

Employment & Labor Law FLASHPOINTS December 2022

Catherine R. Locallo, *Robbins Schwartz* [<http://www.rsntl.com>] , Chicago
312-332-7760 | E-mail Catherine R. Locallo [<mailto:clocallo@robbins-schwartz.com>]

Illinois Employers Ring in New Year with Five New Laws

As we end one year and begin another, Illinois employers should be aware of these five new laws for 2023 and modify policies and practices accordingly for compliance purposes.

The CROWN Act

The Creating a Respectful and Open World for Natural Hair (CROWN) Act amends the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101, *et seq.*, to broaden the definition of “race” to include “traits associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists.” P.A. 102-1102 (eff. Jan. 1, 2023). This means that in Illinois, “[u]nlawful discrimination . . . against a person because of his or her actual or perceived[] race” includes discrimination based on hair texture or hairstyle. *Id.* Several other states have enacted CROWN Act laws in 2022. Illinois employers should review their policies and work rules to ensure compliance with this new law.

Employee Bereavement Leave

The Child Bereavement Leave Act (CBLA), 820 ILCS 154/1, *et seq.*, originally enacted in 2016, provided eligible employees of public and private employers with more than 50 employees with a maximum of 2 weeks (10 workdays) of unpaid bereavement time following the death of a child. P.A. 102-1050 (eff. Jan. 1, 2023). Effective January 1, 2023, the CBLA has been renamed the “Family Bereavement Leave Act” (FBLA). Under the FBLA, eligible employees can take 10 workdays of unpaid leave annually to grieve

1. the death of a “covered family member,” defined as the employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent; and
2. miscarriages; unsuccessful reproductive technology procedures; failed adoption matches; adoptions not finalized due to being contested by another party; failed surrogacy agreements; diagnoses negatively impacting pregnancy or fertility; and stillbirths.

There was no change to the employee threshold for covered employers. Also, an employee must still be employed by a covered employer for a total of 12 months and worked at least 1,250 hours in the 12 months preceding the leave to be eligible for leave.

Employers may request reasonable documentation to support the requested leave, as set forth in statute. The Illinois Department of Labor will develop a form that employers must use if

requesting reasonable documentation of pregnancy or adoption bereavement leave.

Employee Meals Breaks and Day of Rest

The One Day Rest in Seven Act (ODRISA), 820 ILCS 140/1, *et seq.*, was amended to provide additional meal breaks and day of rest notice requirements. P.A. 102-828 (eff. Jan. 1, 2023). The amendment also clarifies what constitutes a meal break and a rest period and that the law excludes employees when meal periods and days of rest are established by a collective-bargaining agreement.

1. At present, the law requires a 20-minute meal break no later than 5 hours after the start of a 7.5 continuous hour shift. As amended, ODRISA requires subsequent, minimum 20-minute meal breaks for every additional 4.5 continuous hours worked beyond the first 7.5 continuous hour shift. An employee's "reasonable amount of time spent using the restroom facilities" cannot count as a meal period. 820 ILCS 140/3 (2023).

2. At present, the law requires that employees be provided at least 24 consecutive hours of rest in a calendar week. As amended, ODRISA requires that employees be provided with 24 consecutive hours of rest in every consecutive seven-day period.

3. Employers must post a notice in their workplace(s) stating the requirements of ODRISA and information on how to file a complaint. Given the shift to remote workers, employers with remote workers must provide the notice to its remote workers by e-mail or on an internal website used by the employer to communicate work-related information.

Expanded List of Mandate Reporters

The Abused and Neglected Child Reporting Act, 325 ILCS 5/1, *et seq.*, was amended to expand the list of mandated reporters under the Act to include physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, and athletic trainers. P.A. 102-861 (eff. Jan. 1, 2023).

Workers' Rights Amendment

On November 8, a sufficient number of Illinois voters supported the Workers' Rights Amendment to Article I of the Illinois Constitution. The constitutional amendment includes several broad provisions, as explained further below:

1. The amendment provides that employees will have a "fundamental right" to bargain over wages, hours, and working conditions under the Illinois Constitution. This initially represents no immediate practical change for most employers, as most employees already had the right to collectively bargain their wages, hours, and working conditions under federal or state statutes. However, we note that the amendment also references a new fundamental right of employees "to protect their economic welfare and safety at work." In practice, many employers have been bargaining over these topics of economic welfare and safety at work in recent years, especially since the COVID-19 pandemic began. As unions and employers test the boundaries of this new constitutional language, we expect that employers may see some bold union proposals that extend beyond the normal scope of bargaining.

2. The amendment prohibits future state laws from interfering with employees' affiliation with unions or diminishing collective-bargaining rights. This broad prohibition also includes a more targeted ban on "right-to-work" laws, which some states use to prohibit public employers and unions from agreeing that workers must be union members.

3. Finally, the amendment states that it controls over the powers of home-rule units. Under the Illinois Constitution, home rule allows some counties and municipalities to exercise broad government powers individually on local issues, unless specifically prohibited by state law. Here, the amendment makes clear that it will prevent not only state statutes that diminish collective-bargaining rights but also any different local ordinances related to the amendment.

For more information about employment and labor law, see EMPLOYMENT TERMINATION: EMPLOYER OBLIGATIONS AND WORKPLACE CONSIDERATIONS (IICLE®, 2022). Online Library subscribers can view it for free by clicking here [<https://www.iicle.com/iicleOnline/Detail/34895>] . If you don't currently subscribe to the Online Library, visit www.iicle.com/subscriptions [<http://www.iicle.com/subscriptions>] .