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News & Types: Employment, Labor & Benefits Update

Prepare to Comply with Illinois' New Anti-Harassment Laws

8/21/2019

Practices: Employment, Labor & Benefits

EXECUTIVE SUMMARY

The Illinois Legislature and Governor JB Pritzker have responded to the #MeToo Movement with important new legislation. January 1 and July 1, 2020, are the important dates for every company's compliance with a series of new laws. Every company must review and revise its written policies and procedures to comply with these laws.

On August 9, 2019, Governor JB Pritzker signed the Workplace Transparency Act. Starting on January 1, 2020, all companies must start complying with the law, which adds the following protections for harassment but creates specific obligations for companies:

- Employers include any person employing one or more employees when the employee alleges sexual harassment;
- The definition of "unlawful discrimination" means both actual and perceived discrimination based upon the employee's or applicant's race, color, sex, and all other characteristics protected by the Illinois Human Rights Act;
- Harassment may not occur in the "working environment," which is not limited to the physical location an employee is assigned to perform duties and, therefore, includes locations away from the workplace;
- Regarding employees who are harassed, employers are responsible for the harassment of employees by managerial and supervisory employees, but employers are responsible for the harassment by non-managerial and non-supervisory employees, only if the employer becomes aware of the conduct and fails to take corrective measures;
- Non-employees become protected from harassment, and non-employees include contractors, subcontractors, vendors, consultants and independent contractors;
- Regarding the non-employees, although employers are responsible for the harassment by the employer's managerial and supervisory employees, employers are responsible for the harassment by non-managerial and non-supervisory employees, only if the employer becomes aware of the conduct and fails to take reasonable corrective measures;
- All employers must conduct annual anti-harassment training programs to all employees, and the training programs must include at least the content in a model training program the Illinois Department of Human Rights ("IDHR") will publish;

- Employment agreements may not include a provision preventing a current or prospective employee from making truthful statements or disclosures about alleged unlawful employment practices, unless the agreement lists a number of rights;
- Arbitration agreements must provide that employees and applicants may pursue claims of harassment and discrimination through either arbitration or through judicial means, such as the IDHR and the federal Equal Employment Opportunity Commission;
- Arbitration agreements may not contain a number of clauses which the legislation finds are unconscionable, such as an employee's and applicant's waivers of the right to assert claims provided by state and federal laws and punitive damages;
- Severance agreements may contain non-disclosure and non-disparagement provisions, but only if there is special language, including the right of the employee or applicant to consider signing the agreement for 21 days and 7 days after signing the agreement to revoke it;
- Sexual harassment becomes a qualifying reason to use up to 12 weeks of unpaid leave to obtain medical and other services under the Illinois Victims' Economic Security Safety Act ("VESSA");
- Starting on July 1, 2020, and annually by July 1 of each year, every employer must report to the IDHR information, including the total number of settlements, adverse judgments and administrative rulings during the preceding year for sexual harassment and discrimination;
- Based upon the information disclosed, the IDHR may open a preliminary investigation on its own, if the IDHR believes that there is a pattern and practice of unlawful discrimination and, if a pattern and practice is found, the IDHR may initiate a charge of a civil rights violation; and
- The IDHR has the right to issue civil penalties for the failure to report and/or provide anti-harassment training.

To comply with this legislation, all employers must implement the following action plan by December 31, 2019:

- Redraft and distribute a revised anti-harassment policy including a number of changes, such as statements that the policy applies to non-employees and to locations away from the workplace;
- Review and revise the employer's anti-harassment training program and ensure that it includes the content in the IDHR's model training program;
- Review, amend and distribute new employment agreements which do not include provisions on non-disclosure of harassment and non-disparagement of the employer;
- Review, revise and distribute new employment arbitration agreements, if the employer uses arbitration agreements;
- Review and revise drafts of standard severance agreements which resolve sexual harassment issues;
- Begin to collate and review for reporting to the IDHR all judgments, administrative rulings and settlements of harassment and discrimination claims and suits; and
- Review, revise and distribute any VESSA policy the employer may have in its employee handbook and, if not in the handbook, implement the VESSA policy in compliance with the legislation.

By beginning early, all employers will be prepared for the changes which start to become effective on January 1, 2020. We recommend not waiting until 2020 or, more seriously, until an employee files a charge of

discrimination or harassment with the Illinois Department of Human Rights, which will investigate the employer's compliance with these laws and may penalize the employer or find substantial evidence to believe that a violation occurred.