

Legal Update

January 2014

SIGNIFICANT CHANGES IN THE LAW

By Glenn A. Rice

We wish our clients and friends a joyous and prosperous New Year.

More than 200 new Illinois laws took effect on January 1, 2014. In keeping with our FVLD tradition, here is a selection of some new laws that may be of special interest to you and your organization.

Illinois Enacts Workplace Violence Prevention Act

The Workplace Violence Prevention Act provides Illinois employers with five or more employees during any workweek with a new tool to curb “unlawful violence” in the workplace. The Act defines “unlawful violence” as “any act of violence, harassment, or stalking as defined by the laws of” Illinois. The Act broadly defines “employees” to include, among others, independent contractors and volunteers of an employer and board members of any organization.

Many cases of workplace violence are preceded by a threat made against an employee or some other warning sign. The new law is intended to assist employers in protecting their workforces, customers, guests, and property by enabling them to seek an order of protection prohibiting credible threats of violence or further violence. To secure an order of protection, an employer must: (1) file an affidavit that shows, to the satisfaction of the court, reasonable proof that an employee has suffered either unlawful violence or a credible threat of violence, and (2) demonstrate that great or irreparable harm has been suffered, will be suffered, or is likely to be suffered by the employee.

Illinois’ Concealed Firearm Carry Law

In 2013, Illinois became the very last state to enact a law allowing licensed persons to carry concealed firearms. The statute requires property owners who wish to prohibit firearms on their premises to post conspicuous signage announcing the prohibition, although Illinois law still strictly prohibits firearms in certain facilities such as schools, bars, and courthouses. The Illinois State Police began accepting applications for concealed carry licenses earlier this month, and reportedly received almost 5,000 applications on the first day its online application system was open. Hundreds of thousands more are expected. Employers that have not done so should consult with counsel to ensure that their anti-violence and weapons policies comply with the new law. Please see our July 2013 [Legal Update](#) for more information.

Amendment to Illinois Right to Privacy in the Workplace Act

The Illinois Right to Privacy in the Workplace Act allows employers to adopt and implement workplace policies governing the use of their electronic equipment, including policies regarding use of the Internet, social networking sites, and e-mail. Last year, Illinois joined a growing number of states that prohibit employers from requiring employees and job applicants to provide their passwords and access to their social networking accounts, such as Facebook or LinkedIn. Effective January 1, 2014, an amendment to the Act creates an exception to that prohibition for “professional accounts” that are set up on social

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networking websites under certain circumstances. A “professional account” is defined as “an account, service, or profile created, maintained, used, or accessed by a current or prospective employee for business purposes of the employer.” A “personal account” is one that is “used by a current or prospective employee exclusively for personal communications unrelated to any business purposes of the employer.”

The amendment provides that where the “password, account information, or access sought by the employer relates to a professional account, and not a personal account,” the statute will not “prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications as required under Illinois insurance laws or federal law or by a self-regulatory organization as defined in Section 3(A)(26) of the Securities Exchange Act of 1934.”

For example, securities brokers and other employers providing financial services are required to monitor certain communications between their registered representatives, on the one hand, and customers and prospective customers, on the other hand, if they relate to the employer’s business. Likewise, these employers are required to review and approve advertising material (which is broadly defined under securities laws). If an employee were to post a comment on Facebook or LinkedIn about a stock that may be bought or sold through the employer then, under the Act as amended, the employer would not only have a right, but also potentially an obligation, to require the employee to provide his or her password to that account.

An employer is still barred from asking or requiring employees or applicants to provide their passwords or other account information for their “personal account” on a social networking website in order to gain access to their account or profile or from demanding access to their “personal account.”

Illinois’ Medical Marijuana Law

The Compassionate Use of Medical Cannabis Pilot Program Act – Illinois’ new medical marijuana law – took effect on January 1, 2014. For a detailed discussion of the new law and its implications for employers, please see our December 2013 [Legal Update](#). Regulations for the implementation of the law are expected sometime later this year and, hopefully, will provide further clarity and guidance to employers regarding important aspects of the new Illinois statute.

New Illinois Cell Phone and Distracted Driving Law

Beginning this year, Illinois has taken a big step in combatting distracted driving by making it unlawful for drivers to use a cell phone while operating a motor vehicle unless it is in a hands-free or voice-operated mode. Drivers who shirk the law by making phone calls or sending texts or e-mails on their mobile devices can expect to face increasing fines for repeat offenses. If an employer has not already adopted a mobile device policy in their employee handbook, it would be wise to do so. If an employer has adopted one, it should update the policy to conform to the new law.

Illinois Raises Its Highway Speed Limit

Beginning this year, Illinois will join more than 30 states that have highway speed limits of 70 mph or more. The maximum speed limit will be raised from 65 mph to 70 mph on Illinois rural interstate highways and tollways; the speed limit for most of the Chicago area will be unaffected by the change in the law. Lest you might think that the new 70 mph speed limit will allow businesses and individuals to more quickly flee Illinois to avoid income and/or estate taxes, please see our October 2013 [Legal Update](#) and November 2013 [Legal Update](#).



The Affordable Care Act

The most significant changes in law at the federal level for 2014 will undoubtedly be the impact of the new provisions of the Affordable Care Act – also known as “Obamacare” – on health insurance coverage. Insurance policies obtained through the new health insurance exchanges began covering individuals on January 1, 2014, and Medicaid benefits will be extended to low income individuals in states that are expanding coverage. Known as the “mandate” or “individual mandate,” individuals are required to have minimum essential health coverage, qualify for an exemption, or make a penalty payment when filing their tax returns. For 2014, the penalty will be the greater of either (a) 1% of the individual’s yearly household income (capped at the national average yearly premium for a “bronze” plan) or (b) \$95 per person (\$47.50 per child under 18) with the maximum penalty per family capped at \$285.

Start Off 2014 on the Right Foot

In the past few years, there have been many significant changes to and developments in the law affecting businesses and the workplace. If your organization has not done so recently, now is an especially good time to review your employment policies and employee handbook with your legal counsel to ensure that they are properly updated and comply with all applicable laws.

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 Glenn A. Rice 312.701.6895 grice@fvldlaw.com, Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, or your regular FVLD contact.

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