

*Tracking Legal Developments that Affect Our Clients***REQUIRED NEW
POLICIES & NOTICES**

- EMPLOYERS CAN NO LONGER REQUEST AN APPLICANT'S CREDIT REPORT NOR USE SOMEONE'S CREDIT HISTORY AS A BASIS FOR HIRING, FIRING OR PROMOTION, UNLESS AN EXCEPTION APPLIES.

ACTION ALERTS

- VEHICLES USED FOR FARM EQUIPMENT ARE ALLOWED ON STREETS BUT LOCAL GOVERNMENTS CAN RESTRICT OR PROHIBIT NON-HIGHWAY VEHICLES ON STREETS UNDER ITS JURISDICTION.
- THERE ARE NEW FEES FOR CLEAN CONSTRUCTION OR DEMOLITION DEBRIS FILL OPERATIONS.
- AN OFFICER TRAINEE WAS ELIGIBLE FOR BENEFITS UNDER THE WORKERS' COMPENSATION ACT

MUNICIPAL DEVELOPMENTS**New Cases****Nuisance**

Village of Northfield v. BP America, Inc.

2010 WL 2977598

(Ill. App. Ct. 1st Dist. July 27, 2010)

The Village sued defendant, arguing that its abandoned gasoline station was a nuisance. The Illinois appellate court reversed the lower court's decision, finding that it erred in granting a motion to reconsider to defendant. The court vacated the order that defendant pay a fine of \$15,750. Further, it found that Municipal Code Section 11-31-1 does not preempt the Village Code, which states that an abandoned gas station qualifies as a nuisance.

Utilities

Rock Energy Cooperative v. Village of Rockton

2010 WL 3122637

(7th Cir. August 10, 2010)

A utility brought a declaratory judgment action seeking a declaration that the Village lacked authority to buy or condemn electric and natural gas utility assets acquired by the utility from a third party. The seventh circuit affirmed the district court's dismissal on ripeness grounds because: (1) the Utility failed to show that the Village had actually contemplated use of its eminent domain powers to obtain the assets in the five (5) years since voters passed a referendum authorizing the Village to pay up to a certain amount for the assets; and (2) the Utility

would be able to assert these arguments in any future condemnation proceeding.

Legislation

Illinois General Assembly -

<http://www.ilga.gov/legislation/default.asp>

Neighborhood Vehicles

House Bill 6094 was signed by the governor and is now Public Act 96-1434. The Act, which is immediately effective, amends the Illinois Vehicle Code. It modifies the definition of a neighborhood vehicle and provides that it shall not be unlawful for any person to drive or operate certain non-highway vehicles on a county roadway or township roadway for the purpose of conducting farming operations to and from the home, farm, farm buildings, and any adjacent or nearby farm land. The Act provides that the mechanical equipment and mandatory insurance requirements that generally apply to non-highway vehicles when operated on a roadway do not apply to certain non-highway vehicles used for farming operations on a roadway. It also provides that if non-highway vehicles used for farming operations on a roadway are not covered under a motor vehicle insurance policy, the vehicles must be covered under a farm, home, or non-highway vehicle insurance policy. The Act provides that the non-highway or recreational off-highway vehicles used for farming operations on a county or township roadway at any time between one-half (1/2) hour before sunset and one-half (1/2) hour after sunrise must be equipped with head lamps and tail lamps, and the head lamps and tail lamps must be lighted. It provides that certain non-highway vehicles used for farming operations may not

cross a tollroad, interstate highway, or controlled access highway but may cross a state highway, municipal street, county highway, or road district highway if specified conditions are followed by the operator. Further, in a provision permitting the use of non-highway vehicles on streets, the Act modifies the definition of a non-highway vehicle, and provides that the unit of local government or the Department of Transportation may restrict the types of non-highway vehicles that are authorized to be used on its streets. Finally, the Act provides that a unit of local government or the Department of Transportation may prohibit the operation of low-speed vehicles on any and all streets under its jurisdiction.

Flinn Report- August 13, 2010-

<http://www.ilga.gov/commission/jcar/flinn/reg28.pdf>

Construction Fill

The Environmental Protection Agency has passed an emergency amendment to adopt a new Part titled "Procedures for Operation of the Clean Construction or Demolition Debris Fill Operation Fee System" (35 Ill Adm Code 1150). The emergency amendment is effective as of August 2, 2010 and is effective for a maximum of 150 days. The IEPA has also proposed permanent amendments that mirror the emergency amendment. The new section defines a clean construction or demolition debris fill operation (CCDD fill operation). CCDD fill operations are current or former quarry, mine or other excavation where clean construction or demolition debris is used as fill material. The amendment addresses the assessment and collection of fees by the EPA from permitted CCDD fill operations. The fees apply to fill operations

located off the site where the CCDD or uncontaminated soil is generated and that are owned, controlled or operated by a person other than the generator of the CCDD or uncontaminated soil. The fees are calculated on a per cubic yard or per ton basis and must be paid quarterly. The amendments also require a certain amount of recordkeeping. Public comment for the proposed rules is available through September 27, 2010.

PUBLIC SAFETY

New Cases

Attorney Fees

Robinson v. City of Harvey, Ill.

2010 WL 3069566

(7th Cir. Aug. 6, 2010)

The seventh circuit reversed the district court's decision to award \$277,462 in supplemental attorney fees to plaintiff after he brought a Section 1983 action against the City. Plaintiff argued that one of the City's police officers unreasonably shot him, and attempted to frame him for illegal possession of a firearm. The seventh circuit affirmed the decision to grant plaintiff's initial request of fees, but reversed the supplemental request in question here. It found that plaintiff waited 1,250 days after the initial judgment to bring this action, which was well beyond the ninety (90) day period to seek supplemental fees. Further, in the initial appeal, the district court judgment of the original fees was a final order.

Search and Seizure

U.S. v. Robinson

2010 WL 3122788

(7th Cir. August 10, 2010)

The seventh circuit affirmed the district court's denial of the defendant's motion to suppress cocaine seized from the defendant's buttocks during a traffic stop. Although the officer interrupted his search of the defendant to secure the vehicle, the officer could return to complete the frisk to ensure that the defendant did not have a weapon.

Motion to Suppress

People v. Frank-McCarron

2010 WL 3035748

(Ill. App. Ct. 3rd Dist. July 29, 2010)

The defendant, a pathologist, was convicted of first degree murder, obstructing justice, and concealment of a homicidal death, after being charged with killing her autistic daughter, age three (3), by suffocation. The Illinois appellate court affirmed the circuit court's decisions. It held that the circuit court did not err in denying the defendant's motion to suppress her inculpatory statements to police, as she made inculpatory statements to six (6) people prior to speaking to the police. Moreover, the defendant was not in custody at the time she made the statements, as she was not restrained and was not coerced to speak, and the police did not deliberately use a question first, warn later technique. Also, the defendant was not denied a fair trial by being required to wear an electronic monitoring device, and the circuit court properly found that the defendant failed to prove insanity.

Legislation

Illinois General Assembly -

<http://www.ilga.gov/legislation/default.asp>

Playground Safety

House Bill 6034 was signed by the governor and is now Public Act 96-1433. The Act amends the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois. It provides that the Department of Public Health shall provide technical assistance materials based on guidelines or standards such as the U.S. Consumer Product Safety Commission's guidelines, the U.S. Access Board final guidelines, or the standards of the American Society for Testing and Materials by June 30, 2011. Additionally, the Act provides that the materials may be available on the Department's website. Finally, the Act provides that nothing in the provision concerning technical assistance on playgrounds shall be construed as imposing any mandate concerning equipment in restaurants or dwellings.

Flinn Report– August 13, 2010-

<http://www.ilga.gov/commission/jcar/flinn/reg28.pdf>

DPH Hearings

The Department of Public Health has adopted amendments to "Practice and Procedure in Administrative Hearings" (77 Ill. Adm. Code 100), which are effective as of July 30, 2010. The amendments update the hearing procedures and statutory language and also add references to federal laws, state laws and rules and Illinois Supreme Court rules. The amendments add procedures for hearings conducted for violations of the

Smoke Free Illinois Act. A person may request a hearing within ten (10) days after a citation. The parties of the hearing are the violator and the enforcing agency, which is the DPH, a local health department or a local law enforcement agency. Hearings can be conducted via telephone or video conference.

LABOR AND EMPLOYMENT

New Cases

Worker's Compensation

Dodaro v. Illinois Workers' Compensation Commission

2010 WL 3035744

(Ill. App. Ct. 1st Dist. Aug. 3, 2010)

A trainee sought worker's compensation after he was injured during training to become an officer in the Chicago Police Department. The court looked to the Worker's Compensation Act and found that a trainee is not considered a duly appointed member of the police department, and therefore is eligible for benefits under the Act. The court determined that the "duly appointed member" exclusion was intended to apply to individuals who have been formally admitted to the responsibilities and benefits of the police department. Further, a trainee may recover under the Act because he does not have full police powers and has not yet been exposed to the risks of the job.

ERISA

Young v. Verizon Bell Atlantic Cash Balance Plan

2010 WL 3122795

(7th Cir. August 10, 2010)

This case involves a drafting error in a multi-billion-dollar pension plan. In working on the fourth draft of Verizon's pension plan, Verizon's in-house attorney moved the

"transition factor" in the conversion formula to make the formula more readable, but in doing so, neglected to delete the transition factor from the former draft. Plaintiff argued that this required the transition factor to be multiplied twice, resulting in greater benefits. The seventh circuit, citing the quote, "People make mistakes. Even administrators of ERISA plans," affirmed the decision of the district court to grant Verizon's equitable reformation claim to remove the scrivener's error.

Legislation

Illinois General Assembly -

<http://www.ilga.gov/legislation/default.asp>

Employee Credit Privacy

House Bill 4658 was signed by the governor and is now Public Act 96-1426. The Act Creates the Employee Credit Privacy Act. It expands the definition of "employer" to include any company authorized to engage in any kind of insurance or surety business pursuant to the Illinois Insurance Code, including any employee, agent, or employee of an agent acting on behalf of a company engaged in the insurance or surety business, and any entity that is defined as a debt collector under federal or state statute. The Act defines the following terms: "credit history," "credit report," "financial information," "marketable assets," "personal or confidential information," "state or national security," and "trade secrets." It provides that information concerning an individual's credit history is not a bona fide occupational requirement unless the duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more (rather than

\$1,000 or more); the position is a managerial position which involves setting the direction or control of the business; the position involves access to personal or confidential information, financial information, trade secrets, or state or national security information; the position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor (rather than the Department of Labor) has promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement; or the employee's or applicant's credit history is otherwise required by or exempt under (rather than required by) federal or state law. It also permits employers to conduct a thorough background investigation, which may include obtaining a report without information on credit history or an investigative report without information on credit history, or both, as permitted under the Fair Credit Reporting Act, provided the information is used for employment purposes only. Finally, the Act redefines "financial information" to mean non-public information (rather than information) on the overall financial direction of an organization, including, but not limited to, company taxes or profit and loss reports.