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New Labor and Employment Legislation Destined to Affect Illinois Employers

If you're an Illinois employer, you'll want to prepare for a number of significant changes in Illinois labor and employment law. Since January 2003, members of the 93rd Illinois General Assembly have introduced a multitude of bills in the labor and employment field. Recently, the Illinois House of Representatives and Senate voted to pass much of this legislation, and in the following weeks, we expect Governor Blagojevich will sign these bills into law.

Illinois employers should be aware of these legislative changes, and prepare now for the changes most likely to apply to their operations. A summary of a few of the more significant bills, most of which are awaiting the governor's signature, is provided below.

Equal Rights and Discrimination Matters

Equal Pay Act of 2003. Enacted into law in May 2003, and tracking language in the Illinois Minimum Wage Law, Public Law 93-0006 prohibits both private- and public-sector employers from paying wages to an employee at a rate less than the rate that the employer pays to another employee of the opposite sex "for the same *or substantially similar work* on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." The purported intent of this Act was to provide the benefits of the federal Equal Pay Act (EPA) to smaller employers excluded from the federal EPA. The wording appears broader than the federal EPA, however, which may raise questions regarding whether this Act has now established aspects of the controversial concept of "comparable worth."

Victims' Economic Security and Safety Act. This bill (H.B. 3486), awaiting the governor's signature, provides an employee up to 12 weeks of unpaid leave in a 12-month peri-

od to seek medical or psychological attention, obtain victim services, participate in safety planning, or obtain legal assistance when that employee has been the victim of domestic or sexual violence — or has a family (or household member) who is the victim of domestic or sexual violence. Similar to the Family and Medical Leave Act (FMLA), the employer must continue to provide health insurance during the leave on the same terms and conditions it does to active employees. The Act further prohibits discrimination against an employee who is — or is perceived to be — a victim of domestic or sexual violence, or who has had a family or household member victimized by such violence. Similar to the Americans with Disabilities Act (ADA), the Act requires employers to provide "reasonable accommodation" to such employees. The Act also has provisions for maintaining the confidentiality of information provided to the employer, provisions for certifying the need for leave, provisions for substituting paid leave for unpaid leave, and a provision requiring that a notice regarding the Act be posted. The Act applies to all public-sector employers, and all private-sector employers with 50 or more employees.

Illinois Human Rights Act Amendment. This proposed amendment would prohibit both public and private employers from imposing a restriction that, in effect, prohibits an employee from speaking a foreign language, even though the conversation does not relate to his or her job duties (S.B. 679).

Illinois Whistleblower Act. This bill (S.B. 1872) would create various whistleblower protections for Illinois private-sector employees. The proposed Act prohibits Illinois employers from enforcing any rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, if the employee has a reasonable cause to believe that the information discloses a violation of any state

or federal law, rule or regulation. In addition, the Act would prohibit an employer from retaliating against an employee for disclosing such information to a government or law enforcement agency. Violations of the Act constitute a Class A misdemeanor and can result in damages including back pay, litigation costs and reasonable attorney's fees.

Labor Relations, Pay and Benefits

Amendments to the Illinois Strikebreakers Act. The General Assembly has proposed prohibiting the ability of Illinois employers, public and private, to use the services of a temporary day-labor service agency to replace striking or locked-out workers (S.B. 90). A companion bill would also prohibit employers from using day or temporary laborers from an agency that is not preregistered with the Illinois Department of Labor (H.B. 310). There are serious questions whether these bills, as applied to private-sector employers, are pre-empted by the National Labor Relations Act.

Amendments to the Minimum Wage Law. The General Assembly has proposed (S.B. 600) raising the minimum wage for public- and private-sector employees age 18 and over to \$5.50 beginning on January 1, 2004, and \$6.50 beginning on January 1, 2005. Employees less than age 18 can be paid up to 50 cents less per hour (provided it is more than the federal minimum wage requirements). These increases will make Illinois' minimum wage significantly higher than the current federal minimum wage rate of \$5.15.

Amendments to Prevailing Wage Act. This bill (S.B. 1212), which was signed into law on June 11, 2003 (P.L. 93-0016), requires contractors who have been awarded a contract for public works with the state to post at the project site the prevailing wage rates for "each craft or type of worker or mechanic needed to execute the contract or work to be performed." In addition, the Prevailing Wage Act is amended to equate wages for tradesmen who perform maintenance work to tradesmen engaged in construction.

If you have any questions regarding these and other bills, and their impact on your employer's operations, please contact a Seyfarth Shaw attorney for more information.

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ATLANTA

One Peachtree Pointe
1545 Peachtree Street, N.E., Suite 700
Atlanta, Georgia 30309-2401
404-885-1500
404-892-7056 fax

BOSTON

Two Seaport Lane, Suite 300
Boston, Massachusetts 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO

55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
312-346-8000
312-269-8869 fax

HOUSTON

700 Louisiana Street, Suite 3850
Houston, Texas 77002-2731
713-225-2300
713-225-2340 fax

LOS ANGELES

One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK

1270 Avenue of the Americas, Suite 2500
New York, New York 10020-1801
212-218-5500
212-218-5526 fax

SACRAMENTO

400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO

101 California Street, Suite 2900
San Francisco, California 94111-5858
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS

Boulevard du Souverain 280
1160 Brussels, Belgium
(32) (2) 647.60.25
(32) (2) 640.70.71 fax