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# EMPLOYMENT & LABOR LAW

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## New Federal Trade Secrets Law—How It Impacts Employment Agreements

The Defense of Trade Secrets Act provides for the recovery of compensatory damages, punitive damages and attorney’s fees for successful employer. However, it is important to note that this new trade secrets law allows no recovery, punitive damages or attorney’s fees unless a “notice of immunity,” in certain circumstances, is provided to employees at the time they enter into an agreement. I encourage all employer clients who have a confidentiality or trade secret policy to adopt a policy noti-

fying employees that, in certain circumstances, they are allowed to disclose trade secret or confidential information without fear of violation of the Defense of Trade Secrets Act. I suggest the following language be added to all applicable employee handbooks and/or employment agreements:

**“In the course of reporting any suspected unlawful conduct to any governmental agency or governmental entity, employees may disclose trade secret information to a govern-**

**ment official, or to an attorney, and they may use it in certain court proceedings without fear of prosecution or liability, provided you do so consistent with 18 U.S.C. §1833.**

**If you would like a copy of the statute, 18 U.S.C. §1833, please ask the human resources manager for a copy of same.”**

## Victims’ Economic Security and Safety Act (VESSA)

As you may recall, VESSA allows employees who are victims of domestic or sexual violence take a leave of absence to address the issues caused by domestic or sexual violence, including physical and mental health issues and court appearances. Previously, that statute only

covered those employers with 50 or more employees. Now, the statute covers everyone; however, the amount of unpaid leave varies depending on the size of the employer. Employers with 14 or fewer employees, must provide up to 4 weeks of unpaid leave in a 12 month period for ab-

sences related to domestic or sexual violence. Employers with 15-49 employees, must provide up to 8 weeks of unpaid leave in a 12 month period. Larger employers are required to provide up to 12 weeks of unpaid leave.

## Sexual Orientation Discrimination—Federally Protected Class

The Seventh Circuit holds that Title VII prohibits sexual orientation discrimination. In *Hively v. Ivy Tech Community College*, Kimberly Hively claimed that she was not hired for full-time employment at the College because she is a lesbian. For decades, the Seventh Circuit has held that discrimination based on sexual orientation is not gender discrimination. Indeed, it is something totally separate. However, the Seventh Circuit recently overturned that

precedent by the full court. The Seventh Circuit sitting en banc stated “any discomfort, disapproval or job decision based on the fact that the complainant-woman or man, dresses differently, speaks differently, dates or marries a same-sex partner, is a reason purely and simply based on sex.” As a result, the Seventh Circuit found employers are now prohibited under federal law from discriminating against an individual based on their sexual

orientation. Of course, this is not new for most employers in Illinois. For any employer who employs fifteen or more individuals is bound by the Illinois Human Rights Act, which has prohibited discrimination based on sexual orientation for years now.



## Child Bereavement Leave

Effective July 29, 2016, all Illinois employers are required to allow employees up to two weeks (10 working days) of unpaid bereavement leave to: 1) attend the funeral or the alternative to a funeral of a child; 2) make arrangements necessitated by the death of child; or 3) grieve the death of a child. This leave must take place within sixty 60 days of the date on which the employee receives notice of

the child's death. Employees are required to provide their employers at least 48 hours advance notice of intention to take this leave, unless such notice is not reasonable under the circumstances. If any employee is entitled to leave under the Child Bereavement Leave Act, they may use paid or unpaid leave that is otherwise available to them. In other words, if an employee wishes to use

vacation time to ensure that this leave is paid, they may do so. An employee may take no more than six weeks of leave in any twelve month period under this provision and the employee may not be retaliated against for having exercised their rights under the Child Bereavement Leave Act.

## Sick Leave in Illinois

Illinois Employee Sick Leave Act went into effect on January 1, 2017. The ESLA requires employers that provide employees with personal sick leave benefits to allow those employees to use at least half of their annual sick time to care for family members on the same terms that employees may use the sick time for them-

selves. A "personal sick leave benefit" is paid or unpaid time off that an employee may use for an absence from work due to the employee's own illness, injury or medical appointments. It does not include absences covered by an employer's plan, such as short-term or long-term disability plans. Family members, for the pur-

poses of ESLA, include: the employee's child, stepchild, spouse, domestic partner, parent, sibling, parent-in-law, grandchild, grandparent or stepparent.

## Human Trafficking – What New Law May Effect You

The Human Trafficking Resource Center Notice Act requires certain Illinois employers to provide the phone number for the National Human Trafficking Resource Center as a helpline for any person "being forced to engage in any activity when they cannot leave, whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity..." Employers who are impacted are those where the sale of alcohol is the principal business and that hold an "On Premise Consumption Retailor License" under the Illinois Liquor Control Act 1934; adult entertainment facility; primary airports; intercity passenger rail stations; bus stations; truck stops; emergency rooms with general acute care hospitals; urgent care centers; farm labor contractors and private job recruitments centers.

The required notice can be found at <http://www.dhs.state.il.us/OneNetLibrary/27894/documents/121915HumanTraffickingPosterAVOFinalinEnglishandSpanish120715.pdf>

The notice must be posted in both English and Spanish.



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