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SEPTEMBER 5, 2019

WORKPLACE TRANSPARENCY ACT BRINGS MATERIAL CHANGES TO THE ILLINOIS HUMAN RIGHTS ACT AND OTHER STATUTES

On August 9, 2019, Governor Pritzker signed into law the Workplace Transparency Act (the “WTA”). The WTA is effective on January 1, 2020, except with respect to disclosure requirements which take effect on July 1, 2020. The WTA:

1. Places new limitations on employment agreements and arbitration agreements;
2. Expands the definitions of discrimination, harassment and working environment;
3. Expands application of the Human Rights Act to contractors;
4. Expands definitions of discrimination and harassment;
5. Expands the definition of working environment;
6. Defines employer liability for non-managerial and non-supervisory employees;
7. Expands the definition of violence to include gender;
8. Creates employer disclosure requirements;
9. Bars and restaurants are required to provide a sexual harassment policy to all employees within the first calendar week of the employee’s employment; and
10. Mandates annual sexual harassment prevention training for all employees

EMPLOYMENT AGREEMENTS.

Employers are prohibited from entering agreements with employees that contain non-disclosure and/or non-disparagement provisions relating to claims of harassment or discrimination. Separation and settlement

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agreements may contain such clauses if: the claim arose before the agreement was executed; both parties agree upon the non-disclosure and/or non-disparagement provision; an employee or job applicant has 21 days to consider the agreement before signing; an employee or job applicant has 7 calendar days following signing the agreement to revoke the agreement.

ARBITRATION AGREEMENTS.

Employers are prohibited from employing arbitration agreements in connection with claims of harassment and/or discrimination.

THE DEFINITIONS OF DISCRIMINATION AND HARASSMENT.

In the past, claims for “perceived” discrimination (i.e., discrimination based upon the employer’s perception of a protected characteristic, whether or not the employee actually had that characteristic) was limited to disability claims. The WTA amends the Human Rights Act to prohibit actual or perceived discrimination and/or harassment based upon any protected characteristic under the Act, including race, color, religion, age, sex, disability, national origin, ancestry, order of protection status, military status, sexual orientation, pregnancy, or unfavorable discharge from the military.

CONTRACTORS.

Coverage of the Human Rights Act is expanded to include “non-employees” such as contractors and consultants.

THE DEFINITION OF WORKING ENVIRONMENT.

An actionable “intimidating, hostile or offensive working environment” is no longer limited to the physical location at which an employee is assigned to work.

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LIABILITY FOR NON-MANAGERIAL AND NON-SUPERVISORY EMPLOYEES.

An employer is liable for harassment or sexual harassment of employees and non-employees by non-managerial and/or non-supervisory personnel if the employer becomes aware of the objectionable conduct and fails to take reasonable corrective measures.

THE DEFINITION OF VIOLENCE NOW INCLUDES GENDER.

VESSA (Victim's Economic Security and Safety Act) is amended to require employers to grant leave to employees who are gender violence victims or who have family or household members who are gender violence victims. An employee who is a victim of domestic, sexual or gender violence may take up to 12 weeks of unpaid leave from work during a 12-month period to seek medical help, legal assistance, counseling, safety planning and other assistance without penalty from their employers.

EMPLOYER DISCLOSURE REQUIREMENTS.

Effective July 1, 2020 all employers and any party to a public contract in Illinois are required to report annually to the Illinois Department of Human Rights:

1. The total number of settlements entered into during the preceding year by the employer or corporate executive of the employer that related to an alleged act of sexual harassment or unlawful discrimination.
2. Employers must sort the number of settlements based upon protected characteristics.
3. The total number of adverse judgments or administrative rulings during the preceding year.
4. Whether equitable relief was ordered against the employer in an adverse judgment or administrative ruling.

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5. The total number of adverse judgments or administrative rulings based on protected characteristics.

The reported information may be used by the Department of Human Rights, and presumably the EEOC, to open investigations into pattern and practice violations.

ANNUAL SEXUAL HARASSMENT PREVENTION TRAINING.

Employers are now required to provide annual sexual harassment training to all employees. The Illinois Department of Human Rights has been charged to develop a model training program which will at a minimum:

1. Define sexual harassment.
2. Provide examples of prohibited conduct.
3. Describe an employer's responsibility to prevent, investigate and address sexual harassment.
4. Summarize federal and state laws addressing sexual harassment, including available remedies.

Employers must use the IDHR model or establish a program which exceeds the minimum requirements provided by the model program.

RECOMMENDED ACTIONS:

1. Review all employee agreements (employment agreements, separation and severance agreements, arbitration agreements) and all employment policies related to harassment, sexual and other, leave, violence and discrimination for compliance with WTA.
2. If you have an internal harassment prevention training program, evaluate the same to determine whether it exceeds the minimum requirements set out in WTA.
3. If you do not have an internal harassment prevention training program, review and adopt the IDHR model program or develop or

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purchase a program which exceeds the minimum requirements of the model programs.

4. Prepare to comply with the reporting requirements. Review cases, if any, which have occurred in the last 12 months; prepare a data base which will capture the 5 categories of information to be reported.
5. If you own a bar or restaurant, review your policies regarding harassment, make certain that they fully reflect the requirements of the WTA and deliver a copy to every employee; have them sign a receipt for the same; and, deliver copy and obtain a signed receipt from every new employee within the first week of the employment.

We are informed that the model training program to be developed by the Illinois Department of Human Rights is not yet available. We are informed that the Department has targeted January 1, 2020 for release of the model program.

Steve Filipowski