

## An Expansion of Employer Liability for Harassment is Coming to Illinois

With legalized recreational marijuana in the rear view mirror, Illinois' Governor Pritzker is expected to turn his attention to labor and employment matters. The Illinois General Assembly approved the Workplace Transparency Act ("[Act](#)") this June. Governor Pritzker is expected to sign the legislation soon, and it will become effective January 1, 2020.

Illinois employers will face a changed landscape in the field of harassment. Namely, 1) the definition of discrimination will be expanded, 2) the geographic area where employers may be found liable will be expanded, and 3) employers will be required to protect non-employees in addition to their own employees from harassment.

### **Illinois Human Rights Act is Amended**

#### *Update to Definition of Unlawful Discrimination.*

Currently the definition of unlawful discrimination is "discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service." The Act adds the phrase "actual or perceived" to the beginning of the definition. The new definition will now begin as "unlawful discrimination means discrimination against a person because of his or her actual or perceived: race, color, religion, . . ."

As a practical matter, this broadening of the definition of unlawful discrimination should not make a difference for most employers. However, the concept of legislating against discrimination based on "perception" appears to be borrowed from the Americans with Disabilities Act ("ADA") and it begs the question how many other ADA concepts might be grafted onto the IHRA in the future.

#### *Clarification of what is a "Working Environment."*

The IHRA's current definition of sexual harassment includes reference to an intimidating, hostile or offensive working environment. The definition will now

clarify that a working environment is not limited to a physical location. Accordingly, Illinois employers will have to be more aggressive about managing the off-site activities of their employees.

*Employers Responsible for Harassment of Independent Contractors and Consultants*

Currently, employers are only responsible for protecting their own employees from harassment. The Act will provide that employers are responsible for the harassment of contractors and consultants so long as the employer is aware of the conduct and fails to take reasonable corrective measures. This will create an obvious tension. On the one hand, employers do not “control” the way an independent contract works. Yet, on the other hand, Illinois employers will be incentivized to employ measures to protect contractors from harassment.

*Mandatory Sexual Harassment Prevention Training*

The Act will also require the State to develop and make available online, free of charge, sexual harassment training. All employers will be required to provide the State’s training or sexual harassment prevention training at least once a year.

At a minimum, the sexual harassment prevention training must include an explanation of sexual harassment, examples of prohibited conduct, a summary of applicable laws about sexual harassment, and a summary of employee rights regarding sexual harassment. If an employer does not comply, the employer will be subject to penalties ranging from \$500 to \$5,000 per violation.

*Additional Sexual Harassment Requirements for Restaurants and Bars.*

Restaurants and bars will be required to provide their employees with additional supplemental training under the Act. At a minimum the supplemental training will be required to include specific conduct, activities, and videos related to the industry. The supplemental training will be available in English and Spanish.

**Conclusion**

The Act will change the face of harassment law in Illinois. Employers will have more incentives than ever to train their managers and vigilantly police harassment complaints. Next week we will discuss other changes to employment law set forth in the Act.

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