

# LAW OFFICE OF LORI A. GOLDSTEIN, LLC

## CLIENT BULLETIN Winter 2015

### **RING IN THE NEW YEAR with New 2015 Employment Laws: Illinois Ban-the-Box, LGBT Rules for Federal Contractors, Minimum Wage, Pregnancy Accommodations, and More...**

#### **Illinois Ban-the-Box (Criminal Background Restrictions) Begins January 1**

Illinois joined multiple states and localities in enacting a “Ban the Box” law, limiting **when** private employers (with at least 15 employees) may obtain criminal history information on job applicants. The **Job Opportunities for Qualified Applicants Act** requires employers to postpone inquiries until after selecting the applicant for an interview or, if no interviews, after making a **conditional offer** of employment. This will also require **removal of related questions from job applications**.

Employers will still be able to conduct criminal background checks in accordance with applicable law. Employers that are subject to a federal or state law that requires exclusion of applicants with certain criminal convictions will be exempt from the law.

#### **Federal Contractors Subject to New LGBT Anti-Discrimination Rules**

U.S. Attorney General Holder has announced a **reversal of the Department of Justice’s** long-standing legal position: **gender identity, including transgender status, is now protected** from (gender) discrimination under Title VII of the Civil Rights Act of 1964. DOJ released a memorandum with the opinion based on Title VII, relevant Supreme Court cases, and developing law (“Treatment of Transgender Employment Discrimination Claims under Title VII of the Civil Rights Act of 1964.”)

DOJ can file such claims against **state and local public employers, but not private employers**. However, many state and local laws affecting private employers cover sexual orientation and gender identity, and the EEOC has supported such coverage under Title VII.

Meanwhile, “final regulations” from the Office of Federal Contract Compliance Programs were published in early December, with a 60-day comment period, pursuant to **President Obama’s Executive Order 13672**, which prohibits discrimination by federal government contractors on the basis of sexual orientation and gender identity. The new regulations (with possible changes after the comment period) will be **effective on April 8, 2015**, for contracts entered into or modified after that date.

Federal contractors **must include the updated Equal Opportunity Clause** in new or modified subcontracts and purchase orders. They should also update the **equal opportunity language in recruitment and post updated notices** for employees and applicants. The new rules have no effect on written affirmative action plan regulations. Contractors will not have to collect report or analyze “EEO” recruitment or workforce data on sexual orientation or gender identity.

## Chicago Raises Minimum Wage

Following many cities and states across the nation, Chicago's city council voted in early December to raise the city's minimum wage from **\$8.25 to \$13 an hour by 2019**. Effective January 1, 2015, the minimum wage increases from \$8.25 to \$10, followed by increases to \$10.50 in 2016, \$11 in 2017, \$12 in 2018 and \$13 in 2019. The change impacts low wage workers, as well as **nannies** and other domestic workers – the law closed a loophole that had exempted such workers.

## Pregnancy Accommodations Become New Law

Another new-year change is the expansion of the Illinois Human Rights Act to add accommodations for pregnant employees and applicants and new mothers. The new requirements apply to **all private Illinois employers**, regardless of workforce size. The law broadly protects “**pregnancy, childbirth, or medical or common conditions** related to pregnancy or childbirth.”

Similar to disability accommodation laws, these require employers to offer reasonable accommodations, such as more frequent or longer breaks; time and private space to express breast milk; physical workplace accommodations; assistance with manual labor; modified or part-time work schedule; job restructuring; and time off for or to recover from applicable conditions.

The amendments are even more protective than disability laws in some respects. They cover not only medical conditions but “common conditions” resulting from pregnancy or childbirth. In addition, employers **cannot require applicants or employees to accept an accommodation** that they did not request; the individual must agree to the form of accommodation. But employees can still be required to submit medical proof for a requested accommodation, and employers can still deny accommodations if they satisfy the strict burden of proving they would pose an “undue hardship.” Key is that if the employer would have to provide a certain accommodation to other similarly-situated, non-pregnant employees, employers will have to negate a “**rebuttable presumption**” of **no undue hardship**.

Also, like family leave laws, after the need for reasonable accommodation ends and an employee communicates intent to return, she must be **reinstated to her former position or an equivalent position** with equivalent pay, without loss of seniority or other benefits (unless an undue burden exists.) A recent guidance issued by the EEOC supports similar protection, overturning the EEOC’s long-standing position that a normal pregnancy is not a disability. Watch for similar amendments under federal law.

### Remember Other Applicable New Laws

In addition to the many new federal and Illinois employment laws, be aware of **changes in other state and local laws that affect your company/employer**. Many have new minimum wages, ban-the-box laws, same-sex protections, and medical marijuana laws impacting the workplace. Some, like California, now impose discrimination protection for interns and paid sick leave. Finally, employers with 50 or more employees should become familiar with the **new Affordable Care Act requirements**.

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