

USD116 Board of Education Legislative Update for January 1, 2020

This legislative update outlines changes effective January 1, 2020 that #USD116 should be aware of. We will work with relevant #USD116 Departments and our Robbins Schwartz attorneys as needed.

I. Public Board Governance Developments

A. Public Act 101-0067: School Board Vacancies

Effective January 1, 2020, most school boards will have more time to appoint a new member when a vacancy occurred. Before Governor Pritzker signed this bill into law, members of school boards in districts with populations of 1,000 to 500,000 had 45 days to fill a vacancy after it occurred. If they failed to fill the vacancy within 45 days, the law then provided that the regional superintendent for the district would appoint a new board member. Under the new legislation, these school boards will have 60 days to appoint a new member instead of 45 days.

II. Hiring and Licensure Developments

C. Public Act 101-0458: School Bus Driver Disqualifying Offenses

This law provides that an applicant for a school bus permit must not have been convicted of committing or attempting to commit within the last 20 years specified Class A misdemeanors under the Cannabis Control Act. It also provides that those applicants cannot be convicted of committing or attempting to commit the following offenses: (1) solicitation or solicitation of murder; (2) permitting sexual abuse of a child; (3) presence or loitering of a sexual predator or child sex offender in or near a public park; (4) aggravated battery; and (5) use of a dangerous place for the commission of a controlled substance or cannabis offense.

III. Wage and Incentive Developments

A. Public Act 101-0001: Minimum Wage

This law went into effect February 19, 2019, but it makes this list because it raises the Illinois minimum wage to \$9.25 per hour on January 1, 2020. The law also increases penalties for violations of the Illinois Minimum Wage Law: For example, employees paid less than the minimum wage may now recover triple the amount of their unpaid wages, plus 5% of the amount of the underpayments per month that they remain unpaid. Employers with fewer than 50 employees may blunt the impact of the rising minimum wage with a tax credit, which phases out over time.

B. Public Act 101-0333: National Board Certification Incentives

The Illinois Teaching Excellence Program will provide new and improved incentives aimed at encouraging more teachers and school counselors in rural or remote districts to obtain National Board certification. Subject to adequate funds, incentives in certain districts now include: up to \$2,000 toward application or retake fees for National Board certification, up to \$3,000 (one time) for National Board certified teachers, up to \$3,000 annually for teachers serving as “candidate cohort facilitators,” and up to \$2,500 annually for serving as a “liaison” who supports such a facilitator.

IV. Mental Health

B. Public Act 101-0350: School Mental Health Training

The Illinois School Code requires in- service training for licensed school employees who work with K-12 students at least once every two years to help them identify the warning signs of mental illness and suicidal behavior in youth and teach them appropriate intervention and referral techniques. Effective January 1, 2020, this amendment clarifies that a school district may use the Illinois Mental Health First Aid training program, administered by certified instructors, to provide the training. Licensed employees who obtain training outside of an in-service training program may present a certificate of successful completion of the training to the school district.

V. Sexual Harassment and Child Abuse/Neglect Developments

B. Public Act 101-0221: Sexual Harassment Omnibus Law – *Sexual Harassment Victim Representation Act*

The *Sexual Harassment Victim Representation Act* (“SHVRA”) is effective January 1, 2020. This new law is intended to prevent conflicts that would result from a union representative representing both a victim and a perpetrator in a proceeding brought by one union member against another. In such cases, the union must designate separate representatives to represent the victim and alleged perpetrator.

C. Public Act 101-0221: Sexual Harassment Omnibus Law – *Illinois Human Rights Act Amendments*

When 2020 arrives, employers need to be aware of significant new obligations under the *Illinois Human Rights Act*. The amendments clarify that unlawful discrimination or harassment includes discrimination based on a *perceived* protected category, not just an *actual* protected category. In addition, employers may be liable for harassment against consultants or contractors, not just for harassment against employees. Beginning July 1, 2020, employers must make annual disclosures of adverse judgments or administrative rulings to the Illinois Department of Human Rights (“IDHR”), but the data they provide will be exempt from disclosure under FOIA. IDHR will also adopt a model sexual harassment prevention training program and make it available to the public. Employers must implement annual training using the IDHR model training program or their own programs that meet the minimum standards set by IDHR.

D. Public Act 101-0221: Sexual Harassment Omnibus Law – *State Employees and Officials Ethics Act Amendments*

By February 9, 2020, a unit of local government (including school districts and community college districts) that is not subject to a state or local Inspector General must amend its sexual harassment policy to provide a mechanism for reporting and independent review of allegations made against one elected official by another.

E. Public Act 101-0221: Sexual Harassment Omnibus Law – *Victims' Economic Security Act Amendments*

Before this amendment, the *Victims' Economic Security Act* (“VESSA”) allowed an employee to take unpaid leave for certain reasons if he/she was the victim of domestic violence, sexual violence, or general violence, or if he/she had a family member or household member who was a victim. This leave right will now apply to gender violence as well. The length of the entitled leave in a 12-month period varies with the employer's size: 12 weeks for employers with at least 50 employees; 8 weeks for employers with 15-49 employees; and 4 weeks for employees with 1-14 employees.

F. Public Act 101-0564: Training for Mandated Reporters

This law amends the *Abused and Neglected Child Reporting Act* (“ANCRA”), which requires any mandated reporter to immediately report to the Illinois Department of Children and Family Services (“DCFS”) when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused or neglected child. Failure to report as required by ANCRA can subject a mandated reporter to loss of a professional license and/or to criminal penalties.

These changes allow multiple mandated reporters in the same workplace who share a reasonable cause to believe that a child may be an abused or neglected child to designate one of them to make a single report. They also require mandated reporters to complete an initial training within 3 months of the first time they engage in a professional or official capacity as a mandated reporter and at least every 3 years thereafter. DCFS will develop free web-based training.

VI. Cannabis Legalization

A. Public Act 101-0027: *Cannabis Regulation and Tax Act*

Recreational use of marijuana is set to become legal under Illinois law, and adult residents of Illinois age 21 and older will soon be able to legally possess up to 30 grams of cannabis flower, 5 grams of cannabis concentrate, and 500 milligrams of THC in a cannabis-infused product. This sweeping legislation also authorizes the State to issue licenses for growers, processors, and retailers of cannabis and to tax the sale of cannabis products. Registered qualifying medical marijuana patients 21 and older will be able to legally grow up to five cannabis plants without further license and be able to possess cannabis in greater amounts than other Illinois residents.

As is the law currently, employers may still adopt and maintain reasonable and non-discriminatory zero-tolerance drug free workplace policies, including policies preventing possession and use in the workplace and working under the influence. To this end, the law lays out specific and articulable symptoms that an employer may use to determine if an employee is under the influence of cannabis. Employers may also maintain policies regarding drug testing employees. Illinois colleges and universities must continue to comply with federal laws such as the Drug-Free Schools and Communities Act Amendments of 1989, which generally require a college campus to be drug free. *Employers should contact legal counsel to ensure that their policies, procedures, and plans for enforcement are as consistent with both state and federal law as possible.*

B. Public Act 101-0593: Cannabis Legalization “Clean-up Bill”

Among other changes to the *Cannabis Regulation and Tax Act*, this amendment clarifies an employer’s right to take adverse action against an employee or prospective employee who tests positive for marijuana. It provides that employers “cannot be sued for actions taken pursuant to an employer’s reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test.” This change suggests that employers can take disciplinary action based on a failed marijuana drug test without fear of being sued under the Act. However, this does not preclude a job applicant or employee from pursuing a cause of action pursuant to other state or federal law.

In addition, this amendment helps to alleviate previous confusion that existed over marijuana drug testing of various public safety positions: “Nothing in this Act prevents a public employer of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters from prohibiting or taking disciplinary action for the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty, unless provided for in the employer’s policies.”

VIII. Restrooms

A. Public Act 101-0165: Gender-Neutral Signage for Single-Occupancy Restrooms

Effective January 1, 2020 “each single- occupancy restroom shall be outfitted with exterior signage that marks the single-occupancy restroom as a restroom and *does not* indicate any specific gender.” Unlike some legal requirements for restrooms, this requirement applies to all existing places of public accommodation and public buildings, not just those that will be altered or constructed in the future. An earlier version of the bill that was not enacted had required signage indicating the restroom was “all-gender” or “gender-neutral,” suggesting that the signage does not need to use those particular terms.