client --- from April 1, 2024 forward. While the benefits portion of the law is still in flux due to a federal court's injunction earlier this year, the hourly rate portion is in play along with the safety mandates and forthcoming new notice requirements.

Brief Summary of Key Points (IDTLSA)

1. After 720 hours of work for a temporary agency's client (within a 12-month period beginning from April 1, 2024 forward), the temporary worker must:
   - Be paid at least the rate of the client's lowest paid FLSA non-exempt similarly situated regular employee with same or substantially similar seniority (and, if that person doesn't exist – then the lowest paid FLSA non-exempt employee at the user client with the closest level of seniority); and NOTE: a third party client can elect to go the US DOL BLS route (tbe)
   - Receive the same benefits or the equivalent cash benefit of the client's comparator employee
2. Agency must inform temporary workers (in writing) that they do not have to accept an assignment requiring that they cross a picket line or work where there is a "labor dispute."
3. A client must timely provide an agency with their direct employees' job duties, pay and benefits upon request.
4. Substantial new safety and hazard assessments and training requirements for both the employer and client – to be implemented prior to the temporary worker beginning work.
5. Higher penalties for violations.
6. Third party rights to file complaints with the IDOL and ultimately file private lawsuits regardless of the outcome at the IDOL – with the ability to recover 10% of any and all penalties/damages recovered – plus attorneys' fees and costs incurred.
7. IL AG's Office can also get involved on its own.
8. New Employment Notice changes & Application Receipt mandates.

Equal Benefits --- (IDTLSA)

In *Staffing Services Association of IL, et. al. vs. Jane Flanagan, Director of the IL Department of Labor*, a federal district court in Chicago granted plaintiffs' request for injunctive relief thereby preventing the IL Department of Labor (IDOL) from enforcing a key provision contained in the 2023 amendments to the IL Day & Temporary Labor Services Act (IDTLSA). While the plaintiffs were not successful in their attempt to block other key sections of the amendments involving "notifying temporary workers of labor disputes" and "interested parties having standing to pursue private lawsuits on behalf of workers," **the court initially blocked the "equivalent benefits" piece to the "Equal Pay for Equal Work" section of the law --- but, recently decided to no longer block it.**

IHRA Amended Again to Add… REPRODUCTION PROTECTIONS

HB4867 ENROLLED: ADDS REPRODUCTIVE HEALTH DECISIONS AS A PROTECTION UNDER HUMAN RIGHTS ACT

Amends the Illinois Human Rights Act declaring the public policy of this State that a person has freedom from unlawful discrimination in making reproductive health decisions and such discrimination is unlawful. Defines “reproductive health decisions” to mean a person’s decisions regarding the person's use of contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care.

Illinois: 2023 Equal Pay Act Amendments

Effective **1/1/2025** Employers with 15 or more employees must:

- Include "**pay scale and benefits**" information in job postings for positions to be physically performed, at least in part, in Illinois, **and** positions that will be physically performed outside of Illinois, but report to a supervisor, office, or other work site in Illinois.
- Disclose pay scale and benefits to an applicant before offer and before discussion of compensation and at the applicant's request.
- Make and preserve records that document the pay scale and benefits for a position. Dept of Labor may initiate investigations of alleged violations and impose civil penalties.

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So, as of January 1, 2025 Forward…

- It is unlawful for an IL employer with 15 or more employees to fail to include the pay scale and benefits for a position in any specific job posting. But, nothing in the law mandates that an employer make a job posting.
- The inclusion of a hyperlink to a publicly viewable webpage that includes the pay scale and benefits satisfies the requirements for inclusion under this subsection.
- If an employer engages a third party to announce, post, publish, or otherwise make known a job posting, the employer shall provide the pay scale and benefits, or a hyperlink to the pay scale and benefits, to the third party and the third party shall include the pay scale and benefits, or a hyperlink to the pay scale and benefits, in the job posting. The third party is liable for failure to include the pay scale and benefits in the job posting, unless the third party can show that the employer did not provide the necessary information regarding pay scale and benefits.
- **An employer shall announce, post, or otherwise make known all opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position.**

How the Big Beautiful Bill Will Impact Your Employee Benefits and Compensation Strategy

- The Big Beautiful Bill, signed into law by President Trump on July 4, 2025, spans nearly 900 pages and touches numerous aspects of federal policy. Nestled within this lengthy legislation are employee benefits provisions that will require employers to navigate new rules, opportunities, and compliance requirements.

- From additional tax deductions for workers to new savings vehicles for children, the benefits-related sections introduce changes that span traditional compensation structures, family support programs, and organizational compliance obligations.

- Link to full blog article can be found at: Labor & Employment Law Update

What Would I Do If I Ran HR???

- Implement Arbitration Agreements for Every New Hire Moving Forward (at least, consider it strongly and discuss with my L&E attorney);
- Embrace my cool/hip Electronic Timekeeping System --- focusing on 1) ALL HOURS WORKED vs. HOURS NOT WORKED, 2) NO INJURY/ILLNESS DURING SHIFT, and 3) NO WORKPLACE DISPUTE DURING SHIFT;
- Figure out Ways to Carefully Utilize AI;
- Consider LTIPs and other Incentive Plans to Attract and RETAIN Talent;
- Master a Paid Leave Program that FITS My Workforce!; and
- Figure out 3 resources for compliance education and to keep on top of all workplace regulations impacting your industry.

Thank you for joining us!

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