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RECENT AMENDMENTS TO ILLINOIS HUMAN RIGHTS ACT AND ILLINOIS STATUTES WARRANT IMMEDIATE ATTENTION

By: Joan M. Eagle

The following summaries of new legislation are intended to acquaint or remind Illinois employers of their responsibilities under Illinois law.

1. *"Speak English Rules" are Illegal Under Certain Circumstances*. The Illinois Human Rights Act prohibits an employer from imposing restrictions prohibiting a language from being spoken by an employee in communications that are *unrelated* to the employee's duties. "Language" means a person's native tongue, such as Spanish, Polish, or Chinese; it does not include profanity, vulgarity, slang or jargon. Thus, an employer may still require that employees speak English when discussing job instructions, safety rules and the like.

2. *Sexual Orientation is Now a Protected Classification*. The Illinois Human Rights Act was recently amended to prohibit an employer from discriminating against an individual because of the individual's sexual orientation. Sexual orientation is defined as actual or perceived heterosexuality, homosexuality, bi-sexuality or gender-related identity; it does not include physical or sexual attraction to a minor by an adult. The Act does not require an employer to give preferential treatment or special rights based on sexual orientation, or to implement affirmative action policies or programs related thereto.

3. *Family Military Leave Act Allows Leave Time for Family Members of Persons in the Military*. Such leave allows family members to spend time with their relatives prior to deployment. The maximum amount of leave permitted is dependent on the size of the employer: up to 15 days is allowed for employers with between 15 and 50 employees and up to 30 days for employer of more than 50. To be eligible, an employee must have worked for the employer for 12 consecutive months prior to the requested leave and have provided at least 1250 hours of service during the preceding 12 months. Independent contractors are also covered under the Act.

4. *Prevailing Wage Act Violators Subject to Criminal Penalties.* Effective January 1, 2006, certain violations of the Illinois Prevailing Wage Act are Class A (rather than Class B) misdemeanors. Further, a contractor or subcontractor who pays workers less than the stipulated rate two or more times may be liable to the Illinois Department of Labor for 50 percent of the underpayment and to the employee for punitive damages of 5 percent of the penalty for each month during which the underpayment is unpaid.

5. *Time Off to Vote Is Now Paid Time Off*. The Illinois Leave of Absence From Work to Vote Act was amended to provide that voters who make application to the employer for voting leave before the day of the election must be given up to two hours of leave *with pay* during working hours if the employee's working hours begin less than two hours after the opening of the polls and end no less than two hours before the closing of the polls.

6. *Time Off to Serve as an Election Judge*. Employers who have at least 25 employees must give leave to an employee appointed as an election judge if the employee gives the employer 20 days prior written notice. Such leave is *unpaid*.

7. *Victims' Economic Security and Safety Act Provides Leave to Victims of Domestic and Sexual Violence.* Employers of 50 or more employees are required to allow up to 12 weeks of job protected leave to any employee who is the victim of domestic or sexual violence or whose household member has been so victimized. Such leave is for purposes of seeking medical attention for, or recovering from, physical or psychological injuries, obtaining services from a victim's service organization, obtaining psychological counseling, participating in safety planning or relocating, or seeking legal or other assistance.

For further information about these new laws, please contact Joan M. Eagle at (312) 845-5439 or jeagle@schwartzcooper.com, or any other member of Schwartz Cooper's Employment Practice Group.