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Williams, Bax & Saltzman, P.C.

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QUARTERLY

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About WBS

Williams, Bax & Saltzman, P.C. is a full-service law firm, representing and advising businesses, nonprofits, fiduciaries and other individuals. Our attorneys are committed to providing value-added services to our clients in a cost-effective manner.

Practice Areas

- Commercial Litigation
- Corporate
- Labor and Employment
- Real Estate
- Insurance
- Professional Liability
- Estate Planning
- Trust Administration and Probate

Our New Attorney

Hilarie Carhill

Associate

Labor & Employment Litigation

Hilarie graduated from Tulane University Law School (JD '17) in New Orleans, LA and went on to serve active-duty in the US Army JAG Corps as a military attorney. Since then, she has been in private practice advising employers and defending against labor & employment claims.

NEW ILLINOIS EMPLOYMENT LAWS FOR 2025

Illinois employers should review their policies and procedures to ensure they are compliant with several new employment laws that took effect on January 1, 2025. Below is a summary of these new employment laws.

PAY TRANSPARENCY UNDER ILLINOIS EQUAL PAY ACT

The Illinois Equal Pay Act was amended to promote pay transparency in the workforce. The amendment requires employers with 15 or more employees to include a "pay scale and benefits" in all job postings. "Pay scale and benefits" means the wage or salary, or the wage or salary range, and a general description of benefits and other compensation, including but not limited to bonuses, stock options, or other incentives the employer reasonably expects to offer for the position.

The amendment also includes a recordkeeping requirement. Employers must now create and maintain records of the "pay scale and benefits for each position," including a copy of the job posting for each position. The records must be maintained for not less than 5 years.

MAINTAINING PAY STUBS UNDER THE ILLINOIS WAGE PAYMENT & COLLECTION ACT

The Illinois Wage Payment & Collection Act was amended to require employers to issue pay stubs for each pay period and that the pay stubs identify "an employee's hours worked, rate of pay, overtime pay and overtime hours worked, gross wages earned, deductions made from the employee's wages, and the total of wages and deductions year to date." The pay stubs are to be maintained for a period of "not less than 3 years after the date of payment, regardless of whether the employee's employment ends during this period."

NEW OBLIGATIONS UNDER THE ILLINOIS PERSONNEL RECORD REVIEW ACT

The Illinois Personnel Record Review Act, which requires employers to provide current and some former employees with access to their personnel records, was also amended to clarify the method for how current and former employees can request a review of their personnel file. The amendments also expand the type of information that must be included in response to a request to review a personnel file. Employers must now include the following documents in response to a properly submitted request to review a personnel file: (1) any employment-related contracts or agreements that the employer maintains are legally binding on the employee; (2) any employee handbooks that the employer made available to the employee or that the employee acknowledged receiving; and (3) any written employer policies or procedures that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.

NEW PROTECTIONS FOR EMPLOYEES UNDER THE ILLINOIS HUMAN RIGHTS ACT

An amendment to the Illinois Human Rights Act ("IHRA") now prohibits discrimination in the workplace based on an employee's engagement in "family responsibilities." The term "family responsibilities" is defined as "an employee's actual or perceived

Recent WBS Cases

BIPA Insurance Coverage Dispute

Rob Muriel and Jay Zenker prevailed on summary judgment in favor of a policyholder and against an umbrella insurer who denied payment of a claim for coverage for a BIPA class action filed against the policyholder. Judge Kocoras of the Northern District of Illinois held that the BIPA claims were potentially covered by the policy and that neither a Violation of Laws exclusion nor an Employment Practices exclusion unambiguously barred coverage. The Court held that the insurer has a duty to defend the policyholder against the BIPA class action upon exhaustion of the primary policy.

Commercial Lease Dispute

David Strubbe obtained summary judgment in favor of a commercial real estate firm and against a tenant who ceased paying rent during the COVID-19 pandemic. The Court rejected the tenant's purported defenses of impossibility of performance and commercial frustration of lease because the tenant was exempt from the State of Illinois' shelter-in-place order. As a result, the Court awarded a substantial money judgment in favor of the landlord.

Insurance Disputes

Rob Muriel and Jay Zenker successfully defended an insurance company against an Illinois Department of Insurance ("IDOI") complaint from a homeowner, who alleged that the insurer's cancellation of his policy violated the Illinois Insurance Code. At a contested hearing before an IDOI hearing officer, the insurer was able to demonstrate by testimony and evidence that it had validly cancelled the policy due to the homeowner's own failures under the policy. The IDOI hearing officer dismissed the homeowner's complaint and denied his petition for rehearing.

provision of personal care to a family member." "Personal care" refers to any activity to ensure family members receive "basic medical, hygiene, nutritional, or safety needs" and to provide family members with "transportation to medical appointments." "Personal care" also means "being physically present to provide emotional support" to family members with "a serious health condition who is receiving inpatient or home care." Family members include "an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent."

The IHRA was also amended to prevent discrimination based on an employee's "reproductive health decisions," which includes decisions about the use of contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care."

Finally, the IHRA was also amended to extend the statute of limitations period for employees to file a charge of discrimination with the Illinois Department of Human Rights. The statute of limitations will increase from 300 days to two years (730 days) from the date of the adverse employment action.

NEW LIMITATIONS ON RESTRICTIVE COVENANTS IN ILLINOIS

Illinois continued to further limit use of restrictive covenants in the state. The Illinois Freedom to Work Act ("IFWA") was amended to limit the use of non-compete and non-solicitation agreements for mental health professionals who provide services to veterans and first responders. Additionally, the IFWA now prohibits the use non-compete and non-solicitation agreements for construction workers regardless of whether an individual is covered by a collective bargaining agreement.

The amendment also requires employers to provide notice to employees of any discrepancies in an employee's employment verification as identified by a federal or state agency. The amendment expressly prohibits an employer from taking an adverse employment action based solely on the initial notice received from the federal or state agency. Within 5 days after receiving notice from the federal or state agency, an employer must inform the employee of the determination and "the time period the employee has to contest the determination."

PROHIBITING CAPTIVE AUDIENCE MEETINGS

Earlier this year, Governor Pritzker signed into law the Worker Freedom of Speech Act ("WFSA"). The WFSA makes it unlawful for an employer to take or threaten an adverse employment action against an employee for failing to attend or participate in an employer-sponsored meetings held for the purpose of expressing the employer's political and/or religious opinions. Employers must also post a notice advising employees of their rights under the WFSA by January 31, 2025.

AMENDMENTS TO THE ILLINOIS WHISTLEBLOWER ACT

The Illinois Whistleblower Act ("IWA") prohibits employers from retaliating against an employee who discloses to a government or law enforcement agency, public body, or court of law that an employer's activities, policies, or practices "violate a State or federal law, rule, or regulation or poses a substantial and specific danger to employees, public health, or safety." The IWA also prohibits employers from retaliating against an employee who refuses to participate in an employer's activities that would violate a State or federal law, rule, or regulation. The IWA was recently amended to make clear

that employees must have a "good faith belief" in alleging that employer's activities are unlawful or for refusing to participate in an employer sponsored activity to have a valid claim under the IWA.

The IWA amendment also makes clear that the prohibition against retaliatory action applies to not only employees who make actual disclosures but also to those employees who merely threaten to disclose an employer's purported unlawful conduct. The IWA amendment also increases the remedies available to an aggrieved whistleblower. Employees may now recover interest of 9% per annum on an award of backpay, liquidated damages up to $10,000, a civil penalty of $10,000, and permanent or preliminary injunctive relief.

For assistance navigating and implementing the aforementioned amendments, please contact the Williams, Bax & Saltzman, P.C. Labor and Employment Law Group (saltzman@wbs-law.com or koessl@wbs-law.com) for more details or assistance.

CONTINGENCY FEE AGREEMENTS IN COMMERCIAL LITIGATION

One of WBS' core practice areas is commercial litigation, including our insurance policyholder coverage practice. Under the right set of circumstances, and if the economic interests align well, our firm will consider taking a case on full or partial contingency. In recent months, two Illinois cases were decided in this commercial litigation contingency fee arena.

In *Levenfeld & Associates, Ltd. v. O'Brien*, 2024 IL 129599, the Illinois Supreme Court held that the Circuit Court properly awarded approximately $2 million in legal fees to a law firm against a client. The terms of a contingency agreement stated that the law firm's fees shall be the greater of (1) 15% of the first $10 million and 10% of any additional assets recovered, or (2) the hourly rates of the lawyers. The client terminated the law firm after it had incurred more than 3,100 hours of time over 19 months and was on the verge of settling multiple complex litigation matters. The lawyers sued under *quantum meruit*, and the Circuit Court found that even though the relationship was terminated, the contingency fee agreement provided a reasonable value of the law firm's services and thus an appropriate *quantum meruit* award. The Supreme Court affirmed that holding.

In *Advance Iron Works, Inc. v. Contegra Construction Co., LLC*, 2025 IL App. (1st) 191525-U, plaintiff AIW agreed to pay its lawyer 40% of any amounts recovered against defendant Contegra. Following trial, plaintiff secured a verdict in excess of $7.3 million. Adding 9% post-judgment interest to the years of post-trial proceedings, plaintiff's lawyer's 40% contingency percentage was over $3 million by the time of the appeal. Part of the appeal focused on whether plaintiff could shift its contingency fee to defendant pursuant to the attorney-fee shifting provision in the contract between plaintiff AIW and defendant Contegra. At the circuit court level, the judge refused to shift the 40% contingency fee from plaintiff to defendant. Rather, the Circuit Court awarded attorneys' fees to plaintiff based on the lodestar method, reimbursing Plaintiff 664 hours of its counsel's time at a rate of $576 per hour, for a net total fee award of $379,836. On appeal, Plaintiff pointed out to the appellate court the injustice that it owed its attorney over $3 million, but was being reimbursed for only $379,836 despite having prevailed in the litigation. The Appellate Court affirmed this aspect of the Circuit Court ruling, finding that there was no abuse of discretion in using the lodestar method to calculate reasonable attorneys' fees, instead of the 40% contingency fee agreement.

These two cases provide helpful instruction that although contingency fee agreements in commercial settings are enforced by lawyers against clients, the same may not always be true when trying to shift fees to a third party pursuant to common attorney fee shifting provisions. At WBS, we account for all such variables when considering entering into a contingency fee agreement; we strive to be clear about the risks and unknowns in advising our clients.
