

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

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NEW LAWS FOR 2023

As another interesting and challenging year comes to a close, Illinois employers should be prepared for new employment laws. These laws are effective 1/1/23 unless otherwise indicated. Important reminders about 2022 laws follow. Wishing all a year of peace, success and well-being.

1. **Illinois minimum wage:** Will rise to \$13 per hour for non-tipped employees and \$7.80 tipped (ages 18 and over) for employers with 4 or more employees. Otherwise, the federal minimum wage remains \$7.25.
2. **Meal break changes** for non-exempt employees: This applies to employees entitled to overtime pay (non-exempt employees) who work more than 20 hours a week. Under the One Day Rest in Seven Act (ODRISA), employees scheduled to work at least 7.5 hours are already entitled to a 20-minute unpaid meal break. As of 2023, those working for longer than 7½ consecutive hours will have an additional 20-minute meal period for every additional 4½ continuous hours worked. The law also clarifies that meal periods do not include an employee's reasonable time spent using the restroom facilities.

Reminder: ODRISA also mandates employers to provide non-exempt employees at least 24 consecutive hours of rest in every calendar week.

3. **Hair discrimination:** The Illinois CROWN Act creates a new definition of "race" protected from discrimination and harassment under the Illinois Human Rights Act. The definition will now include "traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists."
4. **Pay Equity Data Reporting:** Equal pay laws to ensure pay equity regardless of gender and race are being strengthened with additional compliance steps. Under the Illinois

Equal Pay Act, employers that currently file federal EEO-1 reports (generally employers with more than 100 employees) must now submit similar reports on workforce diversity to the state of Illinois. Plus, employers face new pay data reporting and certification requirements.

Employers will have to acquire an "Equal Pay Registration Certificate" from the Illinois Department of Labor. The Certificate confirms that the employer complies with all federal and Illinois laws that guarantee equal pay for female and minority employees.

These laws took effect in 2021, but some employers will need to be prepared for the reporting obligations on 1/1/23. Businesses operating prior to April 1, 2021, must fulfill the requirements between March 23, 2022 and March 23, 2024 - the certification deadline will be individually set by the IDOL – and recertify every 2 years. Newer businesses have up to 3 years after beginning operations to certify.

NOTE: Many states (including Illinois) have bans on salary history questions for job candidates. Some states have gone further with wage transparency laws, requiring employers and recruiters to post salary ranges. New California and New York wage transparency laws become effective on 1/1/23.

5. **Collective Bargaining Rights:** On November 8, Illinois voters passed a constitutional amendment, the Illinois Right to Collective Bargaining Measure. Although no employer policy changes are necessary, the amendment codifies that employees have a “fundamental right to organize and bargain collectively through a representative of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work” and prohibits any law that “interferes with, negates, or diminishes the right of employees to organize and bargain collectively.”

This amendment is consistent with the federal National Labor Relations Act, with a major exception: the Illinois law allows employees to bargain directly with their employer rather than through a union.

Important Reminders (2022 Laws)

1. **Changes In Restrictive Covenants:** On January 1, 2022, significant amendments were made to protect employees on post-employment non-competes and non-solicits. The Illinois Freedom to Work Act changes, which affect contracts signed on and after 1/1/22, include:
 - Non-compete restrictions only for employees with annual earnings of at least \$75,000. (This will increase to \$90,000.00 by 2037.)

- Non-solicitation restrictions only for employees with annual earnings of at least \$45,000 (increasing to \$52,500 by 2037.)
 - Employees/candidates must have 14 days to review and consult with an attorney.
 - If employer unsuccessfully sues an employee on a post-employment non-compete/solicit, the employer must pay the employee's attorneys' fees and costs.
2. **Chicago Employers Are Subject to Additional Conditions for Sexual Harassment policies and training:** As of July 1, 2022, Chicago employers must supplement their sexual harassment policies, make them available in each employee's first language, and provide additional training: 1 hour of sexual harassment training for non-supervisory employees and 2 hours for supervisors, plus 1 hour of bystander intervention training for all employees. The first trainings must be completed by June 30, 2023.
 3. **Disability Association Protection:** IHRA expanded on January 1, 2022 to add protection to employees, contractors and applicants because of their association with a person with a disability. This is already the law under the federal Americans with Disabilities Act. It aims to prevent discrimination because a worker is caring for an ill family member, or insurance costs are high due to that family member.
 4. **Classification of 1099 Independent Contractors:** returned to the "economic realities" test", and clarification of a strict test is pending at the federal level – stay tuned. This makes it more difficult for businesses to show that a worker is a 1099 contractor rather than a W-2 employee. The result is that more gig economy and other U.S. workers will receive minimum wage and overtime protection under the Fair Labor Standards Act.

Heads Up

Breaking news 12/29/22: Protections for pregnant and nursing employees working for mid to large employers will expand nationwide as part of a spending bill approved on Dec. 23 and signed by President Biden on Dec. 29, 2022.

The **Pregnant Workers Fairness Act** provides the right to reasonable accommodations for pregnancy, childbirth, or related medical conditions, similar to accommodations for disabilities covered by the Americans with Disabilities Act. Enforcement rules and implementation are expected to go into effect within 2 years. The new law will apply to employers with 15 or more employees.

The **Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act** will expand protections to express breast milk to salaried employees and enhance the remedies for violations. Effective in late April 2023, the law will require employers with 50 or more employees to provide reasonable unpaid break time for all employees to express breast milk as needed.

Illinois and a few other states/localities already have these protections. The Illinois accommodations law (Illinois Human Rights Act) covers employers with 1 or more Illinois

employee and it protects contractors as well. The Illinois Nursing Mothers in the Workplace Act applies to employers with 5 or more employees.

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