

KTJ

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LABOR AND EMPLOYMENT LAW GROUP

Illinois Legislature Passes New Wave of Labor and Employment Legislation in 2019 .

The Illinois legislature concluded a busy session on June 2, 2019, after passing a variety of labor and employment legislation that will have notable impacts on public employers throughout the state. KTJ is pleased to offer an overview of the legislation that will have immediate and tangible effects:

Amendments to the Illinois Human Rights Act

The Illinois legislature made several tweaks and additions to the Illinois Human Rights Act (“IHRA”) by way of *Senate Bill 75* that will affect public employers. Many of the proposed changes to the IHRA aim to expand the scope of the IHRA’s protections against harassment and discrimination of employees in the workplace, while the additions to the IHRA provide new training and reporting requirements for employers.

IHRA Coverage Expansions

- The legislature proposes to extend the IHRA to cover all protected classes (e.g., race, sex, age, religion, sexual orientation, etc.), whether “actual” or “perceived.”
- The legislature further proposes to amend the IHRA’s definition of “harassment” to include any conduct that “has the purpose or effect of substantially interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.”
- The legislature clarified that the IHRA’s prohibition of harassment and discrimination in the “work environment” is not limited to an employee’s physical location; a measure contemplating harassment by electronic means.
- **NOTE:** the amended IHRA would impose employer liability for harassment by employees if the employer becomes aware of the conduct and fails to take reasonable corrective action.

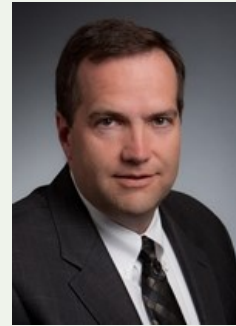
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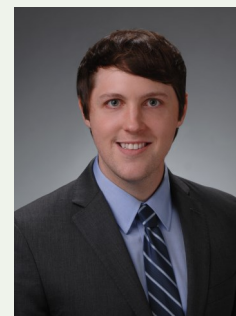
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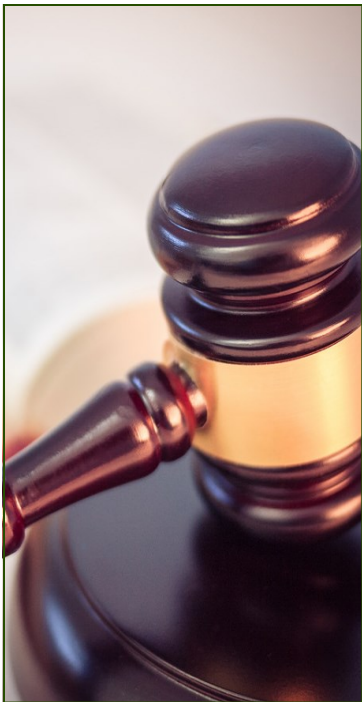


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Annual Sexual Harassment Prevention Training

In addition to the above extensions of IHRA coverage, the legislature added a provision to the IHRA requiring employers to implement annual sexual harassment prevention training. The Department of Human Rights will release a model training program, though employers may implement their own training programs that meet or exceed the Department's standards. Our clients are encouraged to contact their KTJ attorneys for assistance with the development and implementation of effective training programs.

Annual Reporting Requirements

The legislature also included an annual reporting requirement for employers that have had an adverse judgment or ruling relating to discrimination or harassment in the workplace. Such employers must report information about the judgments and/or rulings to the IDHR on an annual basis. When investigating complaints under the IHRA, the IDHR may request information from the employer regarding settlements involving allegations of discrimination and harassment, including the bases upon which any complaints were levied.

The reporting requirement takes effect July 1, 2020, and employers are required to make their annual report by each July 1 thereafter. Our clients are encouraged to contact us to ensure they are meeting any applicable reporting requirements.

The Workplace Transparency Act

Effective January 1, 2020, the Workplace Transparency Act ("IWTA") would take steps to provide additional safeguards against harassment and discrimination in the workplace. The IWTA prohibits certain forms of confidentiality, non-disparagement, and arbitration clauses in employment documents, unless given statutory requirements are met. Employers with unionized workforces should note that these provisions would *not* apply to collective bargaining agreements.

Under the IWTA, no employment contracts or other employment documents such as workplace policy manuals or employee handbooks, can prohibit employees from reporting allegations of "unlawful conduct" to federal, state, or local officials. Unlawful conduct includes criminal conduct, and harassment or discrimination in the workplace. The rule applies to all types of employment contracts, including formal employment agreements, non-compete agreements, confidentiality agreements, and separation agreements.

Further, under the IWTA, employers cannot prevent employees from testifying pursuant to a court order or subpoena about criminal conduct or unlawful employment practices. If a confidentiality or non-disparagement clause in an employment agreement could be construed to curb statements or disclosures about discrimination or harassment, the entire clause could be found void. Employees will have the right to recover attorney's fees and costs if successful in challenging a contract under the IWTA.

Employers should note some exceptions to the IWTA. Employers would be allowed to require confidentiality from the following parties regarding workplace harassment and discrimination:

- Employees who receive complaints or investigate allegations related to

unlawful employment practices as part of their assigned job duties, or otherwise have access to confidential personnel information as a part of their assigned job duties;

- Witnesses who are notified and requested to participate in an open and ongoing investigation of workplace harassment or discrimination, and who are requested to maintain reasonable confidentiality;
- An employee or any third party who receives attorney work product or privileged communications as part of any unlawful employment practice claim;
- Any individual who is subject to a recognized legal or evidentiary privilege; and
- Any third party engaged or hired by an employer to investigate complaints.

As the IWTA could impact many existing employment contracts and workplace policies, KTJ encourages its clients to consult with their attorneys to ensure compliance with the new provisions.

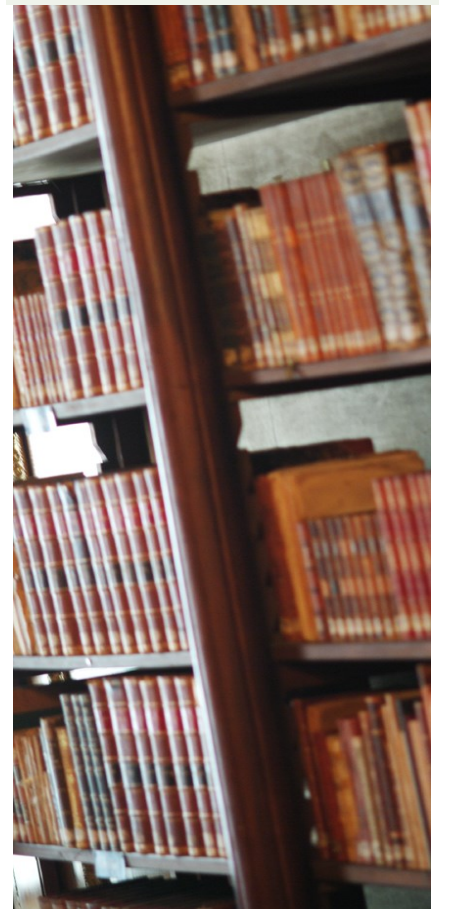
Amendments to the Illinois Equal Pay Act

The Illinois legislature also made substantial amendments to the Illinois Equal Pay Act. Under the new provisions, employers and employment agencies may not request or require job applicants to disclose their prior compensation during the employment application and hiring process. Further, employers may not seek such information from current or prior employers of job applicants. Employers may discuss salary and wage expectations with applicants; however, if an applicant discloses details regarding compensation history, the employer may not use such information to inform hiring or compensation decisions. In any event, employers are prohibited from screening job applicants based on minimum or maximum compensation criteria. These measures aim to reduce the effects of pay discrimination employees may have faced in past positions. Employers may need to revise job applications, as well as recruiting and hiring practices, to comply with the new provisions of the Act. We encourage our clients to contact their attorneys to assist with any necessary adjustments.

In addition, under the new provisions of the Act, employers may be required to justify pay variations between employees, particularly where employers pay different wages or salaries to employees who perform “substantially similar” job duties. In such cases, employers may be required to show that the pay disparity is job-related, and consistent with business necessities. The Act now provides that employees can bring lawsuits in state court to enforce the new requirements. Afflicted employees may seek “special damages” up to \$10,000 (or actual damages, if greater than \$10,000), injunctive relief, and attorney's fees.

Amendments to the Illinois Victims Economic Security and Safety Act

The Illinois legislature proposed to amend the Victims’ Economic Security and Safety Act (VESSA) to extend its protections to victims of “gender violence.” VESSA would define gender violence as a criminal act of violence or aggression that is based at least partly on a person’s actual or



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perceived sex or gender, or any criminal physical intrusion or physical invasion of a sexual nature (regardless of whether the offender is charged and/or convicted for the offense),

The amendment to VESSA would further require employers of fifty (50) or more employees to provide employees who are the victims of domestic, sexual and gender violence, or whose family or household members are victims of the same, with up to twelve (12) weeks of job-protected leave per year. Employers of fifteen (15) to forty-nine (49) employees must afford victims up to eight (8) weeks of job-protected leave per year, while employers of less than fifteen (15) employees must afford victims four (4) weeks. Under VESSA, employees would have to provide employers with at least forty eight (48) hours of advance notice prior to exercising such leave. The leave may be taken to seek, among other relief: medical treatment, counseling, victim's services, relocation assistance, and legal assistance.

Removal of 3% Pension Spiking Cap

Finally, we must note a provision in the statewide budget bill that directly impacts Illinois's public school districts. The Illinois legislature repealed a measure that served to curb pension spiking for public school teachers amid the state's growing pension liabilities. The new provision allows school districts and public universities to give teachers and professors end-of-career annual pay increases of up to 6%, without having to shoulder the resulting increased pension costs. The change repeals last year's controversial 3% cap on such pension spiking.

KTJ's attorneys welcome any and all questions and comments from its clients regarding the recent statutory updates, and will work hard to monitor trends and developments under the new laws as they occur.