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Ogletree Deakins is one of the largest labor and employment law firms representing management in all types of employment-related legal matters.

The firm has more than 900 attorneys located in 53 offices across the United States and in Europe, Canada, and Mexico.

We represent a diverse range of clients, from small businesses to Fortune 50 companies.



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# Employment Law in 2022: What In-House Counsel Must Know

Presented by:

Carol Poplawski

Marlén Cortez Morris

Tina Bengs

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Jen Colvin

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Norma Manjarrez



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# Our Agenda

- Ever-changing Restrictive Covenant Law in Illinois / Carol Poplawski
- Where Biometric Privacy Litigation has been ... and Where it's Headed / Marlén Cortez Morris
- Leave and Accommodation Issues Even More Tricky In A Remote or Hybrid Environment / Tina Bengs
- Anticipated Changes for Employers Under the Biden-era Labor Board: 2022 and Beyond / Harry J. Secaras
- Illinois Equal Pay Act Amendments / Jen Colvin
- Background Checks and Criminal Convictions in Illinois / Michael H. Cramer
- Chicago and Cook County Sick Leave Laws (+ a VESSA Update) / Norma Manjarrez





# Ever-changing Restrictive Covenant Law in Illinois

Carol A. Poplwaski

# Amendments to the Illinois Freedom to Work Act

- Effective January 1, 2022, and does not apply retroactively
- Codifies *Reliable Fire* reasonableness and legitimate business interest
- Essentially codifies *Fifield* regarding consideration
- Imposes new limitations and requirements on non-compete and non-solicitation agreements, including:
  - Language and notice period requirements
  - Salary thresholds



# Agreements Covered

- Non-Solicit Agreements: both employee and customer non-solicits
- Non-Compete Agreements: true non-compete between employees and employers
- Excludes: confidentiality/trade secret agreements, invention assignments, garden leave periods, and agreements pursuant to sales of business

# Consideration Required – *Fifield* Codified and Expanded

- Adequate consideration must be given for both non-solicits and non-competes at-hire and after-hire
- At-Will Employment: Two year rule wins.
- Consideration “adequate to support an agreement to not compete or to not solicit” = “a period of employment plus additional professional or financial benefits **or merely professional or financial benefits adequate by themselves.**”

What does this mean?



# Salary Requirements

- **Non-Competes**

- Actual or expected earnings of \$75,001 per year beginning January 1, 2022, increasing \$5,000 every five years until reaching \$90,000

- **Non-Solicits**

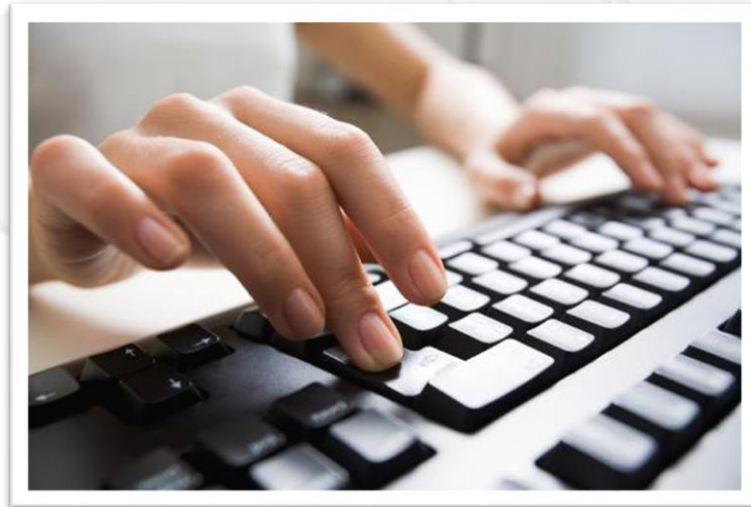
- Actual or expected earnings of \$45,001 per year beginning January 1, 2022, increasing \$2,500 every five years until reaching \$52,500

- **Earnings**

- Wages include salary, bonuses, commission, or any other form of compensation reflected as wages, tips, or other compensation on the W-2, plus elective deferrals

# Language and Notice Period Requirements

- Employees must have **14 days** to consider the agreement
  - While the law does not require this be in writing, it is prudent to do so
  - Employee may sign early
- Employees must be advised ***in writing*** to consult an attorney before signing the agreement



# Potential Penalties

- Illinois Attorney General (AG) is authorized to initiate or intervene in litigation and initiate investigations of potential violations
  - AG may recover monetary damages, restitution, equitable relief, and a civil penalty of \$5,000 *for each violation* or \$10,000 for repeat violations in a five-year period
- Attorney Fees: Employees may recover all costs and reasonable attorney fees if they “prevail in a claim to enforce a covenant not to compete or a covenant not to solicit”

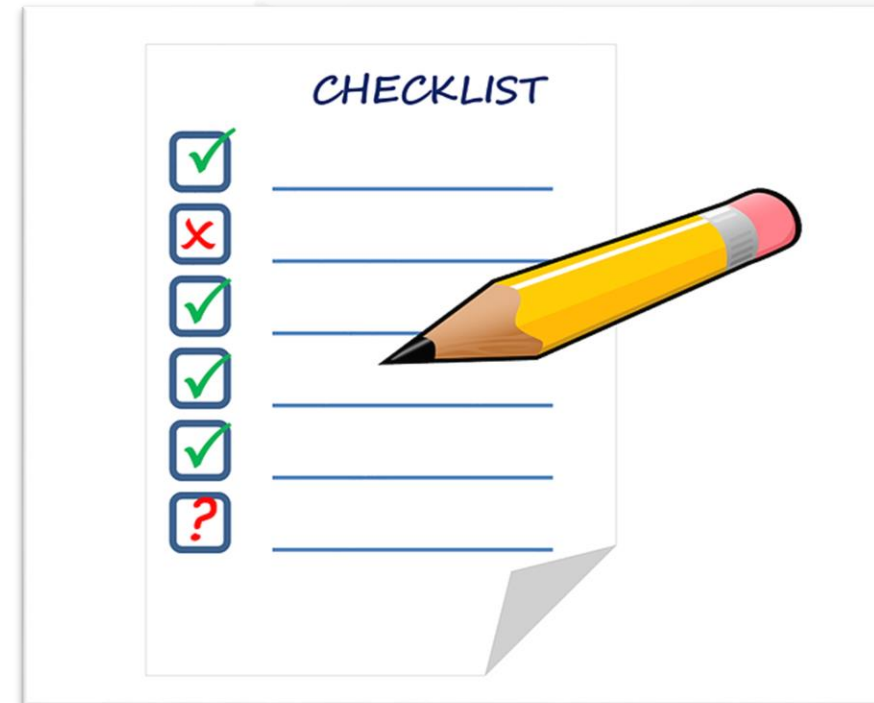
# Notables and Exclusions

- Employees terminated as a result of the COVID-19 pandemic or circumstances similar to the COVID-19 pandemic, unless the employer pays the employee's base salary for the period of enforcement, minus compensation earned through new employment. Applies to non-competes/non-solicits in separation agreements
- Employees covered by a collective bargaining agreement under the Illinois Public Relations Act or the Illinois Educational Public Relations Act
- Construction employees
  - Except management, engineers/architects/design/sales, shareholders/partners/owners



# Top Action Items

1. Understand what agreements are covered under the Act
2. Assess whether the correct people/groups are signing the correct agreements
3. Fortify potential consideration paths
4. Make sure written notice is provided
5. Update enforcement decision tree





# Where Biometric Privacy Litigation has been ... and Where it's Headed

Marlén Cortez Morris

# Use of Biometrics in the Workplace

- Examples of biometric identifiers:
  - Fingerprints
  - Retina or iris scans
  - Voiceprints
  - Scans or records of hand or face geometry
  - DNA
  - Palm prints
  - Other unique biological characteristics used to identify a specific individual



# Use of Biometrics in the Workplace

- Common workplace uses:
  - Timekeeping
  - Access to employer-provided workplace equipment
  - Safety and security
    - Electronic security and building access
  - Inventory management and quality control
  - Immigration compliance
  - Health screenings
    - COVID-19 screenings (e.g., facial scans for temperature checks)



# Biometrics in the Workplace Laws

- Federal law
  - No federal law directly governs biometric information in the workplace
  - BUT several federal laws apply to employee privacy and may apply
- Illinois – first biometric state law in 2008, the Biometric Information Privacy Act (BIPA)
  - Private right of action for BIPA violations
  - Remedies include actual damages or liquidated damages of \$1,000 per negligent violation or \$5,000 per intentional or reckless violation, whichever is larger
- Other state and local laws
- Proposed legislation

# Biometrics in the Workplace Laws

- Statutory requirements:
  - Notice to employees to collect biometric information
  - Written consent from employees to obtain biometric information
  - Restrictions on sale and disclosure of biometric information
  - Standards for data storage, retention, and destruction
  - Written policy\*
    - \* *Not all states require*
- Be mindful of differences in:
  - Scope of coverage
  - Definition of “biometrics” and exclusions
  - Remedies
  - Private right of action



# Biometric Privacy - Hot Litigation Issues


- Standing to sue for “technical violations”
  - Employee has right to sue, regardless of whether any additional harm resulted
- Applicable statute of limitations
  - BIPA does not say
  - 1 year, 2 years, or 5 years?
    - 1 year for invasion of privacy (e.g., slander, libel or publication) claims
    - 2 years for actions claiming statutory damages (rather than actual damages)
    - 5-year “catch-all”
  - Relevant cases
    - *Tims v. Black Horse Carriers, Inc.* – First appellate case to decide the question (September 17, 2021)

# Biometric Privacy - Hot Litigation Issues

- Accrual of BIPA claims
  - First collection/first disclosure vs. Per each scan/disclosure?
  - Massive damages implications
  - IL Supreme Court to decide in *Cothron v. White Castle Systems, Inc.*
- Preemption of BIPA claims
  - Are BIPA claims preempted by the IL workers' compensation regime?
  - Awaiting IL Supreme Court decision in *McDonald v. Symphony Bronzeville Park LLC*

# Best Practices for Employers Using Biometrics

1. Understand your collection, use, storage, and sharing of employee biometric information by auditing systems, policies, and procedures
  - Assess whether employee biometric information is truly needed
2. Ensure a written policy on the collection, use, storage, and sharing of biometric information is implemented
  - Don't forget reasonable accommodations due to religion or disability
3. Ensure written notice is provided and consent is obtained
4. Implement safeguards to protect biometric information
5. Implement proper disposition protocols
6. Train your internal team
7. Revisit your agreements with third parties



# Leave and Accommodation Issues Even More Tricky In A Remote or Hybrid Environment

Tina Bengs

# Critical Policies and Procedures to Spot Need for Leave or Accommodation

- Expected days and times to work
- Absence reporting
- Proper timekeeping procedures
- Production monitoring
- Track use of PTO, sick leave, vacation, etc.



# Employees Not Wanting to Return from Remote Work

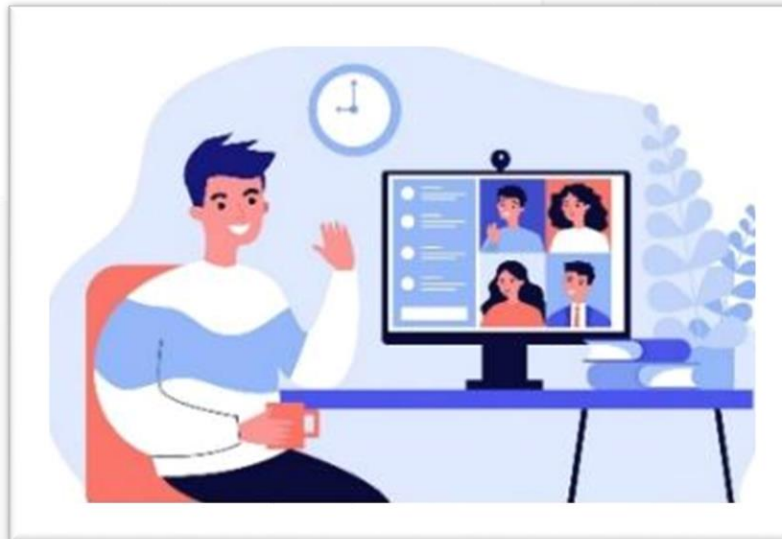
- General Fear – no accommodation required
  - What if Safety Concerns Reported - Whistleblower
- Underlying Personal Health Condition – ADA interactive process to determine if accommodations that support return from remote work
- Living with Others that are at Higher Risk – ADA accommodations not required
- Employee Morale – “we like remote work”





# Remote Work

- EEOC's Guidance confirmed no assumption that just because remote work was necessary during early part of Pandemic, that it is a reasonable accommodation under the ADA that must be considered - - i.e. being at work can still be an essential job function
- If Remote Work requested as ADA Accommodation, engage in interactive process to determine other reasonable accommodations



# Laws Requiring Consideration of Accommodation Requests

If unable to meet a requirement of work based on:

## ADA

- Qualified Individual with a Disability
  - Physical or Mental Impairment
  - that Substantially Limits
  - a Major Life Activity
  - But employee is able to perform essential job functions, with or without accommodation

## Title VII

- Sincerely Held Religious Beliefs



# Accommodations

Any change in the work environment or the way things are done that enables an individual to perform essential job duties or meet requirements of work.

- Job restructuring
- Part-time or modified work schedule
- Reassignment to a vacant position
- Modification of equipment
- Making existing facilities accessible
- Not applying a required policy (e.g. mandatory vaccinations or masking/testing)
- Leave of absence that assists employee in being able to return to work



# Reasonable vs. De Minimis Accommodations



## ADA Standard: Reasonable = No Undue Hardship

No undue hardship on the Employer after considering the accommodation's duration, initial cost, on-going cost, and adverse impact on business operations including other employees, and considering size and resources for the Employer.

## Title VII Standard: De Minimis

Accommodation only required if it has a de minimis impact on the Employer.

## Same Accommodation Requested

Can Employer really deny same accommodation under Title VII's standard but not under ADA's standard?

# Various “Leave” Laws



- FMLA – protected
- State Leave Laws – may be protected
- ADA – EEOC assumes leave as an accommodation is protected unless designated as unprotected

# FMLA “Worksite” for Remote Workers

29 C.F.R. § 825.111(a)(2) – 50 or more employees within a 75 mile radius:

- NOT the remote work site
- Worksite is the office to which the employee reports and from which assignments are made.

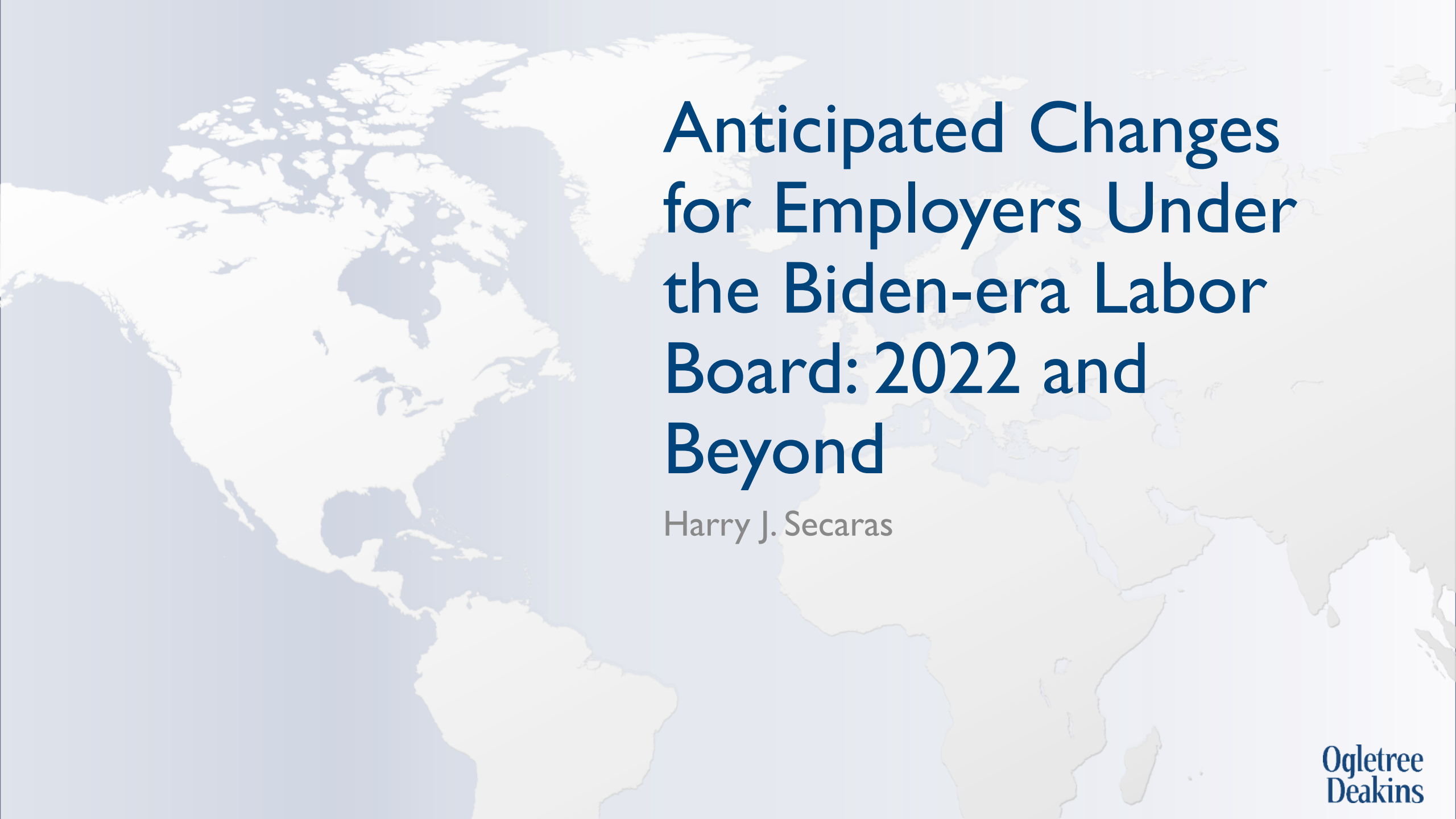




# Outsourcing Leave / Accommodation Administration

- Legal Requirements are the Employer's
- Services Agreement – scope of administration
- EEOC and DOL – investigations target automated processes that fail with unique situations and poor communications to Employees
- HIPAA does not prevent the Employer from receiving the leave/accommodation information
- Double check before making any adverse employment action





# Anticipated Changes for Employers Under the Biden-era Labor Board: 2022 and Beyond

Harry J. Secaras

# What to Expect at the NLRB

## Union Organizing

Expect an increase in union organizing activities as the NLRB will renew its efforts to make organizing easier by:

- Increasing what workers are covered by the Act including review of independent contractor and joint-employer tests under the NLRA.
- Approving smaller units (such as a specific department within a manufacturing location and single site units) and lessening the “community of interest” standards.
- Increasing Union access to employer facilities during organizing.
- Reviewing and “clarifying” recent Board Decision on handbook policies, use of Employer’s electronic communication system, etc.
- Considering continued use of mail ballots for elections.
- Changes to election procedures to expedite the election process (return to “quickie elections.”)

# What to Expect at the NLRB

## Unfair Labor Practices

See GC Memo 21-04 (August 12, 2021) at [www.nlrb.gov](https://www.nlrb.gov).

General Counsel has asked to review charges challenging:

- Employee Handbooks and other work rules.
- Defining what is Protected Concerted Activity (PCA).
  - Expanding definition to include social and political issues not related to workplace (wages, hours, terms of employment) issues.
- Expanding remedies to include consequential damages.
- Changing Union access rules including allowing access to public spaces.
- Application of *Weingarten* in non-union settings.
- Strike activity including permissible intermittent strikes.

# What's an Employer to do?

## **BE PREPARED**

- Understand that changes are anticipated, but have not yet occurred.
- Forewarned is Forearmed!
  - Review employee classifications and correct any misclassification issues.
  - Consider community of interest issues in anticipation of responding to a petition to increase ability to secure the Employer's preferred unit.
  - Review handbooks, work rules and procedures in anticipation of changes.
- Increase manager/supervisor training to identify organizing activity and to dissuade employees from supporting a union.
- Register on the NLRB website to receive press releases and announcements so that you stay apprised of changes as they occur.



# Illinois Equal Pay Act Amendments

Jen Colvin



# Amendments to the Illinois Equal Pay Act

- SBI480 signed on March 23, 2021
- SBI847 signed on June 25, 2021
- Effective immediately
- *However*, IDOL intends to propose rules to implement the amendments.



# Amendments to the Illinois Equal Pay Act

- **Who is a covered business?**
  - Private employers with more than 100 employees
- **When must an employer obtain an equal pay certificate?**
  - Between March 23, 2022 and March 23, 2024
  - Required to enroll with the IDOL and provide contact information
  - Voluntary registration: <https://forms.office.com/g/VQweNsryxx>
  - IDOL will randomly assign due date for submission
- **How often must an employer recertify?**
  - Every two years after obtaining the initial certificate
  - Same due date in subsequent reporting years

# Amendments to the Illinois Equal Pay Act

- **What information/documentation must be submitted?**
  - the most recently filed EEO-1;
  - a statement that the business complies with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the IL Human Rights Act, the Equal Wage Act, the Equal Pay Act of 2003 and other relevant laws;
  - a statement that the average compensation for its female and minority employees is not consistently below the average compensation, as determined by rule by the United States Department of Labor, for its male and non-minority employees within each of the major job categories in the EEO-1;
  - a statement that the business does not restrict employees of one sex to certain job classifications;
  - a statement that the company makes retention and promotion decisions without regard to sex;

# Amendments to the Illinois Equal Pay Act

- **What information/documentation must be submitted?**
  - a statement that wage and benefit disparities are corrected when identified to ensure compliance with the Equal Pay Act;
  - a statement of how often wages and benefits are evaluated to ensure compliance with the Equal Pay Act; and
  - a statement indicating whether the business, in setting compensation and benefits, utilizes:
    - A. a market pricing approach;
    - B. state prevailing wage or union contract requirements;
    - C. a performance pay system;
    - D. an internal analysis; or
    - E. an alternative approach to determine what level of wages and benefits to pay its employees. If the business uses an alternative approach, the business must provide a description of its approach.

# Amendments to the Illinois Equal Pay Act

- **What other information/documentation must be submitted?**

A list of all employees during the past calendar year, separated by:

- Gender
- Race
- Ethnicity
- The county in which the employee works
- The date the employee started working for the business
- The total wages (as defined by Section 2 of the Illinois Wage Payment and Collection Act – this includes salary, commissions and bonuses), paid to each employee during the previous calendar year, rounded to the nearest \$100
- Any other information the IL DOL deems necessary to determine if pay equity exists among employees.

# Amendments to the Illinois Equal Pay Act

- **What about affiliates / subsidiaries?**
  - If employees are at multiple locations in Illinois, employer will submit a single application to the IL DOL regarding all of its operations in Illinois. It is unclear whether affiliates/subsidiaries are included in one filing.
- **Who needs to submit/sign the application?**
  - A corporate officer, legal counsel or authorized agent of the business
- **Is there a filing fee?**
  - \$150 filing fee paid to the IDOL



# Amendments to the Illinois Equal Pay Act

- **Are there penalties for noncompliance?**
  - IDOL can suspend or revoke a certificate or impose civil penalties if the application was falsified or misrepresented information.
- **Can an employee obtain the data submitted to the IDOL?**
  - Yes. A current employee can request anonymized data from the IDOL.

# Top Action Items

- Register contact information with the IDOL
- Determine who will compile the required information for submission
- Determine who will sign the submission
- Consider auditing pay practices and taking action on outcomes





# Background Checks and Criminal Convictions in Illinois

Michael H. Cramer

# Background Checks Under Federal Law

Background checks should be job-related and consistent with business necessity

Fair Credit Reporting Act has strict requirements

- Must use legally-compliant forms for Disclosure, Authorization, Pre-adverse action, and Post-adverse action

Many states have requirements that differ from federal law

State laws change frequently

Class actions over background checks are common

- Automatic \$ penalties per violation
- Attorneys' fees

Do not assume third-party background check vendor does everything correctly



# Criminal Convictions and Background Checks Under Illinois Law

- Illinois has long prohibited basing hiring and employment decisions on **arrest** records.
- In 2021, Gov. Pritzker signed [SB 1480](#), which amends the [Illinois Human Rights Act](#), the [Illinois Equal Pay Act](#), and the [Illinois Business Corporation Act](#).
- The new law limits use of criminal **convictions** in hiring and employment decisions

# SB 1480 and Criminal Convictions

An employer may not base an adverse employment decision (e.g., hiring, promotion, termination) on a *conviction record*, unless the employer can show:

- the conviction is *substantially related* to the person's job, or
- employing the person would pose an *unreasonable safety risk* to people or property

A *conviction record* = any information indicating a person:

- has been convicted of a felony, misdemeanor or other criminal offense, or
- placed on probation, fined, imprisoned, or paroled



# Is a conviction “substantially related” to the job?

## Is the person an unreasonable safety risk?

Employers must consider **six factors**:

- length of time since conviction
- number of convictions
- nature and severity of the conviction and its relationship to the safety and security of others
- facts or circumstances surrounding the conviction
- Employee/candidate’s age at the time of the conviction, and
- evidence of rehabilitation efforts

After considering these factors...

# Employers must engage in an “interactive assessment” before basing an employment decision on a conviction record.

**EMPLOYER** Considers the six factors → Makes preliminary decision to terminate/not hire → Notifies person of decision + reasoning

**EMPLOYEE/CANDIDATE** then has at least 5 business days to respond, and may:

- Dispute accuracy of conviction record
- Present evidence in favor of employment (e.g., rehabilitation efforts)

**EMPLOYER** must consider the evidence before making and implementing final decision

# Potential Consequences of Violation

- Cease-and-desist order
- Actual damages
- Order to hire, reinstate, or promote
- Back pay and benefits
- Attorneys' fees and costs



# Best Practices

Review policies and practices

- Do we *need* a background check for a particular job?
- If so, what type? Credit? Criminal?
- Avoid blanket policy against hiring convicted felons


Can't leave everything to third-party background check vendor

Train hiring teams to:

- Do six-factor test
- Engage in the interactive assessment
- Confer with Legal and/or HR

Safety of workforce and customers still comes first

Weigh risks: danger of employment v. risk of legal action/liability



# Chicago and Cook County Sick Leave Laws (+ a VESSA Update)

Norma Manjarrez



## Local Sick Pay Laws: Illinois Sick Leave

The Illinois Employee Sick Leave Act, effective January 1, 2017, is the State law requiring employers to allow employees to use at least a portion of the sick leave time that is already available to them, under certain existing employer policies, to care for certain relatives.

- Amended in 2021 to include “personal care” of a covered family member.
- Personal sick leave benefits may be used for absences due to an illness, injury, medical appointment, or for personal care of a covered family member (the employee’s child, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent).

The Act does not require an employer that does not otherwise provide personal sick leave benefits to employees to create a new benefit.





# Local Sick Pay Laws: Chicago/Cook County Paid Sick Leave

## CHICAGO LABOR STANDARDS

### WAGE THEFT

#### FORBIDS THE THEFT OF WAGES AND BENEFITS (MCC 6-105)

Wage Theft	Violations and Fines
<ul style="list-style-type: none"><li>Wage Theft means the non-payment of wages, including paid time off or other paid benefits</li><li>Employers must pay Employees on time</li></ul>	<ul style="list-style-type: none"><li>Employees can recoup unpaid wages plus damages</li><li>Violators may be subject to fines or civil actions</li></ul>

MINIMUM WAGE						
SETS MINIMUM WAGE IN CHICAGO (MCC 6-105)						
July 1, 2021 Effective Date	Large Employers 21 or more employees	Small Employers 4 to 20 employees	Youth Workers	Tipped Workers		
				Large	Small	Youth
Min Wage	\$15.00	\$14.00	\$11.00	\$9.00	\$8.40	\$6.60
Overtime Min Wage	\$22.50	\$21.00	\$16.50	\$16.50	\$15.40	\$12.10

All Domestic Workers must receive at least the \$15 minimum wage. If the tipped wage plus tips do not equal at least the number of hours worked times the minimum wage, the Employer must make up the difference.

PAID SICK LEAVE		
REQUIRES PAID LEAVE FOR MEDICAL OR SAFETY REASONS (MCC 6-105)		
Employers must provide Employees with Paid Sick Leave (PSL) to care for themselves or a family member if they work at least 80 hours within any 120-day period.		
Earning Leave	Using Leave	Carrying Over
1 hour of PSL for every 40 hours worked (up to 40 hours in a 12-month period) may be accrued.	Up to 40 hours first year (up to 60 hours during the second 12-month period) may be used.	One half of PSL hours can be carried over between 12 month periods (up to 20 hours). In certain cases, up to 40 hours may be carried over.

HUMAN TRAFFICKING
WORKERS ARE PROTECTED UNDER CHICAGO AND ILLINOIS LAW
If you or someone you know is being forced to engage in any activity or forced to work, cannot leave, is having their wages taken, has had their passport or ID taken away, or is being threatened with deportation if they don't work, <b>Call the National Human Trafficking Hotline 1-888-373-7888 or Text "HELP" to 233733 to access free help and services.</b>  Available at all times in 160 languages and operated by a nongovernmental organization.

FILE A COMPLAINT
Call 311, use the CHI 311 app, or file a Complaint Form at <a href="http://www.chicago.gov/laborstandards">www.chicago.gov/laborstandards</a>



For further detail, including a full list of exempted Employees, visit [www.chicago.gov/laborstandards](http://www.chicago.gov/laborstandards) or contact the Office of Labor Standards at [los@cityofchicago.org](mailto:los@cityofchicago.org) or 312-744-2211. This Notice must be displayed in a conspicuous place at the place of employment and provided with each Covered Employee's first paycheck. Retaliation is prohibited. Notice effective: on August 1, 2021. Last updated July 2021.

## COOK COUNTY EARNED SICK LEAVE ORDINANCE

NOTICE TO EMPLOYEES • EFFECTIVE JULY 1, 2017

In most cases, you are covered by the Cook County Earned Sick Leave Ordinance if:

- You have worked for your employer in Cook County for at least 2 hours in any two-week period, and
- Your employer has a place of business in Cook County.

You are entitled to:

- Earn **one hour** of earned sick leave for every **40 hours** worked for your employer in Cook County;
- You may use earned sick leave when you or a family member are ill, receiving medical care, or the victim of domestic violence or stalking, or a public health emergency closes work, school or daycare;
- You must be paid for earned sick leave at your usual rate of pay, no later than the next payroll period;
- Maximum accrual and use of earned sick leave generally is **40 hours per year**;
- If you do not use all the earned sick leave you earn in a given year, generally you are entitled to carry over half of those unused hours to use in the following year (up to a maximum carryover of 20 hours);
- And you may be entitled to additional benefits under the Ordinance if your employer is covered by the federal Family Medical Leave Act (FMLA) and you are eligible for FMLA leave.

Your employer is prohibited from:

- Retaliating against you for exercising Ordinance rights (e.g., using earned sick leave, filing a claim); or
- Requiring you to search for or find a replacement to cover your work hours while you are on leave.

Your employer is allowed to:

- Impose written rules for: the **minimum increments of time** (4 hours or less) in which earned sick leave can be used; the **type and timing of notice required** for reasonably foreseeable absences; the **minimum duration of employment** before initial use of earned sick leave (not to exceed 180 days).
- Adopt **equivalent alternative practices** to meet its Ordinance obligations (e.g., grant estimated earned sick leave for the year up front) (see Part 600 of the Commission's Earned Sick Leave Rules).

If you believe your employer may have violated this Ordinance:

- The Commission encourages (but does not require) you to **discuss your concerns with your employer**. Employers may use different terminology to describe employee benefits or may have adopted an approved alternative practice to comply with the Ordinance. The Commission's website and Earned Sick Leave Rules are resources for helping you and your employer understand what the Ordinance requires.
- If you cannot talk to your employer because of fear of retaliation or you remain unsatisfied with your employer's explanation of your benefits, **contact the Commission for assistance**.
- If you wish to **file a complaint with the Commission** because your employer has violated the Ordinance, you must generally do so **within 3 years** of the violation. Complaints can also be filed directly in the Circuit Court of Cook County without filing at the Commission first.
- The Commission is available to assist (or receive complaints), Monday – Friday (excluding County holidays) from 9 a.m. – 4 p.m., or by appointment outside of these hours. You may contact the Commission by email, telephone or in person.

## COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 W. Washington, 30<sup>th</sup> Floor, Chicago, IL 60602  
email: [human.rights@cookcountyl.gov](mailto:human.rights@cookcountyl.gov) phone: 312-603-1100

For Ordinance, Rules and Complaint Forms, visit: <https://www.cookcountyl.gov/service/earned-sick-leave-ordinance-0>

# Under what circumstances can Chicago PSL be used?

- The employee is ill or injured, or for the purpose of receiving professional care, including preventive care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;
- A member of the employee's family is ill, injured, or ordered to quarantine, or to care for a family member receiving professional care, including preventative care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders;

# Under what circumstances can Chicago PSL be used?

- Pursuant to 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 stay at home to minimize transmission of a communicable disease, while experiencing symptoms or sick with a communicable disease, obey a quarantine or isolation order;
- Closure of the employee's workplace or the school/place of care of the employee's child due to a public health emergency;
- Time off relating to domestic or sexual violence (victim can be the employee or the employee's family member) or stalking.

# Under what circumstances can Cook County PSL be used?

- The employee is physically or mentally ill or injured, or for the purpose of receiving medical care, treatment, diagnosis, or preventative medical care;
- A member of the employee's family is physically or mentally ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventative medical care;
- Closure of the employee's workplace or the school/place of care of the employee's child due to a public health emergency;
- Time off relating to domestic or sexual violence (victim can be the employee or the employee's family member) or stalking.



# For whose illness may PSL be used?

For the employee him/herself, or for a “family member,” which includes:

- Children;
- Parents;
- Spouses or domestic partners;
- Grandparents, grandchildren, or siblings;
- Any other individual with whom the employee’s relationship is deemed to be the equivalent of traditional family relationships, including godchild, godparent, or co-parent.

# How much paid sick leave does an employee accrue and how much may an employee use annually?

- Employees accrue up to 40 hours of PSL/year.
- Carry over up to 20 hours of non-FMLA PSL, and (if FMLA-eligible) another 40 hours of FMLA PSL.
- As a general rule, employees may use up to 40 hours of PSL per year. Exception for FMLA-eligible employee who exhausts 40 hours of FMLA-covered PSL that was carried over; in that case, the employee can use another 20 hours of non-FMLA PSL.



# Payout Upon Termination? Enforcement?

No earned PSL need be paid in the event of employee termination, resignation, layoff, retirement, or other separation unless an applicable collective bargaining agreement or policy says otherwise.

An employee has multiple avenues for enforcement, e.g.:

- As of 2021, wage theft claim with the Chicago Office of Labor Standards (including underpayment, 2% of underpayment x month underpayment remains unpaid);
- Private cause of action (including three times the amount of underpayment, attorney's fees and costs);
- Complaint with the Cook County Commission on Human Rights.

# VESSA Update



## Department of Labor IDOL State of Illinois

### Victims' Economic Security and Safety Act (VESSA)

#### Required Posting for Employers

**VESSA** provides employees who are victims of domestic violence, sexual violence, gender violence, or any other crime of violence, and employees who have a family or household member who is a victim of such violence, with unpaid, job-guaranteed leave; reasonable accommodations; and protections from discrimination and retaliation.

This time may be used if the employee or the employee's family or household member is:

- experiencing an incident of domestic violence, sexual violence, gender violence, or any other crime of violence
- is recovering from the violence;
- is seeking or receiving medical help, legal assistance (including participation in legal proceedings), counseling, safety planning, or other assistance;
- temporarily or permanently relocating; or
- to take other actions to increase the safety of the victim from future domestic, sexual, or gender violence, or any other crime of violence, or to ensure economic security.

**NOTICE** – Employees must provide the employer with at least 48 hours prior notice, unless providing advance notice is not practicable. If an employee is unable to provide advance notice, an employee must provide notice when an employee is able to do so, within a reasonable period of time after the absence.

**CERTIFICATION** – An employer may require the employee to provide certification of the domestic, sexual, or gender violence, or any other crime of violence, and that leave is to address the violence. Certification may include a sworn statement of the employee and other documentation such as a letter from a victims' services organization, a court record, or any other corroborating evidence, but only if that documentation is in the possession of the employee. The employee may choose which documentation to submit. The employer may not require more than one document related to the same incident or perpetrator of violence in one year. All information related to domestic, sexual, or gender violence, or any other crime of violence, is to be kept in the strictest confidence by the employer.

**DURATION OF LEAVE** – VESSA provides that employees working for an employer with at least 1 employee, but no more than 14 employees, are entitled to a total of 4 workweeks of unpaid leave during any 12-month period. Employees working for an employer with at least 15, but no more than 49 employees, are entitled to a total of 8 workweeks of unpaid leave during any 12-month period. And employees working for an employer with at least 50 employees are entitled to a total of 12 workweeks of unpaid leave during any 12-month period.

Leave permitted during a 12-month period under the act based on number of employees:

Number of employees	Leave permitted
1-14 employees	4 weeks
15-49 employees	8 weeks
50 or more employees	12 weeks

Leave may be taken consecutively, intermittently, or on a reduced work schedule basis.

For information on filing a complaint please call: 312-793-6797

or visit the website: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/vessa.aspx>

**ACCOMMODATIONS** – VESSA provides that employees are entitled to reasonable accommodations to address the needs of the victim(s). Accommodations include, but are not limited to, an adjustment to the job structure, workplace facility, work requirements, or telephone number, seating assignment, or physical security of the work area.

**DISCRIMINATION AND RETALIATION** – VESSA prohibits employers from discriminating, retaliating, or otherwise treating an employee or job applicant unfavorably if the individual involved:

- Is or is perceived to be a victim of domestic, sexual, or gender violence, or any other crime of violence;
- Attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court or administrative proceeding relating to domestic, sexual, or gender violence, or any other crime of violence;
- Requested or took VESSA leave for any reason;
- Requested an accommodation, regardless of whether the accommodation was granted;
- The workplace is disrupted or threatened by the action of a person whom the individual states has committed or threatened to commit domestic, sexual, or gender violence, or any other crime of violence, against the individual or the individual's family or household member; or
- Exercised any other rights under VESSA.

**labor.illinois.gov • DOL.Questions@Illinois.gov**

Lincoln Tower Plaza

Michael A Bilandic Building

Regional Office Building

# VESSA Update

Amendments effective January 1, 2022:

Scope of leave expanded to include crimes of violence (i.e., leave due to domestic violence, sexual violence, gender violence, or any other crime of violence);

Covered family members expanded to include a spouse or party to a civil union, parent, grandparent, child, grandchild, sibling, or any other person related by blood or by present or prior marriage or civil union, other person who shares a relationship through a child, or any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee, and persons jointly residing in the same household;

# VESSA Update

Amendments effective January 1, 2022 (continued):

Certification for need for leave modified to allow employee to choose which document to submit and employer may not require more than one document to be submitted during the same 12-month period leave is requested/taken if the reason is related to the same incident(s)/perpetrator(s);

Adds confidentiality obligations.

# THANK YOU!





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