

June 8, 2005

## Newly Passed Illinois Laws Create Obstacles for Employers

The Illinois legislature generally has not been kind to employers this Spring. Awaiting expected signature by Governor Blagojevich are several pieces of legislation that were opposed by employers' groups during the most recent legislative session. The new laws touch on such issues as union picketing, communications between union agents and members, layoff notification, prevailing wages, and leaves. Although another bill revamping the Illinois Workers' Compensation Act had the support of both management and labor, most of the employment-related legislation coming out of Springfield has been supported by labor. A summary of several of the laws that apply to Illinois employers generally follows.

### Unions gain rights

Labor secured several rights from the Illinois legislature that will have particular significance for employers with unionized workforces. First, H.B. 1480 amended the Illinois Labor Dispute Act to allow striking workers to use a public right of way to:

- ◆ Park up to ten vehicles;
- ◆ Erect "temporary shelters" such as tents or warming shelters; and
- ◆ Post "temporary" signs informing the public about the dispute.

Shelters may be as large as 300 square feet and may be maintained, along with signage, as long as picketers remain at the site. If picketers leave in the evenings, signs and tents must be removed. The law prohibits signs, tents and shelters that obscure or block fire hydrants, traffic signals or drivers' views and requires picketers to leave a reasonable walkway for pedestrians. It is likely that the public areas around strike sites are going to become a lot more crowded with pro-union rhetoric and activity.

Second, H.B. 1079, creates a new privilege for communications between a union agent and bargaining unit member. Now, any time a union agent acquires information in the performance of his or her professional

duties or when acting in his or her representative capacity, that information is privileged against compelled disclosure in any court, board arbitration, or agency proceeding, unless the application of the privilege conflicts with any federal or state labor law. As a result of this law, those communications now are on a similar level with communications between attorney and client, clergy and parishioner, or spouses. The exceptions to the privilege are narrow. A union agent may disclose privileged information when:

- ◆ It is necessary to prevent certain crimes;
- ◆ There is an action against the union agent in his or her personal or representational capacity;
- ◆ A court orders disclosure; or
- ◆ The bargaining unit member authorizes disclosure.

### Prevailing Wage Requirements Toughened

Construction employers operating under prevailing wage rules now face additional compliance burdens after passage of H.B. 188 and H.B. 1370. H.B. 188 requires any contractor or subcontractor working on a prevailing wage project to submit a certified payroll to the public body in charge of the project on a monthly basis. Failure to do so or the filing of a false payroll record is a Class B misdemeanor.

In H.B. 1370, penalties for violations of the prevailing wage law were increased, so that a violation is now a Class A (instead of Class B) misdemeanor. For second and subsequent violations, a contractor or subcontractor who pays less than the prevailing wage is liable to the Department of Labor for 50% of the underpayment and is liable to the worker for punitive damages based on the amount of time the penalty remains unpaid. Further, any contractor or subcontractor who is found to have disregarded its obligations at least two times in five years will have its name published on the Illinois Department of Labor website and publication on the list will result in a four year debarment.

## Workers' Compensation Agreement Has Broad Support

Both employers and pro-labor factions supported a new law designed to overhaul Illinois' workers' compensation law. Illinois joins 42 other states to create a medical fee schedule indexed to the consumer price index with the goal of containing the rise of medical costs tied to workers' on-the-job injuries. The new law also creates a fraud investigation unit in the state's department of insurance as well as a new panel within the workers' compensation commission to resolve disputed claims on an expedited basis. Worker death benefits also increase, with the minimum benefit increasing to the greater of either \$500,000 or 25 years of payments, from \$400,000 or 20 years of payments.

## Legislature Passes Several New Leave Laws

The Illinois Legislature provided certain workers with new leave rights including:

- ♦ **Voting Leave:** Employers must provide up to two hours of paid leave to allow an employee to vote, unless that employee has time to vote before or after work.
- ♦ **Blood Donation Leave:** Employers with 50 or more employees will be required to provide employees up to one hour paid leave every 56 days to donate blood.
- ♦ **Military Family Leave:** Employers with 15 or more employees will be required to provide up to 15 days unpaid leave to the spouses and parents of deployed military personnel, and employers with 50 or more employees will be required to provide up to 30 days of this military family leave.

## Department of Labor Implements Illinois WARN Act

Finally, you should be aware from our April 20th, 2004 *One Minute Memo* (please click here to view that *Memo*) that effective January 1, 2005, Illinois became one of a relatively small number of states to have a "plant closing" law. The Illinois Department of Labor recently adopted "emergency" regulations implementing the Illinois Worker Adjustment and Retraining Act (WARN Act). The new regulations cover such topics as notice content, complaint procedures, investigations, enforcement, penalties and hearings. The Illinois WARN Act is significant for employers because it lowers certain coverage thresholds and therefore applies to employers who may not be covered under the federal WARN Act.

## Conclusion

It may take several months or longer to see how each of these laws plays out in reality, but, assuming they are all signed, employers need to begin considering which of their policies and procedures may need to be altered to ensure compliance with the new laws. Attorneys from Seyfarth Shaw LLP can assist you in identifying necessary changes and drafting new policies and internal rules that comply with the law.

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