



News & Types: Employment, Labor & Benefits Update

# Masuda Funai Employment Newsflash: Illinois Employment Law Updates for 2023

12/30/2022

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Practices: Employment, Labor & Benefits

The New Year will usher in several key amendments and new employment laws that cover a myriad of topics. Below are some highlights of what employers and practitioners need to know in 2023:

## **1. Human Rights Act (HRA) Amendments, effective January 1, 2023**

### **Prohibit Disability Associational Discrimination**

- Prohibits employers from discriminating against an individual because of the individual's association with a person with a disability
- Brings Illinois law in line with the federal Americans with Disability Act ("ADA")

### **CROWN (Create a Respectful and Open Workplace for Natural Hair) Act**

- Prohibits discrimination due to hairstyles actually or perceived to be associated with specific races
- Categorizes traits such as hair texture or protective styling as race-based and therefore protected under bans against racial discrimination
- Expands/clarifies definition of "race" under the HRA to include "traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists."
- Under the CROWN Act:
  - Employers cannot discriminate against individuals because of hairstyle or hair texture that are actually or perceived to be associated with a particular race.
  - Employers can still maintain dress code and grooming policies as long as any restrictions do not violate the CROWN Act.
  - Employers should update diversity policies and trainings to include hair texture and protected hairstyles.

## **2. One Day Rest in Seven Act Amendment, effective January 1, 2023**

In May 2022, Illinois Governor J.B. Pritzker signed into law a pair of amendments to the One Day Rest in Seven Act (ODRISA), which addressed both day of rest and meal break requirements. These amendments include five important changes to the statute that employers should keep in mind in the new year:

- **Mandatory Day of Rest Period:** ODRISA now requires employers to give non-exempt employees 24 consecutive hours of rest “every consecutive seven-day period,” as opposed to “every calendar week” as previously established. Thus, employers can no longer schedule employees to work for more than seven consecutive days across two calendar weeks without a single day off work. Employers wishing to schedule employees to work for more than six consecutive days will need to obtain waivers from the Illinois Department of Labor and may not do so more than eight weeks a year.
- **Additional Meal Breaks:** In addition to providing employees who work 7.5 continuous hours a 20-minute meal break, employers are now required to permit employees to take a second 20-minute meal break for every additional 4.5 continuous hours worked. The amendment also clarifies that a meal break “does not include reasonable time spent using the restroom facilities.”
- **Increased Penalties:** Violations of ODRISA’s provisions are now subject to civil penalties up to five times higher than the previous \$100 limit, as well payments to employees directly as damages:
  - Employers with less than 25 employees may be fined up to \$250 in penalties payable to the Illinois Department of Labor, and damages up to \$250 payable to the employee(s) affected, per violation.
  - Employers with 25 or more employees may be fined up to \$500 in penalties payable to the Illinois Department of Labor, and damages up to \$500 payable to the employee(s) affected, per violation.
- **Notice Requirements:** The amendment mandates that employers “conspicuously” post at the workplace a notice provided by the Illinois Department of Labor outlining employee rights under ODRISA and information on how to file a complaint. Employers must also provide the notice by email or on a website for traveling and remote employees.

### **3. Family Bereavement Leave Act, effective January 1, 2023**

Illinois has amended the Child Bereavement Leave Act (CBLA), which required employers to provide employees up to 10 workdays of unpaid leave annually to grieve the death of a child. The amendments expand the scope of the CBLA, which has been renamed the Family Bereavement Leave Act (FBLA).

- Applies to employers and employees covered under federal Family and Medical Leave Act (FMLA)
- The FBLA requires employers to provide employees up to 10 workdays of unpaid leave annually to grieve the death of “any covered family member”, which includes an employee’s child, stepchild, spouse, domestic partner, sibling, parent, stepparent, mother-in-law, father-in-law, grandchild or grandparent.
- The FBLA leave may be taken to:
  - Attend the funeral or alternative to a funeral of a covered family member.
  - Make arrangements necessitated by the death of a covered family member.
  - Grieve the death of a covered family member.
  - Be absent from work due to:
    - A miscarriage.
    - An unsuccessful round of intrauterine insemination or an assisted reproductive technology procedure (e.g., artificial insemination or embryo transfer).

- A failed adoption match or an adoption that is not finalized because it is contested by another party.
  - A failed surrogacy agreement.
  - A diagnosis that negatively impacts pregnancy or fertility.
  - A stillbirth.
- Employers may request reasonable documentation that a covered event has occurred but not on the category or particulars
  - If an employee has exhausted leave permitted under the FMLA, the FBLA does not grant the right to additional leave.

#### **4. Workers' Rights Amendment to Illinois Constitution**

- On November 8, 2022, Illinois voters approved the Illinois Constitution Amendment (the “Workers’ Rights Amendment” to guarantee workers a broad right to collective bargaining.
- The Amendment states:
  - Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work.
  - No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively . . . including any law or ordinance that prohibits . . . agreements between employers and labor organizations that...require membership in an organization as a condition of employment.
- This alone, however, does not change the overall labor landscape in Illinois, as the new language essentially mirrors rights that historically have existed under Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 (NLRA) (vesting employees with the right to “self-organization, join or assist labor organizations, bargain collectively through representatives of their own choosing and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection”).
- The Amendment’s application in the private sector raises questions about the extent to which the NLRA preempts the subject matter covered by the Amendment. By its terms, the Amendment applies to all employees, not just public-sector employers. Private sector Illinois employers are expected to argue that the Amendment cannot be applied to private sector employers because its subject matter is preempted by the NLRA.
- Notably, the Amendment appears to block Illinois from becoming a right-to-work state. Right-to-work legislation prohibits compulsory union membership. Section 14(b) of the NLRA allows states to bar compulsory union membership as a condition of employment. The Amendment, however, does the opposite by specifically banning any law that prohibits agreements between employers and labor organizations requiring membership in a union as a condition of employment.

- Thus, this language would effectively block any future legislative attempt to enact a private-sector right-to-work law in Illinois. This language could be challenged based on NLRA preemption, but the outcome of any such legal challenge is uncertain.

#### **5. Amendments to the Illinois Business Corporation Act of 1983**

The New Year also marks employers' new reporting obligations to the Illinois Department of Labor. Beginning January 1, 2023, corporations that are organized under Illinois law and that are required to file an Employer Information Report EEO-1 with the EEOC must now include in their annual report to the State of Illinois information that is substantially similar to the employment data reported under Section D of the corporation's EEO-1 report. The Secretary of State will then publish data on the gender, race, and ethnicity of each corporation's employees on the Secretary of State's website.

#### **6. Amendments to Victims' Economic Security and Safety Act (VESSA)**

As previously reported, amendments to the Illinois Victims' Economic Security and Safety Act (VESSA) went into effect on January 1, 2022, expanding protected "crimes of violence" and individuals to whom those protections apply. Subsequent amended regulations governing a complaint process and administrative proceedings under VESSA became effective on November 2, 2022. Changes to the regulations include:

- Expanded definition of "qualifying event" to include all "crimes of violence" and not only domestic, gender or sexual violence
- Expanded definition of "family or household member"
  - Now includes civil unions, grandparents, grandchildren, siblings and any other individual whose close association with the employee is the equivalent of a family relationship as determined by the employee
- Employers can request documentation, but (a) only if the employee has such documentation; (b) employee can choose what documentation to provide; and (c) only one request within 12 months for same incident.
- New confidentiality requirement – "strictest of confidence"

If you have any questions about this article or how it impacts your workplace, please contact Nancy E. Sasamoto, Kevin S. Boroza or any member of the Employment, Labor and Benefits Group.