

LEGAL ALERT**NEW SEVERANCE PAY AND AGREEMENT REQUIREMENTS:**

- **Prohibited After Termination for Misconduct**
- **Limited to No More Than 20 Weeks of Compensation**
- **Severance Agreements Due To Sexual Misconduct Must Be Publicly Disclosed**

The newly enacted Government Severance Pay Act prohibits the payment of severance to any employee who has been terminated for misconduct and limits the payment of severance to any other employees to not more than an amount equal to 20 weeks of compensation. **Public Act 100-895**

The Illinois Local Records Act has been amended to require that any local government, including school districts, must post on their website and make available to the news media, any severance agreement with an employee who has engaged in sexual harassment or sexual discrimination, unless the information required by this amendment is made confidential in the agreement itself. **Public Act 100-1040**

A more detailed summary of the requirements of both of these enactments is set forth herein.

The full text of P.A. 100-895 can be found at:

P.A. 100-895

The full text of P.A. 100-1040 can be found at:

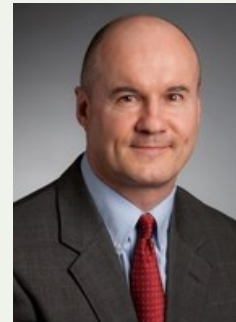
P.A. 100-1040

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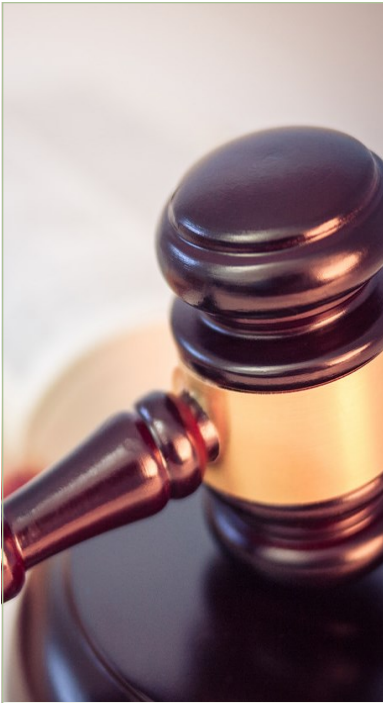
Inside This Issue

Summary of P.A. 100-895.....2-3

Summary of P.A. 100-1040.....4-5

*Link to Full Text
of P.A. 100-895.....1*

*Link to Full Text
of P.A. 100-1040.....1*



SUMMARY OF REQUIREMENTS OF P.A. 100-1040 (The Government Severance Payment Act)

The newly enacted Government Severance Payment Act covers all units of government, including a unit of local government and school districts, as well as other boards and commissions.

The Act establishes two new limits on the payment of severance. Any unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that includes a provision for severance pay with an officer, agent, employee, or contractor are limited by and must include the following provisions in the contract:

- A requirement that severance pay provided cannot be greater than 20 weeks of compensation; and
- A prohibition on the payment of any if the officer, agent, employee, or contractor has been fired for misconduct by the unit of government.

Severance “pay” is defined broadly as “the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated.

“Misconduct” under the Act includes, but is not limited to:

- Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.
- Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
- Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved



absences following a written reprimand or warning relating to more than one unapproved absence.

- A willful and deliberate violation of a standard or regulation of this State by an employee of an employer licensed or certified by this State, which violation would cause the employer to be sanctioned or have its license or certification suspended by this State.
- A violation of an employer's rule, unless the claimant can demonstrate that:
 - ◇ The or she did not know, and could not reasonably know, of the rule's requirements;
 - ◇ The rule is not lawful or not reasonably related to the job environment and performance; or
 - ◇ The rule is not fairly or consistently enforced.
- Other conduct, including, but not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer, or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The Act becomes effective on January 1, 2019.

SUMMARY OF REQUIREMENTS OF P.A. 100-1040

(Severance agreements due to sexual harassment or discrimination)

The Illinois Local Records Act has been amended by adding new provisions requiring the public disclosure of severance agreement information, when the agreement is due to sexual harassment or discrimination by an employee. Oddly, the information is not required to be posted or disclosed to the media if any or all of such information is made confidential by the terms of the severance agreement itself. That is, the terms of any severance agreement will supersede the requirements of this amendment. This amendment does not however affect the existing obligations to disclose severance agreements under FOIA.

The amendment covers any severance agreement entered into with an employee or contractor by any local governments, school districts or taxing body, where such employee or contractor has been found to have engaged in sexual harassment or discrimination. Such sexual harassment or discrimination is as defined in the Illinois Human Rights Act or Title VII of the Civil Rights Act. Any such severance agreement must be posted on the public body's website and must be made available to the news media for inspection and copying within 72 hours of its approval by the public body. The following information must be posted and made available to the media:

- Full name and title of the person receiving the payment.
- Amount of the payment.
- That the employee was found to have engaged in sexual harassment or sexual discrimination.
- The date, time and location of the meeting at which the taxing body approved the severance agreement.

News media is defined here as the personnel of a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.



The information required by this amendment does not have to be disclosed if it would interfere with:

- pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency
- pending or actually and reasonably contemplated legal or administrative proceedings instigated by the complainant of the sexual harassment or discrimination at issue, including, but not limited to, Illinois or Federal law
- result in the direct or indirect disclosure of the identity of a complainant who has not consented to such disclosure
- endanger the life or physical safety of the complainant of the sexual harassment or discrimination.

Public bodies are protected from any liability as a result of compliance with these requirements, except for willful and wanton misconduct.

This amendment became effective August 23, 2018.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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