

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN JUNE 2020



New Law for Small Employers, Phase 4 Begins June 26, Avoiding Reopening Risks

The last few months have been a whirlwind of activity and transformation – both in the workplace and in our nation. Racial injustice and police reform are at the forefront of real and positive change. In a **landmark decision** by a politically divided group, the Supreme Court ruled 6-3 that federal law bans employment discrimination and harassment based on sexual orientation and identity. A Supreme Court decision on DACA continued the immigration protection of our nation’s Dreamers, while an Executive Order put a hold on the issuance of skilled worker visas until 2021.

Looking forward, employers should be aware of upcoming **new requirements affecting employee handbook policies** and requiring training. Finally, as businesses continue to navigate state and local reopening and the transition back to the workplace, check out these **updates and tips for avoiding claims**.

July 1 Illinois Discrimination Law Changes

On July 1, 2020, the **Illinois Human Rights Act will expand to cover ALL Illinois employers** (not just those with 15+ employees) for anti-discrimination, harassment and retaliation obligations. Applicants, employees **and independent contractors** at employers with **1 or more employees** will now be protected based on all state-protected categories, including race, age, religion, nationality, gender, gender identity, and sexual orientation.

The new coverage is key for LGBTQ employees, applicants and contractors. The recent **Supreme Court decision** holding that Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating based on sexual orientation and transgender status, **applies only to employers with at least 15 employees**.

Employers should be **reviewing and updating your written policies** and handbooks, and educating and training managers and leaders. Make sure you **give copies of your EEO and anti-discrimination/harassment policies to your contractors**. Employment practices liability insurance (**EPLI**) is highly recommended.

Finally, remember that **sexual harassment training is required** for all Illinois employers annually, and the first training must occur **by 12/31/20**. Please contact me for information about sexual harassment training and **general discrimination/harassment training** that I conduct. In light of the recent decisions, laws and racial awareness, broad-based interactive training is recommended.

Minimum Wage Increases on 7/1

Employers with Illinois employees will see wage increases on July 1 based on their location and applicable law. The **Illinois** hourly minimum wage will increase to **\$10**. **Chicago's** increases to **\$14** (or \$13.50 for **businesses** with less than 20 employees.) Finally, businesses in **Cook County** outside of Chicago - in **towns that did not opt out** of the 2017 Cook County Minimum Wage ordinance - are subject to the county wage, increasing to **\$13** next week.

Transition Back to the New Workplace

Congratulations for surviving 3+ months of shelter orders and 3 phases of Illinois' Reopening Plan. Both Illinois and Chicago are set to begin their respective **Phase 4 on Friday, June 26**. Here's how things will look different:

Phase 4

Illinois' Phase 4 - the "revitalization phase":

- Gatherings or **50 or fewer** people (increased from 10)
- All schools and child care facilities (including colleges, pre-K -12 schools and summer programs) can reopen under Illinois Department of Public Health (IDPH)-approved guidance
- **Bars and restaurants** can expand from outdoor to **interior seating** with capacity limits under IDPH-approved guidance
- Personal care services and health clubs: All barbershops, salons, spas and health and fitness clubs can open with capacity limits and IDPH approved safety guidance. (Hair and nail salons, barbershops and tattoo studios were allowed to open with restrictions in Phase 3)
- **All employees can return to work** (no longer just essential businesses) with IDPH approved safety guidance. All manufacturing businesses can open and retail businesses will be open with capacity limits. Employers are encouraged to **provide accommodations** if COVID-19-vulnerable employees request (but comply with disability discrimination and confidentiality laws)
- Cinemas and theaters can open with capacity limits, all **outdoor recreation is allowed** and all **health care providers** can open

Illinois and Chicago's websites have **detailed industry-specific** guidelines, checklists, and toolkits, posters/signage and other resources.

Recommended guidance for **Commercial Buildings/Offices** includes:

- **Workspaces separated by impermeable barriers to enhance safety, where possible**
- **Visual signage posted throughout facility regarding hygiene, social distancing, PPE**
- **Individuals required to wear a face covering at all times in common areas, or where 6 ft. distancing is not possible**
- **Small, high-traffic common areas closed to avoid large gatherings**
- **Where social distancing cannot be achieved, consider office re-configuration, which may include installation of physical barriers**
- **Consider reconfiguring work spaces, moving, disabling, or spacing furniture, fixtures, and other infrastructure elements in high density environments**
- **Sanitation stations readily available for employee and customer use**
- **Limit the number of employees returning to work, and if possible, vary start and stop times for those returning to work to promote social distancing conditions**
- **Encourage employees to complete health and safety training related to COVID-19 when returning to work**
- **Prior to leaving home, individuals should self-identify symptoms and stay at home if symptomatic**
- **Prior to entering establishment, employees self-screen (or employer screens) to ensure no symptoms of COVID-19**
- **Limit gatherings of occupants in cafeterias and meetings rooms to 50 people**
- **Follow CDPH and CDC guidance for testing and tracing protocols.**

Federal OSHA Guidelines

At the federal level, the Occupational Safety and Health Administration (OSHA) issued guidance on June 19 to **assist employers reopening non-essential businesses** and their employees returning to work: [OSHA Guidance Return to Work June 2020](#).

The guidance supplements the DOL and Department of Health and Human Services' Guidance on Preparing Workplaces for COVID-19 and the White House's Guidelines for Opening up America Again. It contains an excellent **employer FAQ**. Employers should keep focusing on strategies for basic hygiene, social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training. Also, continue to consider ways to use **workplace flexibilities**, such as remote work and alternative business operations, to provide goods and services to customers.

EEOC Clarification on Testing

In a recent update of its publication, "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," the EEOC confirmed that the Americans with Disabilities Act does **not allow employers to require antibody testing** before allowing employees to re-enter the workplace. Employers can still require a test to determine if someone has an active case of COVID-19.

Remember to store an employee's COVID-19 related medical information (such as the results of a temperature test) in the employee's existing **confidential medical file**—**apart from his/her personnel records**.

As for **non-employees**, such as **customers**, the U.S. Department of Justice has not yet issued an opinion on whether private entities can conduct temperature testing on non-employees. The ADA's protection of individuals with contagious diseases is balanced this protection with business duties to protect the health of others from a "direct threat." Until DOJ clarifies, be cautious in relying on the "direct threat" defense to screen customers.

Establishing **safety guidelines for employee interaction with customers** is important. These include washing hands or using hand sanitizer before and after engaging with customers and promptly disinfecting areas touched by a customer. **Monitor the number of customers** onsite to comply with regulations. Post signage with rules for customers to follow. Consider obtaining signed **liability releases and acknowledgements** from customers that they have complied with applicable regulations.

Be sure to **post the FFCRA model notice** and the **IDPH Workplace and Safety Guidance poster**, and monitor CDC and OSHA websites for updates.

Reduce Risk of COVID-Related Claims/Liability

Finally, the big question I'm hearing from employers: **How can we avoid being sued** by returning employees who claim we aren't following legal requirements? As businesses increase activity and make workforce decisions, and as employees return, it is important to comply with the multiple COVID-related and regular laws and regulations. These include the alphabet soup of OSHA, ADA, FFCRA, FMLA, FLSA, and HIPAA, as well as the Natl. Labor Relations Act, Title VII and state and local employment discrimination laws (another reason for EPLI insurance.) Be aware of **changing stay at home**, shelter in place, essential services, or return to work orders – many **varying by state and city**, as well as paid and unpaid leave ordinances, privacy, wage-hour, unemployment, layoff and furlough requirements.

Restructure, layoff/recall, and termination decisions should be based on legitimate business/operational, **non-discriminatory** reasons, not protected categories such as disability, age, or national origin.

Follow final pay and benefit conversion laws and applicable federal and state WARN laws requiring notice of group layoffs.

Consider **creative and reasonable severance packages** (many covered by PPP) and separation and release agreements.

Update and add policies and forms, including FFCRA leave, FMLA, disability accommodations, protocols/procedures for screening, monitoring and handling COVID-infected or exposed individuals, social distancing, face coverings, sanitation, travel, telecommuting, expense reimbursement. Consider return to work employee acknowledgement forms.

A furlough (leave of absence) or reduced work schedule may jeopardize the exempt status of salaried exempt employees under the Fair Labor Standards Act, which could trigger **minimum wage and overtime pay claims**.

Reduced hours or furloughs could also result in a loss of health insurance coverage and be treated as a COBRA qualifying event. Note that **Illinois Continuation law (mini-COBRA** for employers with up to 20 employees) requires that the **employee have been covered under the group plan for at least 3 months**. Federal COBRA does not have this eligibility condition.

Understanding, flexibility and regular communications are key. The pandemic has impacted employee stress levels. Managers should be aware of mental health considerations during this transition. Ensure employees that the workplace is safe and that HR is available to discuss personal situations that may be affecting work.

Announcements

- ✓ *I can help with **updating policies and form**, and please check my website for COVID and general bulletins and updates: [Law Office of Lori A. Goldstein](#)*
- ✓ *I work with both **employers and employees** (not at the same company!) on workplace matters, compliance, contracts, training, and dispute resolution.*
- ✓ ***Career Resource Center** is here for you! As a proud CRC Board member, I can't say enough about the wonderful career transition services offered by CRC, a nonprofit celebrating 30 years of success. We are here for employees between successes, recent college graduates, individuals returning to the workforce, those seeking a change of employment or career, and employees who need a boost in their career transition search.*

***Virtual Appointments** with Advisors & Specialists are now available for members. To schedule an appointment or to learn about membership, contact [Kelly Clark](#). Try out a workshop, or join for a year. Volunteers and donors always welcome too! careerresourcecenter.org*

*Check out CRC's **Figuring Out What's Next**, a 4 part series for CRC Members:*

Wednesdays, July 8th - 29th, 1-2 pm; reserved space for new members who register by June 30th!



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