

Locke Lord QuickStudy: An Overview of Recent Changes to Chicago and Illinois Employment Laws

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The City of Chicago and the State of Illinois have recently amended a number of employment laws. These amendments include: adjustments to Chicago's Human Rights Ordinance addressing sexual harassment; increased penalties under the One Day Rest in Seven Act ("ODRISA"); and expanded leave rights under the Family Bereavement Leave Act. A brief summary of these changes and their practical implications follows.

Amendments to the Chicago Human Rights Ordinance

On April 27, 2022, the Chicago City Council approved an ordinance imposing significant compliance obligations on employers in the city effective on July 1, 2022. The ordinance amends definitions under the Chicago Human Rights Ordinance and requires employers to engage in training and other outreach to employees regarding sexual harassment.

Altered Definitions

The ordinance redefines various terms throughout the Human Rights Ordinance. The changes include:

- Expanding the definition of "Sexual Harassment" to include "unwelcome conduct of a sexual nature" and "sexual misconduct," which is further defined as "any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of any individual's employment position;" and
- Altering the definition of "Sexual Orientation" from "the actual or perceived state of heterosexuality, homosexuality, or bisexuality," to "a person's actual or perceived sexual and emotional attraction, or lack thereof, to another person."

New Compliance Obligations

The ordinance requires every employer to establish a written policy prohibiting sexual harassment by July 1, 2022. That policy must be provided to each employee, in the employee's primary language, within the first calendar week of their employment, and must include at least:

- A statement that sexual harassment is illegal in Chicago;
- The definition of sexual harassment as provided in Section 6-10-020 of the Human Rights Ordinance;
- A requirement that all employees participate in annual sexual harassment prevention training;
- Examples of prohibited conduct constituting sexual harassment;
- Details regarding how individuals can report allegations of sexual harassment;

- Details regarding legal services available to employees who may be victims of sexual harassment; and
- A statement that retaliation for reporting sexual harassment is illegal in Chicago.

Additionally, employers must conspicuously display at least one English and one Spanish poster (as published by the Chicago Commission on Human Relations) about the statutory prohibition against sexual harassment, and against retaliation for reporting harassment, in a location where employees commonly gather.

Furthermore, all employees must annually participate in sexual harassment-related training. This training must include at least one hour of sexual harassment prevention training and one hour of bystander training. Anyone supervising or managing employees must participate in an additional hour of sexual harassment prevention training each year. This means that supervisors must receive a grand total of three hours of annual training. Employers can fulfill the general hour of annual sexual harassment prevention training via the program used in conjunction with their annual Illinois Human Rights Act training obligation.

The Chicago Commission on Human Relations has published templates for sexual harassment and bystander training and the supplemental training for supervisors and managers, along with a model written policy and the required posters.

Failure to comply with the expanded posting, policy, or training requirements could result in a fines ranging from \$500 to \$1,000 per offense, with each day constituting a separate offense.

Increased Penalties

Finally, the ordinance increases the potential range of penalties for discriminatory practices—including sexual harassment. If the Chicago Commission on Human Relations determines that sexual harassment occurred, an employer can face fines of between \$5,000 and \$10,000 per offense, with every day during which the violation continues considered as a separate offense. This is a significant increase from previously-available fines.

Practical Implications

Employers in Chicago should carefully consider how these amendments will impact their businesses, update their policies, and ensure that the required training and postings occur.

ODRISA AMENDMENT

On May 13, 2022, ODRISA was amended (SB3146) to incorporate new requirements for employers and to expand the potential liability of employers for violations of that Act, with the changes to become effective on January 1, 2023.

New Requirements

The amendment revises ODRISA such that affected employees must be afforded at least 24-consecutive hours of rest in every consecutive 7-day period, rather than every calendar week as is currently permitted. The amendment also requires employees working more than 7.5 continuous hours to be allowed a 20-minute meal period for each

additional 4.5 continuous hours worked, in addition to the 20-minute meal period to which they are entitled during their initial 7.5 hours of continuous work. The amendment also requires employers to post a notice (to be published by the Illinois Department of Labor) regarding ODRISA and the right of employees to file complaints of ODRISA violations.

Expansion of Potential Liability

The amendment also dramatically alters employers' potential liability for ODRISA violations. Presently, if an employer is found to have violated ODRISA, it is guilty of a petty offense resulting in a per-offense fine of \$25 to \$100. However, effective January 1, 2023, ODRISA violations will be considered civil offenses, which could expose employers to liability for penalties as well as civil damages payable to the affected employee(s). Specifically, per the amendment, an employer in violation of ODRISA:

- May be liable for a penalty *and* damages of up to \$250, each, per offense, if the employer has fewer than 25 employees; or
- May be liable for a penalty *and* damages of up to \$500, each, per offense, if the employer has 25 or more employees.

Furthermore, per the recent amendment, offenses are determined on an individual basis for each employee whose rights are violated, with:

- Each consecutive 7-day period in which an employee is not allowed 24 consecutive hours of rest constituting a separate offense;
- Each day an employee is not provided a 20-minute meal period during their initial 7.5 hours of continuous work, or an additional 20-minute meal period during each additional 4.5 continuous hours worked, constituting a separate offense; and
- Failure to post the required ODRISA notice constituting a single offense resulting in a \$250 penalty.

Practical Implications

Illinois employers should review their scheduling and meal period practices and update them, where necessary, to ensure ODRISA compliance before the amendment's January 1, 2023 effective date. Employers should anticipate the possibility of increased ODRISA claims in 2023 and beyond in light of the greatly expanded penalties under the law.

Family Bereavement Leave Act

The Family Bereavement Leave Act—a June 9, 2022 amendment to the Child Bereavement Leave Act—will become effective January 1, 2023 and will expand employees' rights to unpaid leave.

Expanded Leave Rights

The Family Bereavement Leave Act allows employees to take unpaid leave associated with the death of a "covered family member," defined as "an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent." This definition significantly expands the scope of Illinois's statutory bereavement leave, which was previously limited to instances where employees

experienced the death of a child. The Family Bereavement Leave Act also extends unpaid leave to employees experiencing loss of pregnancy, failed adoption or surrogacy, or a diagnosis that negatively impacts pregnancy or fertility.

Specifically, employees experiencing a death or other event covered by the Family Bereavement Leave Act are entitled to up to 10 work days of unpaid leave, to be completed within 60 days after the employee receives notice of the death or covered event. Employees must provide their employer at least 48 hours' advanced notice of their intent to take leave under the Act, unless doing so is not reasonable and practicable. Employers may require employees to provide reasonable documentation to substantiate the need for leave. Employees who experience more than one event qualified for leave under the Act during a 12-month period are entitled to up to a total of six weeks of bereavement leave during that period.

Practical Implications

Many employers already provide some form of paid or unpaid leave for bereavement, but generally not anywhere near the 10 work days of leave that will now be required under Illinois law. Most employers also do not provide bereavement leave for the deaths of as wide a range of relations as the Illinois law now requires (e.g., most employer bereavement leave policies do not cover leave for the death of a parent-in-law). It will be interesting to see the extent to which employees avail themselves of this greatly expanded leave opportunity given that the leave is unpaid. Employers will need to prepare for the unexpected absences of employees for significant periods of time once the new law takes effect.

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