Illinois increases minimum wage, effective January 1, 2020

by Daniel R. Kapolnek

With the passage of the "Lifting Up Illinois Working Families Act" (the Act), on February 19, 2019, Illinois became one of only a handful of states to approve a minimum wage of $15 per hour.

The Act establishes guidelines to increase the hourly minimum wage from $8.25 to $15 per hour by 2025. Illinois' hourly minimum wage will incrementally increase from $8.25 to $9.25 on January 1, 2020, $10 on July 1, 2020, and $11 on January 1, 2021. Beginning on January 1, 2022, the hourly minimum wage will continue to increase by $1 on every January 1 until 2025 when the minimum wage reaches $15 per hour. The Act also increases the minimum wage for workers younger than 18. For workers younger than 18, the minimum wage increases from $7.75 to $8 on January 1, 2020, and then eventually tops out at $13 in 2025.

Tipped workers will also benefit under the Act. Workers in the bar and restaurant industry are typically paid well below minimum wage because tips from customers make up the bulk of their pay. Currently, Illinois employers can pay tipped workers $4.95 an hour, with tips making up the difference to reach the minimum wage. When a tipped employee does not reach minimum wage with tips, the employer is required to make up the difference. Under the Act, the minimum wage for tipped workers will increase to $9 by 2025.

While the aim of the Act is to ensure a living wage for Illinois workers, business groups across the state have voiced concerns about the Act's effect on their payroll. In anticipation of such opposition, the state legislature built a tax credit into the Act to offset increases to the cost of wages. Illinois businesses with 50 or fewer employees will be able to claim tax credits for up to 25 percent of the of the cost of wage increases in 2020. The goal of this credit is to compensate businesses for complying with the Act and to discourage payroll cutting measures, such as decreasing hours, automation, or job cutting. After 2020, the credit will be scaled back until it is eventually phased out.

About 1.4 million workers across Illinois (almost a quarter of the state's workforce) will benefit from the Act. It is unclear how Illinois businesses will react to the upcoming implementation of the Act, but it is certain that Illinois workers will begin to see a significant increase in their take home pay beginning on January 1, 2020.

In Print and At the Podium

Mrs. Vivian recently spoke at a Metro East Financial Empowerment Conference on the topic of "Wills, Insurance, Go Fund Mes, Oh My!" . . . **Mrs. Foulker** recently completed her fifth year with United Way of Lee County and assisted during its fundraising and allocation of campaign funds . . . **Mr. Gehlbach** recently presented a program on estate administration to the Kane County Bar Association . . . **Mrs. Considine** was recently appointed from the ISBA President-Elect to the ISBA Task Force on the Unauthorized Practice of Law . . . **Mrs. Kennedy** was recently appointed as Treasurer of the Dixon Family YMCA and continues to serve as Secretary/Treasurer of the Lee County Bar Association . . . **Mr. Gehlbach** recently wrote an article on the termination of farm leases that was featured in the April issue of the Illinois State Bar Association's Real Property newsletter . . . **Mrs. Vivian** recently spoke at a seminar on Diversifying Culture at the ISBA's Spring Real Estate Law Update.

Deals and Decisions

Mrs. Kennedy recently represented a solar farm company to obtain a special use permit for the one of the largest solar energy systems in Illinois . . . **Mrs. Considine** obtained a favorable result for clients seeking the termination of a father's parental rights due to his depravity and addiction to drugs . . . **Mrs. Foulker** was recently appointed to serve as Guardian ad Litem in a same sex assisted reproduction adoption case . . . **Mr. Gehlbach** closed a real estate transaction involving thirty separate real estate parcels, several tax-deferred exchanges, and almost $50million . . . **Mr. Gehlbach** recently represented clients in the sale of their business and real estate holdings . . . **Mr. Gehlbach** recently published an article in the *Illinois Bar Journal*.

If you prefer to receive this newsletter by e-mail, please send your name and e-mail address to newsletter@egbclaw.com.

Egbc Legal Report

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Emily R. Vivian is new partner at Ehrmann Gehlbach Badger & Considine, LLC

Ehrmann Gehlbach Badger & Considine, LLC, is pleased to announce that **Emily R. Vivian** is now a partner of the firm, joining **Gary R. Gehlbach**, **David W. Badger**, and **Dana M. Considine**. The partners, along with associate attorneys **Darla A. Foulker**, **Courtney E. Kennedy**, and **Daniel R. Kapolnek**, welcome Emily in her new role.

Emily's practice focuses primarily on estate planning and administration, real estate, and business transactions.

Inside

Employers, are you in compliance with the Illinois Human Rights Act?

by Emily R. Vivian

During 2018, Governor Rauner signed two bills amending the Illinois Human Rights Act (the Act). Employers should be aware of the amendments and ensure that they are in compliance.

New Posting Requirement

As employers are (hopefully) aware, the Act requires all employers in Illinois to post, in a conspicuous location, a notice providing certain information to employees. The amendments to the Act update the posting requirements to include an employee's right to be free from sexual harassment. The state-approved notice can be found at: https://www2.illinois.gov/dhr/Publications/Documents/SH%20and%20DISCRIMINATION%20EMPLOYEE%20POSTER.pdf
In addition to posting the required notice, employers must include the posting information in the employer's handbook. If the Department of Human Rights (the Department) determines that an employer is not in compliance with these requirements, the Department will provide notice of non-compliance to the employer, and the employer will then have 30 days to correct the violation. If the employer fails to correct the violation within 30 days, the Department may initiate an action based on a civil rights violation. Employers are well advised to comply with the Act.

Time to File Charge of Discrimination

Prior to the enactment of the amendments, an employee had 180 days from the date of an alleged civil rights violation to file a discrimination charge with the Department. The amendments extend the filing time to 300 days, which matches the timeframe that employees have under federal law to file charges with the Equal Employment Opportunity Commission.

Opt-Out Right for Employee

Another change brought about by the amendments is the right of an employee to file a civil rights action in state court, as opposed to first extinguishing his or her rights under the administrative procedure. That is, an employee is no longer required to initiate a claim for discrimination with the Department. Rather, under the amendments, an employee is now allowed to "op-out" of the Department's investigation and immediately bring a civil action in state court. Within 10 days of the complainant filing a charge with the Department, the Department must provide notice to the complainant of his or her right to opt-out of the Department's administrative process, and the complainant then has 60 days to submit a written request to the Department indicating that the complainant has opted out. The Department must respond to the opt-out request within 10 business days by issuing the complainant a notice of the right to commence an action in circuit court. Within 90 days of receipt of such notice, the complainant may initiate a civil action in state court. The results of this amendment are yet to be seen, but the amendment may very well result in time-intensive, costly litigation.

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Significant tax implications in divorce matters

by Dana M. Considine

The enactment of the Tax Cuts and Job Act of 2017 ("the Act") has significantly changed maintenance (formerly alimony) payments, as they are no longer tax-deductible or taxable to couples who are divorced on or after January 1, 2019. This means that if you are the payor of maintenance you can no longer deduct from your income the amount paid to your former spouse, and if you are the recipient of the maintenance payments, you no longer have to claim the amount received from your former spouse as income.

Those in higher tax brackets will view this as a significant impact since income can no longer be shifted to the former spouse who may be in a lower tax bracket. The advantage that formerly existed from that income-shifting process, would sometimes result in moving the payor of the maintenance into a new, and lower, tax bracket after deducting those payments from his or her income. Now gone are the days of lowering the overall amount of taxes paid by both spouses that could result from this shift of income.

Because of these federal tax law changes, Illinois has reacted by changing its formula that is used to calculate the maintenance to be paid. Instead of using gross income for the calculation, litigants will now find the calculation being performed based off of net income using different percentages altogether.

The Act also removed the personal and dependency exemptions while significantly increasing the standard deductions to almost double the former amount. Additionally, the child tax credit has doubled from $1,000 to $2,000 on each eligible child under age 17. This credit can only be claimed by a parent who is allowed to claim the child as a dependent, however.

If you have questions concerning the tax implications of a potential divorce or a post-decree or parentage situation, Attorneys Considine and Foulker are available for consultation to discuss these important issues.

Transitioning to the Stoned Age: Legalization of cannabis increases need for revised employee handbooks

by Courtney E. Kennedy

On May 21, 2019, the Illinois General Assembly passed the Cannabis Regulation and Tax Act ("the Act"), which provides that effective January 1, 2020, anyone over the age of 21 may now possess, use, or buy marijuana – a now legal drug in Illinois – for recreational use from licensed sellers. While still classified as an illegal drug under federal law, the Act seeks to generate revenue for the state pursuant to a taxation scheme and allows and encourages law enforcement to focus on violent and property crimes.

The Act legalizes the possession and purchase of up to 30 grams of marijuana for those over the age of 21 who are Illinois residents and establishes a regulated market for cultivators, processors and retail stores.

The Act raises several concerns for employers who wish to maintain a drug free environment. However, the Act provides that employers may ban the use of cannabis at the workplace and may forbid employees from arriving to work under the influence of cannabis. Furthermore, employers may discipline or discharge an employee if the employer possesses a good faith basis that the employee is under the influence of cannabis while at work.

In light of the Act, employers should revise their employee handbooks to include a cannabis policy to avoid headaches in the future so long as such policies are enforced in a nondiscriminatory manner. In large part, an employment cannabis policy should:

- outline the company policy concerning drug testing, smoking, consumption, storage, and/or use of cannabis in the workplace and while the employee is "on-call;"
- address and define what conduct constitutes "impairment;"
- include an accident investigation procedure to support the employer's good faith basis for the employee's cannabis use;
- outline the procedure for an employee to contest the basis for the employer's determination that the employee was under the influence or impaired by cannabis; and
- specify the disciplinary action an employer may take for a violation of the cannabis or workplace drug policy.

The Act was signed on June 25, 2019, by Governor J.B. Pritzker, who rigorously campaigned for the legalization of cannabis and is a well-known proponent of the Act. The Act will take effect January 1, 2020.

Illinois employers face new retirement savings obligations for employees

by David W. Badger

The Illinois Secure Choice Savings Program Act (the Act) became law in 2018. Pursuant to the Act, any Illinois business with 25 or more employees that maintains a qualified savings plan must automatically enroll eligible employees in Secure Choice, a retirement savings vehicle.

An estimated 2.5 million employees in Illinois do not have access to employer-sponsored retirement plans. The intent of the Act is to make retirement savings available to more employees without imposing significant burdens on employers.

Secure Choice does not require an employer to *establish* a retirement plan. Rather, if an employer does not maintain a retirement plan, the Act mandates that the employer offer Secure Choice to its employees. An employer subject to the Secure Choice mandate must:

1. Automatically enroll eligible employees;
2. Distribute information about the program and facilitate enrollment;
3. Set up a payroll deduction mechanism; and
4. Promptly transfer employee contributions to the plan.

An employee who is automatically enrolled in the Secure Choice plan has 30 days to opt out of the program or to elect a deferral percentage. If the employee does not elect out, the employer will withhold a percentage of the employee's compensation, either the standard five percent (5%) or such other percentage elected by the employee.

The amount withheld from the employee's paycheck is treated as a contribution by the employee to a Roth IRA. The Secure Choice account for that employee is, accordingly, subject to the same rules and limitations as any Roth IRA.

Implementation of the Act is phased in, based on number of employees. Employers with more than 500 employees became subject to the law in November 2018; employers with 100 to 499 employees became subject to the law on January 1, 2019; employers with 25 to 99 employees will become subject to the law in November of 2019; and employers with less than 25 employees are not subject to the Act but may voluntarily participate in Secure Choice.

An employer who is not subject to the Act will need to report its exemption to Illinois Secure Choice. Those employers who are subject to the Act will need to register and begin participating. The Act imposes a fine for employers who are subject to the Act but fail to participate.

Please contact one our attorneys if you have questions about your obligations, if any, under the Act.

New guardianship training program for guardians of the person

by Darla A. Foulker

Effective September 8, 2019, guardians of the person will be required to complete a training program that outlines the duties and responsibilities of guardians of the person appointed under Article XIa of the Illinois Probate Act, Guardians of Adults with Disabilities. The required program is also intended to outline the rights of the person under the guardianship and is intended to be fully accessible to persons with disabilities.

Pursuant to Section 33.5 of the Guardianship and Advocacy Act, the State Guardian is required to provide this training program to the courts at no cost, and within one year of having letters of guardianship issued to him or her, a guardian of the person will be required to file a certification of completion of the required program with the court. However, even if not required to complete the program, anyone serving as a guardian of the person for a disabled adult will be able to access the training online and benefit from the information provided therein.

For anyone looking to complete the training, it is accessible on the Illinois Guardianship and Advocacy Commission's website at the following link: http://www2.illinois.gov/sites/gac/Pages/default.aspx. Once on the site, you can select Guardianship Training on the right-hand side of the screen and follow the prompts thereafter to complete the training. If you need to print the certificate for filing with the Court, you will want to be sure to have your court case information readily available.