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New Laws Impacting Illinois Employers in 2016 and Beyond

While Illinois appears to be in legislative gridlock on a wide variety of political and legislative fronts, it has become abundantly clear that such gridlock has not curtailed the passage of employment and labor-related legislation in Illinois. The following are highlights of seven new laws impacting Illinois employers in 2016 and beyond.

1. Paid Sick Leave In Chicago and Cook County

Effective July 1, 2017, employers who have at least one (1) employee in Chicago or Cook County are obligated to provide paid sick leave for those employees who work at least 80 hours within any 120-day period, provided they work at least 2 hours in any 2-week period within Chicago or Cook County. Specifically, covered employers are required to offer 1 hour of paid sick time for every 40 hours worked, which can be capped at 5 paid sick days each year unless the employer sets a higher limit. Up to 20 hours of accrued but unused sick leave may also be carried over into the next 12-month period. Sick leave can be used for the employee's own illness or the illness of or medical treatment for the employee's family member (which is broadly defined).

2. The Illinois Employee Sick Leave Act

Effective January 1, 2017, Illinois employers that currently provide sick leave benefits to their employees must allow the employees to use their personal sick leave benefits for absences due to the illness, injuries, or medical appointments of their family members. In short, employers cannot limit sick leave to just the employee's sickness. This law does not require employers (outside the city of Chicago or Cook County) to offer sick leave benefits; however, if they do provide sick leave benefits, employees must be allowed to take such leave for any illnesses or other sickness-related matters of their family members. "Family members" are defined broadly under the Act and include immediate family, parents-in-law, grandchildren, grandparents, or step parents.

3. The Illinois Freedom to Work Act

Effective January 1, 2017, the Illinois Freedom to Work Act will prohibit private sector employers from entering into non-compete agreements with low-wage employees. "Low-wage" employees are defined as those that make less than the greater of (a) the federal (\$7.25 per hour), State (\$8.25 per hour), or local (currently \$10.50 per hour under the Chicago Minimum Wage Ordinance) minimum wage; or (b) \$13.00 per hour. Significantly, while the Act prohibits non-compete provisions, it does not affect an employer's right to protect confidential information and trade secrets or to prohibit the solicitation of other protected relationships, such as customers.

4. Child Bereavement Leave Act

Effective immediately upon its passage on July 29, 2016, the Child Bereavement Leave Act makes Illinois one of only two states in the country to require covered employers to provide unpaid leave in the event of the death of the employee's child. Specifically, the Act requires employers with 50 or more employees to provide eligible employees with up to 2 weeks (10 working days) of unpaid leave, also known as child bereavement leave. Employers and employees under the Act are defined in the same way as they are under the Federal Family and Medical Leave Act (FMLA). Therefore, employees who are eligible to take FMLA leave and employers that are required to provide leave under the FMLA also fall under the Act's provisions. Under the Act, a "child" is defined broadly as an employee's son or daughter who is biological, adopted, or a foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*. If an employee loses more than one child in a 12-month period, the employee is entitled to take up to 6 weeks of unpaid leave in that 12-month period.

5. Illinois Secure Choice Savings Program

Passed by Governor Quinn in June 2015, but not mandated for Illinois employers until June 1, 2017, the Illinois Secure Choice Savings Program mandates that Illinois employers with 25 or more employees (and who have been in business for 2 or more years) provide a retirement savings program to their employees. The covered employer must offer a retirement savings plan to employees or automatically enroll employees in a retirement plan to be set up by the State. Employees have the choice to "opt out" of the plan but they must affirmatively do so in writing. If the employee does not opt out, covered employers must deduct 3% of the employee's compensation and deposit it in the State plan.

6. Chicago and Cook County Minimum Wage

Currently, the Chicago minimum wage is \$10.50 per hour. On July 1, 2017, it will increase to \$11.00 per hour. Thereafter, on July 1, 2018, and July 1, 2019, it will be incrementally raised to \$12.00 and \$13.00 per hour, respectively.

Cook County is also implementing its own minimum wage increase with a slight delay after Chicago. The Cook County Ordinance provides that the first increase to \$10.00 an hour will take effect on July 1, 2017. Thereafter, the minimum wage will rise \$1.00 per year until it is \$13.00 an hour on July 1, 2020. Thereafter, any annual increases will be subject to the rate of inflation not to exceed 2.5% per year.

One notable difference between the Chicago and Cook County ordinances is that, in Cook County, tip workers, who are required to be paid a cash wage of \$4.95 per hour under Illinois law, will have a cash wage increase subject to the rate of inflation starting on July 1, 2018. This cash wage increase to tip workers could have a significant impact on the restaurant and hospitality industries, which maintain a large portion of their work forces by employing tipped workers.

7. FLSA Overtime Regulations Stayed

Scheduled to take effect on December 1, 2016, the highly anticipated Department of Labor FLSA Overtime regulations were stayed by a Federal District Court in Texas on November 22, 2016. The final regulations were set to double the salary level for employees deemed to be exempt from overtime under the Fair Labor Standards Act. For the time being, these regulations appear to be temporarily stayed, but a closer look at the opinion suggests that the Department of Labor may have, according to the Judge, overstepped its authority and, as a result, we are not anticipating the planned overtime regulations to come into effect any time in the immediate future.