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Amendments to Illinois Law Expand Requirements for Employment Contracts

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Executive Summary

On August 15, 2025, Illinois Governor JB Pritzker signed HB 3638 into law, amending the Illinois Workplace Transparency Act (“IWTA”). Effective January 1, 2026, Illinois employers will have numerous additional obligations to ensure that any employment contract that is entered into, modified or extended on or after the effective date does not contain language that may restrict employees from disclosing or reporting allegations of unlawful conduct in the workplace. Any “contract, agreement, clause, covenant, waiver, or other document” is subject to the IWTA, including settlement agreements, termination agreements and arbitration agreements. The IWTA continues to cover employees and certain non-employees including contractors and consultants.

EXPANDED DEFINITION OF “UNLAWFUL EMPLOYMENT PRACTICE”

The IWTA voids any employment contract that requires an employee to waive or arbitrate existing or future claims of unlawful employment practices. Previously, the IWTA defined “unlawful employment practice” as employment discrimination or harassment based on any protected class, or retaliation for complaining of such discrimination or harassment. The IWTA amendments expand the definition of “unlawful employment practice” to include any unlawful practice actionable under state or federal employment law including those enforced by the Illinois Department of Labor, the Illinois Labor Relations Board, the U.S. Department of Labor, the Occupational Safety and Health Administration, and the National Labor Relations Board. Notably, wage claims and workplace safety complaints are covered in the expanded definition.

INCREASED EMPLOYEE PROTECTIONS

The IWTA amendments further expand the restrictions on employment contracts to prevent them from unilaterally: (1) shortening the applicable statute of limitations; (2) applying out-of-state law to Illinois-based claims; or (3) requiring adjudication of Illinois claims in an out-of-state venue if it denies the employee a substantive or procedural right or remedy related to unlawful employment practices. However, it is important to

note that the forgoing provisions may be included if they are mutual by being made in writing, providing actual, knowing and bargained-for consideration, and acknowledging rights to report unlawful and criminal conduct to any appropriate federal, state or local government agency. If the foregoing criteria are not met, it is presumed that an employment contract is a unilateral condition of employment.

Further under the IWTA amendments, any confidentiality clause in a settlement or termination agreement must be supported by distinct, bargained-for consideration separate from any consideration provided in exchange for a release of claims. Employers cannot merely include a boilerplate statement that the confidentiality clause is the employee's preference to overcome the argument that it is a unilateral term.

Additionally, the IWTA amendments expand the right to testify to cover an employee's right to participate in arbitral proceedings when the employee has been required to attend a proceeding pursuant to a court order, subpoena or written request from an administrative agency or the legislature.

NEW REMEDIES

The IWTA amendments now allow recovery of consequential damages in addition to attorney's fees and costs that were previously available.

RECOMMENDATIONS FOR EMPLOYERS

Employers with Illinois operations should begin reviewing and potentially updating their settlement agreements, termination agreements and arbitration agreements in preparation for the effective date of the IWTA's amendments.

Please contact Naureen Amjad, Riebana E. Sachs or any member of the Employment, Labor and Benefit Group with any questions about these developments and how they may impact your workplace.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.