

Business Update: Change to Illinois Law Regarding Hiring Practices

Employer Inquiry or Use of Credit History in Hiring and Employment Decisions Now Prohibited under Illinois Law.

Effective January 1, 2011, Illinois employers are no longer allowed to inquire about or use the credit history of an employee or prospective employee when making hiring, recruiting, discharge, or compensation decisions. The Employee Credit Privacy Act (ECPA), P.A. 096-1426, was signed into law by Illinois Governor Pat Quinn on August 10, 2010. The ECPA also protects persons from discrimination or retaliation if they file a complaint or participate in an investigation relating to violations of the Act. There are limited exceptions to the ECPA relating to the credit-check prohibition. An employer is allowed to access individual credit checks for certain employment involving bonding or security, unsupervised access to more than \$2500, signatory power over more than \$100 in assets, and access to confidential or trade secret information. Additionally, banks, insurance companies, and many public sector jobs are also exempted from the credit-check prohibition. It is important to recognize that employers are still permitted to conduct background checks of applicants and employees as long as the background check does not include a credit history.

New Dangers for Employers Under the Amended Illinois Wage Payment and Collections Act.

On July 30, 2010, the Illinois Wage Payment and Collection Act (WPCA), 820 ILCS 115/15, et seq. was amended. These amendments take effect on January 1, 2011. The WPCA was enacted to provide employees with protections against illegal withholdings from their wages. Under the amended WPCA, the Illinois Department of Labor (IDOL), wage orders now will be considered final agency decisions that may be enforced by the IDOL or challenged by an employer in the state trial courts under the Administrative Review Law, 735 ILCS 5/3-101, et seq. Previously, IDOL wage orders were not self-enforcing and the IDOL was required to file suit in the state trial courts to enforce its wage orders. The effect of this amendment is that employers now will have to fully address wage claims brought before the IDOL and the IDOL's decisions will be subject to limited judicial review. The amended WPCA now also allows an employee to file actions for alleged violations directly in the state court and recover, if successful, its costs and reasonable attorneys' fees. The amended WPCA now also permits the filing of class action lawsuits against employers and protects employees from retaliation for reporting alleged violations of the Act. The amendments also allow employees to now recover two percent interest per month from the time of the underpayment of wages, as opposed to recovery of interest after successful adjudication of claims as is the current law. Lastly, the criminal penalties under the Amended WPCA have been increased whereby repeat violators will be subject to a Class 4 felony if convicted twice within a two-year period.

About The Entrepreneur's Legal ResourceSM

Our firm is designed to provide legal services to business owners in small to mid-sized business in the Chicago area. We specialize in helping our clients solve business problems in order to effectively run their operations. Our services range from business start-up to complex litigation matters. Contact:

Richard J. Lofgren, P.C.
The Entrepreneur's Legal ResourceSM
460 N. Main Street, Suite 209
Glen Ellyn, Illinois 60137
(630) 469-7100 Telephone
(630) 469-7108 Facsimile
rlofgren@elrlaw.com
www.elrlaw.com