

# *Legal Update*

July 2017

## **HR BY THE NUMBERS: THRESHOLDS FOR EMPLOYER COVERAGE**

By Jon Vegosen and Cecilia M. Suh

Employers are subject to an increasing variety of employment laws on the federal, state, and local levels, depending on the number of employees they employ. Some of these laws only require larger employers, say with 50 or more employees, to comply. Other laws apply to employers with only one employee. Given recent developments in employment laws, employers may wish to review whether certain laws apply to them based on their current employee counts and whether they have appropriate policies and practices in place to comply with them. Below is a summary of certain federal and Illinois laws that may be of interest.

### **Employment Laws Covering Employers with 1 or More Employees**

- **Consumer Credit Protection Act:** This federal law prohibits employers from discharging an employee because his or her wages have been subjected to garnishment for any one debt and limits the amount of an employee's earnings that may be garnished in any one week, with certain exceptions. To learn more, please see our [May 2010 Legal Update](#).
- **Employee Polygraph Protection Act of 1988 (EPPA):** This federal law prohibits most employers from requesting that an employee or prospective employee take a lie detector test for pre-employment screening or during the course of employment, except under unusual circumstances. It also prohibits employers from using the results of a lie detector test and making any adverse employment decisions against an individual who refuses to take a lie detector test, with certain exceptions.
- **Employee Retirement Income Security Act of 1974 (ERISA):** This federal law establishes certain standards of conduct and reporting and disclosure requirements for employee welfare benefit plans or benefit plans (e.g., retirement, health, life, or disability plans) offered to employees and their families. ERISA applies to all private employers with employee welfare benefit plans or benefit plans.
- **Equal Pay Act of 1963 (EPA):** This federal law amended the Fair Labor Standards Act to prohibit sex-based wage discrimination and prohibits employers from discriminating in pay between male and female employees performing equal work, with certain exceptions.
- **Fair Credit Reporting Act (FCRA):** This federal law imposes certain requirements on the use of background check information from consumer reporting agencies when making employment decisions. For a discussion of changes to the employment-related background screening notice that is required, please see our [January 2013 Legal Update](#).
- **Fair Labor Standards Act (FLSA):** This federal law requires employers to pay employees a minimum wage and overtime rates. It also imposes other requirements, such as prohibiting sex discrimination in

FVLD®

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.

paying wages, establishing recordkeeping and child labor requirements, and requiring certain employers to provide reasonable unpaid lactation breaks for nursing mothers. For a discussion of the five common mistakes employers make regarding the FLSA, please see our [September 2013 Legal Update](#). For information about some of the risks of misclassifying employees as independent contractors, please see our [March 2011 Legal Update](#). For information about some of the pitfalls of unpaid internships under the FLSA, please see our [July 2011 Legal Update](#).

- **National Labor Relations Act (NLRA):** This federal law provides employees the right to self-organization, to form, join, or assist labor organizations, to bargain collectively, and to engage in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection. It also prohibits employers from discriminating against or interfering with employees in their exercise of these rights and from engaging in unfair labor practices. To learn more about the NLRA's limitations on employers to restrict off-duty conduct on and offline, please see our [December 2010 Legal Update](#).
- **Occupational Safety and Health Act (OSHA):** This federal law requires employers to provide a safe workplace free from serious hazards, to follow OSHA safety and health standards, to provide safety training, to find and correct safety and health problems, and to abide by certain posting and recordkeeping requirements. To learn more about OSHA, please see our [March 2016 Legal Update](#).
- **Uniformed Services Employment and Reemployment Rights Act (USERRA):** This federal law prohibits employment discrimination based on a person's membership, application for membership, service, application for service, or obligation for service in the uniformed services and provides certain re-employment rights and benefits to employees who must take a leave of absence from work due to service in the uniformed services.
- **Illinois Abused and Neglected Child Reporting Act:** This Illinois law requires reporting of any discovery of child pornography while installing, repairing, or otherwise servicing electronic and information technology equipment and for workers in certain industries to report to the Illinois Department of Children & Family Services if they have reasonable cause to believe that a child known to them in their professional/official capacity may be abused or neglected. It also prohibits employers from discriminating against any employee who makes a good faith report or testifies of suspected child abuse or neglect.
- **Illinois Child Labor Law:** This Illinois law regulates the employment of persons under 16 years of age and limits their working hours.
- **Illinois Compassionate Use of Medical Cannabis Pilot Program Act:** This Illinois law prohibits employment discrimination against a person solely for his or her status as a registered qualifying patient or registered designated caregiver; however, employers may still prohibit smoking of cannabis on the premises and enforce policies concerning drug testing, zero tolerance, or a drug-free workplace that are applied in a nondiscriminatory manner. To learn more, please see our [December 2013 Legal Update](#).
- **Illinois Criminal Identification Act:** This Illinois law prohibits employers from considering expunged or sealed records of conviction or arrest in employment matters and from asking if job applicants have had records expunged or sealed. It also requires employment applications to contain specific language stating that an applicant is not obligated to disclose sealed or expunged records of conviction or arrest. To learn more about the use of criminal records in employment decisions, please see our [July 2012 Legal Update](#).

F V L D®

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.

- **Illinois Domestic Workers' Bill of Rights Act:** This Illinois law creates protections for workers who perform domestic work (*e.g.*, housekeeping, house cleaning, caregiving, or cooking) by amending existing laws in Illinois such as the Illinois Minimum Wage Law, the Illinois One Day Rest in Seven Act, and the Illinois Human Rights Act. To learn more, please see our [October 2016 Legal Update](#).
- **Illinois Election Code (Voting Leave):** This Illinois law requires employers to provide employees who are entitled to vote a two-hour leave of absence from employment without penalty, including not reducing compensation due to his or her absence.
- **Illinois Employee Credit Privacy Act:** This Illinois law prohibits employment discrimination based on an individual's credit history/report and employers from making inquiries about an applicant's or employee's credit history or obtaining his or her credit report, with certain exceptions. To learn more, please see our [January 2011 Legal Update](#).
- **Illinois Equal Pay Act of 2003:** Like the federal EPA, this Illinois law makes it unlawful for employers to pay employees different wages for similar work due to gender. The law includes certain exceptions for wage decisions based on non-gender-related factors such as seniority, merit, and quality or quantity of work. Fines for employers with less than four employees are capped at \$500 for a first offense, but fines for employers with four or more employees start at up to \$2,500. To learn more, please see our [January 2016 Legal Update](#).
- **Illinois Firearm Concealed Carry Act:** This Illinois law generally allows licensed persons to carry concealed firearms, but prohibits them from carrying firearms on or into schools, public playgrounds, courts, bars, hospitals, and other "prohibited areas." The law also permits private property owners to prohibit the carrying of concealed firearms on the property with certain limitations. To learn more about the ramifications of this law for employers, please see our [July 2013 Legal Update](#).
- **Illinois Freedom to Work Act:** This Illinois law prohibits employers from entering into a covenant not to compete with low-wage employees and makes such non-competes illegal and void. To learn more, please see our [October 2016 Legal Update](#). Please also see our [August 2013 Legal Update](#) regarding the consideration needed to support a non-competition agreement.
- **Illinois Genetic Information Privacy Act:** This Illinois law prohibits employers from requesting genetic information or a genetic test as a condition of employment or pre-employment application and generally prohibits employment discrimination based on the genetic information of an employee or his/her family member, with certain exceptions.
- **Illinois Human Rights Act:** This Illinois law, while generally applicable to employers with 15 or more employees (see below), prohibits sexual harassment or discrimination based on pregnancy or a mental or physical disability by employers with one or more employees.
- **Illinois Jury Act (Jury Duty Leave):** This Illinois law allows employees who have been summoned for jury duty to take unpaid time off from employment to serve on the jury and be reinstated without loss of seniority and prohibits employers from discharging, threatening to discharge, intimidating or coercing any employee based on jury service.
- **Illinois Mini-COBRA (Illinois Continuation Law):** This Illinois law protects employees who lose their group health insurance coverage with an employer group of any size and provides eligible employees with certain rights to continue their insurance under the employer's group policy. It also



requires employers to provide written notice of continuation coverage within 10 days to the affected employee and to the insurer. Illinois mini-COBRA will apply to most employers who offer fully insured group health plans, with certain exceptions. Employers may also have obligations under the Illinois Spousal Continuation Law and the Illinois Dependent Child Continuation Law. The federal COBRA law covers employers with 20 or more employees who sponsor group health plans. See below.

- **Illinois Minimum Wage Law:** This Illinois law requires employers to pay employees who are 18 years of age or older the Illinois minimum wage and overtime rates, with certain exceptions. It applies to employers with one or more employees, but excludes employees who work for employers who employ less than four employees exclusive of the employer's parent, spouse, child, or other immediate family. To learn more, please see our [October 2016 Legal Update](#).
- **Illinois One Day Rest In Seven Act:** This Illinois law requires employers: to allow most employees at least 24 consecutive hours of rest in every calendar week in addition to the regular period of rest allowed at the close of each working day; to permit employees who work for 7½ continuous hours or longer at least 20 minutes for a meal period beginning no later than five hours after the start of the work period, with certain exceptions; and to keep certain records regarding employees and hours worked.
- **Illinois Right to Privacy in the Workplace Act:** This Illinois law prohibits employment discrimination based on an individual's use of lawful products off the premises of the employer during nonworking hours. It also prohibits employers from inquiring whether a prospective employee has ever filed for or received workers' compensation benefits and from requesting employees' information in order to gain access to the employee's personal social networking account or profile. To learn more, please see our [January 2017 Legal Update](#) and our [January 2013 Legal Update](#).
- **Smoke-Free Illinois Act:** This Illinois law prohibits smoking in any place of employment or within 15 feet of any entrance to a place of employment and requires employers to post "no smoking" signs, with certain exemptions.
- **Illinois Unemployment Insurance Act:** This Illinois law governs employers' unemployment insurance obligations, including the payment of employer contributions and certain wage report requirements. Employers are also generally required to report certain information about new hires within 20 days of adding an employee. To learn more about recent changes to the law with respect to challenging employees' claims for unemployment benefits, please see our [January 2016 Legal Update](#).
- **Illinois Veterans Preference in Private Employment Act:** This Illinois law allows—but does not require—private employers to adopt a voluntary preference for hiring, promoting, or retaining a veteran over another equally qualified applicant or employee. Employers who wish to provide preferential treatment of veterans must adopt a veteran's preference employment policy in writing, publicly post the policy in the workplace or on the employer's website, and inform all job applicants of this policy on its job application form. To learn more, please see our [January 2016 Legal Update](#).
- **Illinois Victims' Economic Security and Safety Act (VESSA):** This Illinois law generally requires employers to provide certain unpaid leave and other rights to employees who are the victims of domestic or sexual violence or who have a family or household member who is experiencing an incident of domestic or sexual violence. VESSA requires employers with 1–14 employees to provide a total of four workweeks of VESSA leave during any 12-month period. Employers with 15–49 employees are required to provide an increased total of eight workweeks of VESSA leave, and employers with at least

FVLD®

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.

50 employees are required to provide a total of 12 weeks of VESSA leave.

- **Illinois Wage Assignment Act:** This Illinois law prohibits employers from discharging or suspending an employee on the basis that his earnings have been subjected to wage demands on his employer for any indebtedness and imposes certain requirements in connection with employees' wage assignments.
- **Illinois Wage Payment and Collection Act:** This Illinois law generally requires employers (a) to notify employees in writing, at the time of hiring, of the rate of pay and of the time and place of payment; to pay wages at least semi-monthly and not later than 13 days after the end of the pay period in which such wages were earned, with certain exceptions; (b) to pay terminated employees' final compensation by the next regularly scheduled payday; and (c) to pay earned and unused vacation as part of such final compensation. It also restricts employers from making deductions from wages or final compensation without an employee's consent and imposes certain requirements in connection with accurate records for each employee, notices, and payroll cards. To learn more, please see our [October 2014 Legal Update](#) regarding the use of payroll cards and our [January 2011 Legal Update](#).
- **Illinois Whistleblower Act:** This Illinois law prohibits employers from taking certain actions against whistleblowers to prevent them from disclosing information to a government or law enforcement agency or to retaliate against them.
- **Note:** Cook County, Illinois and the City of Chicago also have various employment laws that may affect covered employers with one or more employees in Cook County and/or Chicago. These include the Cook County Human Rights Ordinance, the Cook County Wage Theft Ordinance, Chicago Clean Indoor Air Ordinance of 2008, Chicago Human Rights Ordinance, Chicago Minimum Wage Ordinance of 2014, and the Chicago Vehicle Equipment Ordinance on the Use of Mobile Telephones. Other counties and cities may have other ordinances.

#### **Employment Laws Covering Employers with 4 or More Employees**

- **Immigration Reform and Control Act of 1986 (IRCA):** This federal law prohibits employment discrimination based on an individual's national origin or citizenship status when hiring, recruiting, or referring for a fee, unless otherwise required by law.

#### **Employment Laws Covering Employers with 5 or More Employees**

- **Illinois Nursing Mothers in the Workplace Act:** This Illinois law requires employers to provide reasonable unpaid break time each day to an employee who needs to express milk for her child and make reasonable efforts to provide a private room (other than a toilet stall) to do so. This applies to employers with five or more employees (but does not count employees who are the employer's parent, spouse, child, or other members of the employer's immediate family).
- **Illinois Personnel Record Review Act:** This Illinois law gives employees certain rights to inspect and correct their personnel records and imposes certain obligations on employers with respect to personnel records, with certain exceptions. It applies to employers with 5 employees or more than 5 employees exclusive of the employer's parent, spouse, child, or other immediate family members.

#### **Employment Laws Covering Employers with 15 or More Employees**

- **Americans with Disabilities Act of 1990 (ADA) & ADA Amendments Act of 2008 (ADAAA):** These federal laws prohibit employment discrimination against individuals based on disability, including: (a)

F V L D<sup>®</sup>

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.

a physical or mental impairment that substantially limits one or more major life activities of the individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment. For a discussion of extended leave under the ADA, please see our [June 2013 Legal Update](#).

- **Genetic Information Nondiscrimination Act of 2008 (GINA):** This federal law prohibits employment discrimination based on genetic information and employers from requesting, requiring, or purchasing genetic information of an employee or employee's family member, with certain exceptions.
- **Title VII of the Civil Rights Act of 1964 (Title VII):** This federal law prohibits employment discrimination based on a person's race, color, religion, sex, or national origin and prohibits retaliation against an employee for opposing such unlawful employment practices or for making a charge, testifying, assisting, or participating in an investigation, proceeding, or hearing under Title VII. To learn more, please see our [April 2017 Legal Update](#), our [July 2015 Legal Update](#), our [August 2015 Legal Update](#), and our [July 2012 Legal Update](#).
- **Pregnancy Discrimination Act of 1978 (PDA):** This federal law amended Title VII to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. To learn more, please see our [July 2014 Legal Update](#). For a discussion of the implications of the Zika virus with respect to employers and pregnant employees, please see our [March 2016 Legal Update](#).
- **Illinois Family Military Leave Act:** This Illinois law requires employers to provide unpaid, job-protected family military leave to an employee who is the spouse, parent, child, or grandparent of a person called to military service lasting longer than 30 days with Illinois or the United States. To learn more, please see our [January 2011 Legal Update](#).
- **Illinois Human Rights Act:** This Illinois law prohibits sexual harassment and employment discrimination based on race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from military service, or citizenship status. It also prohibits employers from inquiring into or using (a) an arrest or (b) criminal history record information that was ordered expunged, sealed, or impounded when making employment decisions and from prohibiting a language from being spoken by an employee in communications unrelated to the employee's duties. It further requires employers to make reasonable accommodations for medical or common conditions related to pregnancy or childbirth, with certain exceptions. This law generally applies to employers with 15 or more employees; however, if the unlawful discrimination is based on physical or mental disability, pregnancy, or sexual harassment, it applies to employers with one or more employees. To learn more about accommodations for pregnant employees, please see our [December 2014 Legal Update](#).
- **Illinois Job Opportunities for Qualified Applicants Act:** This Illinois law restricts employers' inquiries about a job applicant's criminal record or history until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview or, if there is not an interview, until after a conditional offer of employment is made, with certain exceptions. To learn more about this Act, please see our [September 2014 Legal Update](#). For information about effective employer interviewing, please see our [May 2015 Legal Update](#).
- **Illinois Workplace Violence Prevention Act:** This Illinois law gives employers the right to petition the court for a workplace protection restraining order to prohibit further violence or threats of violence by limiting access to the workplace by individuals who have made a credible threat of violence to be carried out at the workplace (*e.g.*, against an employee). To learn more, please see our [January 2014 Legal Update](#) (Note: This law was amended and now applies to employers with 15 or more employees.)

FVLD®

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.

## Employment Laws Covering Employers with 20 or More Employees

- **Age Discrimination in Employment Act of 1967 (ADEA):** This federal law prohibits employment discrimination against employees 40 years of age or older.
- **Consolidated Omnibus Budget Reconciliation Act (COBRA):** This federal law provides employees with the right to temporary continuation coverage under group health plans for beneficiaries who would otherwise lose coverage due to a qualifying event, such as termination of employment. COBRA covers employers with 20 or more employees who sponsor group health plans.
- **Older Workers Benefit Protection Act (OWBPA):** This federal law amends the ADEA and prohibits discrimination against employees who are 40 years of age or older and imposes certain requirements for employers who ask such employees for a release of their rights or claims.
- **Illinois Employee Arbitration Act:** This Illinois law allows employees to apply to the Illinois Department of Labor to mediate controversies not involving questions that may be the subject of a civil action. It applies to employers with 25 or more employees.

## Employment Laws Covering Employers with 50 or More Employees

- **Family and Medical Leave Act of 1993 (FMLA):** This federal law applies to employers with 50 or more employees and provides eligible employees with unpaid, job-protected FMLA leave for up to 12 weeks for certain family and medical reasons or any qualifying exigency arising out of the fact that an employee's spouse, child, or parent is on covered active duty in the U.S. Armed Forces or for up to 26 weeks to care for a covered servicemember who is the employee's spouse, child, parent, or next of kin. For a discussion of FMLA regulations issued in 2013, please see our [March 2013 Legal Update](#). For a discussion of who is a parent under the FMLA, please see our [July 2010 Legal Update](#).
- **Illinois Child Bereavement Act:** This Illinois law applies to employers and eligible employees who are covered by the FMLA. Employers with 50 or more employees must provide an FMLA-eligible employee with up to 10 work days of unpaid bereavement leave in connection with the death of an employee's son or daughter (including a biological, adopted, or foster child, stepchild, or legal ward). To learn more, please see our [October 2016 Legal Update](#).
- **Illinois School Visitation Rights Act:** This Illinois law generally requires employers to grant an employee unpaid leave of up to a total of 8 hours during any school year to attend school conferences or classroom activities related to the employee's child if they cannot be scheduled during non-work hours. This Illinois law applies to employers with 50 or more employees.
- **Illinois Employee Blood Donation Leave Act:** This Illinois law allows full-time employees who have been employed for at least 6 months to use up to one hour as blood donation leave with pay to donate blood every 56 days. This Illinois law applies to employers with 51 or more employees.

## Employment Laws Covering Employers with 75 or More Employees

- **Equal Employment Opportunity Commission Reporting Requirements (EEO-1 Report):** The EEO-1 Report is a survey mandated by federal law and requires all private employers who are subject to Title VII with 100 or more employees to provide and certify certain employment data categorized by race/ethnicity, gender, and job category on an annual basis.
- **Illinois Worker Adjustment & Retraining Notification Act:** The Illinois WARN Act requires an Illinois employer with 75 or more employees to give 60 days' written notice to affected employees and



the government before ordering a mass layoff, relocation, or employment loss with certain exceptions (e.g., layoff, relocation, or employment loss is due to a physical calamity or an act of terrorism or war).

- **Worker Adjustment and Retraining Notification Act (WARN):** This federal law requires employers with 100 or more employees to provide 60 days' advance notice of any plant closings and mass layoffs to the affected workers, to the dislocated worker unit in the state, and to the appropriate unit of local government, with certain exceptions.

This Legal Update includes only a sampling of important employment laws. It does not discuss every law that may apply to your workplace, including laws in other states in which your organization may do business, nor does it discuss laws relating to employers that have "government contracts." Certain laws that we did not mention may nonetheless be particularly important to you or your business, and we encourage you to consult with legal counsel for more information.

---

*FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 [jvegosen@fvldlaw.com](mailto:jvegosen@fvldlaw.com), Cecilia M. Sub 312.701.6841 [csub@fvldlaw.com](mailto:csub@fvldlaw.com), or your regular FVLD contact.*

FVLD®

© 2017, Funkhouser Vegosen Liebman & Dunn Ltd.

All rights reserved.