

## Legislative Developments and Their Impact on the College Workplace

Annual Legal Update for Illinois  
Colleges Virtual Conference

September 17, 2021

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# Legislative Developments and Their Impact on the College Workplace

Presented by: Catherine R. Locallo and Jessica A. Milligan  
Annual Legal Update for Illinois Colleges Conference  
September 17, 2021

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Legislative  
Developments



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## Legislation About Leaves and Holidays



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## P.A. 102-0335: FMLA Expansion

Effective Date:  
January 1, 2022

- New Public Community College Act Section 3-29.1a
- Reduces the minimum number of hours worked to be eligible for FMLA leave
  - 1,000 (IL law) vs. 1,250 (federal law)
- No change to other eligibility requirements

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P.A. 102-0487:  
VESSA  
Expansion

Effective Date:  
January 1, 2022

- *Reminder:* Length of unpaid leave for qualifying VESSA reason
- At least 50 employees = up to 12 workweeks of leave in 12-month period



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P.A. 102-0487:  
VESSA  
Expansion,  
cont'd.

- *Reasons for leave expanded:*
  - experiencing an incident of domestic violence, sexual violence, or gender violence **or other crime of violence**
  - **Homicide, sex offenses, bodily harm (assault/battery), harassing and obscene communications, armed violence**
  - is recovering from the violence;
  - is seeking or receiving medical help, legal assistance (including participation in legal proceedings), counseling, safety planning, or other assistance;
  - temporarily or permanently relocating; or
  - to take other actions to increase the safety of the victim from future domestic, sexual, or gender violence, or to ensure economic security.

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## P.A. 102-0487: VESSA Expansion, cont'd.

- Clarifies:
  - "Sexual violence" means sexual assault.
  - Leave may be taken consecutively, in addition to intermittently or on a reduced work schedule.
  - Employee certification of the need for leave:
    - Can be in the form of a sworn statement and one of the following documents (but only if the employee has possession of the document):
      - Documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy or a medical or other professional from whom the employee or the employee's family or household member has sought assistance in addressing the qualifying reason for leave; a police or court records; or other corroborating evidence.
    - The employee chooses the document to submit.
    - Statement and documentation shall be maintained in strictest confidence and only disclosed if requested or consented to in writing by the employee or as otherwise required by law.



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## Public Act 102-0334: Juneteenth Holiday

Effective Date:  
August 9, 2021

- Amends the *State Commemorative Dates Act (SCDA)*, the *Election Code*, the *Illinois Procurement Code*, the *Illinois School Code* and the *Illinois Promissory Note & Bank Holiday Act*.
- Recognizes the 19<sup>th</sup> day of June as a holiday to be observed throughout the State.
- When June 19<sup>th</sup> falls on a Saturday or Sunday, neither the preceding Friday nor the following Monday shall be held or considered as a paid holiday. (*Per the SCDA*).
  - For 2022, June 19 falls on a Sunday.
- May be observed with suitable observances and exercises by civic groups and the public and citizens of the State are urged to reflect on the suffering endured by early African-Americans and to celebrate the unique freedom and equality enjoyed by all State citizens today. (*Per the SCDA*).

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## Legislative Amendments to the IHRA



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## P.A. 102-0233: New Protected Category Under IHRA

Effective Date:  
August 22, 2021

- Work Authorization Status
  - The status of being a person born outside of the United States, and not a U.S. citizen, who is authorized by the federal government to work in the United States.
  - No discrimination, harassment, retaliation or adverse employment action, etc.
  - Not intended to require an employer to sponsor, either monetarily or otherwise, any applicant or employee to obtain or modify work authorization status, unless otherwise required by federal law.

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## P.A. 101-0656: New Criminal History Check Requirements under the IHRA

Effective Date:  
March 23, 2021

- Amends the Illinois Human Rights Act (IHRA) to make it a civil rights violation for any employer to use conviction records when it makes hiring and other employment decisions, with limited exceptions.
- The amendment 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 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."

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## P.A. 101-0656: New Criminal History Check Requirements under the IHRA, cont'd.

Effective Date:  
March 23, 2021

- 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 which:
  - States the decision is final;
  - Lists the conviction(s) at issue, the employer's reasoning, and any existing internal procedures for challenging or requesting reconsideration of the decision; and
  - Advises the employee of his/her right to file a charge with the Illinois Department of Human Rights.

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Legislation  
Impacting Labor



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P.A. 102-0260:  
Class  
Enrollment  
Notice to  
Adjuncts

Effective Date:  
January 1, 2022

- We are pleased to report that because of swift action by community college presidents, ICCTA, and our law firm this past spring, a more manageable version of HB0375 was signed into law.
- Text of HB0375, as *originally* introduced:
  - “At least 60 days before the start of a term, a board must notify an adjunct professor about whether a class he or she was hired to teach has been cancelled.”

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P.A. 102-0260:  
Class  
Enrollment  
Notice to  
Adjuncts,  
cont'd.

- Text of P.A. 201-0260, as *signed into law*:
  - "(a) At least 30 days before the beginning of a semester or term and again at 14 days before the beginning of the semester or term, a community college must notify an adjunct professor about the status of class enrollment of the class the adjunct professor was assigned to teach.
  - (b) This Section does not apply if the Governor has declared a disaster due to a public health emergency or a natural disaster pursuant to Section 7 of the Illinois Emergency Management Agency Act.
  - (c) Collective bargaining agreements that are in effect on the effective date of this amendatory Act of the 102nd General Assembly are exempt from the requirements of this Section."

110 ILCS 3-29.14.

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P.A. 102-0260:  
Class  
Enrollment  
Notice to  
Adjuncts,  
cont'd.



The legislative intent appears to be to ensure that adjunct faculty have some advance notice that a class they were assigned to teach may be canceled due to low enrollment.



Impact bargaining obligations.

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## P.A. 102-0596: Petitions, Elections and ULPs

Effective Date:  
August 27, 2021

- Changes to Majority Interest Petitions
  - Showing of interest in support of a petition may be evidenced by electronic communications, and such writing/communication may be evidenced by the electronic signature of the employee.
  - Valid only if signed within 12 months prior to the filing of the petition.
- Changes to Secret Ballot Election
  - May be conducted electronically, using an electronic voting system, in addition to paper ballot voting systems.



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## P.A. 102-0596: Petitions, Elections and ULPs, cont'd.

- New Category of ULP Related to Strikes
  - Promising, threatening, or taking any action to permanently replace an employee who participates in a lawful strike.
  - Discriminating against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in a lawful strike.
  - Lockout, suspend, or otherwise withhold from employment employees in order to influence the position of such employees or the representatives of such employees in collective bargaining prior to a lawful strike.

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## Employment Legislation



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## P.A. 102-0016: Exception to the 6% Increase Cap

Effective Date:  
June 17, 2021

- The Pension Code imposes penalty contributions on employers for annual salary increases exceeding 6% for any year used in the calculation of the “final rate of earnings” that determines pension benefits.
- New exclusion from 6% increase cap:
  - “Any earnings increase resulting from overload work performed in an academic year subsequent to an academic year in which the employer was unable to offer or allow to be conducted overload work due to an emergency declaration limiting such activities.”

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P.A. 102-0540:  
Updates to SURS  
Deferred  
Compensation Plan

Effective Date:  
August 20, 2021



2018

Trailer bill to 2018 law that required SURS to offer an optional defined deferred compensation plan for any active member (P.A. 100-0769).



1 Sep. 2021

As amended, allowed colleges to adopt the plan with an effective date no later than September 1, 2021.

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P.A. 201-0540:  
Updates to  
SURS Deferred  
Compensation  
Plan,  
cont'd.

- Automatic enrollment by SURS for any employee that becomes a participating employee under SURS on or after July 1, 2023.
- Automatic enrollees will have 3% deductions go to their accounts. College board may increase the default percentage contribution.
- Members may opt out of the optional benefit or the default contribution within 30 days from date of notice by SURS.
- Members may withdraw within 90 days of enrollment and have the contributions refunded (less fees, etc.).

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## P.A. 102-0562: New Penalties for Personnel Record Review Act Violations

Effective Date:  
January 1, 2022



Amends Section 7 of the Illinois Personnel Record Review Act, which states an employer or former employer may not divulge a disciplinary report or action to a third party without written notice to the employee mailed on or before the day the information is divulged.



Section 7 as amended includes language stating an individual aggrieved by a disclosure of a disciplinary report in violation of the Act may file a complaint or commence a civil action in court within 3 years after the violation.

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## P.A. 102-0325: Sexual Misconduct Climate Surveys

Effective Date:  
August 6, 2021

- Preventing Sexual Violence in Higher Education Act new Section 35.
- Requires each higher education institution to annually conduct a sexual misconduct climate survey of all students at the institution, compile a summary of the results and submit the summary to the Board of Higher Education, and publish the summary on the institution's website.
- Creates the Task Force on Campus Sexual Misconduct Climate Surveys to develop and recommend to the Board of Higher Education the base survey for distribution to higher education institutions and provide the Board of Higher Education with any related recommendations regarding the content, timing, and application of the base survey.
- Imposes a civil penalty not to exceed \$50,000, adjusted annually for inflation, for each violation in which a higher education institution violated or failed to carry out any provision of Section 35.

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## OCR Letter: Statements by Parties in Title IX Hearings

- In an August 24, 2021 letter, the Department of Education Office for Civil Rights (OCR) stated a Title IX Decision-Maker (Hearing Office) may now consider statements made by a party or witness even if that party or witness did not participate in cross-examination during the live hearing.
- In addition, OCR stated it will immediately cease enforcement of the provision in the 2020 Title IX amendments, 34 C.F.R. section 106.45(b)(6)(i), that prohibited considerations of any such statements by the Decision-Maker in making a determination of responsibility.
- For example:

“[A] decision-maker at a postsecondary institution may now consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment and statement about the alleged sexual harassment that satisfy the regulation’s relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing.”

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## P.A. 102-0083: Homeless Student Liaisons

Effective Date:  
August 1, 2022

- Creates the Higher Education Housing and Opportunities Act:
  - Requires an institution of higher education to designate at least one staff member to serve as a “Housing and Opportunities that are Useful for Students’ Excellence” (HOUSE) liaison.
  - The designated staff member may be employed in the office of financial aid, in campus housing services, or in any other appropriate office or department as determined by the institution.



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## P.A. 102-0083: Homeless Student Liaisons, cont'd.

Effective Date:  
August 1, 2022

- HOUSE liaison responsibilities include:
  - Understand provisions pertaining to the financial aid eligibility of homeless students and assist a homeless student or student in care in applying for and receiving federal and State financial aid and available services;
  - Identify services and resources that are available to and appropriate for a homeless student, connect a homeless student or student in care to a local continuum of care program, and train employees to identify students experiencing homelessness and to refer those students to the liaison.
  - Track and monitor the graduation rate and retention rate of homeless students and students in care enrolled at the institution and report annually the number of homeless students and students in care enrolled at the institution.

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## P.A. 102-0050: Increased Penalties for Illinois Wage Payment and Collection Act Violations

Effective Date:  
July 9, 2021

- Increases damages available to an employee for violations of the Illinois Wage Payment and Collection Act.
- Previously, any employee not timely paid wages, final compensation, or wage supplements by his or her employer as required by the Act may file a claim with the Department of Labor or in a civil action to recover damages in the amount of any such underpayments and damages 2% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. The employee may also recover costs and all reasonable attorney's fees.
- Under Public Act 102-0050, the employee may recover damages in the amount of the underpayment and damages of 5% of the amount of the underpayments for any month following the date of payment during which the underpayments remain unpaid.

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## P.A. 102-0332: Prevailing Wage Act

Effective Date:  
August 6, 2021

- New Department of Labor (“DOL”) electronic database requires contractors to file payrolls directly with DOL.
- By January 2, 2022, DOL shall make searchable database accessible to the public.
- Searchable database shall include details such as classification, skill level, wage rate and gross wages paid.
- Database shall be searchable by contractor name, project name, county and contracting public body.

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## Legislation Impacting College Police Departments



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P.A. 101-0652  
and P.A. 102-  
0028 (trailer bill):  
Sweeping  
Criminal Justice  
Reforms

Effective Date:  
Various Effective Dates

- Illinois Police Training Act (50 ILCS 705/1 et seq.), (eff. 1/1/22).
- Amended to expand training requirements for police officers. The new training requirements focus on various aspects of policing, including the use of force, racial bias, crisis intervention, and mental health. The amendments also focus on strengthening oversight of police wellbeing and conduct by the Standards Board, including:
  - Establishing standards for regular mental health screenings for peace officers.
  - Establishing the Professional Conduct Database, which will consist of confidential information relating to officer misconduct that must be reported by police departments.
  - Receiving and investigating anonymous complaints under the Police and Community Relations Improvement Act (50 ILCS 727/1 et seq.) beginning January 1, 2023.
  - Also establishes new requirements for the certification and decertification of officers.

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P.A. 101-0652:  
Sweeping  
Criminal  
Justice  
Reforms,  
cont'd.

- Local Records Act (50 ILCS 205/1 et seq.), (eff. 1/1/23).
- Amended to require permanent retention of records related to complaints, investigations, and adjudication of police misconduct.

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P.A. 101-0652:  
Sweeping  
Criminal  
Justice  
Reforms,  
cont'd.

- Uniform Peace Officers' Disciplinary Act (50 ILCS 709/1 et seq.), (eff. 7/1/21).
- Amended to eliminate requirements that an officer subject to discipline be informed of the name of complainants and officers in charge of the investigation (now just the nature of the investigation, names of interrogators and those that will be present during interrogation).
- Also eliminates the requirement that any complaints be accompanied by a signed affidavit, allowing for anonymous complaints to serve as the basis for initiating disciplinary action.

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P.A. 101-0652:  
Sweeping  
Criminal  
Justice  
Reforms,  
cont'd.

- Law Enforcement Officer-Worn Body Camera Act (50 ILCS 706/1 et seq.), (phase-in effective 1/1/22 through 1/1/25).
- Requires all law enforcement agencies to employ the use of body cameras starting in 2022 while restricting access to recordings made through body cameras. Body camera footage must be maintained for a minimum period of 90 days.
- The mandate regarding the use of body-worn cameras will be phased in between 2022 and 2025. For community college law enforcement agencies ("other remaining law enforcement agencies"), the implementation deadline is 1/1/25.

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P.A. 101-0652:  
Sweeping  
Criminal  
Justice  
Reforms,  
cont'd.

- Uniform Crime Reporting Act (50 ILCS 709 et seq.), (eff. 7/1/21).
- Establishes new monthly reporting requirements for police departments relating to incidents involving a person experiencing a "mental health crisis", the use of force resulting in the death or serious bodily injury of a person, and the discharge of an officer's firearm.
- Mental health crisis is "when a person's behavior puts them at risk of hurting themselves or others or prevents them from being able to care for themselves."



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P.A. 101-0652:  
Sweeping  
Criminal  
Justice  
Reforms,  
cont'd.

- The Criminal Code of 2012 (720 ILCS 5/1 et seq.), (eff. 7/1/21).
- Expansive amendments to the Criminal Code of 2012 that impact policing operations, standards of officer conduct, and techniques. They include the following:
  - **Use of Force Requirements:** New standards governing a police officer's use of force, which are to be based on the totality of circumstances necessary to effect the arrest or to defend the officer or another from bodily harm during an arrest.
  - **Use of Deadly Force Requirements:** Enhanced criteria for determining whether the use of deadly force is permitted based on the totality of the circumstances. Notably, the use of force in certain circumstances as well as the type of force an officer may use (e.g., chokeholds or above-the-shoulder restraints) will be prohibited.
  - Chokeholds mean providing direct pressure to the throat, windpipe or airway (i.e., risk of asphyxiation). It does not include headlocks (where only the head is held/restrained).

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## P.A. 101-0652: Sweeping Criminal Justice Reforms, cont'd.

- Expansive amendments to the Criminal Code of 2012 that impact policing operations, standards of officer conduct, and techniques (cont'd.):
  - **Use of Force Involving Disabled Individuals:** All police departments and law enforcement agencies are encouraged to develop and adopt policies regarding the use of force involving individuals with physical, mental health, developmental, or intellectual disabilities.
  - **Affirmative Duties to Render Aid:** Establishes an affirmative duty to render aid, including the use of AEDs, and request emergency medical assistance when necessary.
  - **Newly Established Duties Relating to Officer Misconduct:** Establishes an affirmative duty on police officers to prevent other law enforcement officers from using unauthorized force, without regard to chain of command, and to report related violations.
  - **Police Officer Misconduct:** Criminalizes specific acts of police misconduct, including the withholding of information from other law enforcement officers and failing to comply with laws relating to officer-worn body cameras.

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Questions?



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thank you!

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Catherine Locallo's practice focuses on labor and employment law and board governance matters. She counsels employers in all aspects of employment law including hiring, employment contracts, employee discipline issues, terminations and reductions in force, collective bargaining and labor relations, nonimmigrant worker visas and employment discrimination matters. She also counsels public bodies on compliance with Illinois' Freedom of Information Act and Open Meetings Act. Catherine has extensive experience representing clients in court and administrative agency proceedings involving discrimination, retaliation, and harassment claims.

Catherine is approved by the Illinois State Board of Education to provide school board member training.

### AWARDS

Illinois "Rising Star," Employment & Labor Law (2015-2018)

### RECENT PUBLICATIONS

"Illinois Committed to Restrictive Covenant Reform Through Passage of Senate Bill 672," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Plaintiff's Cat's Paw Theory of Liability Failed To Scratch Surface," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Walmart Need Not Change Shift Rotation Practice To Accommodate Religious Beliefs" *Employment and Labor Law Flashpoints*, IICLE (2021)

"CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Employer's Judgment and Job Description Defeat Failure To Accommodate Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Sexual Harassment Prevention Training Compliance Required Before New Year," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)



### PRACTICE AREAS

Education Law  
Labor & Employment  
Litigation

### EDUCATION

J.D., *cum laude*, The John  
Marshall Law School,  
Order of John Marshall

B.S., Southern Illinois  
University

### ADMITTED TO PRACTICE

U.S. Court of Appeals for  
the Seventh Circuit

U.S. District Court for the  
Central District of Illinois

U.S. District Court for the  
Northern District of Illinois

Supreme Court of Illinois

“Superintendent’s Police Report is Protected Speech” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Changing the Landscape: Abusive Conduct Not Protected Under NLRA” *Employment and Labor Law Flashpoints*, IICLE (2020)

“COVID-19 Changes to Claims for Unemployment Benefits in Illinois” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Seventh Circuit: Jury, Not Judges, Must Decide Coach’s Sex Discrimination Claim” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Examining DOL Rule on New Employee Leave Rights” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Better Safe Than Sued – Issuing Timely FMLA Notices” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Unions Strike Back Through Amendments to Illinois Public Labor Acts” *Employment and Labor Law Flashpoints*, IICLE (2020)

“First Amendment Protections Get Broader for Government Employees,” *Chicago Daily Law Bulletin* (2016)

"Regulatory Changes to the Illinois Wage Payment and Collection Act," *Justinian Society Newsletter* (2015)

"New FOIA Amendments to Ease Burden on Public Bodies," *Justinian Society Newsletter* (2015)

“Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award ‘Drew Its Essence’ from the CBA,” *Justinian Society Newsletter* (2014)

“When the Music Stops, Why Not Require Certain Title VII Plaintiffs to Find a Chair on Which to Rest Their Complaint,” *The John Marshall Law Review*, (2009)

#### RECENT PRESENTATIONS

*Is PERA Dead?? Implementation of a Local Appeals Process for Unsatisfactory Ratings*, IASPA Annual Conference (January 2020)

*A Workshop on Compliance with the Open Meetings Act and Illinois Freedom of Information Act*, LUDA Annual Conference (October 2019)

*Community College Trustees Training Session*, ICCTA (June 2019)

#### ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Treasurer, Justinian Society of Lawyers

Co-Chair, Justinian Society of Lawyers Endowment Fund Scholarship Committee

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

Member, Board of Directors, Glenview Stars Hockey Association

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Jessica counsels school districts and community colleges in all aspects of labor and employment law, including employee investigations, discipline and termination, civil rights, and federal and state employment discrimination matters under the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Illinois Human Rights Act, and Title VII. Jessica also advises employers regarding collective bargaining, contract interpretation, grievance arbitrations, and unfair labor practices. Jessica represents clients in a variety of venues including both federal and state court, as well as the U.S. Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

### RECENT PUBLICATIONS

Contributing author, "Employment Discrimination," *School Law: Personnel and Student Issues, IICLE (2021 Edition)*

### RECENT PRESENTATIONS

*Navigating Payroll Laws: Wages and Recordkeeping Requirements*, Illinois ASBO (March 2021)

*Leave and Accommodation Requests: A Panel Discussion*, Large Unit District Association (February 2021)

*Employee Misconduct Investigations and Discipline During a Pandemic: Best Practices to Minimize Employer Liability*, IASPA Annual Conference (January 2021)

*Leave and Accommodation Rights in the COVID-19 Workplace*, Illinois Council of School Attorneys and Illinois Association of School Boards (October 2020)

*Free Speech on Campus*, Illinois Community College Chief Student Service Officers (March 2020)

*Navigating Payroll Laws*, Illinois ASBO Bookkeepers Conference (March 2020)

*Administrators Legal Update*, Concordia University (December 2019)

*Navigating Background Checks in Today's Environment*, Illinois ASBO (May 2019)

*Employee Misconduct Issues: Effective Management Strategies for Defensible Discipline/Discharge*, Concordia University (April 2019)



### PRACTICE AREAS

Labor & Employment

### EDUCATION

J.D., *cum laude*, Michigan State University College of Law

B.A., Michigan State University

### ADMITTED TO PRACTICE

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Central District of Illinois

U.S. District Court for the Southern District of Illinois

U.S. District Court for the Eastern District of Michigan

U.S. District Court for the Western District of Michigan

Supreme Court of Illinois

Supreme Court of Michigan



**ORGANIZATIONS**

American Bar Association

Illinois Bar Association

Illinois Council of School  
Attorneys

Michigan Bar Association

National Council of School  
Attorneys