

# LAW OFFICE OF LORI A. GOLDSTEIN, LLC

## CLIENT BULLETIN Winter 2016

### Year-End Roundup and New Year Forecast

#### 2015 ROUNDUP

Employers and employees saw key changes last year in workplace obligations and rights. The 2015 rules impact employment practices including pregnancy accommodations, criminal background questions, non-competes, Affordable Care Act filing, paid sick leave, and independent contractor classification.

#### PREGNANCY ACCOMMODATIONS (ILLINOIS AND NATIONWIDE)

- As the first New Year's baby was born in 2015, on January 1, 2015 we welcomed the new Illinois Pregnancy Accommodation Act, offering enhanced workplace rights to pregnant employees. For the first time, Illinois employers of all sizes (with **1 or more employee**) must provide "**reasonable accommodations**" for "conditions related to pregnancy, childbirth, or related medical conditions," unless the employer can show "**undue hardship.**"
- The **U.S. Supreme Court** also declared a **new rule for pregnant employees** under federal law. Deciding whether UPS should have given pregnant employees light duty work as it did for non-pregnant employees injured at work, the Court declared that a pregnant employee should be given the **same requested accommodation that the employer provides to similarly situated non-pregnant employees.**
- Finally, the federal **Equal Employment Opportunity Commission updated its pregnancy discrimination guidance** supporting accommodations, and the federal Pregnant Workers Fairness Act, which failed in Congress twice, was recently introduced on a bipartisan basis, improving the likelihood of a new federal law.

#### BAN THE BOX

Illinois joined multiple states in enacting a "Ban the Box" law, requiring **removal of criminal history questions from job applications.** Under the **Job Opportunities for Qualified Applicants Act**, private employers employing 15 or more must postpone any such inquiries until after selecting the applicant for an **interview or, if no interviews, after making a conditional employment offer.**

#### HOT OFF THE PRESS IN ILLINOIS: NON-COMPETE CONSIDERATION

Yet another **federal judge has rejected the "2-year rule" for enforcing non-competes** as enunciated by the Illinois appellate court in the *Fifield* case in 2013. On December 18, the a Northern District of Illinois court opined that the "Illinois Supreme Court is not likely to adopt a two-year, bright line rule in assessing whether an employee was employed for a 'substantial period of time' so as to establish adequate consideration to support a post-employment restrictive covenant." Given the split between the Illinois appellate court and at least four Illinois federal district court judges over the merits of *Fifield*, **unless and until the Illinois Supreme Court weighs in, this will remain a hot issue.**

#### HOT OFF THE PRESS IN U.S: ACA FILING EXTENSION

On December 28, the IRS issued Notice 2016-4 extending the 2015 Affordable Care Act filing deadlines. Now by **March 31, 2016, large employers** (50 or more employees) must send an individual report (Form 1095-C) to each employee who was full-time for at least one month in 2015.

Employers must also file the individual reports with the IRS, together with a transmittal report (Form 1094-C.) Employers who issue 250 or more **individual reports** must file electronically. The deadline for **paper filings is now May 31, 2016 and for electronic filings June 30, 2016. Large employer must comply with these reporting obligations no matter whether they offered health coverage or not**, and no matter whether the coverage was fully-insured or self-funded.

**Individuals** who rely upon other information received from their employer when filing their income tax returns **need not amend their returns** once they receive their Forms 1095-C or any corrected Forms 1095-C, but should keep the forms with their tax records. To learn more about market reforms and various plan requirements, visit [HealthCare.gov](http://HealthCare.gov).

### **PAID SICK LEAVE FOR FEDERAL CONTRACTORS**

While private employers and workers continue to wrangle about paid sick leave, President Obama signed an executive order on Labor Day 2015, requiring federal contractors to provide paid sick leave to employees. 300,000 federal contractors will now earn **1 hour of leave for every 30 hours worked, with a cap of 7 per year.**

Obama reasoned that **parents should not have to choose between losing income or staying home with a sick child.** He also called on Congress to pass the Healthy Families Act, which would require private-sector employers with more than 15 employees to extend paid sick leave benefits.

### **FAMILIES BEWARE: OVERTIME FOR ILLINOIS CAREGIVERS**

Federal overtime exemptions implemented last fall for individuals, families and households (but not agencies) who employ caregivers do not apply in Illinois. Because Illinois law is more protective – it does not exempt caregivers, whether they work for agencies or private families – the state law applies and entitles them to overtime compensation.

### **TIMEKEEPING RULES FOR EXEMPT EMPLOYEES**

**Illinois employers** should also note **new obligations regarding exempt employees.** Enacted last year with little publicity, amendments to the Illinois Wage Payment and Collection Act **require employers to maintain for exempt employees accurate records of the hours worked and vacation earned. Failure** may impede an employer's ability to defend claims that non-exempt employees were **misclassified** as exempt.

### **INDEPENDENT CONTRACTOR STATUS TIGHTENING, AUDITS, AND LAWSUITS**

Last July, the U.S. Dept. of Labor issued an **official guidance on independent contractor status**, finding **most workers to be employees** under the Fair Labor Standards Act. DOL highlighted the **"economic realities" test**, which **de-emphasizes the significance of control.** The test also considers whether the work is **integral** to the company's business, to what extent the worker is **invested** in the company's business, and how **permanent** the work relationship is. The focus is **whether the worker is economically dependent on the employer** (and therefore an employee) or is really in business for herself (an independent contractor). Employers should carefully review their worker relationships, correct any misclassification errors (consider the IRS' Voluntary Classification Settlement Program), and expect more audits, claims and class action suits in the coming year.

## **2016 FORECAST**

### **OVERTIME EXEMPTION CHANGES NOW EXPECTED SUMMER 2016**

Last summer, DOL released proposed changes to the "white collar" overtime exemption for executive, administrative, and professional employees. Initially expected to become effective January 1, the enforcement date has been delayed until at least summer 2016. The changes would **increase the minimum salary to be exempt from overtime pay from \$455 per week (\$23,660 annually) to \$970**

per week (\$50,440 annually.) It will also **raise the highly-compensated employee exemption from \$100,000 to \$122,148 minimum annual salary.** An estimated 5-15 million employees nationwide may lose exempt status, entitling them to overtime pay for working more than 40 hours in a week. Employers will need to budget for salary increases and/or increased overtime costs and **consider cost-saving measures**, such as reducing hours, hiring part-time hourly workers, and converting salaried employees to hourly employees at a lower hourly rate.

### ILLINOIS EQUAL PAY ACT COVERS ALL EMPLOYERS

The **Illinois Equal Pay Act** now applies to **employers of all sizes** (not only employers with 4+ employees), and adds civil penalties. The law requires employers to **pay equal wages to men and women for doing the same or substantially similar work** (unless the wage difference is based upon a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or factors other than gender.)

### “MISCONDUCT” BROADENS - MORE UNEMPLOYMENT COMP DENIALS

As of January 3, the **Illinois Unemployment Insurance Act expanded the scope of what constitutes “misconduct,” thereby making more employees ineligible for unemployment compensation.** With the goal of saving costs for Illinois employers, Gov. Bruce Rauner called the amendment “a step toward making [Illinois] more competitive so we can increase investment in the state and grow jobs.”

**No longer limited to willful and deliberate violations** of an employer’s reasonable policy or rule, “misconduct” now includes:

- Falsifying employment applications or other documents to obtain employment.
- Failure to maintain licenses, registrations or certifications reasonably required by the employer (or by law), unless failure is not the worker’s fault.
- Knowing, repeated violations of attendance policies following a written warning, unless the individual made a reasonable effort to fix the reasons for the violation or the violation was not in his control.
- Refusing to obey employer’s reasonable and lawful instruction, unless refusal is for lack of ability, skills or training or lack of safety.
- Consuming or reporting to work under the influence of alcohol, illegal drugs, non-prescribed drugs or an impairing substance used in an off-label manner on the employer’s premises during work hours in violation of policy.
- Grossly negligent conduct that endangers the safety of the individual or co-workers or damages company property.

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#### Announcements

- ✓ *I am proud to be celebrating the 5<sup>TH</sup> ANNIVERSARY of the Law Office of Lori A. Goldstein on February 1, 2016. Thank you to my wonderful clients, colleagues, and supporters for their continued business, referrals, speaking, writing and networking opportunities.*
- ✓ *Career Resource Center needs you! Please help us spread the word about the wonderful career transition services offered by CRC. We are here for new grads, individuals returning to the workforce, those seeking a change of employment or career, and employees who need a boost in their career transition search. Stop by for a tour, try out a workshop, or join for a year. Volunteers and donors always welcome too! [careerresourcecenter.org](http://careerresourcecenter.org)*

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