



# Employment Law Update

## An Overview of Key Illinois Employment Laws and Developments that Impact Employers



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# Illinois Legislative Updates

# Illinois Human Rights Act

Amended and effective March 23, 2021

Conviction Records cannot be a basis for discrimination in employment

Necessary Procedure if used as a basis for employment disqualification

# Illinois Human Rights Act – Conviction Records

- If used for evaluation in an employment related decision must provide:
  - Notice that conviction record will be reviewed
  - Engage in Interactive Assessment
- What is a conviction record?
  - Convicted of:
    - Felony
    - Misdemeanor
    - Other crime
  - Placed on probation
  - Fined
  - Imprisoned or paroled
  - Convictions do not include unresolved charges



# Illinois Human Rights Act – Conviction Records

- Notice
  - If a conviction record is reviewed in conjunction with an employment decision, Employers must give notice to applicants and employees that their conviction record may be considered.
  - Notice should be given after the initial application is received, but prior to performing the background/conviction record report
  - Notice of a disqualifying conviction will need to be given if the record reveals a potentially disqualifying conviction
  - If the conviction ultimately disqualifies the individual for employment or otherwise adversely affects the individual, the employer must give notice that the decision was based on the conviction record.



# Illinois Human Rights Act – Conviction Records

## Initial Decision Notice

- Notification in writing if a conviction on record is determined to disqualify the individual from employment or promotion
- MUST give the individual at least FIVE business days to respond
- Individual may respond in writing or present evidence for employer to consider



# Illinois Human Rights Act – Conviction Records

Substantial  
Relationship

- the position in question creates an opportunity for the employee to engage in the same or a similar criminal offense

OR

Unreasonable  
Risk

- if the employee poses an unreasonable risk to the property or the safety or welfare of the employer and its employees

# Illinois Human Rights Act – Conviction Records







## Preliminary Assessment

- After the conviction record is obtained
- Analyze the conviction to the job position and any risk to property or safety
- Employers must consider the following factors:
  - time since the conviction;
  - number of convictions;
  - nature and severity of the conviction;
  - whether conviction relates to safety and security of others;
  - facts or circumstances surrounding the conviction;
  - age of the employee at the time of the conviction; and
  - any evidence of rehabilitation efforts.



# Illinois Human Rights Act – Conviction Records

## Remedies to Employee/Applicant if discrimination found:

-  a cease-and-desist order;
-  actual damages to compensate for loss or injury;
-  hiring, reinstatement, or promotion with backpay and benefits;
-  action to make the injured party whole;
-  admission into or restoration of membership; and
-  attorneys' fees and costs.

# Illinois Human Rights Act – Work Authorization Status

- Prevents discrimination based on work authorization status. Defines "work authorization status" as the status of being a person born outside of the United States, and not a U.S. citizen, who is authorized by the federal government to work in the United States.
- Provides that it is a civil rights violation for:
  1. Any employer to refuse to hire, to segregate, to engage in harassment, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of work authorization status;
  2. Any employment agency to fail or refuse to classify properly, accept applications and register for employment referral or apprenticeship referral, refer for employment, or refer for apprenticeship on the basis of work authorization status;
  3. Any employer to refuse to honor work authorization based upon the specific status or term of status that accompanies the authorization to work.

# Illinois Human Rights Act – CROWN Act

Provides that "race" includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists.

# Illinois Human Rights Act – Association Discrimination (Disability)

- Discrimination based on disability includes unlawful discrimination against an individual because of their association with a person with a disability.
- **Application:** Employers should update their EEO trainings and policies to make clear that they do not tolerate discrimination on the basis of association with a person with a disability.

# Illinois Human Rights Act – Reporting

Beginning July 1, 2020, and by each July 1 thereafter, each employer that had an adverse judgment or administrative ruling against it in the preceding calendar year, must report the following to the Department of Human Rights:

- 1) The total number of adverse judgments or administrative rulings during the preceding year;
- 2) Whether any equitable relief was ordered against the employer in any adverse judgment or administrative ruling described in paragraph 1);
- 3) How many adverse judgments or administrative rulings described in paragraph 1) are in each of the following categories:
  - a) sexual harassment;
  - b) discrimination or harassment on the basis of sex;

# Illinois Human Rights Act – Reporting

- c) discrimination or harassment on the basis of race, color, or national origin;
- d) discrimination or harassment on the basis of religion;
- e) discrimination or harassment on the basis of age;
- f) discrimination or harassment on the basis of disability;
- g) discrimination or harassment on the basis of military status or unfavorable discharge from military;
- h) discrimination or harassment on the basis of sexual orientation or gender identity; and
- i) discrimination or harassment on the basis of any other characteristic protected under this Act;

# Illinois Equal Pay Act Amendment

- Amendment provides that employers can discuss with an applicant for employment their expectations with respect to wage or salary, benefits, and other compensation, including unvested equity or deferred compensation that the applicant would forfeit or have cancelled by virtue of the applicant's resignation from the applicant's current employer.
- If, during such discussion, the applicant voluntarily and without prompting discloses that the applicant would forfeit or have cancelled by virtue of the applicant's resignation from the applicant's current employer unvested equity or deferred compensation, an employer may request the applicant to verify the aggregate amount of such compensation by submitting a letter or document stating the aggregate amount of the unvested equity or deferred compensation from, at the applicant's choice, one of the following:
  1. the applicant's current employer; or
  2. the business entity that administers the funds that constitute the unvested equity or deferred compensation.

# Illinois Equal Pay Act of 2003, Equal Pay Certificates



Amended March 23, 2021



Effective March 23, 2024



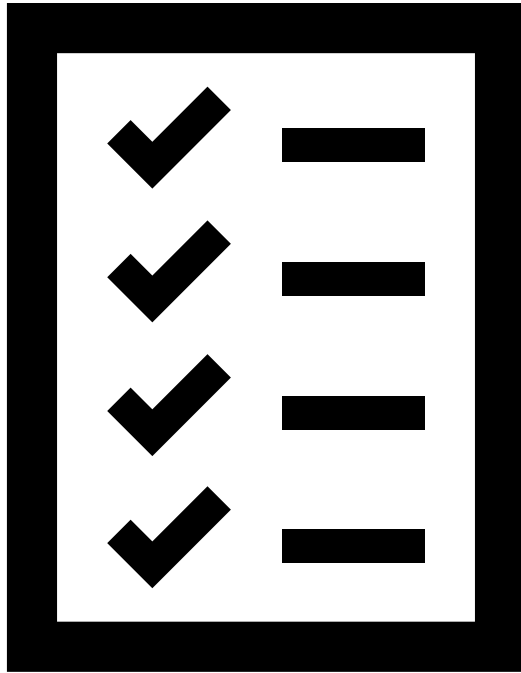
Section 11 of the EPA requires private-sector employers with 100 or more employees to acquire an Equal Pay Certificate from the Illinois Department of Labor on or before March 23, 2024.



Recertify every 2 years



# Illinois Equal Pay Act of 2003, Equal Pay Certificates



## Application for an Equal Pay Certificate includes:

- A \$150 filing fee.
- Wage Records and an Equal Pay compliance statement to the Director.
- The most recent EEO-1 report for each county in which the business has a facility or employees, if the business submits that report to the Department of Labor.
- A list of all employees during the past calendar year, separated by gender and the race and ethnicity categories as reported in the business's most recently filed employer information report EEO-1, and report the total wages paid to each employee during the past year.

# Illinois Equal Pay Act of 2003, Equal Pay Certificates

## The Equal Pay registration certificate statement must:

- Be signed by corporate officer
- State business is in compliance with Title VII of the Civil Rights Act Of 1964, The Equal Pay Act Of 1963, The Illinois Human Rights Act, The Equal Wage Act, and The Equal Pay Act Of 2003
- State the average compensation of females and minorities is not consistently below the average compensation of males and non-minorities within each major job category.
  - Employer may explain pay differences with factors like length of service, experience, etc..
- State that employer does not restrict employees of one sex to certain job classifications and makes employment decisions without regard to sex
- State how often wage and benefits are evaluated to ensure compliance and how any disparities are corrected
- State method used by business to set compensation and benefits rates.

# Illinois Equal Pay Act of 2003, Equal Pay Certificates

## Process

- Application for certificate will be accepted or rejected in 45 calendar days
  - Rejected only if the proper information is not included in application.

## Revocation

- If business fails to make a good-faith effort to comply
- If violations of the EPA are found
- Prior to revocation, Director must seek conciliation with the business
- If revoked, business can file a written request for hearing within 20 days

## Audit

- Business may be audited at any time
- Could include employee interviews, subpoena for documents, and testimony under oath

# Illinois Equal Pay Act of 2003, Equal Pay Certificates

- Employers with fewer than 100 employees must certify that they are exempt from the compliance certification requirements;
- Covered employers must submit their certification application between March 24, 2022, and March 23, 2024;
- Employees may obtain their employer's anonymized pay data; and Employers have 30 days to correct inadvertent failures to file applications.

# Illinois Equal Pay Act of 2003, Equal Pay Certificates

## Penalties

- For failure to obtain or revocation of certificate a business is assessed a penalty of 1% of business's gross profits.
- Whistleblower protection and remedies include:
  - Reinstatement to same or equivalent position;
  - Two times the amount of back pay;
  - Interest on back pay;
  - Reinstatement of full fringe benefits and seniority rights; and
  - Payment of reasonable costs and attorney's fees.



# Illinois Freedom to Work Act

- Amendment effective January 1, 2022
  - A covenant not to compete is not valid or enforceable unless the employee's actual or expected annualized rate of earnings exceeds \$75,000 per year beginning January 1, 2022, and increasing in steps to \$90,000 per year in 2037.
  - Provides that a covenant not to solicit shall not be valid or enforceable unless the employee's actual or expected annualized rate of earnings exceeds \$45,000 per year and increasing in steps to \$52,500 per year in 2037.
  - Employees must be advised in writing to consult an attorney before signing the non-compete or non-solicitation agreement. Employers must also either provide the employee with a copy of the non-compete or non-solicitation agreement at least 14 days before the beginning of employment or give the employee at least 14 days to consider the agreement. The period is waivable at the option of the employee.
  - A covenant not to compete is void and illegal for any employee who an employer terminates or furloughs or lays off as the result of business circumstances or governmental orders related to the COVID-19 pandemic, or under circumstances that are similar to the COVID-19 pandemic.
  - A covenant not to compete is void and illegal for individuals covered by a collective bargaining agreement under the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act. Establishes exclusions for management professional personnel engaged in the construction industry.
  - Enforced by the Attorney General's Office.

# Victim's Economic Security and Safety Act

Victims and family members of victims of crimes of violence (in addition to victims of domestic violence, sexual violence, and gender violence) are subject to the provisions of the Act regarding unpaid leave and prohibited discriminatory acts.

Definition of "family or household members" expanded to include any "individual whose close association with the employee is the equivalent of a family relationship as determined by the employee."

Reminder: Twelve (12) weeks of unpaid leave per twelve (12) month period to seek medical help, legal assistance, counseling, safety planning, and other assistance.



# Unemployment Insurance Act



Provides that victims of crimes of violence shall not be barred from collecting voluntary leave benefits.



# Illinois Health Care Right of Conscience Act

- It is not a violation of this Act for any employer to take any measures or impose any requirements, including, but not limited to, any measures or requirements that involve provision of services by a physician or health care personnel, intended to prevent contraction or transmission of COVID-19 or any pathogens that result in COVID-19 or any of its subsequent iterations.
- It is not a violation of this Act to enforce such measures or requirements, including by terminating employment or excluding individuals from a school, a place of employment, or public or private premises in response to noncompliance.
- This amendment is a declaration of existing law and shall not be construed as a new enactment.
- Effective June 1, 2022



# Illinois Wage Payment and Collection Act Amendment

- On July 9, 2021, Governor Pritzker signed an amendment to the Illinois Wage Payment and Collection Act that increases the penalty for underpaying wages from 2% of the amount of the underpayment per month to 5%.
- Employees have up to 10 years to file a lawsuit under the Act
- Employers are also on the hook for the employee's attorneys' fees, in addition to their own defense costs and other penalties.

# Minimum Wage

- Illinois (effective January 1, 2022)
  - Non-tipped: \$12.00 per hour
  - Tipped: \$7.20 per hour
- Cook County (current, no change July 1, 2021)
  - Non-tipped: \$13.00 per hour
  - Tipped: \$7.20 per hour
- Chicago (effective July 1, 2021)
  - Non-tipped:
    - Large Employers (21+ employees): \$15.00 per hour
    - Small Employers (4-20 employees): \$14.00 per hour
  - Tipped:
    - Large Employers (21+ employees): \$9.00 per hour
    - Small Employers (4-20 employees): \$8.40 per hour

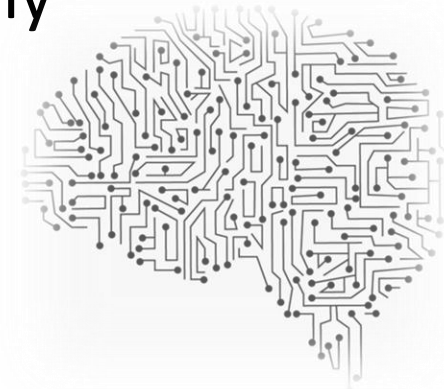


# Illinois Artificial Intelligence Video Interview Act

- An employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos shall do all of the following when considering applicants for positions based in Illinois before asking applicants to submit video interviews:
  - Notify each applicant before the interview that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position;
  - Provide each applicant with information before the interview explaining how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants;
  - Obtain, before the interview, consent from the applicant to be evaluated by the artificial intelligence program as described in the information provided.

# Artificial Intelligence Act

- An employer may not share applicant videos, except with persons whose expertise or technology is necessary in order to evaluate an applicant's fitness for a position.
- Upon request from the applicant, employers, within 30 days after receipt of the request, must delete an applicant's interviews and instruct any other persons who received copies of the applicant video interviews to also delete the videos, including all electronically generated backup copies.



# Artificial Intelligence Act Reporting

- An employer that relies solely upon an artificial intelligence analysis of a video interview to determine whether an applicant will be selected for an in-person interview must collect and report the following demographic data:
  1. the race and ethnicity of applicants who are and are not afforded the opportunity for an in-person interview after the use of artificial intelligence analysis; and
  2. the race and ethnicity of applicants who are hired.
- The demographic data collected must be reported to the Department of Commerce and Economic Opportunity annually by December 31. The report shall include the data collected in the 12-month period ending on November 30 preceding the filing of the report.



# Illinois Personnel Record Review Act

- The amendment provides that an employee may file a complaint or commence an action alleging a disciplinary action disclosure violation within three years after the date of the disclosure of the report, letter, or other disciplinary action.
- Employers should remain cognizant to not disclose disciplinary records of an employee to a third party without prior written notice, as required under the Illinois Personnel Record Review Act. Employees aggrieved by such disclosures have three years to file a lawsuit.
- Effective January 1, 2022.



# Illinois Employee Sick Leave Act

- In April 2021, Gov. J.B. Pritzker signed into law an amendment to the Employee Sick Leave Act (ESLA).
- The ESLA, law since 2017, already provided sick leave could be used for a family member's illness. The amendment expands usage to include "personal care" as well, which includes "activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met, or to provide transportation to medical appointments, for a covered family member who is unable to meet those needs himself or herself."
- Employers may limit the use of sick leave for the purpose of taking care of a family member to an amount "not less than the personal sick leave that would be earned or accrued during 6 months at the employee's then current rate of entitlement."
  - Example: if an employer offered 40 hours of accrued paid sick leave per year, it could limit paid sick leave to tend to the illness, injury or personal care of a family member to 20 hours per year.



# Chicago Paid Sick Leave Ordinance

- The Chicago Paid Sick Leave Ordinance (PSLO) requires covered employers to offer paid sick leave (or an equivalent policy that is as generous or more generous) to covered employees who work at least 80 hours within any 120-day period. Paid sick leave must accrue at a minimum rate of 1 hour per 40 hours worked, with a cap at 40 hours in a 12-month period (there are also carry-over provisions).
- The PSLO also created a new avenue of relief for employees alleging wage theft. As of July 5, 2021, employees may file a claim with the Chicago Office of Labor Standards or in state court, rather than pursuing it under the Illinois Wage Payment and Collections Act.
- As of August 1, 2021, paid sick leave for covered and eligible employees now may be used for the employee (or family member's) mental or behavioral care and substance abuse disorders.

# Chicago Fair Workweek Ordinance



- The Chicago Fair Workweek Ordinance requires employers in covered industries:
  - to give covered workers at least 10 days advance notice of their schedules, (increasing to 14 days beginning on July 1, 2022)
  - compensation for schedule changes made with less than the required notice,
  - premium pay if work less than 10 hours between shifts,
  - extra pay if workers required to change schedule on short notice.
- Beginning on Jan. 1, 2021, Chicago’s “fair workweek” scheduling ordinance allows covered workers to bring private lawsuits for violations of the scheduling rules issued under the ordinance.
- Under the Chicago ordinance, before filing a private lawsuit, covered employees must exhaust their administrative remedies with the City of Chicago Department of Business Affairs and Consumer Protection. However, an employee will be able to file a private action regardless of the results of the City’s investigation as long as they do so within two years. May potentially recover compensatory damages resulting from a violation of the ordinance, including litigation costs, expert witness fees, and reasonable attorneys’ fees.

# Chicago's Anti-Retaliation Ordinance



- Prohibits an employer from taking adverse action against a Covered Employee for obeying an order issued by the Mayor, the Governor of Illinois, the Chicago Department of Public Health, or, a treating healthcare provider, requiring the Covered Employee to:
  1. Stay at home to minimize the transmission of COVID-19;
  2. Remain at home while experiencing COVID-19 symptoms;
  3. Obey a quarantine order issued to the Covered Employee;
  4. Obey an isolation order issued to the Covered Employee; and
  5. Obey an order issued by the Commissioner of Health regarding the duties of hospitals and other congregate facilities.
- In addition, an Employer may not take adverse action against a Covered Employee for caring for an individual subject to (1) through (3) above.
- In addition to citations of up to \$1,000 for each violation per day, the ordinance provides a private cause of action in which covered employees may recover: reinstatement to their previous position or to an equivalent position; damages equal to three times the full amount of wages lost; any other actual damages caused by the retaliatory action; and costs and reasonable attorneys' fees.

# Vaccine Mandates

**City of Chicago and Cook County require compliance with OSHA standards 1910.501(e) & (g), regardless of the number of employees**

- Proof of vaccination is not REQUIRED for employees, but unvaccinated employees must test weekly and wear a mask at all times
- Employers must have a Policy regarding COVID-19 vaccination, including testing procedures for unvaccinated employees
- Employers must determine employee vaccination status of each employee and keep a copy of the vaccination record or attestation of each employee and any test results
- Vaccinated and unvaccinated employees must wear a mask at all times

*It is likely that the City of Chicago and Cook County will continue to enforce these requirements, even in light of OSHA's withdrawal of the ETS Mandate, until there is a significant drop in COVID cases.*

**ROB BERNSTEIN** joined Laner Muchin in 1995 and has been a partner since 2003. His practice has been concentrated in defending employers in employment disputes and proceedings throughout the country, counseling employers on their day-to-day labor and employment issues, training management on a host of labor and employment topics, drafting and negotiating employment and non-competition agreements, drafting employee handbooks and corporate policy manuals, as well as handling collective bargaining negotiations, arbitrations, and a variety of other labor and employment matters on behalf of employers.



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