

August 26, 2021 - Monthly Minute Memo No. 2021-4: *Amendments to the Illinois Human Rights Act*

A. Work Authorization Status Now Protected under the Illinois Human Rights Act.

Effective as of August 2, 2021, the Illinois Human Rights Act (“IHRA”) now prohibits discrimination, harassment, and retaliation against individuals with “work authorization status.” Under the IHRA, work authorization status is defined 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.” Employers, employment agencies, and labor organizations cannot discriminate against, harass, or retaliate against an employee or applicant based on their federally authorized work status. According to the Illinois Department of Human Rights, any person legally authorized to work in the United States, regardless of the length of their work authorization, is protected under the IHRA. This means, for example, that an employer cannot refuse to hire or rescind an offer of employment based on a future work authorization status expiration. Although the IHRA now provides this protection, employers are not required to sponsor any applicant or employee to obtain or modify work authorization status unless required by federal law.

B. Definition of “Disability Discrimination” Amended.

On August 20, 2021, the IHRA’s definition of disability was amended to include “unlawful discrimination against an individual because of the individual’s association with a person with a disability.” This provision prohibits employers from taking adverse actions based on stereotypes and assumptions about individuals who associate with people who have disabilities. For example, an employer cannot refuse to hire an individual who has a child with a disability based on an assumption that individual will be excessively absent from work or unreliable. This definition brings Illinois’ law in line with the federal Americans with Disabilities Act (“ADA”). However, unlike the ADA which applies to employers with 15 or more employees, the IHRA applies to employers with 1 or more employees. The effective date of this amendment is January 1, 2022.

Employers should review all policies, employee handbooks, onboarding policies and procedures and training materials to ensure compliance with these new amendments to the Illinois Human Rights Act.

C. Pending Legislation Regarding the IHRA.

There are two bills introduced this year to the Illinois General Assembly regarding additional amendments to the IHRA. If passed, HB 3284 would require employers to take all “reasonable efforts” to ensure notices summarizing the requirements under the IHRA and

information pertaining to the filing of a Charge of Discrimination are available to employees in their primary language if not English. This bill would allow the Illinois Department of Human Rights to make notices available in a different language and charge a reasonable fee for the notice.

The second bill, if passed, HB 4053 would amend the IHRA and make it a civil rights violation if an employer refuses to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period, not to exceed 4 months and thereafter return to work. This bill, if passed, could give an employee a month longer than the federal FMLA protections. Employers would be required to maintain and pay for the same level of insurance coverage if the employee was not on leave.

Additionally, this bill, if passed, would also make it a civil rights violation if an employer refuses to grant family care and medical leave (up to 12 work weeks) to an employee with more than 12 months of service who worked at least 1,250 hours in the previous 12-month period. Family care and medical leave is defined as leave for the (1) the birth or placement of a child with an employee; (2) the employee's serious health condition (except for leave taken for a disability on account of pregnancy, childbirth or related medical condition); (3) care of a family member with a serious health condition; or (4) a qualifying exigency related to active duty related to an employee's spouse, domestic partner, child, or parent in the U.S. Armed Forces. This amendment seeks to bring Illinois law in line with the federal FMLA.

We will continue to monitor these two bills and notify our clients any new developments.

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