

In Brief

COMING SOON: LIMITS ON EMPLOYERS' USE OF CRIMINAL CONVICTION RECORDS, EQUAL PAY REGISTRATION, AND EXTENDED PANDEMIC MEASURES

January 20, 2021

Last week the Illinois legislature passed two bills that may significantly impact many employers. If signed, SB 1480 will limit the use of criminal conviction records in employment decisions and create requirements for some private employers to obtain equal pay registration certificates. HB 4276 will extend several pandemic-related provisions enacted last year to give greater access to workers' compensation benefits and certain public employee death or disability benefits.

Senate Bill 1480

SB 1480 amends the *Illinois Human Rights Act* ("IHRA") to make it a civil rights violation for employers to use conviction records when making employment decisions. The bill limits an employer's use of conviction records to disqualify applicants from employment, or take adverse employment action against current employees.

However, the bill does not prohibit an employer's use of conviction records when the employer is required by law to do so. It also allows employers to rely upon conviction records when: (1) there is a "substantial relationship" between the employment sought and one or more of the criminal offenses, or (2) when granting or continuing the employment would involve an "unreasonable risk" to property or the safety or welfare of specific individuals or the general public. "Substantial relationship" is defined, for purpose of this bill, as "whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position."

Additionally, before using a criminal conviction record to disqualify an individual an employer must consider specified mitigating factors, provide written notice to

the individual of the disqualifying conviction(s) and the reasons for the disqualification, and allow at least 5 business days for the individual to respond.

If after receiving the individual's response to the disqualification notice the employer decides to move forward with the adverse action based partly or entirely on the conviction record, it must again provide written notice to the employee. This time the notice must state that it is a final decision; list the conviction(s) at issue, the employer's reasoning, and any existing internal procedures for challenging or requesting reconsideration of the decision; and advise the employee of his/her right to file a charge with the Illinois Department of Human Rights.

It is expected that SB 1480 will be signed into law, and as such we recommend that all employers conduct a careful review of their current hiring and promotion practices, job application forms, and job descriptions.

SB 1480 also amends the *Business Corporation Act of 1983* ("BCA"). These amendments do not apply to government entities. Illinois businesses, banks, insurance companies, and foreign corporations authorized to conduct business in Illinois who are required to file an Employer Information Report EEO-1 with the federal EEOC must include any information that is substantially similar to the employment data reported in Section D of that report, in their annual filing with the Illinois Secretary of State. The Secretary of State will publish data on the gender, race, and ethnicity of each corporation's employees within 90 days of receipt of the annual report.

In addition, Illinois private employers with more than 100 employees must obtain an equal pay registration certificate from the Illinois Department of Labor (IDOL) within three years of the bill's effective date. Covered businesses must submit certain pay, employee demographic information, and a signed

equal pay compliance statement. Covered businesses must recertify with IDOL every two years.

SB 1480 will go into effect immediately when Governor Pritzker signs the bill into law.

House Bill 4276

HB 4276 extends several pandemic-related provisions that were enacted last year to give greater access to workers' compensation benefits and certain public employee death or disability benefits. One of those 2020 changes created a rebuttable presumption that "essential" workers who contract COVID-19 were infected while working, making it easier for them to establish successful claims for workers' compensation benefits. The 2020 legislation also detailed evidence that an employer may use to defeat that presumption. It provided a similar rebuttable presumption for police and firefighter death benefits, but only with a positive test or confirmed diagnosis as evidence of a death due to COVID-19. Under the legislation passed last week, those presumptions will extend to June 30, 2021, rather than ending on December 31, 2020.

Similarly, HB 4276 also extends the sunset date for a prior change to the Public Employee Disability Act (PEDA) until June 30, 2021. As a result, if first responders employed by public entities are injured in the line of duty and cannot perform their duties, and if circumstances due to COVID-19 arise before June 30 and hinder the employee's physical recovery, an additional 60 days of continued salary payments may be available beyond the one-year default under PEDA.

If you have questions about how these bills may impact you, please contact your Robbins Schwartz attorney.