



CLIENT ADVISORY

Labor and Employment Adopted Legislation *September 2007*

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Illinois Human Rights Act

This Public Act amends the Illinois Human Rights Act to allow a complainant to either file a complaint with the Human Rights Commission or commence a civil action in the circuit court where the alleged violation took place. If the Director of the Department of Human Rights determines that the charge should be dismissed, the complainant must be given notice of their right to seek review of the decision or file a civil action. A request for review must be filed within 30 days of receipt of the Director's notice. If the complainant chooses to file a civil action, it must be filed within 90 days of receipt of the notice. If a request for review is made, the complainant cannot later decide to file a civil action. If the Director determines there is substantial evidence, the complainant must be given notice that the complainant may file a civil action or request that the Department file a complaint with the Human Rights Commission. The complainant must file the complaint within 90 days of receipt of the notice, or request that the Department file the complaint within 14 days of receipt of the notice.

Effective January 1, 2008. *See Public Act 95-0243.*

Wage Violation Claims

This Public Act amends the Code of Civil Procedure to add that actions brought under the Illinois Wage Payment and Collection Act must be commenced within 10 years after the cause of action has accrued. This Public Act also amends the Wage Payment and Collection Act to allow an employee to file a complaint with the Department of Employment Security alleging a violation of the Act within one year after the wages,

final compensation or wage supplements are due. Any employer who violates the Act is now also liable to the Department for 20% of the unpaid wages. Penalties may be recovered in a civil action brought by the Director in any circuit court.

Effective August 16, 2007. *See Public Act 95-0209.*

Organ Donor Leave Act

The Organ Donor Leave Act is amended to extend the time that an employee may take to donate blood to one or more hours every 56 days, and 2 or more hours to donate platelets every 56 days.

Effective January 1, 2008. *See Public Act 95-0354.*

Employer Tax Withholding

This Public Act amends the Illinois Income Tax Act. The amendment creates new reporting and payment requirements for employers who deduct and withhold tax under this Act after January 1, 2008, depending on the amount of tax withheld. This amendment also states that any employer who is required to submit W-2's electronically or on magnetic media to the IRS must also submit their W-2 forms in the same manner to the Illinois Department of Revenue.

Effective June 29, 2007. *See Public Act 95-0008.*

Income Withholding for Support Act

The penalties section of the Income Withholding for Support Act is amended to state that any officer or employee of any payor who has control, supervision or responsibility for withholding and paying income pursuant to a withholding notice, who willfully fails to do so, will be held personally liable for a penalty equal to the total amount that was not withheld or paid. The personal liability only triggers if the employer is unable to pay the amounts due.

Effective June 1, 2008. *See Public Act 95-0468.*

Illinois Civil Rights Act

The Illinois Civil Rights Act is amended to expand prohibited discrimination to include discrimination based on gender.

Effective January 1, 2008. *See Public Act 95-0541.*

Illinois Human Rights Act

The Illinois Human Rights Act is amended to include as a civil rights violation the refusal of an employer who participates in the Federal Basic Pilot Program to hire an individual, or the segregation of an individual, or to take another listed negative employment action against an individual, without following the Basic Pilot Program procedures.

Effective January 1, 2008. *See Public Act 95-0137.*

Right to Privacy in the Workplace Act

The Right to Privacy in the Workplace Act has been amended to add a new provision relating to the restrictions on use of employment eligibility verification systems. This provision prohibits employers from enrolling in any employment eligibility program, including the Federal Basic Pilot program, unless the Social Security Administration (SSA) or Department of Homeland Security (DHS) are able to make a determination on 99% of the tentative non-confirmation notices issued to employers. The Act also

requires employer who enroll in the Basic Pilot Program to complete a certain mandated training and to post a prescribed notices relating to the Basic Pilot Program and anti-discrimination. The Act further sets forth a number of responsibilities of employers using the employment eligibility verification system. Some of these requirements include: notifying the prospective employee that such employment verification system may be used for immigration enforcement purposes; using the information the employer receives only to confirm the employment eligibility of newly-hired employees after the completion of the I-9 Form; and safeguarding the information and limiting access to the confidential information.

Effective January 1, 2008. *See Public Act 95-0138.*

Health Care Worker Background Check Act

This Public Act amends the Health Care Worker Background Check Act. This Act applies to certain health care employers, including a supportive living program licensed under the Public Aid Code, locations licensed under the Alternative Health Care Delivery Act, community integrated living arrangements operated by a community mental health and developmental service agency, and programs certified to participate in the Supportive Living Program authorized pursuant to the Public Aid Code. This act does not currently apply to substance abuse treatment programs. This act applies to limited mental health programs as defined by the statute.

This change will require livescan fingerprint-based criminal history records checks from the State Police. The fingerprint check is not required for health care employees who have been continuously employed since October 1, 2007, have met previous background check

requirements and, where applicable, a waiver, and are in the Health Care Worker Registry.

However, after October 1, 2007, or as soon thereafter as is reasonably practical, any student, applicant or employee who wants to be included on the Department of Public Health's (the "Department") Health Care Worker Registry must authorize the Department to request the fingerprint check. Also, any health care employer making a conditional offer of employment after October 1 must request a fingerprint check. The request must be made electronically and include the following information:

- social security number
- demographics
- a disclosure statement
- authorization to conduct background check

This information must be submitted within 2 days after authorization is given by the applicant. The employer must also transmit the fingerprints electronically to the State Police within 10 working days after receiving the authorization.

Employers will now also be required to conduct a search regarding the applicant on the following websites to determine whether the applicant has been adjudicated a sex offender, has been a prison inmate, or has committed Medicare or Medicaid fraud:

- Illinois Sex Offender Registry
- Department of Correction Sex Offender Search Engine
- Department of Corrections Inmate Search Engine
- Department of Corrections Wanted Fugitives Search Engine
- National Sex Offender Public Registry
- Health and Human Services Office of Inspector General website

The State Police will also notify the Department of any new convictions based on matches with fingerprints previously submitted to the Health Care Worker Registry. The Department will in turn notify the employer, and the employee will be disqualified from any healthcare position covered by the Act until they have received a waiver.

Employers must now also notify the Department of hiring or termination dates within 30 days of that date, as well as the employment category and type. Notification must be given to the applicant of the background check and that they may either not be hired or may be fired depending on the results of the check. An employer may conditionally hire an employee for up to 3 months while awaiting the results of the background check.

The Public Act also amended the procedure for obtaining a waiver. The application for waiver will be submitted to the Department and must provide a written explanation of the circumstances around the conviction and any official documentation. The applicant may also submit any other employment and character references or other supporting evidence. The employee cannot be employed while the application for waiver is pending. A copy of the disclosure and authorization forms, the livescan fingerprint check request form, all notifications resulting from the check and the waiver, if applicable, must be retained for the duration of the employee's employment.

Effective August 13, 2007. *See Public Act 95-0120.*

Employee Classification Act

This Public Act creates the Employee Classification Act. The Act is meant to address the “practice” of misclassifying employees as independent contractors. The Act sets forth the circumstances under which an individual will be deemed an employee or independent contractor for purposes of the Act. This Act only applies to Illinois contractors who engage in construction.

Effective January 1, 2008. *See Public Act 95-0026.*

Whistleblower Act

The Whistleblower Act has been amended to add the State, local government and school districts, State colleges and State agencies to the definition of “employer”. The section on “false claims” has also been expanded to include the following actions as those that will be subject to a civil penalty: knowingly taking adverse employment actions in retaliation for disclosing information concerning a violation of a law, rule or regulation; or knowingly retaliating against an employee who has disclosed information in a court, administrative or other proceeding concerning the violation of a law, rule or regulation. Additionally, the definition of “claim” has been expanded to include a request or demand for money damages or injunctive relief on behalf of an employee who has suffered an adverse employment action in violation of the act.

Effective January 1, 2008. *See Public Act 95-0128.*

Commission on Discrimination and Hate Crimes Act

This Public Act creates the Commission on Discrimination and Hate Crimes Act. The Act establishes a Commission to work with community and religious leaders, educators and other public officials, local government, law enforcement and other officials to identify and uproot discrimination, help ensure the application of State laws, and to make

and implement recommendations to the Governor. An annual report shall be submitted every March 30.

Effective August 24, 2007. *See Public Act 95-0425.*

SELECT FEDERAL UPDATES

EEOC Enforcement Guidance on Unlawful Disparate Treatment of Workers with Care Giving Responsibilities

The EEOC recently issued new enforcement guidance concerning circumstances under which discrimination against a working parent or other caregiver constitutes unlawful disparate treatment. Unlawful disparate treatment arises where a worker with care giving responsibilities is subjected to discrimination based on a protected characteristic, usually based on sex and/or race. Unlawful disparate treatment can also arise under the Americans with Disabilities Act where an employer discriminates against a worker based on their association with an individual with a disability. The new guidance also illustrates examples of unlawful disparate treatment. A question and answer guide as well as the enforcement guidance may be

found at:

<http://www.eeoc.gov/policy/docs/caregiving.html> or
http://www.eeoc.gov/policy/docs/qanda_caregiving.html

Social Security Letter “No Match” Rule

The Department of Homeland Security (DHS) announced their plan to implement by September 14, 2007 a new rule aimed at cracking down on employment verification. The Rule would require employers to resolve mismatches between documents given to

verify employment when submitting an employee's I-9 form, and "no match letters" sent by the Social Security Administration (SSA) when a discrepancy between the submitted documentation and the SSA's files occur. The rule would require the employer to resolve any discrepancies within 90 days or fire the employee. Employers who violate this Rule would be subject to fines of as much as \$12,500 per violation. However, on August 31st a federal judge issued a temporary restraining order delaying the implementation of the Rule. No further action has been taken to date.