

# Legal Update

January 2016

## SIGNIFICANT CHANGES IN ILLINOIS LAW

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We wish our clients and friends a healthy, happy, and prosperous 2016. As we do every year, our January *Legal Update* highlights several new laws that may be of interest to Illinois businesses and individuals. As we ring in the new year, we encourage all affected businesses and persons to ensure that they are in compliance with these laws.

### **Amendments to the Illinois Unemployment Insurance Act**

Changes to the Illinois Unemployment Insurance Act now make it easier for companies to contest employees' claims for unemployment benefits. Although employees discharged for "misconduct" were ineligible for unemployment benefits prior to the changes, the statutory definition of "misconduct" was amorphous and often led to inconsistent outcomes. Now, the Act provides a non-exclusive list of circumstances that qualify as "misconduct." The list includes, for example, falsification of job applications and related documents; failure to maintain licenses and registrations required for a job; repeated violations of lawful attendance policies; refusal to obey lawful and reasonable instructions; reporting to work under the influence of alcohol or illegal drugs; and grossly negligent conduct endangering employee safety.

Although the amendment does not remove all subjectivity from the "misconduct" analysis, it should help increase predictability in the resolution of disputes regarding unemployment benefits. Employers should review their attendance policies, update them if necessary, and ensure that they are provided to employees in writing (*e.g.*, in an employee handbook), electronically, or via posting in the workplace. In addition, employers should have each employee sign an acknowledgment, which states that he or she has received a copy of, understands, and shall abide by the employer's policies. Employers should also make sure to maintain detailed documentation of employee discipline and performance issues so that (among numerous other reasons) they are able to establish misconduct in disputes over unemployment benefits. You can find tips on effective documentation [here](#).

### **Changes to the Mechanics Lien Act**

The Illinois Mechanics Lien Act was amended to allow a property owner to "bond over" a mechanics lien, a procedure long available in many other states. The Act provides property owners or any other person who may be liable for the payment of a lien claim the right to substitute an eligible surety bond for the property securing the lien claim. The effect is to clear title to a property subject to a payment dispute. Among other requirements, the surety bond must be equal to 175% of the amount of the lien claim and issued by an A-rated surety company.

### **Expansion of the Equal Pay Act**

The Illinois Equal Pay Act of 2003, which previously applied only to employers with four or more employees, now applies to all Illinois employers. The Act makes it unlawful for employers to pay

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employees different wages for similar work due to gender. The Act includes exceptions for wage decisions based on non-gender-related factors such as seniority, merit, and quality or quantity of work.

The amendments to the Act also create tiered penalties based on employer size. Fines for employers with less than four employees are capped at \$500 for a first offense, whereas fines for employers with four or more employees start at up to \$2,500. The Act also allows employees to file civil suits to recover the amount of an underpayment as well as their attorneys' fees.

### **Veterans Preference in Private Employment Act**

This new Illinois statute allows—but does not require—employers to adopt policies that provide preferential treatment of veterans in hiring, promotion, and retention. Such policies, if adopted, must be in writing and posted at the employer's workplace and on its website, and employment application forms must inform applicants of the policy.

Previously, the Illinois Human Rights Act (the Illinois anti-discrimination statute) allowed preferential treatment of veterans when required by law. Employers may now choose to adopt these policies even when they are not legally obligated to do so. Employers adopting a policy providing preferential treatment for veterans should be sure to apply the policy uniformly and consistently to mitigate the risk of claims that the policy is being administered arbitrarily as a pretext for unlawful discrimination.

### **City of Chicago Minimum Wage Ordinance**

Although the Illinois minimum wage remains \$8.25 per hour, the Chicago minimum wage ordinance, which was adopted in late 2014 but went into effect in 2015, increased the minimum wage in Chicago to \$10 per hour.

On July 1, 2016, the minimum wage will increase to \$10.50 per hour. Further increases are scheduled for each year through 2019, and in subsequent years, the minimum wage will increase up to 2.5% per year in relation to increases in the Consumer Price Index.

### **Amendments to the Probate Act**

Illinois has amended the Probate Act of 1975 to create a rebuttable presumption that a will is void if it was executed after the person who executed it has been adjudicated disabled and a guardian has been appointed. The presumption can be overcome by evidence of the individual's capacity to execute the will. Another amendment to the Act presumptively voids transfers of over \$20,000 to hired caregivers who are not relatives of the deceased. The presumption can be overcome by evidence that the transfer did not result from fraud, duress, or undue influence or by evidence that the version of the will executed before the transferee became a caregiver also gave the transferee the same or greater share of the estate.

A third amendment bars a person found civilly liable for financially exploiting an elderly or disabled person from inheriting a share of that person's estate. Previously, the Act allowed disinheritance only of those who had been convicted of financial crimes against the elderly.

Please note that this Legal Update discusses only a small sample of new Illinois laws. Certain laws we did not mention, because they may not apply to many of our readers, may nonetheless be particularly important to you or your business, and we encourage you to consult with counsel regarding any changes in the law that are of interest to you.

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*FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Seth A. Stern 312.701.6837 [sstern@fvldlaw.com](mailto:sstern@fvldlaw.com), Cecilia M. Sub 312.701.6841 [csuh@fvldlaw.com](mailto:csuh@fvldlaw.com), or your regular FVLD contact.*

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