

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

LABOR DAY 2023



This Labor Day marks the **last day of full-time work from home** for over 1 million employees. FedEx, Lyft, Zoom Communications (yes, even Zoom!) and many other companies are now requiring return to the office at least part of the week. Office attendance has hovered at 50% in 2023, the highest since the pandemic began. But successfully pulling off RTO is certainly a challenge. 73% of employers report struggling to get workers back in the office, according to a recent survey of 185 human resource executives.

Meanwhile, as our nation recognizes and appreciates our workforce this Labor Day, unions and strikes have become more prevalent, and workers' rights continue to be strengthened by new laws. Businesses faced **new mandates in 2023 and should prepare for new laws to come**, both in Illinois and on a federal level for employees, and some even for temps and contractors.

1. Illinois Paid Leave Law

Mental health issues are at an all-time high, and work-life balance is top of mind. Since 2017, only Illinois employers in **Chicago and in Cook County “opt-in” towns** have had to provide paid sick leave based Chicago and Cook County ordinances. But on January 1, 2024, **all remaining Illinois employers** will face significant change under the new Illinois Paid Leave for All Workers Act.

Private and public employers of **all sizes** will be required to offer employees an annual minimum of **40 hours of paid leave for any purpose** that can be used after 90 days on the job. Plus, employees will be able to **carry over** up to 40 hours of unused time at year-end. Employees will not have to provide a reason or supporting documentation for leave. Unused leave is not paid out at separation.

2. Equal Pay and Benefits for Temporary

A new law now protects temps in Illinois with **equal pay and benefits**. The Temporary Worker Fairness and Safety Act, effective immediately in early August, restricts “permatemping” (keeping workers in temporary assignments for long periods of time.) The amendment to the Illinois Day and Temporary Labor Services Act requires staffing agencies - and employers who rely on temporary and day laborers – to provide temporary workers who work **more than 90 days**, pay and benefits comparable to direct-hire employees. Companies can pay the hourly cash equivalent of the actual cost of the benefits, in lieu of providing the benefits.

3. Contractor Protection

When the Illinois Freelance Worker Protection Act becomes effective on July 1, 2024, **freelance workers** will be legally protected from **intimidation, harassment, and discrimination** from hiring parties, and be entitled to **written contracts** and timely compensation.

4. Expense Reimbursement Rights

In April, the IL Dept. of Labor **beefed up** employee expense reimbursement with new regulations and **doubled the current penalties**. Illinois law requires employers to reimburse employees for necessary expenses incurred in connection with their employment for the "primary benefit" of the employer. Prior to the amendments, employers had no guidance on how to determine whether an **expense was incurred for the primary benefit of the employer**. Employers now have a **5-factor test**:

- Whether the employee has any expectation of reimbursement
- Whether the expense is required or necessary to perform the employee's job duties
- Whether the employer is receiving a value that it would otherwise need to pay for
- How long the employer is receiving the benefit, and
- Whether the expense is required of the job

5. Pay Transparency

Illinois will join a growing number of states when pay transparency comes to Illinois in 2025. Under the amended Equal Pay Act, employers with more than 15 employees will have to **disclose pay scale and benefits in job postings**. Intended to reduce discrimination and eliminate pay disparity, pay transparency laws seek to **level the playing field** by giving candidates and employees more leverage in compensation discussions.

Meanwhile, employers should remain up to date on pay transparency developments in states in which they operate to ensure compliance. While the rationale for pay transparency laws is consistent across states, the laws themselves are not identical and may impose differing or **conflicting obligations on multistate employers**.

6. Expanded Bereavement Leave

Illinois recently expanded bereavement leave rights for (1) parents who lose a child to suicide or homicide, and (2) family members of those killed in a crime of violence. Next January 1, the **Family Bereavement Leave Act** (applicable to employers with at least 50 full-time employees in Illinois) will provide employees who experience the loss of their child by suicide or homicide to take unpaid leave from work to grieve the loss. This expansion comes about a year after the statute was expanded to cover pregnancy and adoption loss.

Illinois **employers of all sizes** will see employee **rights increase** under the Victims' Economic Security and Safety Act. **VESSA** entitles employees who are victims of domestic violence, sexual violence, or gender violence (or whose family members or household members are victims of such violence) to take unpaid leave from work to address issues related to the violence.

Beginning in 2024, the law will also permit employees to take up to **10 workdays** of unpaid leave related to the death of a **family member or household member who is killed in a crime of violence** to (1) attend the funeral, funeral alternative, or wake, (2) make arrangements necessitated by the death, and (3) grieve the death of the lost family member or household member.

7. FLSA Overtime Exemption Minimum Salary Raise Proposed

Once again, the federal Department of Labor is seeking to increase the minimum salary levels to be exempt, which would provide **3.6 million more workers with overtime** pay. For employees in executive, administrative, or professional roles, the proposed rule would:

- Increase the Fair Labor Standards Act (FLSA) minimum salary level from \$684 per week (**\$35,568 per year**) to \$1,059 per week (**\$55,068 per year**)
- Increase the total annual compensation requirement for highly compensated employees from \$107,432 per year to \$143,988 per year
- **Automatically update earnings thresholds every 3 years** so they keep pace with changes in worker salaries

This would be a big jump and the DOL will now accept public comments on the proposal for 60 days. Even if a final rule is issued, it could face legal challenges. Efforts to raise the cutoff to \$47,500 several years ago were ruled invalid by a federal judge.

8. FTC to Vote in April 2024 on a Federal Non-Compete Ban

On Jan. 5, 2023, the U.S. Federal Trade Commission proposed a rule that would **ban almost all employee non-compete restrictions, superseding varying state laws.** Currently, most states allow non-compete agreements with reasonable duration and geographic scope. A few states, including Illinois, restrict them with salary thresholds and other conditions.

But the potential for a national ban means employers need to be ready. While the proposed rule is **limited to employee non-competes** (not non-solicits or NDAs, contractor restrictions or business sales), it would **retroactively invalidate existing agreements.** Employers would have to **notify current and former employees** that the non-compete provision is invalid.

Most employers strongly reject a broad ban and are pushing to narrow the scope. The U.S. Chamber of Commerce questions the FTC's legal authority to implement a wholesale ban. The FTC is now reviewing public comment and will **vote on the rule in April 2024.** But employers nationwide can take steps:

- **Consider and beef up alternatives** to non-competes, like strengthening covenants on confidentiality, IP, and non-solicitation.
- Make sure all agreements comply with **current state laws**, and narrowly tailor restrictions to meet actual business needs.
- If the applicable state law requires legal "**consideration**" (something of value) beyond new or continued at-will employment, think about to offer.
- Provide required notice, as required in some states (e.g., 14 days in Illinois).
- **Do due diligence** when hiring to make sure there aren't any **conflicts with a candidate's agreements** with current or former employers. Otherwise, the former employer could sue your company for intentional interference with that agreement. If a cease-and-desist letter is received, take it seriously and seek legal counsel.
- Enforce confidentiality and other restrictions. If a current or former employee is violating or threatening to violate a restrictive covenant, investigate and take necessary action.

I work with both **employers and employees** (not at the same company!) on workplace matters, compliance, discrimination, harassment, employment and severance contracts, training, and dispute resolution.

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