



New Illinois Sexual Harassment Laws Mandate Annual Training, Disclosure of Settlements, and Impose Restrictions on Confidentiality Agreements

The Illinois legislature recently passed a series of new laws to further address the issues raised by the #MeToo movement. The laws have been sent to Governor Pritzker for signature. This alert focuses on some of the key features of the new sexual harassment laws.

Limitation on Confidentiality Clauses in Settlement Agreements

Once signed into law, Illinois employers that wish to maintain the confidentiality of allegations of unlawful employment practices must comply with the restrictions placed on the use of confidentiality clauses in settlement and severance agreements. Under the new law, confidentiality may be a term of the agreement only if:

1. It is documented in the agreement that the employee desires the agreement to be confidential and confidentiality is mutually beneficial to both the employee and employer;
2. The employer notifies the employee of his or her right to have an attorney review the agreement before it is executed;
3. There is consideration given in exchange for the confidentiality agreement (which suggests that additional consideration beyond the settlement amount must be exchanged);
4. Any release or waiver applies only to unlawful

- employment practices that accrued before the date the agreement is executed; and
5. The employee is given 21 days to review the agreement and seven days to revoke his or her signature after signing it.

Failure to comply with these requirements will render the confidentiality agreement (but not the entire agreement) null and void. Employers should take care in drafting their settlement and severance agreements because an employee may be entitled to his or her attorney's fees and costs in challenging an unlawful confidentiality clause.

Please note that this law is not retroactive – meaning that it will not impact settlement or severance agreements previously entered into with employees.

Employers Are Required to Disclose Judgments and Settlements

Beginning on July 1, 2020, Illinois employers employing one or more employees will be required to disclose to the Illinois Department of Human Rights any adverse judgment or administrative ruling entered against it in the preceding year. Employers are required to disclose certain information, including, without limitation: (1) the number of adverse judgments or administrative rulings; (2) whether any

equitable relief was ordered; and (3) the number of adverse judgments or administrative rulings for specific types of harassment or discrimination.

Employers may also be required to disclose the total number of settlements resolving claims for sexual harassment or discrimination in the previous five years.

Disclosures of these settlements is only required in the context of a pending charge of discrimination or harassment.

Failure to comply with these disclosure requirements could subject employers to a civil penalty.

Mandatory Annual Sexual Harassment Training

In an effort to encourage Illinois employers to adopt and implement policies to ensure that workplaces are safe for employees to report sexual harassment without fear of retaliation, the Illinois legislature has mandated that all Illinois employers provide sexual harassment training on an annual basis.

The Illinois Department of Human Rights will produce a model sexual harassment training program that will be made available to employers

and the public at no cost. Employers may use this training program or provide one of its own as long as it meets the minimum standards provided by the law.

Training must be provided at least once a year for all employees.

Failure to comply with this new law could subject the employer to a civil penalty.

*This alert is not meant to contain an exhaustive list or discussion of all new Illinois employment laws relating to sexual harassment. If you have questions about the laws discussed in this alert or any other new law on the horizon, please contact the author listed below or the **Aronberg Goldgehn attorney** with whom you work.*

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