

SMITH O'CALLAGHAN & WHITE

33 NORTH LA SALLE STREET

SUITE 3800

CHICAGO, ILLINOIS 60602

TELEPHONE
(312) 419-1000

FACSIMILE
(312) 419-1007

WEBSITE
www.socw.com

NEW ILLINOIS EMPLOYMENT LAWS FOR 2008

This is a brief overview of recently enacted or amended Illinois employment laws, as of February 15, 2008, for the benefit of our clients and friends with business operations in Illinois.

Illinois Human Rights Act

There are several changes to the Illinois Human Rights Act ("IHRA"), effective on January 1, 2008, including the following key changes:

- A significant amendment to the IHRA permits plaintiffs to file lawsuits alleging discrimination or workplace harassment in the Illinois state courts. 775 ILCS 5/7A-102 *et seq.* Previously, claims brought under the IHRA had to be filed with and were adjudicated exclusively by the Illinois Human Rights Commission. The new law does not change available remedies in the event a lawsuit is filed. Importantly, unlike Title VII and similar federal statutes, the IHRA *does not cap* damages, such as those for emotional distress. See, Smith O'Callaghan & White's September, 2007 Client Alert, located on our Website at "New Developments," September, 2007.

- Another IHRA amendment creates a civil rights violation against an employer, participating in the federal government's E-Verify program for employment eligibility confirmation, upon findings that the employer engaged in a discriminatory employment decision and did not follow the federal E-Verify program's safe harbor procedures. 775 ILCS 5/2-102(G)(2).

- Also, an amendment to the IHRA changes the terms "handicap" to "disability," and "handicapped person" to "person with a disability" throughout the IHRA. 775 ILCS 5/1-102, 1-103, 3-102.1. The IHRA's underlying definition of the terms remains the same. *Id.*

- An additional amendment to the IHRA modifies the definition of "place of public accommodation," citing specific types of public places, including, but not limited to, hotels, restaurants and bars, stores, public transportation stations, parks, schools and gyms. 775 ILCS 5/5-101(a).

- Another new provision to the IHRA states that a professional service provider's refusal of services to an individual in a protected class does not constitute a violation under the IHRA where: (i) the provider based the refusal on a non-discriminatory reason; and (ii) in the normal course of operations, the provider would, for the same non-discriminatory reason, refuse to provide services to an individual who is not in the protected class. 775 ILCS 5/5-102.1.

Smoke Free Illinois Act

The Smoke Free Illinois Act, effective January 1, 2008, prohibits smoking in all public places, places of employment, and areas within 15 feet of any entrance to a public place or place of employment. 410 ILCS 82/15. Under the new law, employers must post “No Smoking” signs and remove ashtrays. 410 ILCS 82/20. The Act applies to Illinois public and private employers employing at least one (1) person. 410 ILCS 82/10. Fines can be assessed for violations. 410 ILCS 82/45. Exemptions are granted for retail tobacco stores, private and semi-private rooms in nursing homes and long-term care facilities, hotels and motels. 42 ILCS 82/35. Finally, the Act repeals and replaces the former Illinois Clean Indoor Air Act.

Illinois Whistleblower Act

Several recent amendments, effective January 1, 2008, expand the scope of the Illinois Whistleblower Act: (i) the definition of “employer” now includes government entities; (ii) retaliation based on an employee’s disclosure of information in a court or administrative hearing is now expressly prohibited; and (iii) enforcement of the Act over local government entities is now within the exclusive power of the Illinois Attorney General. 740 ILCS 174/5, 174/15 and 174/40.

Illinois Whistleblower Reward and Protection Act

A recent amendment to the Illinois Whistleblower Reward and Protection Act, effective January 1, 2008, expands the definition of “State” to include State universities, counties and municipalities, school districts, and units of local government. 740 ILCS 175/2(a). An additional amendment creates a right of civil action and prohibits retaliation against employees who disclose information regarding the filing of a false or fraudulent claim for payment with a State entity. 740 ILCS 175/3(a)(8), (a)(9) and (c). The amendment also expands the definition of “claim” to include a request or demand for money damages or injunctive relief. *Id.* The prohibition against retaliation under the Act applies to all private and public sector employers. *Id.*

Illinois Employee Classification Act

The newly enacted Illinois Employee Classification Act, effective January 1, 2008, states that any individual performing services for a contractor must be classified as an employee, except under limited and explicit circumstances set forth in the statute. 820 ILCS 185/10. The Act applies to contractors and subcontractors in construction, trucking, landscaping and related trades. 820 ILCS 185/5. Essentially, this new law is intended to deal with contractors who allegedly misclassify workers as independent contractors rather than employees. Violations of the Act include fines in increasing amounts per violation, starting at \$1,500 per violation (calculated based on each day that each worker is misclassified). Multiple violations potentially lead to debarment of the contractor, resulting in an ineligibility period of four (4) years for receipt of state contracts. 820 ILCS 185/40 and 185/42. Willful violations are punishable by penalties up to double the statutory amount and punitive damages to the employee, as well as criminal penalties against the contractor. 820 ILCS 185/45. Finally, the Act contains a provision prohibiting retaliation and creates a private right of action under which the employee may recover wages and benefits and attorney’s fees and costs. 820 ILCS 185/55 and 185/60.

Illinois Wage Payment and Collection Act

A key amendment to the Illinois Wage Payment and Collection Act, effective August 16, 2007, requires that an employee must file a claim alleging violations of the Act with the Department of Labor within one year after the wages, final compensation or wage supplements were due. 820 ILCS 115/11. (Specific legal counsel on time deadlines and the application of this change should be sought by possible claimants). Another amendment to the Act states that an employer failing to comply with an order to pay wages within 15 days shall be liable to the Department of Labor for 20% of such unpaid wages (in addition to the existing 1% per day penalty owed to the employee). 820 ILCS 115/14(b). Penalties under this section may be recovered in a civil action brought by the Director of Labor. *Id.* Only employees of the State or Federal governments are exempt under this Act. 820 ILCS 115/1.

Illinois Prevailing Wage Act

A recent amendment to the Illinois Prevailing Wage Act, effective August 21, 2007, expands the meaning of “construction” of “public works” projects to include “any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.” 820 ILCS 130/2 and 130/3.

Illinois Minimum Wage Law

A new provision to the Illinois Minimum Wage Law, effective July 1, 2007, mandates that an employer pay no less than the statutory minimum wage to an employee who is a day or temporary laborer or to an employee whose employment is occasional and irregular and requires 90 days or less to complete. 820 ILCS 105/4(a)(2)(A) and (a)(2)(B).

Illinois Day and Temporary Labor Services Act

Recent amendments to the Illinois Day and Temporary Labor Services Act, effective in late August, 2007, clarify the definitions of “day and temporary labor” and “hours worked;” create a violation for the third party client’s failure to remit time records to the temporary labor service in the manner provided for in section (a)(2) of 820 ILCS 175/12; and detail the manner in which a day or temporary laborer’s hours worked must be reflected on his paycheck stub. 820 ILCS 175/5 *et seq.* Coverage under the Act extends to all third party clients (any person or other legal entity that contracts with a day and temporary labor service agency for obtaining day or temporary laborers). 820 ILCS 175/5.

Illinois Substance Abuse Prevention on Public Works Projects Act

The Illinois Substance Abuse Prevention on Public Works Project Act, effective January 1, 2008, prohibits employees working on public works projects from using illegal drugs or being under the influence of illegal drugs or alcohol while at work. Additionally, employers contracted to perform work on public works projects must have a written program for the prevention of substance abuse, including drug and alcohol testing, for their employees. 820 ILCS 265/1 *et seq.* The Act defines an employer as a contractor or subcontractor performing a public works project, and refers to the Illinois Prevailing Wage Act for the definition of “public works.” 820 ILCS 265/5.

Illinois Child Labor Law

An amendment to the Illinois Child Labor Law, effective January 1, 2008, prohibits all minors under the age of 16 from working in occupations that involve the handling of human blood, human blood products, human body fluids or human body tissues. 820 ILCS 205/7(26).

Illinois Insurance Code – Group Health Insurance

An amendment to the Illinois Insurance Code, effective August 24, 2007, requires insurers to provide enhanced screening and measures designed to prevent and detect breast cancer in all group or individual insurance coverage. 215 ILCS 5/356g. Also, employers issuing group health insurance plans must provide, upon request of the Department of Healthcare and Family Services, individuals' health insurance coverage information; accept the State's right of recovery of certain payments made for services offered by the Department; respond to an inquiry by the Department regarding a claim for payment of any health care item or service; and comply with certain claim submission requirements. 215 ILCS 5/5.5. New group health insurance provisions apply to all types of employers issuing health insurance. 215 ILCS 5/356g and 5/5.5.

Illinois Criminal Code - Identity Theft Law

A new provision of the Illinois Criminal Code, effective August 21, 2007, provides that a person commits the offense of facilitating identity theft when the person, in the course of employment or official duties, has access to the personal information of another person, and knowingly, with the intent of committing identity theft, disposes of that information in a manner that could allow the public to access the information. 720 ILCS 5/16G-13. This provision applies to all employees. *Id.* The provision of the Illinois Identity Theft Law providing for civil remedies was also amended to include the crime of facilitating identity theft. 720 ILCS 5/16G-21.

Illinois Right to Privacy in the Workplace Act

A recent amendment to the Illinois Right to Privacy in the Workplace Act, effective January 1, 2008, prohibits all Illinois employers from enrolling in the Department of Homeland Security's E-Verify pilot program for confirming applicants' employment eligibility. 820 ILCS 55/12. The Department of Homeland Security has filed a lawsuit to enjoin enforcement of the new Illinois law. Pending the resolution of the lawsuit, the State of Illinois has agreed not to enforce the law.

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This is a brief summary of Illinois statutes subject to court and agency interpretation, and changes. This summary is not intended to be, nor should it be construed as, legal advice or to create an attorney-client relationship.