Engage PEO Client Alert - Illinois

Illinois Expands Victims' Economic Security & Safety Act (VESSA); Makes Changes to Non-Compete Agreements

Illinois Year End Update

What's New: Illinois expanded VESSA to protect employee leave for a "crime of violence," which now includes sex offenses, assault, harassment and obscene communication, armed violence, and other crimes, and expands the definition of family and household member victims for which employees may take leave.

Additional changes to Non-Compete Agreements are provided below.

Why It Matters: Effective January 1, 2022, Illinois employers need to allow unpaid leave up to 12 weeks for every 12-month period to address issues related to a crime of violence.

Effective **January 1, 2022**, HB 3582 will take effect which amends the state's Victims' Economic Security and Safety Act (VESSA) in several ways. VESSA currently entitles employees who are victims of domestic violence, sexual violence, or gender violence (or whose family members or household members are victims of such violence) to take **unpaid leave up to twelve (12) weeks for every twelve (12) month period to address issues related to the violence**.

The revised law will now protect leave termed as a "crime of violence," which will now include sex offenses, assault, harassment and obscene communication, armed violence, and other crimes. The law also defines sexual violence to include sexual assault.

Additionally, employees will now be eligible to take unpaid leave under VESSA for a much broader group of family members, including a party to a civil union, grandparents, grandchildren, siblings, or "any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee."

The amendments also modify the process for employee certification of the need for leave. Previously, employers could require certification in the form of: (a) documentation from the employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or the employee's family or household member has sought assistance; (b) a police or court record; or (c) other corroborating evidence. **Under the revised law, the employee can choose the type of documentation to submit**. Moreover, the employer cannot request or require more than one document to be submitted during the same 12-month period leave is requested or taken if the reason for leave is related to the same incident(s) of violence or the same perpetrator(s) of the violence.

Finally, **the amendments add a confidentiality provision that requires all information provided to the employer, including the employee's statement and any other documentation, record, or**

corroborating evidence, and the fact that the employee requested or obtained an accommodation pursuant to VESSA, to be retained in the strictest confidence by the employer except to the extent that the disclosure is: (1) requested or consented to in writing by the employee; or (2) otherwise required by applicable federal or state law. **If an employer does receive a document supporting an employee's leave under VESSA, it should maintain the document in an employee's confidential file separate from the employee's personnel file**.

Illinois – Additional Requirements for Enforceability of Restrictive Covenants including Non-Compete Agreements

In 2016, Illinois enacted the Freedom to Work Act (IFWA), which prohibited employers from entering into non-compete agreements with "low-wage" employees, defined under that law as employees earning less than the greater of (a) the applicable minimum wage under local, state, or federal law; or (b) $13.00 per hour. Illinois has now made it even more difficult for employers to enter into and enforce restrictive covenants with their employees.

Significant modifications to this law will go into effect on **January 1, 2022.** SB672 imposes new restrictions on employers who require employees to sign non-compete and non-solicitation agreements. Additionally, it imposes potential liability on employers who attempt to enforce unenforceable non-compete and non-solicitation agreements.

What Changes Does the Amended IFWA Make?

First, the law voids certain agreements and imposes new salary minimums for such agreements to exist.

Non-Competes

The amended IFWA respectively voids non-compete agreements between employers and employees if employees earn $75,000 per year or less and increases the threshold as follows:

- $80,000 in 2027
- $85,000 in 2032, and
- $90,000 in 2037.

Non-Solicitation Agreements

The amendment prospectively voids non-solicitation agreements for employees earning $45,000 per year or less and increases the threshold as follows:

- $47,500 in 2027
- $50,000 in 2032, and
- $52,500 in 2037.

Second, SB672 imposes specific notice requirements on employers. A non-solicitation or non-compete agreement will be enforceable in Illinois only if

(a) the employer advises the employee in writing to consult with an attorney before entering into the covenant; and

(b) the employer provides the employee with a copy of the covenant at least 14 calendar days before the commencement of the employee's employment ***or*** the employer provides the employee with at least 14 calendar days to review the covenant. An employee may waive this 14-day requirement by signing before the expiration of those 14 days.

Third, SB672 further clarifies what constitutes a "reasonable" agreement, providing that non-compete and non-solicitation agreements are void and unenforceable unless:

- The employee receives "adequate consideration," defined as
    - (1) employment with the employer for at least two years after execution of the agreement; or
    - (2) consideration otherwise "adequate to support an agreement to not compete or to not solicit, which consideration can consist of a period of employment plus additional professional or financial benefits or merely professional or financial benefits adequate by themselves."
- The covenant follows a valid employment relationship.
- The covenant is not greater than what is required to protect the employer's legitimate business interest.
- The covenant does not place unwarranted hardship on the employee.
- The covenant is not detrimental to the public.

Fourth, SB672 renders void and unenforceable a non-compete agreement for an employee whose job was terminated or furloughed due to circumstances "related to the COVID-19 pandemic, or under circumstances similar to COVID-19."

Fifth, SB672 imposes possible liability or the risk of litigation or investigations on employers that seek to enforce unenforceable non-compete or non-solicitation provisions.

Please reach out to your HR Consultant if you have any questions about the new changes in Illinois.