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Lorna K. Geiler is a shareholder with Meyer Capel, P.C. She concentrates her practice on Employment & Labor law representing primarily employers in ensuring compliance with applicable laws and, where appropriate, litigating. Lorna also represents employers in union organization efforts and labor negotiations. She can be contacted at:

Meyer Capel
A Professional Corporation
306 W. Church Street
P.O. Box 6750
Champaign, IL 61826-6750
Phone: (217) 352-1800
Fax: (217) 352-1083
lgeiler@meyercapel.com

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New Interpretation of the Employee Classification Act

The Illinois Department of Labor has implemented new reporting requirements for construction/contractor employers. These reporting requirements apply to: "Any contractor, **other than** a person meeting the responsible re-bidder requirements of Section 30-22 of the Illinois Procurement Code, or a business primarily engaged in the sale of tangible personal property or a contractor doing work for a business primarily engaged in the sale of tangible personal property, for which either an individual, sole proprietor or partnership is performing construction services." [emphasis added] Reporting shall be done annually on or before January 31st following the taxable year in which payments to and individual, sole proprietor or partnership (if the recipient of the payment is not classified as an employee) is made. The report shall include the contractor name, address and business identification number; the individual, sole proprietor or partnership name, address and Federal Employer Identification Number; and the total amount the contractor paid the individual, sole proprietor or partnership performing services in the taxable year, including payments for services and for any materials and equipment that was provided along with the services. An inaccurate or incomplete report can result in a civil penalty. Clearly, this is designed to ensure contractor employers are complying with the Employee Classification Act and not "misclassifying" employees. These requirements are a further effort to limit the use of sole proprietors, partnerships and individuals in conjunction with the requirements of the Illinois Prevailing Wage Act.

OSHA Update - the "eyes" have it

There are new requirements imposed by OSHA that went into effect January 1, 2015 with respect to recordkeeping and reporting. First, while historically employers were required to report to OSHA all work related fatalities and any work related hospitalization of three or more employees, now employers are also required to report all work-related amputations and losses of an eye.

Employers are required to report a fatality within eight hours of learning of it. If a work-related fatality occurs more than thirty days after a work-related incident, no report is required. An in-patient hospitalization, loss of an eye or amputation must be reported within twenty-four hours of the employer learning of it.

Reports to OSHA can be made at the Area Office during normal business hours; by hotline at 1-800-321-6742 or electronically at www.osha.gov. For more information, visit www.osha.gov/recordkeeping2014

What is a Spouse Under FMLA?

As you may recall, in *United States v. Windsor*, the United States Supreme Court struck down the definition of spouse in Section 3 of Defense of Marriage Act. In the *Windsor* case, a same sex couple married in Ontario, Canada in 2007. In 2009, one of the spouses passed away and the surviving spouse, Windsor, inherited the entire estate. Windsor then applied for a spouse's exemption from the estate tax under the Internal Revenue Code which was denied based on the Defense of Marriage Act's definition of spouse as a marriage/spouse requiring a union between a man and a woman. The case was heard by the Supreme Court and the definition of spouse in Section 3 of the DOMA was stricken. This becomes relevant under the FMLA since an employee is entitled to FMLA leave to care for an ill or injured **spouse**. The Department of Labor has published under its rule making authority, a final rule that redefines spouse to include same sex spouses. As a result, if called to question or in addressing your leave policy under the FMLA and, indeed, your leave policies in general, the definition of spouse should now be expanded to include same sex married couples.

Private Employers Must Provide Retirement Savings Program

The Illinois Secure Choice Savings Law requires those private employers with 25 or more employees, who have operated for two or more years, to offer a qualified retirement plan. If you already offer a qualified retirement plan, you can stop reading here. However, if you do not currently offer some type of retirement savings plan, and meet the above criteria, you are required to provide a retirement savings plan for your employees, such as a 401k plan or, alternatively, automatically enroll employees in a state run retirement plan through the Illinois Secure Choice Savings Program. Employers are not required to contribute to the plan; however, they must deduct 3% of each participating employee's compensation which will be automatically deferred and invested. This can be done through a 401k or, if done through the State's Secure Choice Savings Program, it will be automatically deferred and invested into a default IRA unless the employee chooses otherwise. No employer contributions are required; however, employers will be required to bear the administrative costs of ensuring the payroll deductions. Employees can opt out of this program; however, unless they specifically do so, the employer is required to enroll them.

This law becomes effective June 1, 2015; however, employers are allowed until June 1, 2017 to provide a retirement plan for employees or enroll them in the Program Plan.

Interns Can Be Sexually Harassed

An Amendment to the Illinois Human Rights Act expands the definition of employees for the purposes of sexual harassment to include interns, paid or unpaid. Historically, the Illinois Human Rights Act applies to employers with 15 or more employees; however, the prohibitions regarding pregnancy discrimination, sexual harassment, disability discrimination and retaliation apply to any employer who has at least one employee. Since unpaid interns are now covered by the sexual harassment prohibition, I encourage you to review your sexual harassment policy to make sure it is clear that it is not only applicable to a traditional employee but interns as well.

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