

Reminder: 2022 HR Checklist for Employers

Employers must be aware of several new laws, some of which took effect on January 1, 2022, and others which take effect thereafter. This is a good time for employers to review their agreements, handbooks, and procedures to ensure compliance with these legal changes and any past changes that were not yet accounted for. The following checklist highlights some of the new laws for 2022.

- ✓ **Amendments to the Federal Arbitration Act:** On February 12, 2022, Congress passed a law amending the Federal Arbitration Act. This amendment prohibits employers from requiring employees to enter into arbitration agreements covering sexual harassment or sexual assault claims and prohibits class and/or collective waivers regarding participation in a joint, class, or collective action for sexual harassment or sexual assault claims. It is expected that President Biden will sign this bill into law.
- ✓ **Illinois Minimum Wage Increase:** The Illinois minimum wage for non-tipped employees increased to \$12.00 an hour (\$9.25 for individuals under the age of 18 working less than 650 hours per calendar year). For tipped employees, the Illinois minimum wage increased to \$7.20 an hour.
- ✓ **Chicago Minimum Wage:** The minimum wage for Chicago employees (performing at least 2 hours of work in a two-week period for an employer within Chicago) increases on **July 1, 2022**, as follows:
 - \$14.50 an hour for employers with 4 to 20 employees.
 - \$12.00 an hour for employees under the age of 18.
 - For employers with 21 or more employees, the minimum wage increases in proportion to the increase in the consumer price index, capped at 2.5%. However, if Chicago's unemployment rate for the preceding year is equal or greater than 8.5% there will be no minimum wage increase.
 - For tipped employees, the minimum wage is calculated at 60% of the minimum wage calculated above for employers with more than 21 or more employees. For employers with 4 to 20 employees, the minimum wage is \$8.70 (60% of the 2022 minimum wage of non-tipped employees).
- ✓ **Equal Pay Act:** Businesses with more than 100 Illinois employees must apply for an equal pay registration certificate from the Illinois Department of Labor between March 24, 2022, and March 23, 2024, and recertify every 2 years. The IDOL recommends that businesses submit their contact information to ensure they receive communications from the IDOL including information regarding the deadline to file. The website to submit this

information is located [here](#). Businesses should receive 120 days advance notice from the IDOL of their deadline to file for the certificate.

- ✓ **Illinois Freedom to Work Act:** Effective January 1, 2022, employers may not enter into non-compete agreements with employees earning less than \$75,000 a year (increasing by \$5,000 every five years until 2037) and non-solicitation agreements for employees earning less than \$45,000 a year (increasing by \$2,500 every five years until 2037). Additionally, employers must provide the employee a copy of the non-compete and/or non-solicitation agreement 14 days before the start of employment or provide at least 14 calendar days to review the agreement. The employee may voluntarily elect to sign the agreement before the 14 days expire. Also, the employer must inform the employee in writing that they should consult an attorney before signing the agreement.

- ✓ **Victims' Economic Security and Safety Act ("VESSA") Amendments:** Recently, VESSA was amended to expand various provisions of the Act, as follows:
 - Amended to include a "crime of violence" as a basis for leave. This includes crimes such as homicide, sex offenses, bodily harm, harassing and obscene communications, terrorism, and armed violence.
 - "Family or household member" now includes a party to a civil union, grandparent, child, grandchild, sibling, or any other person related by blood or by present or prior marriage/civil union or any other individual whose close association with the employee is equivalent to a family relationship.
 - Although an employer may request certification for VESSA leave, the employee (not the employer) chooses what documentation in their possession to submit. An employer cannot request or require that more than one document be submitted during the same 12-month period if the leave is related to the same incident of violence or perpetrator. All documentation submitted, including the request for leave, must be kept confidential.
 - Amended to expand the non-discrimination provisions to protect applicants and employees who *are perceived to be* victims of domestic violence, sexual violence, gender violence, or any other crime of violence.

- ✓ **Disability Discrimination:** The Illinois Human Rights Act now prohibits employers from taking adverse actions based on stereotypes and assumptions about individuals who associate with people who have disabilities.

- ✓ **Human Trafficking Recognition Training:** Originally, this law only required lodging establishments (hotels and motels) to provide employees with training regarding the recognition of human trafficking and protocols for reporting observed human trafficking. However, effective January 1, 2022, restaurants and truck stops are also required to provide this training, every two years, to those employees with reoccurring interactions with the public.

- ✓ **Illinois Biometric Information Privacy Act ("BIPA"):** Recent decisions by the Illinois Appellate and Supreme Courts remind us that it remains important for employers that utilize biometric information for timekeeping or in other areas of their business to ensure that they obtain written consent and have policies in place before collecting any biometric information of their employees. A technical violation of BIPA, whether or not the

employee incurred any actual damage, can subject an employer to substantial liability. On February 3, 2022, the Illinois Supreme Court issued a decision finding that claims under BIPA are not preempted by the Illinois Workers Compensation Act. Also, this year, the Illinois Supreme Court will decide whether BIPA claims accrue each time a person's biometric information is scanned or only when the biometric information is initially scanned.

As a reminder, the following laws were effective last year:

- ✓ **Conviction Records:** The Illinois Human Rights Act prohibits employers from using conviction records as a basis for an employment action, except in limited circumstances. In the limited circumstances where a conviction may be used as a basis, such action is conditioned on following certain procedures as outlined in the statute.

- ✓ **Work Authorization:** The Illinois Human Rights Act also prohibits employers from discriminating against, harassing, or retaliating against an employee or applicant based on their federally authorized work status. For example, an employer cannot refuse to hire or rescind an offer of employment based on future work authorization status expiration. However, employers are not required to sponsor any applicant or employee to obtain or modify work authorization status unless required by federal law.

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