



**Entrepreneur
& Family**
BUSINESS COUNCIL

Employment Law Compliance Issues

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Rachel Bossard is a Partner at Burke, Warren, MacKay & Serritella, P.C and a strategic partner of EFBC since 2015. Rachel chairs the Firm's Labor and Employment practice group. She represents employers in all aspects of the law including client counseling, training, litigation, and benefits. She has vast trial experience in both state and federal courts and has litigated and mediated hundreds of employment law matters filed with various governmental agencies. Rachel has argued before the Seventh Circuit Court of Appeals on multiple occasions regarding issues such as discrimination, retaliation, and failure to accommodate.



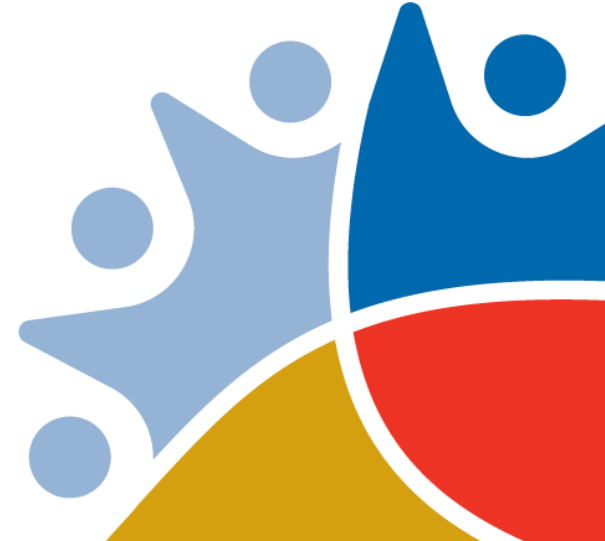
Hiring and Recruitment

- Ensure job postings comply with Pay Transparency Law – salary and benefit disclosures.
 - The Pay Transparency amendment to the Illinois Equal Pay Act went into effect on January 1, 2025, and requires an employer to include pay scale and benefit information in job postings.
 - The law applies to employers with at least 15 employees, whether the employees are inside or outside of Illinois or full-time or part-time.
 - When an employer makes an external job posting, the employer also must within 14 days announce, post, or otherwise make known to all its current employees all opportunities for promotion.



Hiring and Recruitment

- Ensure offer letters comply with Illinois Wage Payment and Collection Act and include appropriate disclaimers.
 - 820 ILCS 115/10 Employers shall notify employees, at the time of hiring, of the rate of pay and of the time and place of payment. Recommend that offer letters notify the employee if the employee is exempt or nonexempt
 - Contingent upon satisfactory completion of background check, drug testing
 - Include disclaimer language that the employee is at-will and that either party may terminate the relationship at any time



Hiring and Recruitment

- Ensure job descriptions are thorough, accurate and acknowledged by employee.
 - Can be fluid and need to be updated, but first need to start with one
 - Agreement between the employer and the employee regarding the expectations of the position
 - Critical for performance evaluations, work restrictions, requests for accommodation
 - Include percentages
 - Other duties as assigned
 - Examples



Hiring and Recruitment

- Comply with the Fair Credit Reporting Act and Illinois Ban the Box laws when conducting background checks.
 - Illinois Human Rights Act prohibits discrimination against employees or applicants on the basis of an arrest.
 - Under Illinois Ban the Box law, employers cannot ask about criminal history until after an applicant has been deemed qualified for the job, has been selected for an interview, or a conditional offer has been made.
 - Obtain consent form.
 - Pre-Adverse and Adverse Determination letters/Summary of Rights.
 - When deciding whether or not to disqualify an applicant based upon their criminal background, must be able to show that it is job-related and consistent with business necessity.



Hiring and Recruitment

- Verify applicant's eligibility to work in the U.S.
- Obtain complete I-9 forms with copies of documents
- Perform routine audits of I-9 forms to ensure work authorizations have not expired



Wage and Hour Issues

Proper classification of employee versus independent contractors.

- **Opportunity for profit or loss:** Whether the worker has the potential to make a profit or loss based on their managerial skill.
- **Investments by the worker:** The extent of the worker's investment in their own equipment or tools.
- **Degree of permanence:** The length of the work relationship.
- **Nature and degree of control:** The extent to which the employer controls the work's methods, schedule, and compensation.
- **Integral part of the business:** Whether the work performed is a core part of the potential employer's business.
- **Skill and initiative:** The level of skill and initiative required to perform the duties.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Executive Exemption

- To qualify for the executive employee exemption, all of the following tests must be met:
 - The employee must be compensated on a salary basis at a rate not less than \$684 per week;
 - The employee's primary duty must be managing the company or a department or subdivision of the company;
 - The employee must regularly direct the work of at least two or more other full-time employees or their equivalent; and
 - The employee must have the authority to hire or fire other employees, or make recommendations for doing so.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Administrative Exemption

- To qualify for the administrative employee exemption, all of the following tests must be met:
 - The employee must be compensated on a salary basis at a rate not less than \$684 per week;
 - The employee's primary duty must be the performance of office or non manual work directly related to the management or business operations or the employer's customers; and
 - The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Professional Exemption

- To qualify for the learned professional employee exemption, all of the following tests must be met:
 - The employee must be compensated on a salary basis at a rate not less than \$684 per week;
 - The employee's primary duty must be the performance of work requiring advanced knowledge, which is intellectual in character and requires the consistent exercise of discretion and judgment;
 - The advanced knowledge must be in a field of science or learning; and
 - The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Creative Professional

- To qualify for the creative professional employee exemption, all of the following tests must be met:
 - The employee must be compensated on a salary basis at a rate not less than \$684 per week; and
 - The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Computer Employee

- To qualify for the computer employee exemption, all of the following tests must be met:
 - The employee must be compensated on a either a salary basis at a rate not less than \$684 per week or compensated hourly at a rate not less than \$27.63 an hour; and
 - The employee must be employed as a computer system analyst, computer programmer, software engineer or other similarly skilled worker in the computer filed performing specific duties.



Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Outside Sales Employee

- To qualify for the computer employee exemption, all of the following tests must be met:
 - The employee's primary duty must be making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
 - The employee must be customarily and regularly engaged away from the employer's place of business.

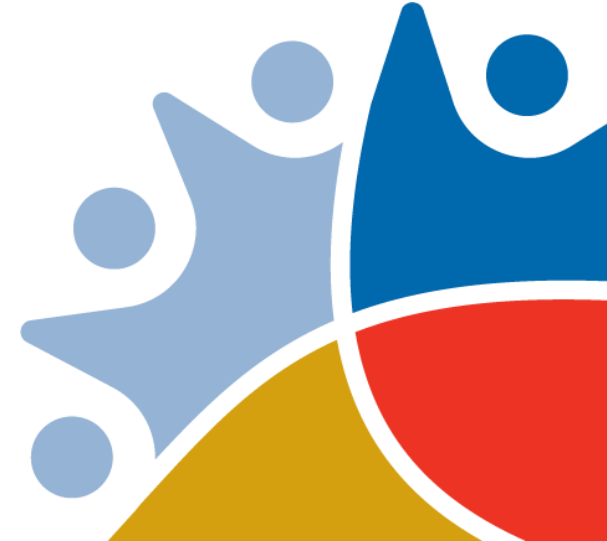


Wage and Hour Issues

Proper classification of employee as exempt or non-exempt.

Highly Compensated Employees

- Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.



Wage and Hour Issues

Understand minimum wage and overtime obligations:

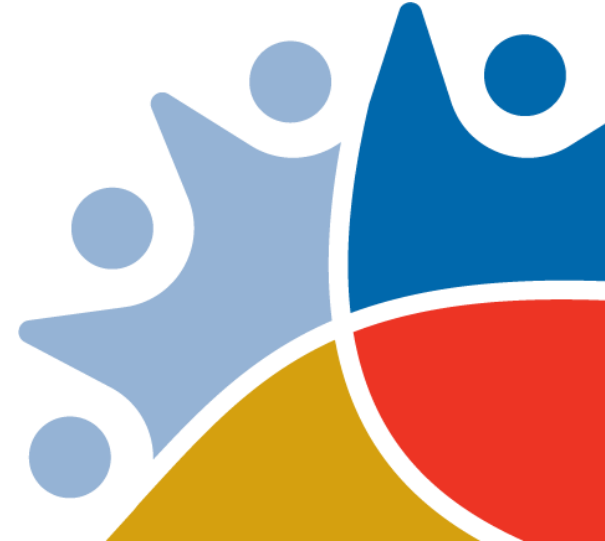
- The minimum wage in Illinois is \$15.00 per hour as of January 1, 2025, for individuals 18 years of age and older.
 - Overtime \$22.50 (any hours over 40 in a workweek)
- Effective July 1, 2025, the minimum wage in Chicago is \$16.60
 - Overtime \$24.90 (any hours over 40 in a workweek)



Wage and Hour Issues

Provide legally required break times.

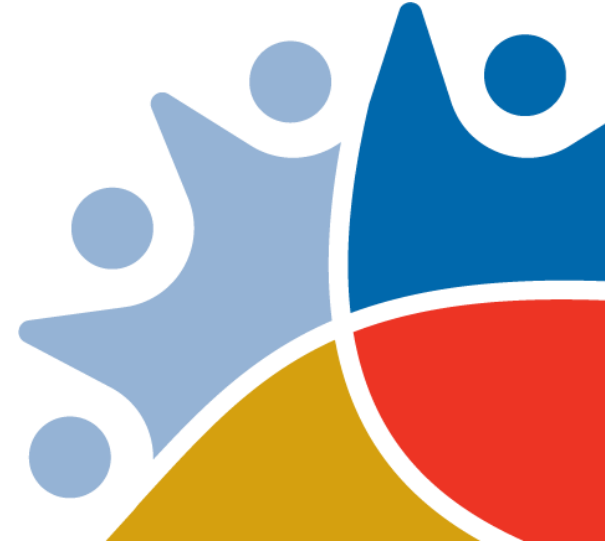
- In Illinois, the One Day Rest in Seven Act (ODRISA) requires most employers to provide at least a 20-minute meal break no later than five hours after the start of a shift for employees working 7.5 hours or more.
 - An additional 20-minute meal break is required for shifts of 12 hours or longer. These meal breaks are unpaid, and reasonable restroom breaks do not count towards the meal break.
- ODRISA also requires at least 24 hours of rest every seven consecutive days. Under this Act.



Wage and Hour Issues

Maintain accurate timekeeping records.

- Employers have a legal burden under the Fair Labor Standards Act (FLSA) and state laws like Illinois' to maintain accurate records for non-exempt employees, including hours worked, pay rates, and earnings, with varying retention periods for different record types (two years for wage computation records, three years for payroll records).
- Failure to keep proper records can result in liability if an employee claims to be underpaid.



Discrimination and Harassment

- Understand obligations under Title VII, ADA, ADEA, Illinois Human Rights Act
 - Federal laws prohibit discrimination and harassment on the basis of protected characteristics such as race, religion, sex (including sexual orientation, gender identity and pregnancy, age, national origin, disability (mental or physical) or genetic information
 - Illinois law also includes arrest record, marital status, Military status, citizenship and immigration status, and familial status



Discrimination and Harassment

Implement and enforce policies prohibiting discrimination and harassment.

- Must have an EEO policy and an anti-harassment policy.
- Illinois and Chicago have requirements of what must be contained in the policy



Discrimination and Harassment

Provide training on these policies, particularly anti-harassment.

- All Illinois employees are required to have one hour of harassment prevention training annually.
- City of Chicago employees are required to have bystander training as well. And Chicago supervisors must undergo additional supervisor training.



Discrimination and Harassment

Provide reasonable accommodations to applicants and employees with disabilities and those who are pregnant.

- Must have a process to assess requests for accommodations and engage in the interactive process.



Discrimination and Harassment



Promptly investigate and address any complaints.

- Do not unilaterally decide that a complaint about discrimination or harassment does not have merit.
- Document your efforts to investigate.
- Determine and communicate your findings.
- Address conduct that violates your policies.



Employee Benefits

Illinois Paid Leave for All Workers Act.

- Effective January 1, 2024, requires most Illinois employers to provide up to 40 hours of paid leave annually to employees who accrue it at a rate of one hour for every 40 hours worked.
 - Employees can use this paid leave for any reason, and employers cannot require them to provide documentation or find a replacement worker.
 - Employers must have a written policy and can deny leave requests due to operational necessity, though they cannot have discriminatory blackout dates.



Employee Benefits

Chicago Paid Sick and Safe Leave Ordinance.



- Effective July 1, 2024
 - Any employee who works at least 80 hours for an employer in Chicago within any 120-day period is covered by the ordinance and is eligible for paid leave and paid sick leave.
 - Employees begin to accrue paid leave and paid sick leave on the first calendar day after they begin their employment.
 - For every 35 hours worked, employees accrue one hour of paid leave **and** one hour of paid sick leave.



Employee Benefits

Family Medical Leave Act (FMLA)

- Employers with 50 or more employees within a 75-mile radius
 - Includes both full-time and part-time employees
 - Eligible employees are those who have worked for the employer for at least 12 months, have worked at least 1,250 hours in the 12 months prior to the leave request.
 - Up to 12 weeks of unpaid time off.
 - Use the DOL forms.



Employee Benefits

Affordable Care Act (ACA)

- Under the Affordable Care Act (ACA), employers with 50 or more full-time or full-time equivalent employees must offer affordable health coverage or face potential IRS penalties.



Employee Handbooks

- Must have at least a minimum number of critical policies
 - Clearly communicate expectations
 - Give examples, but not exhaustive
 - Include flexible language
 - No rigid progressive discipline policies
 - Reviewed by counsel
 - Updated regularly



Performance Evaluations

- Critical feedback and evidence of performance
 - Routinely performed
 - Honest and objective
 - Document employee shortcomings



Discipline and Discharge

- At-will Employment
 - Employment Agreements
 - Collective Bargaining Agreements
 - Employee Handbook Policies
 - Document, document, document
 - Follow procedures for proper notice, final pay, PTO



Employee Records

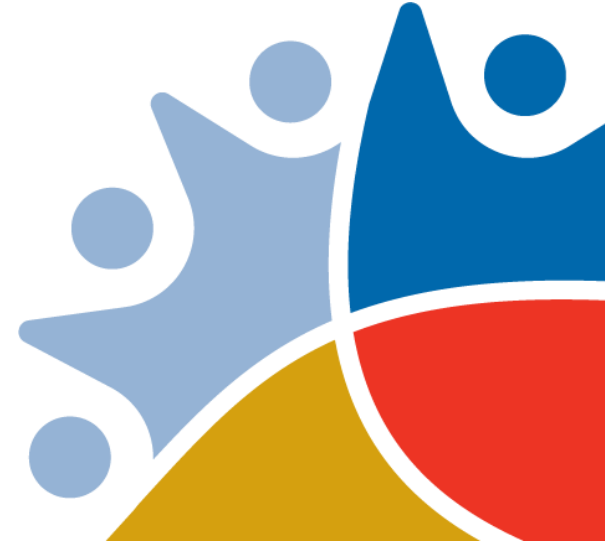
- Maintain accurate and confidential employee records.
- Be prepared to comply with the Illinois Personnel Record Review Act.
- Maintain employee medical records confidentially and separate from personnel file.



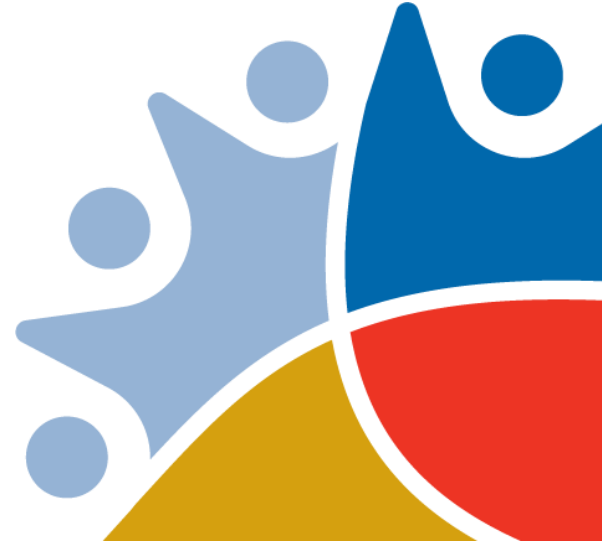
Workplace Safety



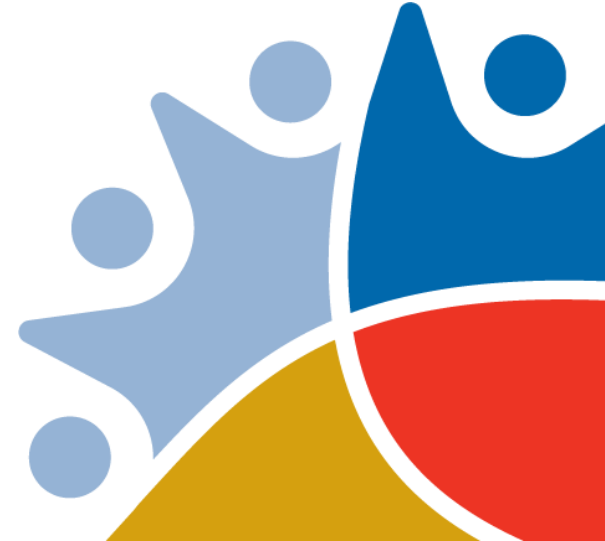
- Maintain adequate workers' compensation insurance
- Timely report incidents
- Be aware of any OSHA regulations that apply
- Require appropriate safety equipment
- Conduct regular safety trainings



Questions?



THANK
YOU



Presenter Contact Info



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