EMPLOYMENT & LABOR LAW

Volume 6, Issue 2 November 2019

MEYER CAPEL

A PROFESSIONAL CORPORATION

Workplace Transparency Act

The Workplace Transparency Act becomes effective January 1, 2020. It bars any contract or "document" from including provisions that prohibit prospective, current or former employees from reporting allegations of "unlawful conduct" to the appropriate government officials for investigation. Unlawful conduct includes, not only criminal conduct, but conduct violating the anti-harassment and anti-discrimination laws as well as potential overtime and Minimum Wage and Prevailing Wage Act issues. The rule applies to employment contracts, no-compete, non-solicitation and confidentiality agreements and, finally, separation agreements. Since it references "documents" it likely also applies to provisions regarding confidentiality contained in employee handbooks or policies. Most employment contracts or policies that deal with confidentiality, non-disclosure or non-disparagement are designed to protect confidential employer information, such as: client or prospective client information; costs or change rates; trade secret or other financial information. But it is arguable that if the confidentiality (or other) provision could be read to have the effect of preventing disclosure to an appropriate governmental agency, the entire agreement could be unenforceable. It would be wise to review any employment contracts, confidentiality agreements or policies or related agreements you may have with your employees.

Illinois Salary History Ban - How Does It Impact You?

The Salary History Ban is a recent amendment to the Equal Pay Act. It prohibits employers from screening applicants based on their current or prior salary/ wage history (this includes benefits, commissions and bonuses); requesting or requiring applicants to disclose their history; asking an applicant's former employer information regarding that history or retaliating against someone who fails to respond to such an inquiry. This went into effect September 29, 2019 and applies to all Illinois employers regardless of the location of the applicant. An employer can still ask an applicant or candidate about their expectations or anticipated salary range and, if their salary is a matter of public record subject to the Freedom of Information Act, the Salary History Ban does not apply to a FOIA request. Employers can still ask questions that relate to the allocation of compensation, such as: "historically what percentage of your compensation has been salary versus commission or bonus"; however, employers cannot do anything that would "prompt" a candidate to feel as if it is asking, and therefore, disclose, salary history.

Lorna K. Geiler is a shareholder with Meyer Capel. She concentrates her practice in employment and 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
Phone: (217) 352-1800
Fax: (217) 352-9294
lgeiler@meyercapel.com

Amendments to the Illinois Human Rights Act

There are several amendments to the Illinois Human Rights Act that are scheduled to go into effect soon.

Applicability

First, effective July 1, 2020, the Illinois Human Rights Act will be expanded to all employers that employ at least a single employee during 20 or more weeks in the current year or the preceding year. Previously the applicability of the Human Rights Act had been limited to those employers who had 15 or more employees for all forms of discrimination and harassment, except disability and sexual harassment.

Sexual Harassment

The definition of harassment has been expanded to include any unwelcomed conduct that has the purpose of effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. In addition, an employer may now be liable to third parties, such as contractors or consultants, who are subjected to harassment while in the employer's workplace. Finally, the work environment is no longer limited to the physical location to which an employee is assigned.

Protected Classes

The protected classes have been expanded to include not just actual protected classes, but those in "perceived" classes. In addition, employers will now be responsible for annual training on sexual harassment for their employees using training materials to be developed by the Department of Human Rights or their equivalent. Restaurants, bars and coffee shops have heightened requirements for sexual harassment training and policies. For example, restaurants, bars and coffee shops are required to give all employees a written sexual harassment policy (this must be available in both English and Spanish) within the first calendar week of employment. These entities will be required to conduct the sexual harassment training all employers are required to conduct, but, in addition, will have supplemental training.

Fines

Also beginning July 1, 2020 and each July 1st thereafter, employers who have had an adverse ruling against them relating to discrimination or harassment, must report the information to the Department of Human Rights. Further, when investigating charges, the Department can now request prior settlement information involving allegations of discrimination and harassment.

For both the training and disclosure requirements, violations will result in fines not to exceed $500 for the first offense, $1,000 for the second and $3,000 for the third and subsequent.

Mandatory Sexual Harassment Training

Beginning January 1, 2020, all Illinois employers must train their employees on sexual harassment in the workplace. Undoubtedly Illinois is now addressing the #METOO movement and our own allegations against Illinois politicians or their staff in this legislation. Annually employers will be required to train their employees through a sexual harassment training program that includes an explanation of what sexual harassment is, a summary of the applicable laws prohibiting harassment in the workplace including a provision on remedies available to victims, examples of illegal conduct and the responsibilities of employers to address claims of harassment. **The first training requirement is for the calendar year 2020**. Those employers that do not provide the appropriate training can be fined up to $1000 the first time and $5000 for each time thereafter.