



## New Illinois Employment Laws Effective January 2019

**As we near the end of 2018**, we wanted to share several new or amended Illinois employment laws that become effective on January 1, 2019. Below is a brief explanation of the laws and how they may impact Illinois employers.

### **Illinois Wage Payment and Collection Act (IWPCA) Amendment Requires Illinois Employers to Reimburse Employees for Business Related Expenses**

In accordance with the amendment to the IWPCA, Illinois employers are required to reimburse employees for work related expenses. The amendment is consistent with a growing trend across the country in favor of mandatory reimbursement policies. Similar policies exist for employers in states such as California, Iowa, Massachusetts, Montana, New Hampshire, North Dakota and South Dakota, as well as the District of Columbia.

Under the amended IWPCA, employers must reimburse their employees in the following circumstances:

- 1) when the employer required or authorized the employee to incur the expense;
- 2) when the expense request, along with appropriate documentation, was submitted within 30 calendar days to the employer; and
- 3) when, absent supporting documentation

(such as a receipt), the employee provided a signed, written statement supporting the expense.

Illinois employers should note that the provisions of the amended IWPCA do not necessarily apply where: (a) the employer has a written expense reimbursement policy; (b) that policy does not provide for no or *de minimis* reimbursement to employees; and (c) the employer complies with its policy. Based on this, Illinois employers are encouraged to review or develop a written expense reimbursement policy that addresses the type of expenses the employer will reimburse, the procedure for requesting reimbursement, and the necessary documentation required to support an expense reimbursement.

### **Amendments to the Illinois Human Rights Act (IHRA) Require a New Notice To Be Posted**

In accordance with several recent amendments to the IHRA, Illinois employers are required to post a notice from the Illinois Department of Human Rights relating to unlawful discrimination and sexual harassment. The notice can be found [here](#).

The notice states that employers are prohibited from treating employees differently based on race, age, gender, pregnancy, disability, sexual orientation, or any other protected class named in the IHRA.

The notice further provides that employees: 1)

have the right to reasonable accommodations based on pregnancy and disability; and 2) cannot be retaliated against if they have reported discrimination, participated in an investigation, or if they helped others exercise their right to complain about discrimination. Lastly, the notice provides employees with information about how and where to report discrimination.

Illinois employers should post the IHRA notice in a location where other employee related notices are posted and should ensure that their employee handbooks comply with the recent amendments to the IHRA.

### **Equal Pay Act Amendment (IEPA) Requires Illinois Employers to Cover Pay Discrimination Between African-Americans and Non-African-Americans**

An amendment to the IEPA prohibits employers from paying African-American employees less than other employees for performing the “same or substantially similar work,” on jobs that require equal skill, effort and responsibility. The amended IEPA also prohibits employers from paying African-American workers less for work that is performed by other employees under “similar working conditions.”

Please note that this amendment is not without exceptions. An employer may be permitted to pay African-American employees less if the pay is based on the following:

- 1) a seniority system;
- 2) a merit system;
- 3) a system that measures earnings by quantity or quality of production; or
- 4) a differential based on any other factor other than race or a factor that would constitute unlawful discrimination under the IHRA.

Illinois employers should ensure that they compensate their employees in a neutral and nondiscriminatory manner and have written

policies discussing the basis for any disparities in pay.

### **Illinois Service Member Employment and Reemployment Rights Act (ISERRA) Requires Illinois Employers to Revisit Military Leave Policies and Practices**

ISERRA provides certain rights and protections to Illinois employees who are members of the military.

ISERRA adopts all of the protections afforded to service members under the federal Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA), with regards to reemployment following military service, benefits and non-discrimination in employment for military service members. For a full listing of rights afforded to service members under USERRA, see [the Department of Labor’s Notice of Rights under USERRA](#).

Illinois employers should note that ISERRA is more expansive than USERRA in one or more of the following ways:

- 1) ISERRA contains a broader definition of ‘military service’ than under federal law;
- 2) ISERRA prohibits employers from issuing poor performance reviews to service members during periods of military leave;
- 3) ISERRA provides military service member employees with a private right of action against their employers for violations of the Act; and
- 4) ISERRA requires employers to post a notice of employee rights under the statute.

For additional information about ISERRA, employers can visit the Attorney General’s ISERRA Advocate website accessible [here](#).

In order to comply with ISERRA, Illinois employers should consider revising their military leave

policies and posting the ISERRA notice where other employee related notices are posted. Failure to comply with ISERRA could subject an employer to a lawsuit and possible judgment for damages.

*If you have any questions about this Alert, or if you would like assistance in updating your policies or complying with the noted Illinois employment laws, please contact the authors listed or the [Aronberg Goldgehn attorney](#) with whom you work.*

### Authors

[Amy M. Gibson](#)

312.755.3154

agibson@agdglaw.com

[Maryam Arfeen](#)

312.755.3185

marfeen@agdglaw.com