

Client Advisory

New Laws Affect Illinois Employers

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Every Illinois employer should be aware of three state laws that have taken effect: one prohibits sexual orientation discrimination, another allows employees to take unpaid leave when their spouses or children are called to serve in the military, and the third requires employers to give paid time off to employees to donate blood.

Sexual Orientation Discrimination

The Illinois Human Rights Act now prohibits discrimination in employment based on "sexual orientation," defined as "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." Because the law covers perceived sexual orientation, an employer cannot discriminate against an employee because it believes the employee to be gay, straight, bisexual, or suffering from a gender-related identity disorder, even if the employer's belief is mistaken.

The Human Rights Act continues to prohibit discrimination based on race, color, religion, national origin, ancestry, age, sex, marital status, handicap, arrest record, military status, or unfavorable discharge from military service. The Act also outlaws practices such as "English-only" rules that require employees to use a particular language in communications unrelated to their duties. The law applies to employers of any size with respect to discrimination based on handicap or sexual harassment, and to employers with at least 15 workers with respect to all other types of discrimination.

Family Military Leave Act

The Family Military Leave Act requires Illinois employers with at least 15 employees to provide unpaid leave to employees who are the spouses or parents of soldiers being called to active military duty of more than 30 days. Employers that employ 15 to 49 employees must provide up to 15 days of such leave during the time deployment orders are in effect, while employers that employ 50 or more employees must provide up to 30 days of leave during that time. Employees are eligible if they have been employed for at least 12 months and worked at least 1250 hours in the 12 months before leave begins. An employee must exhaust his or her accrued vacation and any other available leave except sick and disability leave.

The law requires employees to provide their employers with advance notice of the need for leave. In addition, an employee must generally consult with the employer to schedule the leave so as to not unduly disrupt the employer's operations. An employer may require certification from the appropriate military authority.

Employees who take such leave cannot lose any employee benefit they accrued before taking leave and must be allowed to continue their benefits during the leave at their own expense. At the end of a leave, an employer must restore the employee to the same position he or she held when the leave began or to a position with equivalent seniority status, pay, benefits, and other terms and conditions of employment, unless the employer can show that the employee cannot be restored due to conditions unrelated to his or her exercise of rights under the Act.

Employers cannot discriminate against employees who exercise rights under the Act, nor can they interfere with, restrain, or deny an employee's attempt to exercise such rights. Employers found by a court to have violated the Act may be liable for equitable relief, such as reinstatement, lost pay and benefits.

Employers should also remember that the Human Rights Act prohibits military status discrimination against National Guard members and reservists. In addition, employers must also honor both Illinois law (the Service Member's Employment Tenure Act) and federal law (the Uniformed Services Employment and Reemployment Rights Act) in their treatment of employees who serve in the military, including National Guard members and reservists.

Employee Blood Donation Leave Act

This law requires Illinois employers that employ more than 50 employees to give an eligible employee, upon request, one hour of paid time off every 56 days to donate blood. To be eligible for such leave, an employee must be full-time and have been employed at least six months.

On January 20, 2006, the Illinois Department of Public Health issued proposed regulations under the Act. Under those rules, an employee requesting leave would have to submit medical documentation, which could be a simple statement from the blood bank indicating that the employee has an appointment to donate blood. The employer could also require the employee to provide a statement from the blood bank confirming that the employee kept the appointment. If an employer adopted a policy permitting paid leave for blood donation, the proposed rules would prohibit employers from requiring employees to use sick time or vacation time for the leave.

We Can Help

If you have any questions about these laws or any other labor or employment law issue, please contact any of the following members of our Labor and Employment Practice in Chicago:

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