



News & Types: Client Advisories

Leaning Forward Into 2022 - Issues You May Have Missed

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Practices: Employment, Labor & Benefits

During 2021, three issues demanded the attention of human resource professionals and management. In 2022, we expect these same three issues to require similar attention to minimize risk and ensure compliance.

- **Non-Compete and Non-Solicitation Agreements:** Effective January 1, 2022, companies are prohibited from (1) entering a covenant not to compete with any Illinois-based employee unless the employee's actual or expected earnings exceed \$75,000 per year, and/or (2) entering a covenant not to solicit with any Illinois-based employee unless the employee's actual or expected earnings exceed \$45,000 per year. These actual or expected earnings thresholds will increase in 2027, 2032, and 2037. Additionally, Illinois-based employees must be advised in writing to consult with an attorney before entering such restrictive covenants and be provided fourteen (14) calendar days to review the covenant(s). Because a covenant not to compete and/or a covenant not to solicit entered into in violation of the statutory earnings thresholds is considered void and unenforceable, we encourage all companies to review and update their existing agreements and consider the earnings thresholds before providing such restrictive covenants to Illinois-based employees.
- **Biometric Privacy Litigation:** Companies continue to use employee fingerprints, hand scans, retina scans or facial recognition technology for timekeeping, building, computer, and smartphone access. During 2021, we experienced an increase in class action litigation filed against companies that used such technology without first obtaining the employee's prior written consent. The Illinois Biometric Information Privacy Act regulates the use, collection, storage, safeguarding, handling, retention, and destruction of an employee's biometric information. In 2022, we expect this type of class action litigation to continue because the law provides for statutory damages and attorneys' fees. To limit exposure to class action litigation, every company with employees in Illinois should investigate if it utilizes employee biometric information for any purpose and if such information is protected by the Illinois Biometric Information Privacy Act.
- **Updating Beneficiary Designations:** Life insurance or 401(k) beneficiary designation forms are likely the most important benefit election form. Beneficiary designation forms direct insurance companies and/or 401(k) providers to make payments to specific individuals. In 2021, two employees died with outdated beneficiary designation forms on file requiring the plan administrators to investigate the matters and make payment decisions. In 2022, we expect to receive more outdated beneficiary designation issues because they occur each year. Employees should be required to review their beneficiary designation forms annually

and at each life changing event (birth, marriage, divorce, etc.). If beneficiary designations are not updated regularly, insurance or 401(k) funds may not be paid based on the deceased employee's latest wishes.

If you have any questions, please contact a member of the Employment, Labor and Benefits Practice Group.