

In Brief

December 2019

DON'T DROP THE BALL ON THESE NEW YEAR'S DAY LAWS!

Not long after the Times Square Ball drops to ring in the new year, more than 250 new laws will go into effect and create a new legal landscape for Illinois employers to navigate. This legislative update outlines changes coming January 1, 2020 that employers should be aware of. As always, if you have questions about these or any other new legal requirements, please contact your Robbins Schwartz attorney.

I. PUBLIC BOARD GOVERNANCE DEVELOPMENTS

A. Public Act 101-0067: School Board Vacancies

Effective January 1, 2020, most school boards will have more time to appoint a new member when a vacancy occurred. Before Governor Pritzker signed this bill into law, members of school boards in districts with populations of 1,000 to 500,000 had 45 days to fill a vacancy after it occurred. If they failed to fill the vacancy within 45 days, the law then provided that the regional superintendent for the district would appoint a new board member. Under the new legislation, these school boards will have 60 days to appoint a new member instead of 45 days.

B. Public Act 101-0291: Charter School Board Members

This law technically goes into effect January 1, 2020, but it gives charter schools one year of lead time to make sure that their boards of directors or other governing bodies include at least one parent or guardian of a current

student. In addition, charter school board members will have one year from the effective date or from the beginning of their first term, whichever comes later, to complete at least four hours of professional development leadership training on specified subjects. In subsequent years, charter school board members will have to complete at least two years of training.

C. Public Act 101-0233: Municipal OMA Trainings

Elected or appointed members of municipal public bodies will have an additional option for completing their Open Meetings Act training requirements when the new year arrives. Those individuals may satisfy the training requirements by completing an in-person training sponsored or conducted by the Illinois Municipal League.

II. HIRING AND LICENSURE DEVELOPMENTS

A. Public Act 101-0260: Artificial Intelligence Video Interview Act

Artificial intelligence (AI) often consists of highly complex computer programs that “learn” or solve problems by analyzing large, complex amounts of information. At least in theory, an AI may be able to evaluate job candidates by processing thousands of pictures or videos and “learning” to recognize patterns in the facial expressions or body language of more successful applicants.

This Act creates notice and consent requirements that an employer must meet before using AI to analyze video interviews submitted by job applicants. It also limits how employers may share job applicant videos and requires an employer to delete all copies of an applicant's video interviews within 30 days after a job applicant's request. *Consult with legal counsel if such a request is made to ensure compliance with other related laws (e.g., the Local Records Act).*

B. Public Act 101-0187: Police Training and Disqualifying Offenses

The Illinois Police Training Act currently provides that police officers who are convicted of a felony or certain specified misdemeanor offenses must be decertified. As of January 1, 2020, this law amends the Act to provide that police officers who enter a guilty plea to those offenses must also be decertified. This amendment also provides that if an agency hires an officer and the officer fails to complete the required training within six months, the agency shall be prohibited from employing this individual in a law enforcement capacity for one year from the training deadline. A second failure to ensure that the officer is trained will result in the agency being permanently barred from employing that individual in a law enforcement capacity.

C. Public Act 101-0458: School Bus Driver Disqualifying Offenses

This law provides that an applicant for a school bus permit must not have been convicted of committing or attempting to commit within the last 20 years specified Class A misdemeanors under the Cannabis Control Act. It also provides that those applicants cannot be convicted of committing or attempting to commit the following offenses: (1) solicitation or solicitation of murder; (2) permitting sexual abuse of a child; (3) presence or loitering of a

sexual predator or child sex offender in or near a public park; (4) aggravated battery; and (5) use of a dangerous place for the commission of a controlled substance or cannabis offense.

D. Public Act 101-0594: Paraprofessionals and Charter School Content Area Knowledge Tests

Starting in 2020, instead of requiring an associate's degree or a minimum number of higher education credits for a paraprofessional educator endorsement, that endorsement on an Educator License with Stipulations may be issued to an applicant who, among other qualifications, has passed a paraprofessional competency test. In addition, this law requires charter school employees in instructional positions to have passed a content area knowledge test.

E. Public Act 101-0094: Speech Pathologist Licensure

This law clarifies the conditions for issuing a Professional Educator License with a school support personnel endorsement for non-teaching speech-language pathologist. That endorsement will be issued to a speech pathologist with a regular license pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act and a current Certificate of Clinical Competence in speech-language pathology from the American Speech-Language-Hearing Association.

III. WAGE AND INCENTIVE DEVELOPMENTS

A. Public Act 101-0001: Minimum Wage

This law went into effect February 19, 2019, but it makes this list because it raises the Illinois minimum wage to \$9.25 per hour on January 1, 2020. The law also increases penalties for violations of the Illinois Minimum Wage Law: For example, employees paid less than the minimum wage may now

recover triple the amount of their unpaid wages, plus 5% of the amount of the underpayments per month that they remain unpaid. Employers with fewer than 50 employees may blunt the impact of the rising minimum wage with a tax credit, which phases out over time. For more on this law, see our In Brief.

B. Public Act 101-0333: National Board Certification Incentives

The Illinois Teaching Excellence Program will provide new and improved incentives aimed at encouraging more teachers and school counselors in rural or remote districts to obtain National Board certification. Subject to adequate funds, incentives in certain districts now include: up to \$2,000 toward application or retake fees for National Board certification, up to \$3,000 (one time) for National Board certified teachers, up to \$3,000 annually for teachers serving as “candidate cohort facilitators,” and up to \$2,500 annually for serving as a “liaison” who supports such a facilitator.

IV. MENTAL HEALTH

A. Public Act 101-0217: College Mental Health Info

For the 2020-2021 academic year and for each academic year thereafter, a public university or community college district must make available to its students information on all mental health and suicide prevention resources available at the university or community college. See our In Brief on Public Act 101-0251, the *Mental Health Early Action on Campus Act*, for more information on other related obligations that colleges must begin meeting on July 1, 2020.

B. Public Act 101-0350: School Mental Health Training

The Illinois School Code requires in-service training for licensed school

employees who work with K-12 students at least once every two years to help them identify the warning signs of mental illness and suicidal behavior in youth and teach them appropriate intervention and referral techniques. Effective January 1, 2020, this amendment clarifies that a school district may use the Illinois Mental Health First Aid training program, administered by certified instructors, to provide the training. Licensed employees who obtain training outside of an in-service training program may present a certificate of successful completion of the training to the school district.

V. SEXUAL HARASSMENT AND CHILD ABUSE/NEGLECT DEVELOPMENTS

A. Public Act 101-0221: Sexual Harassment Omnibus Law – *Workplace Transparency Act*

The Workplace Transparency Act (“WTA”) prohibits contract terms that would restrict an employee from reporting allegations of unlawful conduct to government officials for investigation. The WTA also limits the use of terms in contracts that would require an employee to waive or limit rights, arbitrate claims, or keep confidential allegations that are related to alleged unlawful employment practices. The WTA includes a fee shifting provision if an employee, prospective employee, or former employee receives a final, non-appealable order in his/her favor on the question of the validity and enforceability of his/her contract under the WTA.

B. Public Act 101-0221: Sexual Harassment Omnibus Law – *Sexual Harassment Victim Representation Act*

The *Sexual Harassment Victim Representation Act* (“SHVRA”) is effective January 1, 2020. This new law is intended to prevent conflicts that

would result from a union representative representing both a victim and a perpetrator in a proceeding brought by one union member against another. In such cases, the union must designate separate representatives to represent the victim and alleged perpetrator.

C. Public Act 101-0221: Sexual Harassment Omnibus Law – Illinois Human Rights Act Amendments

When 2020 arrives, employers need to be aware of significant new obligations under the *Illinois Human Rights Act*. The amendments clarify that unlawful discrimination or harassment includes discrimination based on a *perceived* protected category, not just an *actual* protected category. In addition, employers may be liable for harassment against consultants or contractors, not just for harassment against employees. Beginning July 1, 2020, employers must make annual disclosures of adverse judgments or administrative rulings to the Illinois Department of Human Rights (“IDHR”), but the data they provide will be exempt from disclosure under FOIA. IDHR will also adopt a model sexual harassment prevention training program and make it available to the public. Employers must implement annual training using the IDHR model training program or their own programs that meet the minimum standards set by IDHR.

D. Public Act 101-0221: Sexual Harassment Omnibus Law – State Employees and Officials Ethics Act Amendments

By February 9, 2020, a unit of local government (including school districts and community college districts) that is not subject to a state or local Inspector General must amend its sexual harassment policy to provide a mechanism for reporting and independent review of allegations made against one elected official by another.

E. Public Act 101-0221: Sexual Harassment Omnibus Law – Victims’ Economic Security Act Amendments

Before this amendment, the *Victims’ Economic Security Act* (“VESSA”) allowed an employee to take unpaid leave for certain reasons if he/she was the victim of domestic violence, sexual violence, or general violence, or if he/she had a family member or household member who was a victim. This leave right will now apply to gender violence as well. The length of the entitled leave in a 12-month period varies with the employer’s size: 12 weeks for employers with at least 50 employees; 8 weeks for employers with 15-49 employees; and 4 weeks for employees with 1-14 employees.

F. Public Act 101-0564: Training for Mandated Reporters

This law amends the *Abused and Neglected Child Reporting Act* (“ANCRA”), which requires any mandated reporter to immediately report to the Illinois Department of Children and Family Services (“DCFS”) when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused or neglected child. Failure to report as required by ANCRA can subject a mandated reporter to loss of a professional license and/or to criminal penalties.

These changes allow multiple mandated reporters in the same workplace who share a reasonable cause to believe that a child may be an abused or neglected child to designate one of them to make a single report. They also require mandated reporters to complete an initial training within 3 months of the first time they engage in a professional or official capacity as a mandated reporter and at least every 3 years thereafter. DCFS will develop free web-based training.

VI. CANNABIS LEGALIZATION

A. Public Act 101-0027: *Cannabis Regulation and Tax Act*

Recreational use of marijuana is set to become legal under Illinois law, and adult residents of Illinois age 21 and older will soon be able to legally possess up to 30 grams of cannabis flower, 5 grams of cannabis concentrate, and 500 milligrams of THC in a cannabis-infused product. This sweeping legislation also authorizes the State to issue licenses for growers, processors, and retailers of cannabis and to tax the sale of cannabis products. Registered qualifying medical marijuana patients 21 and older will be able to legally grow up to five cannabis plants without further license and be able to possess cannabis in greater amounts than other Illinois residents.

As is the law currently, employers may still adopt and maintain reasonable and non-discriminatory zero-tolerance drug free workplace policies, including policies preventing possession and use in the workplace and working under the influence. To this end, the law lays out specific and articulable symptoms that an employer may use to determine if an employee is under the influence of cannabis. Employers may also maintain policies regarding drug testing employees. Illinois colleges and universities must continue to comply with federal laws such as the Drug-Free Schools and Communities Act Amendments of 1989, which generally require a college campus to be drug free. *Employers should contact legal counsel to ensure that their policies, procedures, and plans for enforcement are as consistent with both state and federal law as possible.*

B. Public Act 101-0593: *Cannabis Legalization "Clean-up Bill"*

Among other changes to the *Cannabis Regulation and Tax Act*, this amendment clarifies an employer's right to take adverse action against an

employee or prospective employee who tests positive for marijuana. It provides that employers "cannot be sued for actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test." This change suggests that employers can take disciplinary action based on a failed marijuana drug test without fear of being sued under the Act. However, this does not preclude a job applicant or employee from pursuing a cause of action pursuant to other state or federal law.

In addition, this amendment helps to alleviate previous confusion that existed over marijuana drug testing of various public safety positions: "Nothing in this Act prevents a public employer of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters from prohibiting or taking disciplinary action for the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty, unless provided for in the employer's policies."

Employers should contact legal counsel to ensure that their policies, procedures, and plans for enforcement are as consistent with both state and federal law as possible.

VII. PROTECTION OF PRIVATE IMAGES

A. Public Act 101-0385: *Removal of Private Compromising Images Act*

Effective January 1, 2020, this law provides that a person may petition in court for a take-down order if the person discovers that a "private compromising image" of himself/herself is posted online, and is entitled to seek damages. A "private compromising

image” is one that shows the “intimate parts” of an individual who is at least 18 years of age and is identifiable from the image or information displayed in connection with it.

A person may sue: the person who knew or should have known that the plaintiff did not consent to the dissemination and nonetheless intentionally disseminated the image; or the person who owns or operates a website on which the posting of private compromising images is allowed or not removed upon discovery of such images being posted.

B. Public Act 101-0556: *Civil Remedies for Nonconsensual Dissemination of Private Sexual Images Act*

This law creates a civil cause of action for an individual harmed from the intentional dissemination or threatened dissemination, by a person over the age of 18, of a private sexual image without the depicted individual's consent. If liable, damages can be awarded. The depicted individual must be identifiable to a reasonable person. The accused must have known that (1) the depicted individual did not consent to the dissemination; (2) the image was a private sexual image; and (3) the depicted individual was identifiable.

VIII. RESTROOMS

A. Public Act 101-0165: *Gender-Neutral Signage for Single-Occupancy Restrooms*

Effective January 1, 2020 “[e]ach single-occupancy restroom shall be outfitted with exterior signage that marks the single-occupancy restroom as a restroom and *does not* indicate any specific gender.” Unlike some legal requirements for restrooms, this requirement applies to all existing places of public accommodation and public buildings, not just those that will be altered or constructed in the future. An earlier version of the bill that was not

enacted had required signage indicating the restroom was “all-gender” or “gender-neutral,” suggesting that the signage does not need to use those particular terms.

B. Public Act 101-0293: *Restroom Baby Changing Stations*

With certain exceptions, including for schools, public buildings with restrooms that are open and accessible to the public must have at least one safe, sanitary, convenient, and publicly accessible baby diaper changing station that is accessible to both men and women, or one station each for men and women. A public restroom that includes a baby diaper changing station must also include signage indicating its location.

IX. MISCELLANEOUS

A. Public Act 101-0380: *Amendment to the IELRA*

This amendment to the *Illinois Educational Labor Relations Act* (“IELRA”) revises the definition of “educational employee” to no longer exclude graduate students/assistants from coverage under the IELRA.

B. Public Act 101-0527: *Creation of the Worker Protection Unit*

The Office of the Attorney General is getting a new division in 2020. The Worker Protection Unit is being added to intervene in, initiate, enforce, and defend all criminal or civil legal proceedings on matters and violations of Illinois worker protection laws (*e.g.*, wages, safe working conditions, etc.).

C. Public Act 101-0343: *Data Breaches*

The *Personal Information Protection Act* provides various requirements regarding data breaches, which allow the unauthorized acquisition of

personal information. Effective January 1, 2020, this legislation adds a requirement that, if an entity is required to provide notice of a data breach to more than 500 Illinois residents as the result of a single incident, that entity must also provide notice to the Attorney General with certain information. The Attorney General may then publish the name of the entity, the types of personal information that were compromised, and the date range of the breach.