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UNION NEWSLETTER

KATZ, FRIEDMAN, EAGLE, EISENSTEIN & JOHNSON

77 W. Washington Street, 20th Floor

Chicago, IL 60602

312-263-6330

Illinois Injury Hotline

1-800-444-1525

UPDATE ON RECENT CHANGES IN ILLINOIS EMPLOYMENT LAW

Happy New Year! As a service to our clients, we provide this update on recent legislation in Illinois that is of interest to unions and workers. The Illinois legislature had a busy year in 2003, enacting numerous pieces of significant legislation that became effective on January 1, 2004. These new laws could dramatically impact the rights of workers in Illinois.

1. The **State Lawsuit Immunity Act, PA 93-0414**, permits employees, former employees, and prospective employees of the State of Illinois to sue their employer for violation of the Age Discrimination in Employment Act of 1967, the Family and Medical Leave Act ("FMLA") the Americans with Disabilities Act ("ADA"), Title VII of the Civil Rights Act, or the Fair Labor Standards Act. (Previously, there may have been some legal impediments which may have bared State employees from bringing suit under these Federal laws.)

2. The Illinois legislature also extended protections against discrimination by government agencies outside of the workplace. The **Illinois Civil Rights Act of 2003, PA 93-0425**, which became effective as of January 1st, prohibits any unit of State, county, or local government from excluding a person from participation in any program or activity it offers on the basis of his or her race, color, or national origin. This law also prohibits the government from using criteria that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. Any individuals who are denied participation in such programs due to their race, color, or national origin can file a lawsuit for a violation of the Act in either state or federal court.

3. Several pieces of legislation offer brand new civil rights protections to Illinois workers. For instance, the **Victims' Economic Security and Safety Act, PA 93-0591**, which has been effective since August 25, 2003, offers workplace protection to victims of domestic violence. This Act provides that employers may not discharge or discriminate against an employee for taking time off from work to seek relief as a victim of domestic violence. It also prohibits employers from discharging, discriminating, or retaliating against an employee who is a victim of domestic violence for taking time off from work to seek medical attention or counseling for injuries or psychological trauma caused by domestic violence. Thus, this Act provides similar protection to those available under the Family Medical Leave Act (FMLA), but extends coverage to situations that might not be

covered under the Federal law. The stated purpose of this Act is to promote the State's interest in reducing domestic violence, dating violence, sexual assault and stalking.

4. Likewise, an amendment to the **Illinois Human Rights Act, PA 93-0217**, creates civil rights protections for employees who choose to speak languages other than English during their work day. Some private employers have prohibited immigrant employees from conversing among themselves in a language that the boss doesn't understand. This amendment makes it unlawful for any employer to adopt or enforce a policy that limits or prohibits the use of any language in the workplace unless the employer can demonstrate that the restriction is a "business necessity." In order to impose such a restriction, the employer must also first notify its employees of (i) the circumstances and times when the language restriction is required and (ii) the consequences for violating the language restriction.

5. The Illinois legislature also passed numerous laws that are similar to existing federal laws, but which expand upon protections available to employees. For instance, the **Equal Pay Act of 2003, PA 93-0006** prohibits employers from discriminating between employees on the basis of sex by paying disparate wages solely on the basis of the employee's gender. The Act also prohibits retaliatory discharge or discrimination against an employee on the basis of the employee's use of the Act and provides that those found in violation of this section of the Act can be charged with a Class B misdemeanor. The Act also requires employers to keep pay records for a period of at least three years, and requires employers to post a notice summarizing the Act's requirements.

6. Similarly, while you are likely to be familiar with federal "whistleblower" laws which provide protections to individuals who report certain types of unlawful activity, the Illinois **Whistleblower Act, PA 93-0544** provides expansive protection to employees in Illinois who report unlawful conduct by their employer to appropriate authorities. This law prohibits employers from adopting or enforcing any rule, regulation, or policy that prevents employees from disclosing information to a government or law enforcement agency regarding the employer's violation of a state or federal law, rule, or regulation. The Act also prohibits employers from retaliating against an employee for disclosing such information to a government or law enforcement agency, so long as the employee has "reasonable cause" to believe that the information discloses a violation of a state or federal law, rule, or regulation. Additionally, employees who refuse to participate in an activity that would result in a violation of a state or federal law, rule, or regulation are protected under the Act. Violation of the Act may be considered a Class A misdemeanor. Employees who are injured by an employer's violation of the Act may bring a civil action against the employer for all relief necessary to make the employee whole, including reinstatement, back pay, compensation for damages, litigation costs, expert witness fees, and reasonable attorney's fees.

We appreciate the opportunity to serve as your legal advisor. Please remember that if you or your members or friends have questions regarding workers' compensation injuries, social security disability, negligence claims or discrimination, feel free to telephone us. There is no charge for the initial consultation.