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New Year, New Updates to Employment Laws



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Human Resources & Employment

With 2023 just around the corner, now is the time for employers to prepare for updates and anticipated changes to federal, state and local employment laws. Below is a brief summary of the landscape of changes to employment law for employers in 2023.

What Employers In Chicago Need to Know:

Chicago Expands Required Training for Sexual Harassment Prevention

Employers have until June 30, 2023, to comply with the Chicago Human Rights Ordinance's obligation to provide "bystander intervention" training. For more information on these training requirements, review [this post](#) on Gould & Ratner's *Human Resources Law Blog*.

Chicago Fair Workweek Ordinance Changes Notice Requirements for Schedule Changes

Several changes were made to the Chicago Fair Workweek Ordinance, which became effective July 1, 2022. For more information on which employers are covered and the new notice requirements, see [this post](#) to our *Human Resources Law Blog*.

What Employers in Illinois Need to Know:

Illinois CROWN Act Prohibits Racial Discrimination Based on Hair Styles

Effective January 1, 2023, the CROWN Act, which stands for Create a Respectful and Open Workplace for Natural Hair, becomes law, amending the definition of "race" under the Illinois Human Rights Act to include traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists. Employers should review their grooming and dress code policies before January 1 to ensure compliance.

Illinois Department of Labor Issued Rule to Protect Domestic Workers

In August 2022, the Illinois Department of Labor (IDOL) issued new rules about pay for domestic workers. For further discussion of these changes, please see [this post](#) on our Human Resources Law Blog.

One Day Rest in Seven Act Amendments

The law governing meal periods and rest breaks for employees in Illinois – the One Day Rest in Seven Act (ODRISA) – has been amended in several key aspects which are effective on January 1, 2023.

First, employers are required to provide at least 24 consecutive rest hours within every consecutive seven-day period. Before these amendments, rest periods were compliant if they were provided once within a “work week.” Beginning in 2023, however, employers must provide a rest period within every consecutive seven-day period, regardless of which week the seven-day period starts or ends. Employers may still seek waivers from the Illinois Department of Labor if employees would like to volunteer to work past the seven-day period without a 24-hour rest period.

As for meal periods, ODRISA has long required employers to provide an unpaid 20-minute lunch break within the first 5 hours to all employees who work 7.5 hours or longer. Under the new amendments, employers must now also provide an additional 20-minute lunch break to all employees for every 4.5 hours over the 7.5 hours (i.e., for any employees that work 12 hours or more). Employers are prohibited from treating “reasonable time using the restroom facilities” as a meal period.

Employers are also required to post a notice, provided by the IDOL, summarizing ODRISA’s requirements and providing employees with information on how to file a complaint with the IDOL. Notice can be provided to remote employees by email or posting on the employer’s website.

The amendments also substantially increase the penalties for violations of ODRISA. Such violations can now result in penalties of \$250 per offense for employers with less than 25 employees and \$500 per offense for employers with 25 employees or more. Additionally, each employee impacted by the violation would be entitled to damages of \$250 for employers with less than 25 employees and \$500 for employers with 25 employees or more.

Illinois Expands Eligibility and Reasons for Bereavement Leave

Under the current law, the Child Bereavement Leave Act (CBLA), employers must provide bereavement leave only for the loss of a child. Beginning in January 2023, employers must provide bereavement leave for more qualifying events and for other family members (in addition to a child) under the newly amended Family Bereavement Leave Act (FBLA).

Employers are required to provide 10 days unpaid bereavement leave to employees for the death of family members, “which includes an employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.”

Employees may also take bereavement leave if a covered family member dies, to make funeral arrangements and to attend the funeral; and for any of the following events related to pregnancy or adoption: (i) a miscarriage; (ii) an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer); (iii) a failed adoption match or an adoption that is not finalized because it is contested by another party; (iv) a failed surrogacy agreement; (v) a diagnosis that negatively impacts pregnancy or fertility; or (vi) a stillbirth.

Employees taking bereavement leave must: (1) provide employers with 48 hours of notice unless such notice is not reasonable or practicable; and (2) complete their bereavement leave within 60 days after they receive notice of the qualifying event. If an employee experiences more than one death of a family member, an employee can take up to six weeks of unpaid bereavement leave.

Illinois Established a Minimum Standard for Employee Paid Sick Leave in Collective Bargaining Agreements

Beginning in January 2023, rights under the Employee Sick Leave Act (ESLA) will “serve as the minimum standard in a negotiated collective bargaining agreement.”

Under ESLA, employers are not required to provide paid sick leave to employees. If an employer does provide paid sick leave, however, employees must be permitted to use part of that time for relatives, including “the employee’s covered family member” (defined as the employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild,

grandparent, or stepparent) “on the same terms upon which the employee is able to use personal sick leave benefits for the employee’s own illness or injury.” Such leave may be due to personal illness, injury, medical appointment or for “personal care” of a covered family member to ensure that a covered family member’s basic medical, hygiene, nutritional or safety needs are met, or to provide transportation to medical appointments.

What All Employers Need to Know:

EEOC Released New “Know Your Rights” Poster

In fall 2022, the EEOC released a new “Know Your Rights” poster that employers must post in the workplace. Please read [this post](#) on our Human Resources Law Blog to see what changes have been made to the poster and what employers are expected to do.

DOL Issued Proposed Rule Making It Harder to Qualify as an “Independent Contractor”

In October 2022, the U.S. Department of Labor (DOL) issued a proposed rule about classifying independent contractors under federal wage and hour law. Although the comment period only recently closed, employers should be prepared for these new changes defining who is an independent contractor in 2023.

The proposed rule seeks to overturn the Trump administration’s Independent Contractor Rule, which altered the “economic realities” test, the framework that courts and agencies have historically used to determine whether an individual is an independent contractor.

Before the Trump administration’s rule, courts and agencies would generally consider five to six factors: (1) the nature and degree and control over the work; (2) the worker’s opportunity for profit or loss; (3) the worker’s investment in equipment or materials required for their task; (4) the amount of skill required for the work; (5) the degree of permanence of the working relationship between the worker and the potential employer; and, (6) whether the work is part of an integrated unit of production. Under the Trump administration’s rule, courts and agencies were required to give greater weight to the first two factors, designating them as the “core” factors. If these two core factors were not dispositive, only then should courts consider the other factors (other than the factor addressing a worker’s investment in equipment or materials).

The proposed rule change would restore the totality-of-the-circumstances analysis and would rescind the Trump administration’s approach that gave greater weight to the first two factors of the “economic realities” test. Under the proposed rule, none of the factors listed above “have a predetermined weight and are considered in view of the economic reality of the whole activity.” The proposed rule would also reestablish an individual’s investment in equipment or materials as a standalone factor that should be considered.

DOL Is Expected to Raise Minimum Salary Threshold to Qualify for Exemptions From FLSA Overtime Pay Requirements

The DOL announced in 2022 that it intends to issue new rules about employees exempt from the overtime pay requirement under the Fair Labor Standards Act (FLSA). As background, an employee is exempt from the FLSA’s overtime pay requirements if they qualify for the “white collar” exemption under the statute, which requires a minimum set salary and certain job duties.

The current salary threshold for the exemption is \$684 a week, or nearly \$36,000 a year. The DOL is expected to raise the salary amount required to be considered exempt, but no reports have been made about the specific dollar amount (though estimates have been in the \$800-\$1,000 per week range). Although the details of the proposed rule have not yet been announced, employers should be prepared to review strategies for handling the anticipated increases in the minimum salary requirements to satisfy the exemptions.

If you would like more information or would like to discuss these issues further, please contact a member of Gould & Ratner’s [Human Resources and Employment Law Practice](#).