

August 17, 2005

## Newly Passed Illinois Laws Impact Public Employers

The Illinois legislature's busy schedule this past Spring included a number of pieces of legislation of interest to public employers. Awaiting expected signature by Governor Blagojevich (or already signed into law) are various bills and laws that 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 are relevant to Illinois public employers 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.

The law applies to both public sector and private sector strikes. In addition, public employers will need to be aware of work stoppages at private companies in their jurisdiction. It is likely that public law enforcement officers will be called to enforce the law on behalf of strikers or to address allegations that striking workers are

blocking walkways or traffic signals. Therefore, employers need to educate their police forces and other public services about the correct way to address strike situations. This bill has been sent to the Governor and is expected to be signed.

Second, Public Act 94-0022, effective January 1, 2006, 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.

Third, the Illinois Educational Labor Relations Act (IELRA) was amended by Public Act 94-0210 to provide that, if a collective bargaining agreement that includes a fair share clause expires or continues in effect beyond its scheduled expiration date pending the negotiation of a successor agreement, the employer shall continue to honor and abide by the fair share clause in the old agreement until a new agreement containing a fair share clause is reached. The failure to abide by the old fair share clause during negotiations for a new agreement shall be an unfair labor practice. This change in the law only effects public entities covered by the IELRA, but a similar law, Public Act 93-0854, which covers all other public employers, was passed last year.

## Open Meetings Act Changes

Effective January 1, 2006, any public entity that has a website maintained by full-time staff must post on the website the agenda of any regular meetings and a notice of the schedule of such meetings. Although failure to post notice of a regularly scheduled meeting will not invalidate any action taken at the meeting, public employers should still make it a policy to post meeting schedules on their websites at least 48 hours in advance of the meeting. Minutes from such meetings must be posted on the website within seven days of being approved by the public body and must remain on the website for 60 days. See, Public Act 94-0028.

A second bill, SB 1857, amends the Open Meetings Act as it relates to the requirement of public bodies having a semi-annual review of closed meeting minutes (to determine if the minutes can be publicized). Failure to conduct the reviews does not make the minutes or recordings of the meetings open to the public or available in judicial proceedings **as long as** the public body, within 60 days of the discovery of its failure, conducts the review and reports in an open meeting that the need for confidentiality either remains or no longer exists. This bill is awaiting signature by the Governor.

## Laws Regarding Firefighters Change

A number of bills and laws impact firefighters' rights, and several have caused concern for public employers.

First, two bills currently before the Governor threaten to give individual firefighters or their unions additional control over local government. HB 1338, if signed, will allow a paid firefighter of a municipality to serve as the mayor or on the municipal council of that municipality. It would also allow a paid firefighter of a fire protection district to serve on the fire protection district board in which he or she is employed while actively employed as a firefighter. Obviously, this law could create a series of conflict of interest headaches should any firefighters get elected, given the number of employment-related issues elected officials discuss and vote upon.

The second bill, HB 1403, would reorganize the downstate firefighter pension boards to give the employee and retiree members of a municipality's fire pension board a controlling share of the vote. Specifically, two of the five board members will be appointed by the mayor (or fire district president), two will be current firefighters, and one would be a retired firefighter. While fire pension board members have a fiduciary duty to preserve fire pension fund assets for truly deserving participants, the change could make it easier for local fire pension funds to award, for example, disability pension benefits in cases where the applicant's eligibility is questionable. Given that any firefighter with a disability pension is considered catastrophically injured under the Public Safety Benefits Act, any easing of disability pension qualifications will have significant monetary consequences for municipalities.

Two other bills are of less concern, but still important, considering the changes they make to the law. Public Act 94-0188 amends the Firemen's Disciplinary Act and reduces the length of time for a suspension to be considered a major infraction. Previously, an act that could lead to a suspension of less than 72 hours was a minor infraction, and a firefighter had fewer rights with respect to interrogation, notice, etc. Now, a firefighter's rights when facing disciplinary action attach for any charge seeking his or her removal, discharge, or suspension from duty in excess of 24 hours.

Lastly, HB 594 clarifies the Volunteer Firefighter Job Protection Act by changing the title of covered individuals from volunteer "firefighter" to "emergency worker". It also expands the explanation of what positions such a title covers, including unpaid emergency medical technicians, ambulance drivers, or first responders, as long as they do not work in one of these capacities for any other fire department, fire protection district or governmental entity for compensation. Additionally, the bill clarifies that the law prevents public and private employers from terminating an employee who is a volunteer emergency worker because of absence or tardiness tied to the emergency work, *but that the law does not apply to any employer that is a municipality with a population of 3,500 or more*. That is, large towns and municipalities are not barred from terminating employees who miss work because of volunteer emergency work.

## Legislature Passes Several New Leave Laws

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

- ♦ **Voting Leave:** As part of HB 1968, which modifies state election law, public and private 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. This bill is awaiting signature by the Governor.
- ♦ **Blood Donation Leave:** All employers (public and private) with 51 or more employees will be required to provide employees up to one hour paid leave every 56 days to donate blood, when requested by the employee to do so. This bill became Public Act 94-0033.
- ♦ **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. This bill, SB 1627, was signed into law on August 14, 2005.

With respect to these new leave laws, employers should review their employment policies to make sure they are covered and that employees are provided with the correct amount of leave.

## Prevailing Wage Requirements Toughened

Construction companies performing prevailing wage work for public entities 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 disbarment. Both of the prevailing wage bills are currently in front of the Governor for signature.

## Workers' Compensation Agreement Has Broad Support

Private employers and pro-labor factions supported most aspects of a new law, HB 2137, 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. However, public employers have concerns about several other parts of the law that increase benefits to injured or killed workers. Worker death benefits increase to the greater of either \$500,000 or 25 years of payments, from \$250,000 or 20 years of payments. Burial benefits increase from \$4,200 to \$8,000. These changes will impose additional costs on local governments, which will be passed on to taxpayers. It is not yet clear whether the savings from the medical fee schedule will offset the costs of the increased benefits.

## Department of Labor Implements Illinois WARN Act

Finally, you should be aware from a previous One Minute Memo [[click here](#)] 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), PA 93-915. 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, and there are other bills that may yet become law when the legislature resumes its session in the Fall. Assuming the bills are all signed, public 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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