

New Legal Protections for Job Candidates and Workers

by [Lori Goldstein](#)

Applicants, employees and even contractors are benefitting from new laws that significantly change the workplace. Stronger protection from discrimination and harassment, an overhaul of overtime rules, new mandates on candidate salary questions and expense reimbursement, and legalized marijuana were the focus this past year.

- 1. Expanded Discrimination, Harassment and Retaliation Coverage** - On January 1, the Illinois Workplace Transparency Act (WTA) extended these laws to 1099 contractors. All Illinois employers must now provide annual sexual harassment training. Coverage for small employers (1-14 employees) – currently limited to disability, pregnancy and sexual harassment – will expand on July 1 to include all protected categories under Illinois law, including age, race and national origin.
- 2. Overtime Minimum Salary Increase** – Following years of discussion and thwarted changes, the first significant changes to federal overtime laws in over 50 years became effective this year. These changes reduce the number of overtime exempt employees by:
 - Raising the minimum “standard salary level” to be an exempt employee from \$23,660 to \$35,568 per year;
 - Raising the total annual compensation level for the “highly compensated employee” exemption from \$100,000 to \$107,432; and
 - Allowing employers to use annual nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level.
- 3. No Salary Questions** - A broad nationwide effort is underway to promote equal pay and avoid perpetuating decades of unequal pay based on legally protected categories. On September 29, 2019, Illinois became a “salary transparency” state, restricting employers from asking candidates about past earnings. Employers with 4 or more employees, employment agencies, and recruiters can’t ask current or former employers about an applicant’s salary and can’t condition job offer on disclosing salary history. Employers can provide information regarding the benefits of a position and discuss an applicant’s expectations regarding compensation.
- 4. Expense Reimbursement** – Illinois employees now have a statutory right to reimbursement of “all necessary expenditures or losses incurred within the employee’s scope of employment and directly related to services performed for the employer.” Reimbursement is not required for losses caused by employee negligence, normal wear or theft. The law imposes obligations on employees too. Expenses must be authorized and comply with written reimbursement policies and deadlines, and must not exceed employer-established expense caps. Employers may also limit the timeframe for submitting reimbursement requests, subject to a minimum of 30 days.

- 5. Legal Recreational Marijuana and The Workplace** - Since marijuana became legal in Illinois on New Years' Day, employees have faced a multitude of questions. Can they still be subject to a "zero tolerance" policy and be fired for a positive test? Does the answer change if the job is safety-sensitive? Is marijuana use a reasonable accommodation for applicants/employees with disabilities?

While employers can have a "reasonable" workplace drug policy, they must balance unique Illinois privacy law, which bans employers from taking adverse action against employees for lawful conduct outside the workplace. Applicants and employees should be aware of these rules:

- Employers may prohibit use and possession at work and impose reasonable drug testing policies
- Employees in safety-sensitive positions are subject to federal prohibition of marijuana (recreational and medical.)
- Employers can discipline an employee based on a "good faith belief" that the employee is "impaired" or under the influence of marijuana at work, while performing job duties, or while on call.
- Employees are entitled to a "reasonable opportunity" to contest the basis for the employer's adverse decision.

- 6. Rights During a Pandemic** – As an attorney representing workers and employers, I've heard from many regarding work status, rights and obligations in the face of the coronavirus crisis. Please see my Client Bulletin and FAQ for details on workers' rights and employer duties under the emergency paid leave law, shelter-in-place order, and unemployment law: [COVID-19](#) I am offering a free 15-minute telephone consultation to individuals and business owners to address these or other employment law issues. Feel free to contact me at lori.a.goldstein@gmail.com or [Lori Goldstein](#).