



## New Illinois Employment Laws for 2015

Three new employment laws will take effect for Illinois employers beginning Jan. 1, 2015. The first, the Illinois “ban-the-box” law, was discussed in an earlier [GT Alert](#). The second new law, the Pregnant Workers Fairness Act (PWFA), consists of amendments to the Illinois Human Rights Act (IHRA) that impose new requirements on employers for the treatment of pregnant employees and applicants, and apply to all employers with one or more employees in Illinois. The third new law amends the Illinois Wage Payment and Collection Act (IWPCA) to permit employers to pay employees’ wages using payroll debit cards for the first time; however, the IWPCA amendments contain strict requirements on their use. This *GT Alert* summarizes the more salient features of PWFA and IWPCA payroll card amendments.

### The PWFA

The most significant requirement of the PWFA is the duty of employers to provide reasonable accommodations if requested by an employee or applicant due to pregnancy, defined as pregnancy, childbirth or any medical or common condition related to pregnancy or childbirth, unless the employer can demonstrate that the accommodation would impose undue hardship on the employer’s business operations. This requirement is similar to the duty imposed on employers to reasonably accommodate disabled applicants and employees under the Americans with Disabilities Act (ADA) in order to enable them to perform the essential function of the job an applicant seeks or an employee holds. The provisions of the PWFA concerning reasonable accommodations are similar to the rules established by the EEOC in its non-binding July 14, 2014, pregnancy discrimination guidance, but the IHRA amendments are legally binding on all Illinois employers, more specific and somewhat different in certain respects. For example:

- > While the PWFA mandates an interactive process between the employer and the employee or applicant to attempt to agree on a reasonable accommodation as under the ADA, the PWFA specifically prohibits an employer from requiring the applicant or employee to accept an accommodation selected by the employer if the parties are unable to agree on an accommodation. The PWFA is silent as to the recourse an employer has if the applicant or

employee rejects the employer's proffered accommodation. Presumably, the employer must agree to an accommodation requested by an applicant or employee, or one deemed medically advisable by her health care provider, unless it can establish that such accommodation would impose an undue hardship.

- > The PWFA permits an employer to obtain documentation from the applicant's or employee's health care provider regarding the need for a requested accommodation (with appropriate authorization from the applicant or employee) to the same extent it seeks such documentation for conditions that may constitute disabilities (though the PWFA does not include pregnancy as a disability under the IHRA). However, the PWFA further limits what an employer may request to the medical justification for the requested accommodation, a description of the accommodation that is medically advisable, the date the accommodation became medically advisable and the probable duration of the accommodation.
- > The PWFA contains a non-exclusive list of accommodations that may be reasonable. These include more frequent or longer bathroom breaks; breaks for increased water intake or periodic rest; private non-bathroom space for expressing breast milk or breastfeeding; seating; assistance with manual labor; light duty; temporary transfer; accessible worksite; new or modified equipment; job restructuring; part-time modified work schedule; adjustment or modification of examinations, training materials, or policies; reassignment to a vacant position; time off to recover from conditions related to childbirth; and leaves of absence necessitated by childbirth or medical or common conditions resulting from pregnancy or childbirth.
- > If a leave is granted as a reasonable accommodation, the employee must be reinstated to her original job or equivalent position with equivalent pay and with accumulated seniority and full-credit for retirement and all other fringe benefits regardless of the length of leave, unless the employer can demonstrate that such reinstatement would impose an undue hardship. As a result, leave policies that provide for termination of employment if an employee does not return to work from leave within a specific, finite length of time or policies that do not provide for full reinstatement to the same or an equivalent position would likely be viewed by Illinois Human Rights Commission as being unlawful under the PWFA as applied to a pregnancy leave, absent proof of undue hardship.

The PWFA also prohibits discrimination against an applicant or employee because of her pregnancy or because she has requested an accommodation for her pregnancy. It also requires all employers subject to PWFA to post a notice prepared by the Illinois Department of Human Rights on its website where notices to employees are customarily posted, and to include the PWFA notice in any employee handbook or manual distributed to employees by the employer. The text of the PWFA amendments to the IHRA is underscored in [P.A. 098-1050](#). All employers with one or more employees in Illinois should review their employment policies and procedures, modify them if necessary, and provide appropriate training to HR staff, supervisors and managers.

### **The Payroll Card Amendments to IWPCA**

Employers' use of payroll debit cards to pay employees is a relatively recent and controversial phenomenon. Currently, under the IWPCA, Illinois employers can only pay employees in cash, by check, or by authorized direct deposit to an account in a financial institution designated by the employee. As a result of the growing use of payroll debit cards and the reported abuses stemming from them, beginning

Jan. 1, 2015, employers will be permitted to pay their Illinois employees through payroll debit cards but with strict requirements on their use. Among those are:

- > Employers may not require employees to use payroll cards as condition of employment.
- > Employers must provide a clear and conspicuous written disclosure containing the following: notice that payment by payroll card is voluntary; a list of other permissible means by which employees may be paid; notice that third parties may assess transaction fees in addition to the fees assessed by the payroll card issuer; and an explanation of how employees may obtain, at no cost, their net wages, check account balances and request paper or electronic transaction histories.
- > Employers must obtain an employee's voluntary written or electronic consent to be paid by payroll card before paying an employee through a payroll card, and must provide other permissible means for employees to receive their pay.
- > Employees must be provided with at least one method of withdrawing their full net wages from a payroll card once per pay period, but not less than twice per month, at no cost to the employee, at a location readily available to the employee.
- > Employees, at their request, will be entitled to one transaction history each month in electronic or paper form and unlimited telephone access to obtain the employee's payroll card account balance at no cost to the employee.
- > Employers may not use a payroll card program that charges fees for point of sale transactions, the application, initiation, loading of wages by the employer or participation in the program. Account inactivity and declined transaction fees are permitted on limited bases.
- > A payroll card or payroll card account may not be linked to any form of credit, including overdraft fees, loans against future pay or cash advances.
- > If an employee paid through a payroll card requests to be paid by another permissible means, the employer must pay the employee by the other means requested within two pay periods.

The full text of all the IWPCA amendments concerning payroll cards is underscored in [P.A. 098-0862](#). Employers with employees in Illinois that may wish to take advantage of the potential payroll administration cost-savings from the use of payroll cards need to evaluate those potential savings against burdens and costs that may result from the restrictions on their use.

Greenberg Traurig's Labor and Employment attorneys in Illinois are available to discuss these and other emerging legal trends as necessary.

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