LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN – LABOR DAY 2024

Our nation's 130th Labor Day celebration of workers arrives during interesting times. The world came together for the exciting summer Olympics and Paralympics. In 2 months, we will elect a new U.S. president and vice president. Many employees are back in the office, at least part-time. Unions continue to gain in numbers and strength, while DEI programs are waning.

The next administration may support current employment laws and agency regulations. Or, it may significantly change them, continuing to rein in agency power. The recent injunction against the FTC non-compete ban is one example. Meanwhile, businesses continue to face new mandates and should prepare for new laws to come.

Federal Non-Compete Ban Thwarted

The hottest employment news is the recent court **injunction, preventing the proposed federal non-compete ban** from becoming effective. On August 21, just days before the September 4 effective date, the Northern District of Texas court issued a nationwide injunction prohibiting the Federal Trade Commission from enforcing its non-compete ban. That means no ban for now and non-competes (as well as non-solicit restrictions) will continue to be subject to state laws.

Now is the time to **review your agreements for compliance with applicable state law**. Which law that is depends. Don't assume it will be the law the parties agreed to and stated in the agreement (often company HQ.) Instead, many courts apply the state law where the employee works/worked.

If you have remote employees, be sure you know their state law. Some states, like Minnesota, North Dakota, Oklahoma ban non-competes, and California bans non-competes and customer non-solicits. and non-solicits. Other states like Illinois have strict requirements, like minimum

salary, something extra (legal "consideration"), and 14 days to review agreement with an attorney.

Stay tuned for further developments - we may see a future ban in its current form or modified based on court and agency action.

Illinois Rules Protecting Employee Freedoms on Political or Religious Matters

Just weeks before the January inauguration, on January 1, 2025, the Illinois Worker Freedom of Speech Act will govern Illinois employers. They **cannot terminate or discipline** an employee, including managers, or threaten to do so, because the employee **declines to attend or participate in an employer-sponsored meeting about political or religious matters** or decline to receive communications about such a meeting.

"Political matters" is defined broadly to cover elections, political parties, proposals to change legislation, regulations, or public policy, and the decision to join or support any political, civic, community, fraternal, or labor organization. Employers can still conduct such meetings on a voluntary basis. The act covers distribution of union avoidance literature and union avoidance conduct. techniques.

Deadline for Filing Illinois Discrimination Claims Will Increase to 2 Years

On January 1, 2025, the deadline for filing an employment discrimination, harassment, or retaliation charge under the Illinois Human Rights Act (IHRA) will **increase from 300 days to 2 years**. Illinois joins several states that extended the deadline beyond the federal (300-day) requirement.

New Protected Classes – Family Responsibilities and Reproductive Health Decisions

The IHRA will add 2 protected categories next year, prohibiting adverse action against an employee or candidate based upon the employee's "family responsibilities" or reproductive health decisions.

"Family responsibilities" means an employee's **actual or perceived provision of personal care** (i.e. medical, hygiene, nutritional, or safety needs, or to provide transportation to medical appointments) to a family member who is unable to meet those needs themself. It also encompasses being physically present to provide **emotional support** to a covered family member with a serious health condition who is receiving inpatient or home care.

Different from employee disability laws, employers are not required to make accommodations or modifications to company policies for an employee based upon family responsibilities. An employer can still take adverse action and **enforce reasonable workplace rules** (e.g. leave, scheduling, attendance, performance), as long as its policies comply with the IHRA.

Illinois employers will also be prohibited from discriminating against an employee for actual or perceived **decisions on reproductive health and welfare**, including pro-choice or anti-abortion views or healthcare decisions. California, Connecticut, Delaware, the District of Columbia, Hawaii, New Mexico, and New York maintain similar state protections.

"Reproductive Health Decisions" are defined as "a person's decisions regarding the person's use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care."

Employers with Illinois employees should **prepare to update employee handbooks, and train** managers and supervisors concerning the new protected categories.

AI Law Will Restrict Illinois Employers

Another key change to the IHRA will take effect on January 1, 2026. Illinois is the **second state to prohibit employers from using artificial intelligence if it has a discriminatory effect** on employees based on a protected class or uses zip codes as a proxy for a protected class. Employers will be required to provide notice if using AI for recruitment, hiring, promotion, selection for training, discharge or discipline.

The Illinois Artificial Intelligence Video Interview Act (2020) already **requires notice and consent** from Illinois applicants before AI may be used to analyze **video interviews**. As more employers incorporate artificial intelligence into employment-related activities, it will be important to balance the benefits of AI with the risk of breaking ever evolving laws.

Prediction Was Accurate: Corporate DEI Programs Down

In June 2023, when the Supreme Court **struck down affirmative action in colleges**, legal experts predicted that this would open the door for challenges to race-conscious diversity programming in the workplace, such as diversity, equity, and inclusion (DEI) and environmental, social, and governance (ESG) initiatives, as well as diversity quotas for hiring and promotions. That prediction has proved to be true.

Facing boycotts, social media criticism and even legal action by critics of diversity policies, many **companies have publicly ended their DEI initiatives**. One of the most recent was Harley Davidson, following social media criticism from a right-wing conservative activist who has successfully taken on DEI policies at several American companies. Harley announced it has **no DEI function or hiring quotas** and that it ended supplier diversity spend goals. The company may also drop some sponsorships, including LGBTQ+ Pride festivals.

Other companies have taken similar actions, including Lowes, Ford, Jack Daniels, Caterpillar, and John Deere. Meta and Google have quietly dialed back DEI efforts, and Microsoft made news when it eliminated DEI roles within its events team.

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.