



# EMPLOYMENT & LABOR LAW

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## Concealed Carry Policy

Illinois has now joined the rest of the United States and approved concealed carry. Effectively, properly licensed individuals can carry concealed weapons almost anywhere in Illinois, including at work. There are a limited number of statutory exceptions to the concealed carry right. Specifically, even properly licensed individuals are prohibited from carrying a concealed firearm at preschools; childcare facilities; elementary and secondary schools; gaming facilities; private and public community colleges and universities; private and public hospitals, mental health facilities and nursing homes; and businesses that serve alcohol on their premises or derive more than 50% of their gross re-

ceipts from the sale of alcohol.

Illinois was the last state to allow some form of firearm concealed carry by its citizens. Without a policy to the contrary, your employees who have conceal carry permits must be allowed to carry concealed firearms onto your property.

Not surprisingly, many employers want to control or outright prohibit individuals who have licenses from carrying concealed firearms onto their property. As an employer, like all other property owners, to effectively prohibit firearms at your facility, you need two things. First, an employee policy prohibiting firearms. Second, you are required to have a 4x6 inch sign, that has been previously approved by the Illinois State Police, advising individuals, employees and visitors, that con-

cealed firearms are prohibited on the property. Again, this sign must have been approved by the Illinois State Police and must be mounted "clearly and conspicuously" at the building entrance(s).

It is important to understand that regardless of any of your internal policies, employers and others not on the specified exception list contained in the statute may not prohibit employees or other individuals from carrying a concealed firearm into a parking lot or storing a firearm and ammunition in a locked vehicle.



## NLRB Ruling Posting Requirement Overturned

The NLRB's rule requiring all employers, union and non-union, to conspicuously post at their facilities official NLRB notices advising employees of their rights under the NLRA, including the right to form unions and file ULPs against their employers, has been found illegal by the DC Circuit Court of Appeals. It is no longer a legal requirement for an employer to make such postings.

In the decision handed down

by the United States Court of Appeals for the District of Columbia, *National Association of Manufacturers v. NLRB*, the Court found the Board's requirement that employers post a "notification of employee rights under the National Labor Relations Act", which included advising employees of their right to form unions and file unfair labor practice charges against their employers, was unconstitutional and a violation of employer First Amendment

rights to freedom of speech. *National Ass'n of Manufacturers v. NLRB*, 2013WL1876234 (May 7, 2013).

Finally, a federal appeals court having jurisdiction over the National Labor Relations Board has clipped the Board's wings. There has been a substantial "reach in" by the NLRB to the operations of private employers. It's good to see a court say, "No".

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## Is that No Compete Really Enforceable?

Illinois courts have been reluctant to enforce post-employment restrictive covenants for years. Unfortunately, their enforceability was recently dealt a significant blow. In *Fifield v. Premier Dealer Services, Inc.*, the Illinois Appellate Court refused to enforce a post-employment restrictive covenant citing a lack of sufficient consideration.

In this case, the employer, Premier, offered the employee, Fifield, a job; however, as a condition of employment it required him to sign a contract wherein he agreed to the following: 1) not to solicit customers to end their relationship with Premier; 2) not to interfere with any relationship between Premier and its customers and 3) not to accept business from any customer with whom Premier had a business relationship in the twelve months prior to his termination. This post-employment restrictive covenant was not a blanket non-competition agreement requiring Mr. Fifield to refrain from working for a competitor at all. It only limited his relation-

ships with Premier customers. Finally, the parties agreed that as a part of his employment agreement, these post-employment restrictive covenants would not apply if Fifield's employment was terminated without cause during his first year of employment.

Three months into his employment, Fifield quit and went to work for a competitor. Premier filed suit asking the Cook County Circuit Court to enforce the post-employment restrictive covenants. Both the trial and the Appellate Court found there was inadequate consideration to support the restrictive covenants. Premier argued that the job offer itself was adequate consideration. Fifield would not have been employed by the company but for his agreement to the restrictive covenants. The job was the consideration. The court disagreed and found that the three months Fifield worked for Premier was an inadequate

time to support the post-employment restrictive covenants and he was not bound.

So what can you do? For those employees who have been employed at least two years since the execution of their post-employment restrictive covenant, it is unlikely the *Fifield* ruling will effect the enforceability of the covenant.

For those who haven't, you may wish to offer some additional consideration, such as a bonus, in exchange for the execution of a new post-employment restrictive covenant. There is also caselaw suggesting that a restrictive covenant is inoperable in the event the employee is terminated without cause during the first two years of employment. In any event, it is important to review your relationships with your employees to ascertain what, if any, additional protective steps you should take.

## Credit Checks in Illinois

It has been common practice for Illinois employers to conduct background checks which include a credit history or credit check. Traditionally, so long as compliance with such laws as the Federal Fair Credit Reporting Act was ensured, these types of checks and even decisions based on the results of a credit history were acceptable.

As a result of the economic downturn and the effect it had on millions of individuals, including residents of the State of Illinois, the Illinois Legislature adopted the Employee Credit Privacy Act. The Employee Credit Privacy Act generally prohibits private employers from conducting blanket credit checks. Governmental entities and private employers engaged in banking or insurance functions are generally excluded from this Act. Those private employers that are included in this prohibition can still conduct credit history or credit checks of employees under certain circumstances.

An employer cannot fail or refuse to hire, recruit, discharge or otherwise discriminate

against an individual in employment because of the individual's credit history or credit report; inquire about an applicant's or employee's credit history; or order or obtain an applicant's or employee's credit report from a consumer reporting agency.

Notwithstanding this provision, private employers may require a credit check or credit history if the employer can establish that a satisfactory credit history is a bona fide occupational requirement. To qualify as a bona fide occupational requirement, at least one of the following must be present: 1) state or federal law requires bonding or other security covering an individual holding the position; 2) the duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500.00 or more; 3) the duties of the position include signatory power of business assets of \$100.00 or more per transaction; 4) the position is a managerial position which involves setting the direction or control of the business; 5) the position involves

access to personal or confidential information, financial information, trade secrets or state or national security information; 6) the position meets certain criteria established in the Administrative Rules of the United States Department of Labor or the Illinois Department of Labor identifying credit history as a bona fide occupational qualification; or 7) the employee's or applicant's credit history is otherwise required by or exempt under federal or state law.

If the position does not meet one of these exceptions, an inquiry into their credit or a requirement of a satisfactory credit history is prohibited under Illinois law. Effectively, the bar has been raised. The employer is now required to establish that the credit history really is directly related to the position being sought. As a result, it may be necessary to modify the direction you give the entity or organization conducting your background checks to ensure that you do not violate state law.