

Illinois

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

In 2014, Illinois enacted amendments to the Illinois Human Rights Act (“Act”) designed to promote the rights of pregnant women in employment. The Illinois Department of Human Rights has issued new rules on pregnancy discrimination and accommodation in employment intended to implement and amplify the provisions of the law.

Reasonable Accommodation

The Act requires employers to provide reasonable accommodations to a pregnant applicant or employee affected by pregnancy, childbirth, or related medical or common conditions upon her request for such accommodations. The new rules require employers to respond to an employee’s or job applicant’s requests for accommodation of a pregnancy-related condition in a timely manner. An employer’s undue delay may constitute a failure to provide a reasonable accommodation.

Interactive Process

The Act requires that the employer and job applicant or employee engage in a timely, good-faith, meaningful, exchange to determine the effective reasonable accommodation. The new rules state that if the employer determines that the requested accommodation will impose an undue hardship, then the employer should explore whether there are any less restrictive alternative accommodations including a temporary transfer, reassignment, or job restructuring.

The Act further provides that an employer may not require the job applicant or employee to accept the alternative accommodation. However, the new rules clarify that a job applicant’s or employee’s refusal to accept an alternative accommodation may signify that the job applicant or employee is not participating in good faith in the interactive process. Finally, any requests to modify a previous reasonable accommodation request should be considered as a new or independent request.

Temporary Transfer or Reassignment as an Accommodation

The Act lists examples of temporary accommodations that may allow a pregnant job applicant or employee to work, including:

- A transfer to a less strenuous or less hazardous position;
- A transfer to a vacant position;
- Restructuring of the position sought or held; and
- A transfer to a part-time position or part-time status.

The new rules provide that if the rate of pay of the position that the employee or job applicant is transferred to is higher than that of her current position, the employer must pay the rate of the position to which the job applicant or employee transfers. If the rate of pay is lower, the employer may pay the lower rate, but must show that the change in pay is justified and consistent with the

change in job duties, schedule, or employment status. However, the employer may not reduce fringe benefits unless the employer can prove an undue hardship.

Time Off or Leave as an Accommodation

An employee who took pregnancy-related protected time off or a leave of absence shall be reinstated to her original job or an equivalent position upon her return. The pay and benefits should be equivalent to what the employee was receiving as of the date the employee went on leave. An employer is not required to provide paid leave unless the employer is required by other laws or does so for other classes of employees. An employer is also not required to provide any paid time off benefits that would have otherwise accrued during the leave of absence.

Advance Notice

The new rules require that the employee give the employer prior notice of expected time off that is foreseeable, unless the employer would not require prior notice from other classes of employees. If the time off or leave is based on a foreseeable medical treatment, the job applicant or employee must make a reasonable effort to schedule the treatment so that it does not unduly disrupt the operations. If the time off is not foreseeable, the employee or applicant must provide notice to the employer as soon as possible.

Employer Notice

The Act requires that an employer post a notice in a conspicuous location in the workplace that summarizes an employee's rights and obligations under the law. An employer must also include in any employee handbook information concerning a job applicant's or employee's rights regarding pregnancy accommodation. The notice ([link is external](#)) is available on the Department's website.

The new rules also include provisions for assessing undue hardship, and determining discrimination and retaliation on the basis of pregnancy. The GPS summary of the 2014 pregnancy accommodation provisions of the Human Rights Act appears [here](#).

56 Ill. Adm. Code 2535 (Effective Date 11/04/2015).

II. Pre-Employment Inquiry Guidelines

A. Voluntary Veterans' Preference

Illinois has enacted a law that creates a voluntary veterans' preference to be applied in hiring, promotion and retention decisions. Under the Veterans' Preference in Private Employment Act, a private employer may adopt an employment policy that gives preference to a military veteran and his or her relatives. The new law does not define what an eligible relative is for purposes of receiving the preference. The policy must be in writing and posted publicly at the place of employment or on the employer's website. The employer's job application must inform all applicants of the veterans' preference policy and where the policy can be obtained. The policy must be applied consistently to all decisions regarding hiring and promotion. The law defines "veteran" as a person who:

- Served on active duty in the armed forces for more than 180 days and was discharged or released with an honorable discharge;
- Was discharged or released from active duty due to a service-connected disability; or

- Is a member of the Illinois National Guard who was never deployed but separated under an honorable discharge.

An employer may require a veteran to submit a Department of Defense DD214/DD215 form, also known as a report of separation, in order to be eligible to receive the preference.

The new law also amends the Illinois Human Rights Act to provide that the Human Rights Act does not prevent an employer from giving preferential treatment to a veteran or his or her relatives pursuant to a veterans' preference policy authorized under the Veterans' Preference in Private Employment Act.

330 ILCS 56/1 et. seq. The amendment to the Human Rights Act appears at chapter 775, section 2-104(A)(2)(Effective Date 01/01/2016).

B. Military Recruiting Incentive Programs

The Illinois Human Rights Act ("Act") permits an employer to give preferential hiring treatment to veterans and their relatives. The Act also allows an employer to use an applicant's unfavorable discharge from the military as a valid employment criterion in certain circumstances. New amendments to this law clarify that an employer may participate in a bona fide recruiting incentive program sponsored by a branch of the United States Armed Forces, a reserve component of the United States Armed Forces, or any National Guard or Naval Militia, where participation in the program is limited by the sponsoring branch based upon the service member's discharge status.

775 ILCS 5/2-104 (Effective Date 07/28/2015).

III. Family and Medical Leave

A. Child Bereavement Leave

Illinois enacted the Child Bereavement Act to provide eligible employees with protected time off to:

- Attend their child's funeral or alternative to a funeral;
- Make arrangements necessitated by the death of the child; or
- Grieve the death of a child.

Under this Act, a child means an employee's son or daughter who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

The Act borrows the definitions of "employee" and "employer" from the federal Family and Medical Leave Act. Thus, employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year are subject to the law. Eligible employees are those with 12 months of service, who worked at least 1,250 hours during the 12-month period prior to the leave, and who work at a location where at least 50 employees are employed by the employer within 75 miles.

The leave must be completed within 60 days of the date that the eligible employee receives notice of the child's death. An employee shall provide the employer with at least 48 hours' notice of the employee's intent to take the bereavement leave, unless notice is not reasonable or practicable. The employer may require reasonable documentation, including but not limited to a published obituary, death certificate, or written verification of death, burial,

or memorial service from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. In the event of the death of more than one child in a 12-month period, an employee is entitled to up to 6 weeks of bereavement leave during a 12-month period.

Bereavement leave is unpaid. However, the employee may use any accrued paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program to substitute for an equivalent period of bereavement leave.

It is an unlawful employment practice for an employer to take adverse action against an employee for exercising or attempting to exercise his or her rights under this law. The Act provides for a private right of action by an employee alleging a violation of its terms. In addition, a violation of this Act can result in civil penalties.

820 ILCS 154/10 (Effective Date 07/29/2016).

B. Personal Sick Leave Benefits

Illinois enacted the Employee Sick Leave Act to permit an employee to use his or her employer-provided personal sick leave benefits to care for a family member. Accordingly, an employee may use accrued personal sick leave benefits to take time off for an illness, injury, or medical appointment of the employee's child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. The Act defines personal sick leave benefits as time accrued and available to an employee to be used as a result of absence from work due to personal illness, injury, or medical appointments, but does not include absences from work for which compensation is provided through an employer's plan. However, an employer that has an existing paid time off policy that would otherwise provide family care benefits as required under the Act is not required to modify its paid time off policy.

The Act provides that an employee may be absent for reasonable periods of time and on the same terms that the employee is able to use the sick leave benefits under the employer's policy for the employee's own illness or injury. In addition, the Act provides that an employer may not limit the use of sick leave benefits for family care to an amount less than the personal sick leave that would accrue during six months at the employee's then current rate of entitlement.

The Act does not prevent an employer from providing more generous family care benefits than those provided under the Act. In addition, the Act clarifies that it does not extend the maximum period of leave to which an employee is entitled under the federal Family and Medical Leave Act, regardless of whether the employee receives sick leave compensation during that leave.

The Act prohibits an employer from retaliating against an employee by discharging, threatening to discharge, demoting, suspending, or in any manner discriminating against an employee for:

- using personal sick leave benefits,
- attempting to exercise the right to use personal sick leave benefits,
- filing a complaint with the Illinois Department of Labor or alleging a violation of the Act,

- cooperating in an investigation or prosecution of an alleged violation of the Act, or
- opposing any policy or practice or act that is prohibited by the Act.

820 ILCS 191/5 (Effective Date 01/01/2017).

C. Victims' Economic Security and Safety Act

The Illinois Victims' Economic Security and Safety Act provides unpaid leave to an employee when an employee or an employee's family or household member is a victim of domestic or sexual violence. Employers with 15-49 employees must provide a total of eight weeks of leave during any 12-month period; employers with 50 or more employees must provide a total of 12 weeks of leave during any 12-month period. The amendments expand the coverage of the Act to employers with fewer than 15 employees. Accordingly, employers with 1-14 employees must provide a total of four weeks of leave during any 12-month period.

Employees may use this leave to:

- seek medical attention or recover from injuries caused by domestic or sexual violence;
- obtain services from a victim services organization or counseling;
- participate in safety planning or relocating; and
- seek legal assistance.

820 ILCS 180/10 820 ILCS 180/20 (Effective Date 01/01/2017).

D. Child Bereavement Leave

Illinois enacted the Child Bereavement Act to provide eligible employees with protected time off to:

- Attend their child's funeral or alternative to a funeral;
- Make arrangements necessitated by the death of the child; or
- Grieve the death of a child.

Under this Act, a child means an employee's son or daughter who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

The Act borrows the definitions of "employee" and "employer" from the federal Family and Medical Leave Act. Thus, employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year are subject to the law. Eligible employees are those with 12 months of service, who worked at least 1,250 hours during the 12-month period prior to the leave, and who work at a location where at least 50 employees are employed by the employer within 75 miles.

The leave must be completed within 60 days of the date that the eligible employee receives notice of the child's death. An employee shall provide the employer with at least 48 hours' notice of the employee's intent to take the bereavement leave, unless

notice is not reasonable or practicable. The employer may require reasonable documentation, including but not limited to a published obituary, death certificate, or written verification of death, burial, or memorial service from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. In the event of the death of more than one child in a 12-month period, an employee is entitled to up to 6 weeks of bereavement leave during a 12-month period.

Bereavement leave is unpaid. However, the employee may use any accrued paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program to substitute for an equivalent period of bereavement leave.

It is an unlawful employment practice for an employer to take adverse action against an employee for exercising or attempting to exercise his or her rights under this law. The Act provides for a private right of action by an employee alleging a violation of its terms. In addition, a violation of this Act can result in civil penalties.

820 ILCS 154/1, 820 ILCS 154/5, 820 ILCS 154/10, 820 ILCS 154/15, 820 ILCS 154/20, 820 ILCS 154/25, and 820 ILCS 154/30 (Effective Date 07/29/2016).

IV. Wage and Hour Laws

A. Equal Pay Act Amendments

Amendments to the Illinois Equal Pay Act of 2003 (the "Act") expand the law's coverage and increase penalties for noncompliance. Prior to the amendments, the Act prohibited employers with four or more employees from paying unequal wages to male and female employees for doing the same or substantially similar work unless the difference in pay is based on a seniority system, merit system, or a system measuring earnings by quantity or quality of production. An employer who violated the Act was subject to a penalty of up to \$2,500 for each affected employee.

The amendments change the employer coverage threshold such that the Act now applies to all employers regardless of the number of employees they have. In addition, the amendments increase the penalties for employers who violate the Act. The new law fines employers with fewer than four employees up to \$500 per affected employee for the first offense, \$2,500 per affected employee for the second offense, and \$5,000 per affected employee for the third or subsequent offense. Employers with four or more employees are fined up to \$2,500 per affected employee for the first offense, \$3,000 per affected employee for the second offense, and \$5,000 per affected employee for the third or subsequent offense.

820 ILCS 112/5 and 820 ILCS 112/30 (Effective Date 01/01/2016).

B. Wage Assignments

Illinois requires certain written procedures be followed when a portion of an employee's wages is assigned to a creditor. New amendments to the Illinois Wage Assignment Act:

- permit a creditor to serve its demand for wages on an employer via first class, registered, or certified mail;
- clarify that if the wage assignment is revocable under federal law, it is only valid until the employee revokes it;

- amend the “Notice of Intent to Assign Wages” form to include additional information about the revocability of assignments, where applicable; and
- provide procedures the employee must follow to revoke an assignment.

The employer must commence payments to a creditor not sooner than five days after it receives notice of a demand if it has not received a revocation. If the employer receives a notice of revocation from the employee, it must stop any deductions in place for that wage assignment unless the employer receives a copy of a subsequent written agreement between the employee and creditor that reauthorizes the assignment.

740 ILCS 170/2, 740 ILCS 170/2.1, 740 ILCS 170/2.2, and 740 ILCS 170/4.1, and 740 ILCS 170/4.2 (Effective Date 01/01/2017).

C. Overtime Exemption for Certain Union Employees

Illinois has expanded the list of individuals who are exempt from state overtime laws to include an employee who is a member of a bargaining unit recognized by the Illinois Labor Relations Board and whose union has contractually agreed to an alternate shift schedule as allowed by the federal Fair Labor Standards Act (29 U.S.C. § 207(b)).

820 ILCS 105/4a (Effective Date 01/01/2016).

V. Drug Testing

Illinois enacted the Compassionate Use of Medical Cannabis Pilot Program Act in 2013. The amended law adds post-traumatic stress disorder and terminal illnesses with a diagnosis of six months or less to the list of debilitating medical conditions that would qualify a patient to lawfully use medical cannabis. The amendments clarify that medical cannabis cardholders are not considered unlawful drug users solely because of their qualification as a patient or designated caregiver under the Act. The amended law also clarifies that medical cannabis products purchased by a qualifying patient at a licensed dispensing organization are lawful.

Patients must have a physician’s written certification as part of the qualification process under the Act. The amendments eliminate the need for a physician to state in a written certification that it is the physician’s professional opinion that the patient is likely to receive therapeutic or palliative benefit from the medical use of cannabis. Instead, the physician must state that he or she is treating or managing treatment of the patient’s debilitating medical condition.

The amendments make several administrative changes to the Act, including amending the procedure by which additional medical conditions are added to the covered list of debilitating conditions, providing for fingerprinting and tracking of patient identification by the Illinois Prescription Monitoring Program, and increasing the time period for expiration of registry cards to every three years. The Act is set to expire on July 1, 2020.

410 ILCS 130/5, 410 ILCS 130/7, 410 ILCS 130/10, 410 ILCS 130/15, 410 ILCS 130/35, 410 ILCS 10/45, 410 ILCS 130/57, 410 ILCS 130/60, 410 ILCS 130/70, 410 ILCS 130/75, and 410 ILCS 130/220 (Effective Date 06/30/2016).

VI. Noncompete and Other Employment Agreements

Illinois has enacted the Freedom to Work Act to prohibit an employer from entering into a covenant not to compete with an employee who earns an hourly rate equal to the federal, state, or local minimum wage or \$13, whichever is greater. The Act uses the definition of “employer”

from the Illinois Minimum Wage Act; thus, for purposes of the new law, an employer is any individual, partnership, association, corporation, limited liability company, business trust, governmental or quasi-governmental body, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons are gainfully employed on some day within a calendar year. The Act provides that a covenant not to compete entered into between an employer and a low-wage employee is illegal and void.

A covenant not to compete is defined as an agreement between an employer and a low-wage employee that restricts the employee from performing work:

- for another employer for a specified period of time;
- in a specified geographical area; or
- for another employer that is similar to such low-wage employee's work for the employer included as a party to the agreement.

820 ILCS 90/5 (Effective 01/01/2017).

VII. Workplace Safety

Illinois has amended its medical marijuana laws to provide that, in addition to private health insurers, employers and property and casualty insurers are not required by the law to reimburse a person for costs associated with medical marijuana use.

410 ILCS 130/40 (Effective Date 01/01/2016).

VIII. Workers' Compensation

The Illinois Employee Leasing Company Act requires any entity that leases any of its workers to a lessee through an employee leasing arrangement to maintain accounting and employment records relating to all employee leasing agreements for a minimum of four calendar years. In addition, the law requires a lessor to:

- maintain sufficient information in a manner consistent with a licensed rating organization's submission requirements;
- provide a lessee's experience modification factor within 30 days of a written request of a lessee with an annual payroll in excess of \$200,000;
- provide loss information to the lessee within 30 days of a written request of a lessee with an annual payroll of less than \$200,000.

The law also provides that if a lessee's experience modification factor exceeds the lessor's experience modification factor by 50% at the inception of the employee leasing arrangement, the lessee's experience modification factor must be utilized to calculate the premium or costs charged to the lessee for workers' compensation coverage for two years. After the two-year period, the premium charged by the insurer may be calculated on the basis of the lessor's experience modification factor.

The new law amends the Act to exempt lessors that do not provide workers' compensation insurance coverage for leased employees from compliance with the above requirements, with one exception. Such lessors must still maintain accounting and employment records relating to all

employee leasing agreements for at least four calendar years. In addition, the amendment provides that either a lessor or lessee may provide workers' compensation insurance coverage for leased employees under an employee leasing agreement, and requires the lessor to notify the Illinois Department of Insurance of the coverage where the coverage has been provided by the lessee.

215 ILCS 113/25 and 215 ILCS 113/30 (Effective Date 01/01/2017).

IX. Miscellaneous

A. Illinois Private Employment Agency Act Amendments

The Illinois Private Employment Agency Act requires employment agencies to register with the state Department of Labor ("Department") and obtain a business license in order to operate within the state. This amendment provides that an employer cannot accept a referral of an individual from an employment agency if the employment agency is not licensed by the Department.

An "employment agency" is any person, firm, association, partnership, limited liability company, association, corporation, or other legal entity or its legal representatives, agents, or assigns engaged for gain or profit in the business of placing, referring, securing or attempting to secure employment for persons seeking employment, or in finding employees for employers. This definition does not include anyone who consults and recruits and is compensated solely by an employer to identify, appraise, or recommend individuals and is not compensated in any way by the individual who is identified, appraised, or recommended.

The amended law provides further that an employment agency must give its employer clients proof of a valid license at the time a contract between the employment agency and the employer is entered into. The employment agency must also notify all employer clients within 24 hours of any denial, suspension, or revocation of its license. All contracts between the employment agency and employer for services provided by the employment agency are considered null and void as of the effective date of denial, suspension, or revocation of the employment agency's license and remain null and void until the employment agency is licensed and in good standing with the Department.

The Department maintains a list of entities licensed as employment agencies. Employers may rely on this list, which is published on the Department's website, to verify licensure. A first violation for accepting a referral from an unlicensed agency will result in a notice issued to the employer by the Department. Second, subsequent, and unaddressed violations will result in monetary penalties.

222 ILCS 515/1, 222 ILCS 515/3, 222 ILCS 515/11, 222 ILCS 515/12 and 222 ILCS 515/1.5, 222 ILCS 515/12.2, 222 ILCS 515/12.4, 222 ILCS 515/12.5, 222 ILCS 515/12.5, and 222 ILCS 515/12.6 (Effective Date 01/01/2016).

B. Infertility Coverage

An amendment to Illinois insurance law expands the scope of infertility coverage. The Illinois Insurance Code provides that group accident and health insurance policies covering more than 25 employees that provide pregnancy-related benefits must contain coverage for the diagnosis and treatment of infertility. Prior to the amendment, the applicable law defined "infertility" as the inability to conceive after one year of unprotected sexual intercourse or the inability to sustain a successful pregnancy. This amendment extends the definition of infertility to include the inability to conceive after one year of attempts to produce conception or the inability to conceive after an individual is diagnosed with a condition affecting fertility.

Prior to the amendment, coverage for in vitro fertilization, gamete intrafallopian tube transfer, or zygote intrafallopian tube transfer was required only if the covered individual was unable to attain or sustain a successful pregnancy through reasonable, less costly covered treatments. This amendment extends coverage for these procedures to individuals who are unable to attain a viable pregnancy or maintain a viable pregnancy.

215 ILCS 5/356m (Effective Date 01/01/2016).

C. Human Trafficking Posting

A new law provides that certain businesses must post a notice concerning human trafficking. Employers must conspicuously display the notice on their premises. The requirement to post notice is limited to the following Illinois businesses:

- Premise where the sale of alcohol is the principal business
- Adult entertainment facilities
- Primary airports
- Intercity passenger rail or light rail stations
- Bus stations
- Truck stops
- Hospital emergency rooms
- Urgent care centers
- Farm labor contractors
- Privately-operated job recruitment centers

The notice shall be printed in English, Spanish, and in one other language that is the most widely spoken language in the county where the establishment is located. The law does not require a business or other establishment in a county where a language other than English or Spanish is the most widely spoken language to print the notice in more than one language in addition to English and Spanish.

775 ILCS 50/5, 775 ILCS 50/10, 775 ILCS 50/15, and 775 ILCS 50/20 (Effective Date 01/01/2016).

D. National Guard Reemployment Rights

The Illinois Service Member's Employment Tenure Act protects servicemembers' right to reinstatement to private employment after the period of military service is completed. This amendment extends the leave of absence and reinstatement protections to members of the National Guard who are called into active duty by the Illinois governor or a governor of any other state.

The Illinois Service Member's Tenure Act provides that in order to be eligible for reinstatement, the employee must meet all of the following requirements:

- The employee received a certificate or other evidence of honorable discharge or satisfactory completion of his or her military service.
- The employee is still qualified to perform the duties of the position of his or her previous employment.
- The employee applied for re-employment within 90 days after release or within one year after discharge from a hospital.

An employer must restore a former full-time employee to his or her former position or to a position of similar seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. If the employee is no longer qualified due to a disability sustained during service but is qualified to perform duties of another position, the employer must offer the employee the alternative position. The employee must also receive similar seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

330 ILCS 60/3 (Effective Date 07/21/2015).

E. Employer Access to Social Media Accounts

The Right to Privacy in the Workplace Act prohibits an employer from requesting or requiring an employee or prospective employee to provide any password or other related account information in order to gain access to the employee's or prospective employee's social networking account, or to demand access to an employee's or prospective employee's social networking account. This amendment strengthens the protections under the Act by placing greater restrictions on an employer's ability to access an employee's or applicant's online accounts. Specifically, the amendment prohibits an employer or prospective employer from:

- requesting, requiring, or coercing any employee or prospective employee to provide a user name and password or other related account information to his or her personal online account;
- demanding access in any manner to an employee's or prospective employee's personal online account;
- requesting, requiring, or coercing an employee or applicant to authenticate or access a personal online account in the presence of the employer;
- requiring or coercing an employee or applicant to invite the employer to join a group affiliated with any personal online account of the employee or applicant;
- requiring or coercing an employee or applicant to join an online account established by the employer or add the employer or an employment agency to the employee's or applicant's list of contacts that enable the contacts to access the employee or applicant's personal online account; or
- discharging, disciplining, discriminating against, retaliating against, or otherwise penalizing an employee or failing or refusing to hire an applicant as a result of his or her refusal to: •provide the employer with a user name and/or password, or any other authentication means for accessing a personal online account;
- authenticate or access a personal online account in the presence of the employer;
- invite the employer to join a group affiliated with the applicant's or employee's personal online account; or
- join an online account established by the employer.

Further, the amendments make it unlawful for an employer to retaliate against an employee or applicant for filing or causing to be filed any complaint, whether orally or in writing, with a public or private body or court alleging the employer's violation of the Act.

The amendment defines a "personal online account" as an online account that is used by a person primarily for personal purposes and does not include an account created, maintained, used, or accessed by a person for a business purpose of the person's employer or prospective employer.

The amendment clarifies that an employer must comply with the requirements under Illinois insurance laws or federal law or by a self-regulatory organization to screen employees or applicants prior to hiring. The employer must also comply with any applicable legal requirements to monitor or retain employee communications, provided that the password, account information, or access only relates to an online account that an employer supplies or pays for or an employee creates or maintains on behalf of or under direction of an employer in connection with that employee's employment.

In addition, the amendments preserve an employer's ability to request or require an employee or applicant to share specific content that has been reported to the employer, without requesting or requiring them to provide a user name and/or password, or other means of authentication that provides access to an employee's or applicant's personal online account, in order to:

- ensure compliance with applicable laws or regulations;
- investigate an allegation, based on receipt of specific information, of the unauthorized transfer of an employer's proprietary or confidential information or financial data to an employee or applicant's personal account;
- investigate an allegation, based on receipt of specific information, of a violation of applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct;
- prohibit an employee from using a personal online account for business purposes; or
- prohibit an employee or applicant from accessing or operating a personal online account during business hours, while on business property, while using an electronic communication device supplied or paid for by the employer, or while using the employer's network or resources, to the extent permissible under applicable laws.

An employer is not liable for inadvertently receiving the username, password, or any other information that would enable the employer to gain access to the employee's or potential employee's personal online account, unless the employer:

- uses that information, or enables a third party to use that information, to access the personal online account;
- does not make reasonable efforts to secure information that is likely to be inadvertently received and the employer is aware or should be aware that the information is likely to be inadvertently received; or
- does not delete the information as soon as reasonably practicable.

725 ILCS 168/5 and chapter 820 ILCS 55/10 (Effective Date 01/01/2017).

F. Environmental Barriers Act

The Illinois Environmental Barriers Act seeks to eliminate barriers to individuals with disabilities. The amendments clarify that the Act generally applies to public facilities constructed after May 1, 1988. The amendments change references from "environmentally limited persons" to "individuals with disabilities" and add several new definitions, including:

- Disability—a physical or mental impairment that substantially limits one or more major life activities; a record or history of such impairment; or regarded as having an impairment.
- Accessible—a site, building, facility, or portion thereof is deemed accessible if it complies with the Illinois Accessibility Code.
- Facility—all or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site.
- Primary function area—an area of a building or facility containing a major activity for which the building is or facility is intended. There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas.
- Public—any group of people who are users of the building or employees of the building but do not include those employed by the owner of a building for the sole purpose of construction or alteration of a building during the time in which the building is being constructed or altered.

The amendments require that any alteration of a public facility must comply with the Illinois Accessibility Code provisions governing alterations as such provisions exist at the time the alteration commences. In addition, any alteration that affects or could affect the usability of or access to an area containing a primary function must be made to ensure that, to the maximum extent feasible, the paths of travel to the altered area are readily accessible to and usable by individuals with disabilities. However, this is not required if the cost of the alterations to provide an accessible path of travel to the primary function area exceeds 20 percent of the cost of the overall alteration, or such alterations are otherwise disproportionate to the overall alterations in terms of cost and scope as set forth in the Code.

Finally, the amendments impose penalties for violations of the Act. Any owner of a public facility in violation of the Act is subject to civil penalties not to exceed \$250 per day. In addition, each day the owner is in violation constitutes a separate offense. A public facility continues to be in violation of the Act and the Illinois Accessibility Code following construction or alteration for as long as the public facility is not in compliance with the Act and the Code.

410 ILCS 25/2, 410 ILCS 25/3, 410 ILCS 25/4, 410 ILCS 25/5, 410 ILCS 25/6, and 410 ILCS 25/8 (Effective Date 01/01/2017).

G. Data Security Breach Notification

Illinois' Personal Information Protection Act requires an individual or entity with personal information to provide notice of a data security breach to affected individuals in the most expedient time possible and without unreasonable delay following the discovery or notification of a breach. This amendment modifies statutory definitions, provides for changes to the method of notification, requires notification to law enforcement, and imposes data safeguarding obligations on covered entities.

The statute defines personal information as an individual's first initial and last name in combination with the following data elements:

- Social Security number.
- Driver's license number or state identification card number.

- Account number or credit and debit card number.

The amendment expands this definition to include a user name or email address in combination with a password or security question and answer that would permit access to an online account. The amendment also adds the following data elements to the definition of personal information:

- Medical information.
- Health insurance information.
- Unique biometric data generated from measurements or technical analysis of human body characteristics.

“Health insurance information” is defined as an individual’s health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any medical information in an individual’s health insurance application and claims history, including any appeals records. “Medical information” means any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a healthcare professional, including such information provided to a website or mobile application.

Additionally, the amendment requires that notice be provided in electronic or other form directing affected residents to promptly change their online account user names or passwords and security questions or answers.

The law requires covered entities to provide notice by mail or electronic notice. The amendment allows for substitute notice to prominent local media in areas where affected individuals are likely to reside if such notice is reasonably calculated to give actual notice to persons for whom notice is required, if the breach impacts residents in one geographic area.

The statute requires a covered entity to notify affected individuals in the event of a data security breach. The amendment adds a requirement that the breach must also be reported to the state attorney general if more than 250 Illinois residents are among those affected.

The statute defines a “data collector” to include government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic personal information. The amendment imposes an obligation on data collectors that own or license personal information, or that maintain or store records that contain personal information, to implement and maintain reasonable security measures to protect that data from unauthorized access, acquisition, destruction, use, modification, or disclosure.

815 ILCS 530/5, 815 ILCS 530/10, 815 ILCS 530/12, 815 ILCS 530/45, and 815 ILCS 530/50 (Effective Date 01/01/2017).

H. Automatic Retirement Savings Program

The Illinois Secure Choice Savings Program Act (“Program”) establishes a retirement savings program in the form of an automatic enrollment payroll deduction IRA intended to promote greater retirement savings for private-sector employees in a “convenient, low-cost, and portable manner.” The Program calls for implementing the Illinois Secure Choice Savings Fund, a trust that will include enrolled employees’ individual retirement accounts (IRAs). Enrollee IRAs will be considered individual accounts within the Fund, and amounts in the

Fund will consist of contributions received from enrollees and participating employers through automatic payroll deductions. Funds in the trust are wholly separate from the state treasury: these funds are not property of the state and cannot be commingled with state funds. The Program will be administered by the Illinois Secure Choice Savings Board (“Board”).

The new law requires the Program to be implemented within 24 months of its effective date, i.e., no later than June 1, 2017. If the Board does not secure sufficient funding to implement the Program within 24 months, implementation may be delayed. Enrollment of employees will begin at the time the Program is implemented.

Covered Employers

The new law defines “employer” as a person or entity engaged in a business, industry, profession, trade, or other enterprise in Illinois, whether for profit or not for profit, that

1. has at no time during the previous calendar year employed fewer than 25 employees in Illinois,
2. has been in business for at least 2 years, and
3. has not offered a qualified retirement plan, including but not limited to a plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code of 1986 within the preceding 2 years.

Small employers may also participate in the Program if they notify the Illinois Department of Revenue of their desire to participate. A small employer is one that employed fewer than 25 employees in Illinois at any one time during the previous calendar year, or has been in business for less than 2 years, or both.

Note that the new law gives employers the option at any time to set up any type of employer-sponsored retirement plan (e.g., a 401(k) or a SEP plan), or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the Program.

Employer Obligations

Upon implementation of the Program, employers must complete the following requirements:

- Employers must establish a payroll deposit retirement savings arrangement to allow employees to participate in the Program within 9 months after the Board opens the Program for enrollment.
- Employers must automatically enroll in the Program all employees who have not opted out of participation.
- For employees who do not opt out, employers must provide payroll deduction retirement savings arrangements for such employees and deposit funds into the Program on behalf of the enrolled employees.
- Small employers may, but are not required to, provide payroll deduction retirement savings arrangements for each employee who elects to participate in the Program.
- Employers must designate an open enrollment period at least once per year to allow non-participating employees to opt in.

The new law also provides that participating employers will not have any liability for an employee's decision to participate in or opt out of the Program, for the investment decisions of the Board or of any enrolled employee, or for the Program's investment performance or benefits paid. Participating employers will not be fiduciaries, or be considered fiduciaries, of the Program.

Employee Enrollment

Employees who have not opted out of participation may select a level of contribution expressed as a percentage of their wages or as a dollar amount up to the deductible cap for the taxable year. Employees are free to change their level of contribution at any time, subject to any rules set forth by the Board. If an employee does not choose a specific level of contribution, the employee's level of contribution will be set at 3% of his or her wages, provided that such contribution will not cause the employee's total contributions to IRAs for the year to exceed the deductible cap for the taxable year.

Employees may cancel their participation in the Program at any time.

Notification to Employees

The Board will create and distribute informational packets to employers. Participating employers are required to provide the employee information packet (1) to current employees upon implementation of the Program and (2) to new employees at the time of hire.

Penalties

An employer that fails without reasonable cause to enroll an employee in the Program within the time prescribed will be subject to the following penalties:

- \$250 for each employee for each calendar year or part of a calendar year during which the employee was neither enrolled in the Program nor had opted out; or
- \$500 for each subsequent calendar year for any portion of that calendar year during which the employee continues to be unenrolled and has not opted out.

Employers that are subject to penalties will receive a notice of proposed assessment of penalties and may contest the assessment by filing a protest with the Illinois Department of Revenue within 90 days.

Applicability of ERISA

Notably, the new law requires the Board to request an opinion or ruling from the "appropriate entity with jurisdiction" over the federal Employee Retirement Income Security Act (ERISA) regarding the applicability of ERISA to the Program. The Board may not implement the Program if it is determined that the Program is an employee benefit plan and state or employer liability is established under ERISA. Further, the Board may not implement the Program if the IRA arrangements offered do not qualify for the favorable income tax treatment ordinarily given IRAs under the Internal Revenue Code.

820 ILCS 80/1 et. seq. (Effective Date 06/01/2015).