Labor and Employment Alert: Illinois' Workplace Transparency Act Imposes New Training and Reporting Obligations on Employers (Part II)

Related Attorneys

Adam J. Rocco

Michael C. Griffaton

Related Services

Employment Counseling

Labor and Employment

CLIENT ALERT | 10.22.2019

As we previously reported in Part I of this series, the Illinois Workplace Transparency Act (WTA) will significantly change the contours of employment, separation, and settlement agreements when it becomes effective on January 1, 2020. The WTA also makes changes to the Illinois Human Rights Act (IHRA) to impose new training and reporting obligations on employers. Unless otherwise noted below, these changes also take effect on January 1, 2020.

Reporting Obligations

Beginning July 1, 2020, and annually thereafter, employers must disclose the following information to the Illinois Department of Human Relations (IDHR):

1. the total number of adverse judgments or administrative rulings during the preceding year;
2. whether any equitable relief was ordered against the employer in any adverse judgment or administrative;
3. how many adverse judgments or administrative rulings are in each of the following categories: sexual harassment; discrimination or harassment on the basis of sex; discrimination or harassment on the basis of race, color, or national origin; discrimination or harassment on the basis of religion; discrimination or harassment on the basis of age; discrimination or harassment on the basis of disability; discrimination or harassment on the basis of military status or unfavorable discharge from military status; discrimination or harassment on the basis of sexual orientation or gender identity; and discrimination or harassment on the basis of any other protected characteristic.

Further, if the IDHR is investigating a charge under the IHRA, the IDHR may request the employer to submit the total number of settlements entered into during the preceding five years that relate to any alleged act of sexual harassment or unlawful discrimination that: (1) occurred in

the workplace of the employer; or (2) involved the behavior of an employee or a corporate executive, without regard to whether that behavior occurred in the workplace. The total number of settlements must be reported along with how many settlements were in each of the above reporting categories when requested by the IDHR. The IDHR is prohibited from relying on the existence of any settlement agreement to support a finding of substantial evidence.

The IDHR will publish an annual report for the Illinois General Assembly aggregating this data. All data supplied by employers is confidential and not subject to the Illinois Freedom of Information Act. An employer who fails to provide the requested information is subject to a civil penalty of up to $5,000.

Expansion of the Illinois Human Rights Act

The WTA expands the protections in the IHRA in three ways. First, extends the IHRA to encompass "nonemployees" such as contractors. Second, it now prohibits discrimination on the basis of "perceived" protected characteristics regardless of whether the individual actually has the characteristic; previously, perceived discrimination was limited to claims of disability discrimination. Third, it specifies that the definition of "working environment" in the IHRA is not limited to a physical location where an employee is assigned to perform his or her duties.

Sexual Harassment Prevention Training

The WTA requires employers to provide sexual harassment prevention training annually to all employees. The training must include the definition of sexual harassment, examples of prohibited conduct, explain the employer's responsibility to prevent, investigate, and remedy sexual harassment, set forth available remedies, and set forth federal and Illinois laws regarding sexual harassment. The IDHR will produce a model sexual harassment prevention training program for employers. Employers may use that program or adopt their own substantially identical one.

Training and Policy Requirements for Bars and Restaurants

Bars and restaurants must provide a written sexual harassment policy in English and Spanish to all employees within their first week of employment. The policy must include the definition of sexual harassment, a prohibition against harassment and retaliation, internal and external reporting mechanisms, and a requirement that all employees participate in training. In addition to the training that all employers must provide, bars and restaurants must provide supplemental training at least annually specifically targeted at sexual harassment issues in their industry.

Illinois Victims' Economic Security and Safety Act (VESSA)

VESSA requires employers to provide 4-12 weeks of unpaid, job-protected leave and/or other reasonable accommodations to obtain medical, psychological, or other services after an employee experiences domestic or sexual violence. The WTA amends VESSA to include gender violence among the qualifying reasons for taking leave.

Conclusion

Employers should review their EEO/harassment policies and procedures to ensure they comply with the WTA's new requirements. Employers should also take steps to comply with the mandatory reporting requirements. Contact your Vorys lawyer if you have questions about the WTA.