ENGAGE PEO

GenesisHR SOLUTIONS SYNCHRONY ZAMP HR

Client Alert
Illinois Legislative Updates for 2025

DISCREPANCIES IN EMPLOYMENT VERIFICATION

WHAT'S NEW: Illinois has new requirements for employers when they find discrepancies in employee's employment verification information or when they are notified of a discrepancy. These requirements apply to discrepancies found by both the I-9 and E-Verify systems.

WHAT IT MEANS: Employers who discover, or are notified, of a discrepancy in an employee's employment verification information must provide the employee with:

- The specific document or documents that are deemed to be deficient and the reason why they are deficient.
- Instructions on how the employee can correct the deficient documents.
- An explanation of the employee's right to have representation present during the verification or re-verification process.
- An explanation of any other rights the employee may have with regard to the verification or reverification process.

Additionally, if an employer is notified by a federal or state agency of a discrepancy as it relates to work authorization, the employer is prohibited from taking adverse action against the employee, including re-verification of their work authorization. Employers must provide notice of the discrepancy to the employee within five business days after notification, along with:

1. An explanation that the federal or state agency has notified the employer that the work authorization documents do not appear to be valid or reasonably relate to the employee.

2. The time period the employee has to contest the determination. The notice must be hand delivered if possible and, if not, notification by mail or email is acceptable. Employees must be allowed to have a representative present during any meetings, discussions, or proceedings with the employer. Employers are prohibited from taking any adverse action during the above process.

Employers are also now required to notify employees when they have been notified of an inspection of I-9 Employment Eligibility Verification forms, within 72 hours of receiving the notice. If, during an agency inspection it is determined the employee's documents do not establish work authorization, employers are required to notify the employee of the finding within five business days. The employee then has time to inform the employer whether they will contest the determination.

WHAT EMPLOYERS SHOULD DO:

1. Review your E-Verify and I-9 procedures to ensure you are prepared to notify employees of verification issues and comply with the amendments.

2. Consider implementing a checklist to follow in the event you discover discrepancies during the employment verification process.

CHANGES TO ILLINOIS WAGE PAYMENT COLLECTION AND PERSONNEL RECORD REVIEW ACTS

WHAT'S NEW: Effective January 1, 2025, employers will be subject to new requirements pertaining to the preservation and production of employee pay stubs under the Wage Payment Collection Act. There have also been changes to the Illinois Personnel Record Review Act amendment that also expand the documents that employers must provide to requesting employees.

WHAT IT MEANS:

Pay Stubs: Illinois employers must adhere to the following requirements as it relates to pay stubs:

- Maintain copies of employee pay stubs for at least three years after the date of payment, even if the employee's employment ends during that period and regardless of whether the pay stub was provided electronically or on paper.
- Provide copies of pay stubs upon request, within 21 days of the request. The employer must provide the pay stubs in the manner requested by the employee.
- Employers who provide electronic pay stubs in a manner that the former employee cannot access after separation must offer to provide the outgoing employee with a record of all the pay stubs from the year prior to the separation, upon separation from employment. The employer must record in writing that the offer was made, when, and how the employee responded. Failure to follow these requirements can result in a fine of up to $500 per violation.

Other Documents: Under the amendment, employers will now be required to provide employees with copies of the following documents, if requested by the employee:

- Any employment-related contracts or agreements that are legally binding on the employee.
- Any employee handbooks that the employer made available to the employee or that the employee acknowledged receiving (which presumably includes all prior versions).
- Any written employer policies or procedures that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.

Employers should be aware that when an employee requests their personnel file, these documents must be included.

WHAT EMPLOYERS SHOULD DO:

1. Review your current document retention policies and make necessary revisions to ensure compliance with the new regulations.
2. Ensure that during the separation process, employees are provided with a written offer to provide a record of the prior year's pay stub. Make sure to record, in writing, that the offer was made, when, and how the employee responded.
3. Consider utilizing a checklist for personnel file requests.

EXPANSION OF DEFINITIONS AND PROTECTIONS AFFORDED TO EMPLOYEES UNDER THE ILLINOIS WHISTLEBLOWER ACT

WHAT'S NEW: As of January 1, 2025, amendments to the Illinois Whistleblower Act go into effect. These amendments have added new definitions and expanded whistleblower protections for employees.

WHAT IT MEANS: The Illinois Whistleblower Act now prohibits employers from taking retaliatory action against an employee who discloses or *threatens* to disclose information about an employer's activities, policies, or practices, or refuses to participate in them, when the employee has a *good faith belief* that such activities, policies, or practices violate a law, rule, or regulation or poses a danger to employees, public health, or safety. This essentially broadens the scope of "reportable conduct" under the Act.

Additionally, actions under the Whistleblower Act were previously limited to retaliation based on reports to law enforcement or a government agency or court. The amendments further expand the list of parties to whom an employee may report to include "any supervisor, principal officer, board member, or supervisor in an organization that has a contractual relationship with the employer who makes the employer aware of the disclosure."

Finally, penalties and damages have been expanded to include, in addition to reinstatement, backpay, and attorneys' fees and costs: (1) permanent or preliminary injunctive relief; (2) front pay and 9% interest on any back pay award; (3) liquidated damages of up to $10,000; and (4) "the court shall award a civil penalty of $10,000 payable to the employee."

WHAT EMPLOYERS SHOULD DO: Illinois now has one of the most extensive whistleblower protection statutes in the country. Employers should avoid any adverse employment actions of any kind due to an employee's "whistleblowing" or protected activities – whether the report was made internally or to a governmental or law enforcement agency.

LIMITS ON EMPLOYERS' ABILITY TO CONDUCT "CAPTIVE AUDIENCE" MEETINGS

WHAT'S NEW: As of January 1, 2025, Illinois prohibits employers from disciplining, discharging, penalizing, or threatening to discipline, discharge, or penalize employees for refusing to attend mandatory employer-sponsored meetings in which the employer communicates its opinion about religious or political matters.

WHAT IT MEANS: Illinois' Freedom of Speech Act has little to do with worker freedom of speech and is more focused on restricting employers' speech.

Specifically, the employer or employer's agent, representative, or designee is prohibited from taking any adverse employment action against an employee:

1. Because the employee declines to attend or participate in an employer sponsored meeting or declines to receive or listen to communications from the employer or the agent, representative, or designee of the employer if the meeting or communication is to communicate the opinion of the employer about religious matters or political matters.
2. As a means of inducing an employee to attend or participate in meetings or receive or listen to communications about religious matters or political matters; or
3. Because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, of a violation or a suspected violation of the Workplace Freedom of Speech Act.

Further, the Act further defines "political matters" broadly to cover elections, political parties, proposals to change legislation, regulations, or public policy, and the decision to join or support any political, civic, community, fraternal, or *labor organization*.

Employees who believe they have been disciplined or terminated in violation of the Act will have a private right of action on behalf of themselves and other similarly situated employees. A prevailing employee will be able to recover lost pay and benefits, reinstatement, attorney's fees and costs, injunctive relief, and "any other appropriate relief as deemed necessary by the court to make the employee whole," the new law says.

WHAT EMPLOYERS SHOULD DO: Employers should post a notice of employee rights under the Illinois Worker Freedom of Speech Act where employee notices are customarily placed by January 31, 2025. However, it is currently unclear if the Illinois Department of Labor (IDOL) will provide a model notice for compliance.

The Act could be significant for Illinois employers that distribute union avoidance literature and train managers to practice union avoidance techniques. Employers who hold such training sessions should make clear in writing that attendance is strictly voluntary and that failure to attend will not result in adverse action.

Please reach out to your Engage Human Resources Partner if you have any questions concerning this alert or other HR-related matters.