

Labor & Employment Update



Speaker



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STATE UPDATES

Amendment to VESSA (eff. 8/25/25)

- The Illinois Victims' Economic Security and Safety Act (VESSA) provides leave benefits for victims of violent crime (domestic, sexual, etc.), including instances where family or household members of employees are victims of crimes of violence.
- **8/15/15: VESSA amended to allow crime victims' use of and access to employer-owned equipment to record crimes of violence committed against employees or their family/household members.**
 - Must allow access to photographs, voice/video recordings, and any other digital document or communication stored on employer's equipment
 - Cannot take adverse action against employee-victims related to this use of equipment, but you may require compliance with "reasonable employment policies"
 - If electronic device policy restricts personal use of company equipment, employer must revise policy to include exception consistent with amendment

AI In Employment Update

Artificial Intelligence Video Interview Act (2020)
regulates use of AI in the interview process

HB 3773 (eff. 1/1/26) amended the Illinois Human Rights Act to prohibit the use of AI in employment decisions that result in discrimination on the basis of protected characteristics

- It is a violation of the IHRA to use AI if it has the effect of discriminating
- **Also makes it a violation to use AI without providing notice to an employer that AI is in use**

IDHR recently issued proposed rules implementing the statutory requirements



AI In Employment Update



- Draft rules apply broadly to “employers” under the IHRA and to their agents, including recruiters and other third parties acting on an employer’s behalf.
- Notice is required whenever AI is involved in covered employment decisions, regardless of whether it leads to unlawful discrimination
- Notice must include information such as the AI product’s name, the employment decisions it affects, its purpose, the data it collects, targeted job positions, right to accommodation and contact details for inquiries

AI In Employment Update

Employers would need to provide notice to current employees annually or within thirty days of the “adoption of a new or substantially updated” AI system. For prospective employees

- Notices would be required to be posted in (1) employee handbooks or manuals; (2) in a “conspicuous location” on the employer’s physical premises where notices are usually posted; (3) in a “conspicuous location” on the employer’s intranet or external website; and (4) in any job notice or posting.

Notice of AI use would need to be included in any job posting.

What’s next? It is possible, though unlikely, that the draft rules could be changed before being published in the *Illinois Register* and opened for a public comment period.

Workplace Transparency Act Amendments (eff. 1/1/26)

- Originally passed in 2020, regulates use of confidentiality, arbitration, and terms in a settlement agreement relating to unlawful employment practices
- **8/15/15: WTA amended to add definition of concerted activity, expand scope of “unlawful employment practice,” expand prohibited contract terms, and expand the requirements necessary to meet the exception**
- Any agreement, clause, waiver that is a unilateral condition of employment that has the purpose or effect of preventing an employee from making truthful statements or disclosures about an **unlawful employment practice** or **engaging in protected concerted activity**...is against public policy and void



WTA Amendments Continued...

- BUT, you can have an agreement that would otherwise violate the WTA if it is in writing, mutually bargained for consideration, and...
 - Acknowledges right to report good faith allegations of **unlawful employment practices**;
 - Acknowledges right to report good faith allegations of criminal conduct
 - Acknowledges right to participate in a proceeding related to **unlawful employment practices, including any litigation brought by a government agency or other person alleging a violation**
 - Acknowledges right to make truthful statements required by law
 - Acknowledges right to receive legal advice
 - **Acknowledges right to engage in protected concerted activity**

WTA Amendments Continued...

Confidentiality provisions must:

- Have separate consideration than that being provided for the release of claims

- Avoid unilateral clause that states that the promise of confidentiality is the preference of the employee

Recommendation: review existing agreements and make necessary updates for the 1/1/26 effective date to preserve the enforceability of these provisions and agreements generally



Amendment to IL Nursing Mothers in the Workplace Act (eff. 1/1/26)

- Must provide reasonable break time to employees who need to express breast milk for **up to 1 year after the child's birth**. Break time may run concurrently with break time already given
- **8/15/15: amended to provide that an employer “shall compensate the employee during break time at the employee’s regular rate of pay”** unless it would create *undue hardship*
 - defined under the IHRA: “prohibitively expensive or disruptive”
 - consider: financial resources and size of employer, impact on operations
- Cannot require employees to use paid leave for breaks or otherwise reduce compensation during break time

Amendment to IL Military Leave Act (eff. 8/1/25)

Employers with 51+ employees must provide up to 40 hours of paid leave a year (8 hours per month until max reached) to participate in a military funeral honors detail (i.e., to perform specific services at a veteran's funeral ceremony)

Eligibility:

- Worked for employer for at least the last 12 months
- Worked at least 1,250 hours during those 12 months
- Trained to participate in a funeral honors detail
- **Either:** (1) A retired or active member of U.S. Armed Forces (includes Reserves) or National Guard; or (2) Personally designated as an “authorized provider” or registered member of an “authorized provider” (private individual or organization that augments the uniformed members of a military funeral honors detail)



Military Leave Continued...

Leave is in addition to other relevant leave available under USERRA

- Cannot require exhaustion of other types of leave

May request documentation to verify participation

May require employees to provide reasonable notice of intent to use leave

Applicable Exemptions: (1) Independent living facility, assisted living facility, nursing home facility, or other similar care facility or facility providing 24/7 care, and granting the request would reduce staffing levels below statutory minimums OR impair the safe/efficient operations of the facility; (2) Granting the request would violate a CBA



Amendments to the IL Human Rights Act (eff. 1/1/26)

- Statutory obligation for IDHR to hold fact-finding conference during charge investigations lifted
 - FFC to be held at IDHR's discretion
 - Only held if **both** parties submit written request **within 90 days of charge filing date** and IDHR has not already issued its report
- IHRC civil penalties in the event of violations
 - \$16,000 for first-time violators
 - \$42,500 for employers with one (1) prior violation in past five (5) years
 - \$70,000 for two (2) or more violations in past seven (7) years
- ***Amendments do NOT apply retroactively (charges filed prior to 1/1/26)***

Amendment to Blood & Organ Donation Leave Law (eff. 1/1/26)

- Covered employers (51+ employees and all public employers) to provide:
 - **One (1) hour or more paid leave** to donate blood every 56 days
 - **Up to 10 days of [paid/unpaid?] leave** in 12-month period to serve as organ donor
 - Section 3: The Act is “**intended to provide time off with pay,**” yet no language to mandate this
 - Until amendment, limited to full-time employees employed for at least six (6) months

Eff. 1/1/26:

- Expands leave benefit to “part-time employees” (not defined)



Family Neonatal Intensive Care Leave Act (eff. 6/1/26)

Requires IL employers with 16+ employees to provide unpaid, job-protected leave to eligible employees following childbirth if their newborn is hospitalized in the neonatal intensive care unit (“NICU leave”)

Amount of Leave required:

- 16-50 employees: 10 days
- 51+ employees: 20 days
 - May set minimum increment of 2 hrs.

Relationship to FMLA:

- NICU leave taken after the expiration of FMLA (assuming employee is FMLA-eligible)
- Cannot require concurrent use of FMLA/NICU leave
- Unlike FMLA, eligibility for NICU leave **not** contingent on length of service or hours worked



NICU Leave Continued...

- **Employer Responsibility:**
 - Maintain health insurance benefits
 - Guarantee reinstatement to the same or substantially equivalent position
 - Cannot force employee to use PTO in lieu of unpaid NICU leave
 - May require reasonable verification of NICU stay (documentation from healthcare provider confirming length of hospitalization), but cannot require disclosure of medical details
 - ***Civil penalties: up to \$5,000 per infraction***
- **Best Practices:**
 - Train leave/benefit staff on sequencing of FMLA/NICU leave
 - Coordinate with benefits providers to ensure continuation of coverage during leave
 - Plan for absences (employees are not required to find their own replacement)

IL Wage & Hour Law

- *Johnson v. Amazon.com Services, LLC*, 2026 IL 132016 (2026), IL Supreme Court held that the Illinois Minimum Wage Law’s definition of “hours worked” differs in a significant way from the federal Fair Labor Standards Act
 - The Portal-to-Portal Act and its limitations on what is and is not compensable work before and after an employee’s shift under the FLSA **does not apply** to the IMWL
 - IMWL is governed by a more employee friendly standard requiring compensation for all time the employee is required to be on the employer’s premises, *even if such time does not involve the performance of the employee’s job duties*
 - COVID-related health screenings that Amazon employees were required to participate in before their work shift constituted hours worked under the IMWL

FEDERAL UPDATES

DOL Independent Contractor Rule

- 2/27/26 The DOL Wage and Hour Division issued a proposed rule defining “independent contractors” under the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and Migrant and Seasonal Agricultural Worker Protection Act (MSPA).
 - largely restores the 2021 independent contractor final rule issued during the first Trump Administration.
 - formally rescinds and replaces the 2024 rule issued by the Biden Administration.
 - 2024 Rule analyzed “totality of the circumstances” using a six-factor test of independent contractor status where no factor was more heavily weighted.
- The two “core” factors carrying the most weight are (1) the nature and degree of the worker’s control over the work and (2) the worker’s opportunity for profit and loss. If both point the same way, classification is usually clear.
- The 60-day public comment period runs through 04.28.26.

EEOC Developments

- January 22, 2026, the EEOC rescinded its guidance on harassment in the workplace
 - The rescinded guidance had come under legal and political attack for its discussion of gender-identity issues.
 - The rescission of the guidance does not change employers' nondiscrimination obligations (Chair: "Federal employment laws against discrimination, harassment, and retaliation and Supreme Court precedent interpreting those laws remain firmly in place.")
- The EEOC approved resolution returning the authority to approve or disapprove new and intervening litigation to the Chair and Commissioners rather than the GC. Now, in most cases, GC will only be able to proceed with litigation upon approval by the EEOC, which will vote on litigation recommendations submitted by the General Counsel.
- Trends in charge handling

EEOC Guidance on DEI

<https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work>

<https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>

- DEI training may give rise to a hostile work environment claim
- Reasonable opposition to DEI training could constitute protected activity
- Employer's business interest in diversity (including customer/client preference) doesn't justify practices that would otherwise be prohibited under Title VII
- **Examples of potentially discriminatory classification/segregation:**
 - Only offering employer-sponsored activities to certain groups
 - Restricting access to facilities/premises based on protected status
 - Limiting membership in affinity/culture groups or ERGs
 - Separating staff into groups based on protected status during training

Implications for DEI and Best Practices

DEI programs and policies are not per se illegal

Review published memos and guidance and self-audit (HR/legal)

- Review internal and external content for problematic language
 - Policies, procedures, DEI-related programs
 - *Check your website!*
 - Open access for any and all cultural/affinity groups



NLRB Update

- February 2026, Board issued a final rule restoring the 2020 joint-employer standard, replacing a 2023 Biden Administration rule that never took effect
 - 2023 final rule was intended to rescind and replace the 2020 rule issued under the first Trump Administration. The 2023 rule was challenged in court and in the court's ruling of March 2024, the rule was vacated before it took effect
 - The 2020 rule remained the operative rule for determining joint employer status.
 - This recent action was done to comply with the District Court order, replace the vacated 2023 test with the text of the 2020 rule.
- Joint employment will be found only if two employers share or codetermine the employees' essential terms and conditions of employment. To establish that, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship of those employees

NLRB Update

- NLRB now is back to having a quorum with the December confirmations of 2 Trump nominees to the Board, so 3 Board members of 5 filled
 - GC role filled, Crystal Carey
- Acting GC took action to rescind a number of key Biden era guidance memorandum issued by the former GC Abruzzo that addressed what was viewed as violations of employee Section 7 rights:
 - overly broad confidentiality and non-disparagement provisions in settlement agreements;
 - use of non-compete agreements;
 - use of stay or pay provisions (i.e. tuition reimbursement, sign on)

QUESTIONS?