SMITH O'CALLAGHAN & WHITE

33NORTH LASALLE STREET
SUITE 3600
CHICAGO, ILLINOIS 60602

WEBSITE
www.socw.com

TELEPHONE
(312) 419-1000

Checklist of Significant Illinois Employment Law Changes Effective January 1, 2020

There are significant employment law changes in Illinois effective January 1, 2020. This checklist highlights the significant changes for easy reference:

- Employers required to do sexual harassment training annually. *See Amendment to Illinois Human Rights Act, 775 ILCS 5/2-109.*
  - Applies to all employers of any size with Illinois employees
  - Illinois Department of Human Rights to issue model on-line training
  - Training now will be even more powerful defense point in defending sexual harassment claims

- Employers must report adverse judgments or administrative rulings. *See Amendment to Illinois Human Rights Act, 775 ILCS 5/2-108.*
  - Applies to all employers and report must be made to Illinois Department of Human Rights for such judgments and rulings in prior calendar year
  - Supposed to be kept confidential within agency, not subject to FOIA requests
  - Now will be risk of agency building alleged pattern and practice cases
  - Employer's settlements of discrimination or harassment cases must be reported, if requested, in investigation conducted by Department of Human Rights

- Illinois Human Rights Act expanded to cover discrimination or harassment on "perceived" characteristics, harassment of independent contractors and consultants, non-traditional workplaces, and all employers of any size.
  - Unlawful discrimination and harassment on basis of protected class expanded to claims that individual is "perceived" to be in protected class even if not actually part of protected class. *See Amendment to Illinois Human Rights Act, 775 ILCS 5/2-102(E-1).*
  - Unlawful harassment expanded to include claims of hostile environment by non-employee independent contractors and consultants. *Id. at § 5/2-102(A-10).*
  - Definition of workplace not just physical location of employer's offices or plant to take into account flexible working arrangements. *Id. at § 5/2-101(E).*
  - Illinois Human Rights Act applies to all employers in Illinois regardless of size employing one or more persons (no longer 15 employee threshold in Illinois for discrimination). *Id. at § 5/2-101(B).*

- New Illinois recreational cannabis (marijuana) law. *See Cannabis Regulation and Tax Act, 410 ILCS 705/10-50.*
  - Employer rights carved out expressly in new statute to make clear recreational use does not extend to conduct or effects at work or performing work duties
  - Employer has right to discharge or discipline based on use or impairment during working hours
  - "Good faith belief" is test and "reasonable opportunity" to contest is required
  - Employer must be able to demonstrate zero tolerance policy, i.e., have a written zero tolerance policy including marijuana at work
  - Issues to be worked out include pre-hire testing and lasting effects of marijuana in system in contrast to other drugs

- Illinois minimum wage to $9.25/hour on January 1, 2020 and $10.00/hour on July 1, 2020. *See 820 ILCS 105/1* et seq.

- New requirements for settlement agreements or releases between employers and employees in discrimination and harassment cases. *See Workplace Transparency Act (WTA), 820 ILCS 96/1-1* et seq.
  - Employer cannot restrict employee from reporting to government officials or testifying about unlawful employment practices. *Id. at § 96/1-25(a)-(c) and § 96/1-30(a).*
  - Employer can otherwise still get confidentiality but a settlement agreement or release containing confidentiality provisions must now fulfill the following requirements: (i) establish that the employee had a preference for confidentiality; (ii) that the requirement of confidentiality was freely bargained (not coerced); (iii) give 21 days to consider and 7 days to revoke such an agreement or release; and (iv) give written notice of a right to seek legal counsel. (Note that in New York, where these requirements were enacted last year, some employers use a separate preference agreement showing the employee wanted confidentiality). *Id. at § 96/1-30(a).*

- New requirements for employment agreements entered into or modified after January 1, 2020 where agreement was presented by employer as non-negotiable condition of employment. *See Workplace Transparency Act (WTA), 820 ILCS 96/1-1* et seq.
  - Employer in such employment agreements (as with settlement agreements or releases) cannot have confidentiality provision that would have effect of restricting employee from reporting to government officials or testifying about unlawful employment practices. Importantly, this requirement is inapplicable to employers who can show the agreement was not "take it or leave it." *Id. at § 96/1-25(a)-(c).*
  - Employer's right to compel arbitration now more restricted where "take it or leave it" arbitration clauses not freely negotiated and arbitral remedies and procedures are limited, although this part of the law may be overturned by the courts as counter to the Federal Arbitration Act. *Id. at § 96/1-25(b).*

- Illinois prohibitions on requesting or considering compensation history in hiring and restricting employees discussing compensation among themselves (this last one became effective September, 2019). *See 820 ILCS 112/10.*
  - Employers can no longer request salary, wage or benefits history from applicants in hiring process and can no longer consider such information in making hiring decisions
  - Employers can no longer restrict employees from talking about their salary, wages or benefits
  - Employers can still ask applicants about their expectations for compensation and benefits
  - Policies on confidentiality may need to be revised on employee communications

Smith O'Callaghan & White
www.socw.com

Terry J. Smith terry.smith@socw.com
Robert R. Duda Jr. robert.duda@socw.com

January 27, 2020