

What's New and What's Coming for Illinois Employers: 2022 and Beyond

September 13, 2022

Welcome and Some Housekeeping Items



Be sure to sign-in for MCLE Credit at the registration desk.



Ask questions! Our panelists are happy to engage with you.



If your attendance time meets the rules set by the Illinois MCLE Board, ACC Chicago will send your certificate by email next week.

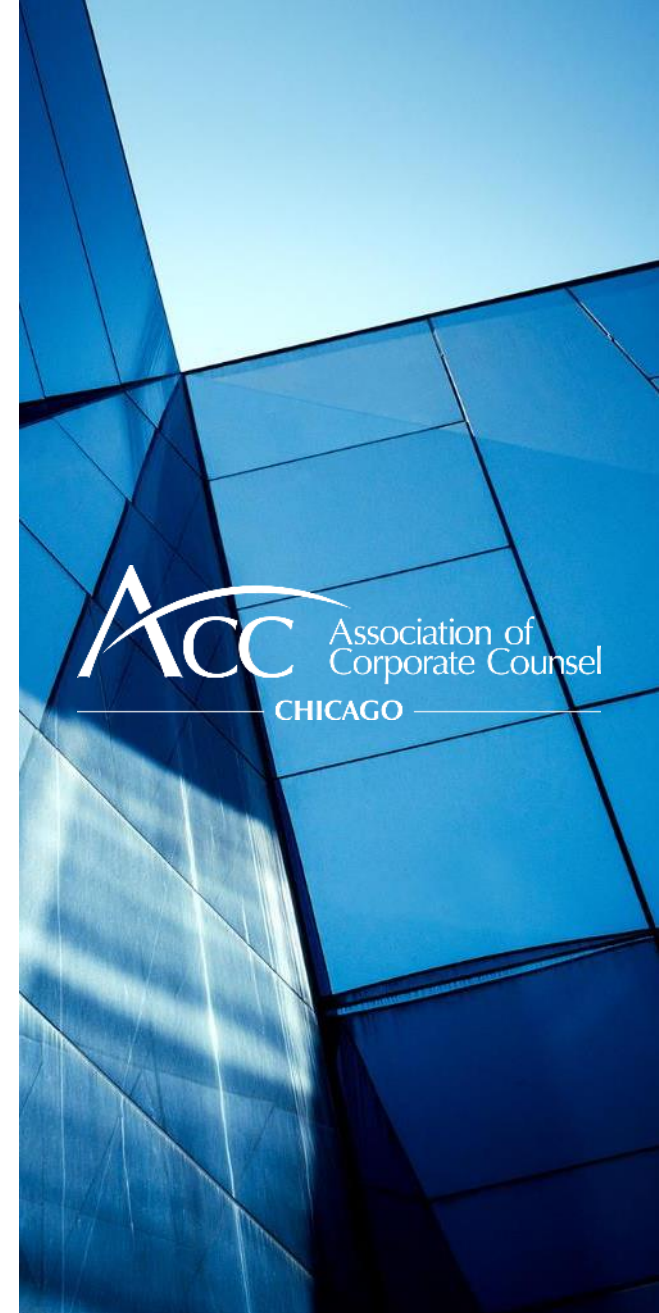


Watch for the survey/feedback link sent to your email after the program.



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- Free CLE, Roundtables, DEI & Professional Development Programs
- Socials, Special Networking Groups, Annual Celebration Event
- Community Outreach, Diversity Initiatives & Pro Bono Offerings
- Leadership and Speaking Opportunities, Chicago Lawyer Subscription
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 - ACC Docket Magazine & Newsstand (searchable legal news feed)
 - ACC Survey Portal, Resource Library, Contracts Portal & Legal Ops Section
 - E-Groups and Committees on Substantive Practice Areas



Today's Speakers



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Illinois: New Employment Obligations

- Illinois Equal Pay Registration Certification
- Sexual harassment training (Chicago)
- CROWN Act (hairstyle discrimination)
- BIPA Litigation update
- Illinois Family Bereavement Law
- Wage and Hour Updates



Illinois Equal Pay Registration Certification Process



New Reporting Requirement – 2021 Amendments

Employers must apply for Equal Pay Registration Certificate (EPRC)

Who's covered?

- Private employers: 100+ employees in Illinois and required to file an EEO-1

What's the reporting deadline?

- Initial reporting period (i.e., March 24, 2022 - March 23, 2024)
- Deadline varies (i.e., assigned by IDOL, with at least 120 days to report)
- Recertification every two years

What needs to be submitted?

- \$150 filing fee
- Wage records
- Equal pay compliance statement



New Reporting Requirement – 2021 Amendments

How do you count total number of employees in Illinois?

- Count the total number of employees who worked in or were based out of Illinois as of December 31 the prior calendar year.

What constitutes “wages?”

- Any compensation paid to employees – including wages, salaries, earned commissions, earned bonuses, stocks and ownership shares.
- “Wages” do not include value of retirement benefits, health insurance benefits or other fringe benefits.





EPRC: Required Wage Records

- Most recent EEO-1 Report
- List of Employees (during past calendar year) with:
 - Gender, race, ethnicity
 - County where employee works
 - Total wages paid (i.e., W-2-Box 5)
 - Hire date and termination date (if applicable)
 - Job classification
 - Job title
 - Social Security Number (last four digits only)
- Required Format: Text-searchable, sortable Microsoft Excel or comma-separated values file format.



EPRC: Requested Wage Records – What Happens after Submission?

IDOL reviews and identifies any pay disparity issues

IDOL can share the wage data it receives with the Illinois Department of Human Rights and Illinois Attorney General

IDOL will compile aggregate reports that are not confidential

Employees can request anonymized data from IDOL regarding the employee's classification and pay



ILLINOIS DEPARTMENT OF LABOR

JB PRITZKER
GOVERNOR

JANE R. FLANAGAN
ACTING DIRECTOR

Equal Pay Act Registration Certificate Compliance Statement

This compliance statement shall be signed by a corporate officer, legal counsel, or authorized agent of the business for which this compliance statement is being submitted. For businesses that have more than one location in Illinois, this form shall be submitted only once, regarding all operations in Illinois.

Pursuant to the requirements of the Equal Pay Act of 2003 (820 ILCS 112/11(c)(1)), as an authorized representative of _____, hereby known as the "Business," I certify that:

1. The Business is in compliance with:
 - a. Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e);
 - b. The Equal Pay Act of 1963 (29 U.S.C. § 206);
 - c. The Illinois Human Rights Act (775 ILCS 5);
 - d. The Equal Wage Act (820 ILCS 110); and
 - e. The Equal Pay Act of 2003 (820 ILCS 112);
2. The average compensation for female and minority employees at the Business is not consistently below the average compensation for male and non-minority employees within each of the major job categories in the Employment Information Report (EEO-1), taking into account factors such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, education or training, job location, use of a collective bargaining agreement, or other mitigating factors;
3. The Business does not restrict employees of one sex to certain job classifications, and makes retention and promotion decisions without regard to sex;
4. Wage and benefit disparities are corrected when identified to ensure compliance with the wage laws listed in section 1;
5. Wages and benefits of employees are evaluated on the following basis to ensure compliance with the wage laws listed in section 1 (Circle one. If methods of calculation are different in different counties, describe the methods for each county):
 - a. Every _____ months/years (circle); or
 - b. Other (describe): _____; and
6. The Business utilizes the following method(s) to determine employee compensation and benefits (Circle all that apply. If methods of calculation are different in different counties, describe the methods for each county):
 - a. A market pricing approach.
 - b. State Prevailing Wage or collective bargaining agreement requirements.
 - c. A performance pay system.
 - d. An internal analysis.
 - e. An alternative approach (describe): _____; and

Certification

The undersigned hereby certifies that they are a corporate officer, legal counsel, or authorized agent of the Business and that the information contained in this Equal Pay Act Registration Certificate Compliance Statement is true and accurate at the time of the signing.

Signature: _____ Date: _____

Printed Name: _____

Title: _____

Business Name: _____

EPRC: Equal Pay Compliance Statement

What are you certifying??

- Corporate officer or authorized agent to certify accuracy
- Certify females and minorities are on average paid at a rate not consistently below males and non-minorities, and disparities are corrected when identified
- Identify frequency of wage/benefit reviews
- Identify method used to set wages
- Certify compliance with Title VII, EPA, IHRA, et. al.



Illinois Equal Pay Act – Penalties

If IDOL's review of an employer's data reveals pay disparities, the IDOL may initiate an investigation

An employer may be fined up to \$10,000 for failing to certify compliance

Falsification or misrepresentation of information on an EPRC application is a violation of the Equal Pay Act and is could be grounds for revoking the EPRC or civil penalties up to \$10,000



EPRC: Preparing to Certify Compliance



Employers have at most 15 months to identify and correct any pay disparities



Begin reviewing compensation data now to allow time for remediation in advance of certification



Consider a pay equity analysis with the assistance of counsel to preserve privilege



New Sexual Harassment Prevention Obligations for Chicago Employers





Sexual Harassment Prevention in Chicago

- Amendment to Chicago Human Rights Ordinance (6-010-010, et. seq.)
- Effective 6/4/22
 1. Expanded what constitutes sexual harassment
 2. Increased statutory penalties (\$5-10k per violation)
 3. Increased time period for filing a claim (365 days)
- Effective 7/1/22
 1. Written harassment prevention policy
 2. New training obligations





Who is covered?

- Any employee “engaged to work” within the geographic boundaries of the City
- “Employer” means any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that provides employment for one or more employees in the current or preceding calendar year, and any agent of such an entity or person. To qualify as an employer for purposes of Section 6-010-054, such individual, group, or entity must: (1) be subject to one or more of the license requirements in Title 4 of this Code; or (2) maintain a business facility within the geographic boundaries of the City; or (3) both (1) and (2). The City of Chicago and its sister agencies qualify as employers for purposes of Section 6-010-054.”





The City's FAQs

Q: I am a business without a location in Chicago and I am not required to hold a City of Chicago business license; however, my employees may occasionally go on assignments in Chicago. Are we required to send the new anti-harassment ordinance posting to these employees?

A: No. The posting requirement of the new sexual harassment protections apply only to businesses who, (1) are required to have a business license issued by the City of Chicago, or (2) maintain a facility within the geographical boundaries of the City of Chicago.

Q: My business is not considered an employer as defined by the Chicago Human Rights Ordinance (not subject to licensing requirements and/or does not maintain a facility in Chicago), but we have employees who occasionally work within the geographical boundaries of Chicago. Is my business required to maintain a sexual harassment policy, place the poster in the workplace, and conduct sexual harassment training?

A: No. The training, policy, and posting requirements of the new sexual harassment protections apply only to businesses who (1) are required to have a business license issued by the City of Chicago, or (2) maintain a facility within the geographical boundaries of the City of Chicago.



What Constitutes Sexual Harassment?

Section 6-010-020 defines sexual harassment as any:

- Unwelcome sexual advances or unwelcome conduct of a sexual nature
- Requests for sexual favors or conduct of a sexual nature when:
 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
 2. Submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual.
 3. Such conduct has purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- *Sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual's employment position.*



Harassment Policy Requirements

Employer's written harassment policy must contain at least the following:

1. A statement that sexual harassment is illegal in Chicago.
2. The sexual harassment definition in Section 6-010-020.
3. A requirement that employees participate annually in one hour of sexual harassment prevention training (two hours for supervisors) and one hour of bystander training.
4. Examples of prohibited conduct.
5. Complaint procedure (including any internal complaint form).
6. Details about legal services (including governmental) available.
7. A statement that retaliation for reporting sexual harassment is illegal in Chicago.



Harassment Training Obligations

How much training is required?

- One hour of sexual harassment prevention training (all employees) (already required by Illinois law)
- One hour of sexual harassment prevention training (for supervisors/managers)
- One hour of bystander training (all employees)

Who needs the training

- Employees working physically in a Chicago office?
- Employees working remotely from their home within the city boundaries?
- Managers who supervise employees who work in Chicago?



Record Retention Requirements

What must be retained?

1. A copy of the employer's written sexual harassment policy.
2. A record of trainings given to each employee.
3. Records necessary to demonstrate compliance with the ordinance.

For how long?

Five years, or the duration of any claim, civil action, or investigation pending pursuant to the ordinance, whichever is longer.

What if I don't comply?

Creates a presumption, rebuttable by clear and convincing evidence, that the employer violated Section 6-010-040



Illinois CROWN Act

Create a Respectful and Open Workplace for Natural Hair



Illinois CROWN Act

Overview

- Previously only applied to schools.
- House Amendment 1 to SB 3616.
- Effective 1/1/23, it applies to employment (and housing, etc.)
- Illinois Human Rights Act protects discrimination based on race.
- “Race” is now defined to include:
 - *Traits associated with race, including but not limited to, hair texture and protective hairstyles such as braids, locks and twists.*
- *Covers all employers in Illinois.*

*** Considerations: Review employee handbook policies (e.g., discrimination, harassment, personal appearance, grooming).*



Biometric Information Privacy Act Litigation Update

Illinois federal and state court decisions and emerging trends



Overview

- Biometrics generally
- Common uses of Biometrics in the Workplace
- Complying with BIPA



BIPA Litigation

In re: McDonald v. Symphony Bronzeville Park, LLC,

- Are violations of BIPA covered by the Illinois Workers' Compensation Act?

Tims v. Black Horse Carriers, Inc.,

- What statute of limitations applies to BIPA claims?

Cothron v. White Castle System Inc.,

- When do BIPA claims accrue?



BIPA – Looking Forward

Open issues

**Settlement
Trends**



New Family Bereavement Law

Expansion of Child Bereavement Law





Family Bereavement Law

- Effective 1/1/23
- Employers with 50 or more employees
- Eligible employees: Same as those eligible for FMLA (i.e., 1250 hours, 12 months, 50 employee within 75 miles)
- Up to 10 workdays of unpaid bereavement leave for the death of a covered “family member”.
 - child, stepchild, spouse, domestic partner, sibling, parent or step-parent, MIL or FIL, grandchild, grandparent



Family Bereavement Law

- Leave can be taken to:
 - attend the funeral (or alternative), make necessary arrangements, to grieve, or for an absence due to (i) miscarriage, (ii) unsuccessful round of intrauterine insemination or assisted reproductive technology procedure, (iii) failed adoption match or because adoption is contested by another party, (iv) failed surrogacy, (v) a diagnosis that negatively impacts pregnancy or fertility, or (vi) a stillbirth.
- Leave must be taken within 60 days after notice of the death or the failed pregnancy/fertility event.
- Reasonable documentation can be required to substantiate need for leave, *but* you cannot require an employee to identify the specific type of event for leave taken for pregnancy/fertility reasons.
- IDOL will be publishing a model form for employers to request documentation from employees.



Family Bereavement Leave

- Handbook or policy update
- Consider the coordination with paid sick leave
- Forms for requesting leave
- Forms for substantiating the need for leave (IDOL?)



Wage and Hour Updates

- One Day Rest in Seven Act
- New Liability for Contractors (IWPCA)
- Chicago Fair Workweek Ordinance





One Day Rest in Seven Act Amendment

- Effective 1/1/23
- Covers all non-exempt employees, except
 - Part-time employees (working 20 hours or less in a calendar week), security guards, and certain employees fixing equipment to prevent injury.
- 24 hours consecutive hours of rest in every consecutive 7-day period
- Post the day(s) of rest for each employee within specified time period
- Meal periods – second 20-minute meal period for every 4 1/2 hours beyond the 7 1/2 hours (e.g., 12 hours worked = two meal periods)
- Post ODRISA notice and provide electronically to remote workers
- Increased penalties (each person affected is a separate offense)
- Fines and damages assessed on an individual basis for each employee whose rights are violated.



Contractor Liable for Subcontractor Wage Claims

- Amended Illinois Wage Payment and Collection Act (contracts on or after 7/1/22)
- Primary contractor is liable for debt owed by subcontractor, any tier for claimant's performance of labor included in primary contractor's contract with the owner.
 - Unpaid wages, fringe or other benefit payments, interest, IDOL penalties, and attorneys' fees.
- Subcontractor indemnification is required (unless contract says otherwise)
- Private right of action and pre-litigation notice
- Covers primary contractors with a direct contractual relationship with the property owner and who enter into a contract "for the erection, construction, alteration, or repair of a building, structure, or other private work in [Illinois]" that exceeds \$20,000.
 - Excludes primary contractors party to a CBA on the project where the work is being performed, and work performed for a government entity.



Chicago Fair Workweek Ordinance

- **New Employees:** On or before employment begins must provide "good faith" written estimate for the first 90 days, of average weekly days and hours of work, including on-call shifts.
- **Current Employees:**
 - Must post in a conspicuous place (and send electronically upon request) the "work schedule" at least **14 days** before any new schedule begins.
 - Can decline previously unscheduled hours if not given 14 days' notice.
 - Changes made with less than 14 days' notice requires paying one hour of pay to the employee for every impacted shift.
 - Work schedule includes shifts and on-call status of all current covered employees, subject to certain exceptions (e.g., domestic violence victim can request their schedule not be posted or given to other employees).





Questions?

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