

A Legal Update on Policies & Procedures in the Employment Law Landscape



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This is an open discussion focused on Q&A. So please ask questions & interrupt me. If you're confused by my acronyms, etc. ask.

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Topics We'll Cover [Slide 2/2](#)

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Minimum Wage [Slide 1/3](#)

- Federal min wage still same: \$7.25/hour; since 2009. Fair Labor Standards Act, 29 U.S. Code Sec. 206. Tip credit minimum \$2.13, max \$5.12.
- IL: currently \$8.25/hour; tipped \$4.95; 1st 90 days \$7.75/\$4.65; i.e., \$.50 less per hour.
 - From 1/1/20 — 6/30/20, \$9.25;
 - tipped \$5.55 (60%)
 - From 7/1/20 — 12/31/20 \$10;
 - tipped \$6
 - From 1/1/21 — 12/31/21 \$11.
- IL Minimum Wage Law, 820 ILCS 105/

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Minimum Wage [Slide 2/3](#)

- Cook County: Ordinance No. 16-5768:
 - 7/1/19 — 6/30/20 \$12/hour; tipped is \$6.40
 - 7/1/20 — 6/30/21 \$13
 - 7/1/21 — ? based on CPI (max 2.5%).
- Chicago: Muni Code, Chapter 1-24, Chicago Minimum Wage & Paid Sick Leave Ordinance
 - 7/1/19 — 6/30/20 \$13, tipped \$6.40
 - 7/1/20 — 6/30/21 *probably* \$15; tipped will be \$8.40.

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Minimum Wage Slide 3/3

- Penalties that commonly apply to fed, state & local:
 - backpay,
 - penalties like triple or punitive damages
 - per day fines \$500 - \$1k/day,
 - attorney’s costs & fees.

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Chicago Fair Workweek Ordinance Muni Code 1-25; SO2019-3928

Slide 1/4

- AKA “predictive scheduling.” It’s a new phenomena in workplaces. More common in cities: NYC, LA, San Fran, Philly, Seattle.
- Effective here 7/1/20.
- Applies to: for profit businesses generally employing globally 100+; nonprofit corporations 250+; narrow exceptions (restaurants 30 or more locations globally & 250 + employees. "Restaurant" doesn't include businesses limited to 3 or fewer locations in Chicago that are owned by 1 employer & operating under a sole franchise.).

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Chicago Fair Workweek Ordinance

Slide 2/4

- Most industries are covered (e.g., manufacturing, construction, healthcare, retail, services, warehouses, etc.). Not emergency services or “ticketed events” (capacity of at least 5k).
- Covered employee works 420 hours within 18-months & spends majority of time working in Chicago.
- Earns \$50k/year or less, or \$26/hour or less.
- 2 year statute of limitations & 3 year record retention.
- Contractors not covered; temporary employees are covered.

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Chicago Fair Workweek Ordinance

Slide 3/4

- Essentially, requires POSTED & WRITTEN schedules at least 10 days in advance (increasing to 14 days on 7/1/22).
- Written schedule must include shifts & on-call status.
- Employers must restrict scheduling practices that prevent workers from attending to their families, health, education & other obligations.
- Workers get 1 hour of reg pay for changes made to a schedule after 10 day deadline.
- Can decline extra hours not previously scheduled & no retal.

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Chicago Fair Workweek Ordinance

Slide 4/4

- 1st offer of extra shift work to covered employees.
- Employees not required to work hours scheduled less than 10 hours after the end previous day's shift. Will be paid a higher wage for those shifts—1.25 X regular rate of pay for that shift.
- Exceptions due to emergencies not controllable by employer; mutually agreed to in writing w/waiver; written request by employee; self-scheduled shifts.
- Penalties: \$300-\$500 fine per offense & per day. Private lawsuit award backpay, "damages," costs & lawyer's fees.

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PTO & Paid Sick Leave

Slide 1/2

- Not brand new, but relatively new here — effective 7/1/17. Also lots of confusion.
- Most of the statutes (state, county & city) are substantially the same (penalties & rollover are different).
- Any employee working at least 80 hours within any 120-day period is eligible.
- For every 40 hours worked accrue 1-hour of PTO. Limited to 40 hours per 12-month period.

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Paid Sick Leave Slide 2/2

- After 12-mo. accrual period can carry over to next 12-month period half of unused accrued PTO, max 20 hours.
- Penalties: \$500 — \$1,000/day, 3 X amount denied or lost, interest, with costs & attorney's fees.

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Ganja



Slide 1/2

- Illinois Cannabis Regulation & Tax Act, 410 ILCS 705/: 21 & older can purchase, possess & partake.
- Amends the Illinois Right to Privacy Workplace Act. Can't refuse to hire, fire or take other adverse actions against an employee, or candidate, because they use outside of work.
- Employers can still maintain anti-pot, including zero tolerance policies, & can also take action on a "good faith belief" that an employee is impaired.

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Marijuana Slide 2/2

- Still federally illegal. What to do? No judicial challenge yet, so it's practically impossible to say. However, don't expect to hear about city, county or state enforcement of fed prohibition.
- IL Right to Privacy in the Workplace Act penalties:
actual damages, costs,
attorney's fees for willful &
knowing violations.

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IL Salary History Ban

Slide 1/2

- Illinois Salary History — Equal Pay Act of 2003 — the No Salary History Law; effective 9/29/19; 820 ILCS 112/10.
- Can't ask applicant's salary & benefits history. Applies equally to 3rd party recruiters.
- Employers can provide information about & discuss with employees, or prospective employees, to including benefits).
- Can discuss applicant's expectations with respect to wage/salary, benefits, or perks related to wage/salary (other compensation).

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IL Salary History Ban

Slide 2/2

- Penalties up to \$10k fine, backpay, interest, attorney's fees & costs.
- Narrow exceptions for compensation systems based on seniority, merit, quantity or quality of production systems, or factors other than an employee's gender.

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IL Human Rights Act Coverage & Sex Harassment Training

Slide 1/3

- New definition of employer. 1+ employees (down from 15).
- Perceived protected status covered as well as actual.
- Effective 7/1/20
– 775 ILCS 5/2-101

Harassment Training:

- Reaction to #MeToo even though there's other equally pervasive forms of harassment.
- Applies to all employers.

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IL Human Rights Act Coverage & Sex Harassment Training [Slide 2/3](#)

- IDHR “shall produce a model sexual harassment prevention training program The model program shall be made available to employers & to the public online at no cost.”
 - Don’t know when this will be done; anyone’s guess.
 - Therefore, effective date is iffy. Supposed to be 1/1/20; 775 ILCS 5/2-109
 - Beware of commercial solicitations since it’s free.
- Unspecified penalties. 30-day warning to comply.

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IL Human Rights Act Coverage & Sex Harassment Training [Slide 3/3](#)

- Beginning 1/1/20, employers disclose the following annually to IDHR:
 - Number of adverse judgments or administrative rulings during prior year in any discrimination case under any federal, state or local law.
 - Type of relief ordered.
 - Total number of judgments & rulings, broken down by the protected characteristic(s) of those cases.

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IL Workplace Transparency Act *Slide 1/3*

- 820 ILCS 96/; effective 1/1/20 (maybe).
- Can't prevent employee, prospective employee, former employee or contractor (1099) from reporting any alleged unlawful conduct to any gov't. officials; before during or after.
- Can't *unilaterally* base employment on pre or post employment waivers or restrictions of rights to report. Can *mutually/bilaterally* agree to waivers or restrictions.

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IL Workplace Transparency Act *Slide 2/3*

- Indicators of *mutual* agreement:
 - “consideration” — lots of \$
 - right to have attorney review
 - reasonable time to review (21/7 days rule; same as ADEA/OWBPA; but can waive this)
 - no coercion
 - in writing.
- Can still require employee participation in legitimate work-related investigations.
- Restrictions on arbitration & other dispute resolution.

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IL Workplace Transparency Act [Slide 3/3](#)

- Generally speaking: at least **75%** of the employment agreements I see are **UNENFORCEABLE** in 1 or more ways.
- This includes 75% of the agreements I see that are written by other lawyers.
- Don't arbitrarily or randomly create these.

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IL Victim's Economic Security & Safety Act VESSA [Slide 1/2](#)

- Effective 1/1/20 LOA: take between 4 & 12 weeks of unpaid & protected leave during any 12-month period.
- At least 50 employees then entitled to 12 weeks of leave; 15 – 49 employees 8 weeks; 1 – 14 ees. 4 weeks.
- Includes acts or realistic threats of aggression based on employee's actual or perceived sex or gender.

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VESSA Slide 2/2

- Penalties = wages, salary, employment benefits, public assistance, or other compensation denied or lost, interest.
- Equitable relief as may be appropriate, including but not limited to hiring, reinstatement, promotion.
- Attorney's fees, expert witness fees & other costs of legal action.

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U.S. Fair Labor Standards Act (FLSA)

- Currently: \$23,600/year, \$455/week, are exempt from OT. Employees who earn \$100k-plus per year are almost surely exempt.
- Starting 1/1/20: FLSA Section 13(a)(1) amended by 29 C.F.R. part 541:
 - At least \$35,568/year or \$684/week.
 - Highly compensated \$147,414
- Applies to most employers; narrow exceptions. Annual gross volume of sales made or business done isn't less than \$500,000

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Recording & Eavesdropping

- 720 ILCS 5/14-2
- Amended 1/1/16 but commonly misinterpreted
- Can you record a conversation to which you're NOT a PARTY to?
Yes, but only if you're not "surreptitiously" recording, & it's not a "private" conversation.
 - Or all PARTIES consent.
 - Or you unknowingly or unintentionally record.
 - Private usually means a *reasonable expectation of privacy*.
- Penalties: Criminal conviction-most likely misdemeanor or felony.

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IL Artificial Intelligence Video Interview Act

- Public Act 101-0260; effective 1/1/20
- Employer must get "applicant's" prior & informed consent to use of AI recordings or analysis.
- Strict confidentiality.
- Destroy those records within 30 days if applicant requests.
- Presumably doesn't apply to current employees. But unclear on whether an applicant can also be a current employee, if they're applying within the company.
- Unspecified penalties.

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What's Next?

- Greater responsibility & restrictions for employers on use of private information & how private information is defined. Focus on genetics & AI, employment screening.
- Employers bear greater responsibility for educating & training workforce on maturity, laws, conditions of employment.
- Continuous tinkering regulating of employee relations.

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About Me



My clients are small to medium sized companies in all industries. 1/3rd of my practice is focused on counseling, prevention & proaction. The 2nd third of my practice is centered on transactional law— negotiations & contracts. The final 1/3rd is focused on litigation in state & federal court & before regulatory agencies. I often win cases.

Regarding civic & association involvement, I'm on the following boards of directors:

- Chair & Director, Oak-Leyden Developmental Services
- Vice Chair & Director, The Lakeside Community Committee
- Treasurer & Director, Youth Outreach Services
- Director, Kelly Hall YMCA
- Director, Latinos Progresando
- Director, The Decalogue Society of Lawyers, the Jewish bar association
- Member, Advocacy Committee, Chicago Bar Foundation.

I'm a native Chicagoan, from West Rogers Park. I graduated from Rogers Public School. For high school, I graduated from Niles North in Skokie. It was during childhood that I was indoctrinated into the ways of business, employment & entrepreneurship. My father owned & ran his own chain of pharmacies in Chicago for 35 years. My grandfather was an immigrant businessman who owned his own grocery stores in Chicago. Family taught me the value of hard work & how to compete & succeed in business.

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