**RASHRM**

**EMPLOYMENT LAW UPDATE**

**JUNE 2014**

**PENDING LEGISLATION**

Illinois General Assembly

**HB 8 Pregnancy Accommodation Bill**

Amends the Illinois Human Rights Act. Provides that with respect to employment, it is a civil rights violation for an employer to refuse to provide reasonable accommodations for an employee for conditions related to pregnancy, childbirth, or related medical conditions, if she so requests, with the advice of her health care provider. Provides that the term “reasonable accommodations” means actions which would permit such an employee to perform in a reasonable manner the activities involved in the job or occupation including an accessible worksite, acquisition or modification of equipment, job restructuring, and modified work schedule. Provides that the reasonable accommodations shall be undertaken provided that those actions do not impose an undue burden.

**HB 5701 Ban the Box**

Creates the Best Candidate for the Job Act. Provides that an employer may not inquire into or require disclosure of a job applicant’s criminal record or criminal history before the candidate has been notified that the candidate has been selected for a job interview or has been offered a conditional offer of employment. Requires consideration of the nature and gravity of a candidate’s conviction record, the time elapsed since the conviction, and whether the conviction has a direct bearing on the candidate’s fitness before excluding a candidate. Authorizes civil remedies. Provides that the Department of Labor may impose penalties for violations.

**SB 68 Minimum Wage Increase**

Amends the Minimum Wage Law. Increases the minimum wage to $9.25 per hour on October 1, 2014, $10 per hour on July 1, 2015 and $10.65 per hour on July 1, 2016.

**SB 2758 Mandated Retirement Plans**

Creates the Illinois Secure Choice Savings Program Act. Establishes a retirement savings program in the form of an automatic enrollment payroll deduction IRA with the intent of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner. Creates the Illinois Secure Choice Savings Program Fund consisting of moneys received from enrollees and participating employers. Sets forth the composition of the Board, the Board’s duties, and provisions governing risk management, investment firms, and investment options. Provides for employee and employer information packets, as well as program implementation and enrollment. Provides that the State shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Program. Requires annual reports and audits of the Program. Sets forth penalties. Amends the State Finance Act to create the Illinois Secure Choice Savings Program Fund.

**HB 2624 Workers Comp reform re: causation**

Amends the Workers’ Compensation Act. Provides that an employee who is required to travel in connection with his or her employment and who suffers an injury while in travel status shall be eligible for benefits only if the injury arises out of and in the course of employment while he or she is actively engaged in the duties of employment. Defines “accident” and “injury”. Provides that “injury” includes the aggravation of a pre-existing condition by an accident arising out of and in the course of the employment, but only for so long as the aggravation of the pre-existing condition continues to be the major contributing cause of the disability. Provides that an injury resulting directly or indirectly from idiopathic causes is not compensable. Further provides that, with respect to the computation of compensation to be paid to an employee who had previously sustained an injury resulting in payment of compensation for partial disability for injuries not involving serious and permanent disfigurement and injuries for which the Act provides a schedule of benefits, the amount of the prior award for the partial disability with respect to the same portion of the body shall be deducted. Limits cumulative awards for partial disability to 500 weeks, which shall constitute a complete loss of use of the body as a whole. Provides that no employer shall be required to pay temporary partial disability benefits to an employee who has been discharged for cause. Provides that injuries to the shoulder are deemed to be injuries to the arm and injuries to the hip are deemed to be injuries to the leg. Provides for the computation of compensation when there are multiple employers and when there is less than full-time work.

**DISCRIMINATION**

Federal Circuit Courts

*EEOC v. Baltimore County.*, No. 13-1106 (4th Cir. March 31, 2014)

***Facts***: Two county employees, age 51 and 64, respectively, filed charges of discrimination with the EEOC, alleging that the county’s retirement plan and contribution rates violated the ADEA by discriminating against them on the basis of their ages. The county’s retirement plan required that the rate of employee contribution to the retirement plan be determined by the employee’s age at the time the employee joins the plan. Thus, the older an employee was at the time of enrollment, the higher the rate that the employee was required to contribute. The EEOC filed its complaint against the county on behalf of the two employees and a class of similarly situated county employees, who were in the protected age group of 40 years of age and older when they enrolled in the plan. The trial court determined that the county’s employee contribution requirements violated the ADEA because age was the “but for” cause of the disparate treatment, and granted partial summary judgment for the EEOC.

***Summary***: The Fourth Circuit first rejected the county’s contention that the Supreme Court’s holding in *Kentucky Retirement Systems v. EEOC,* 554 U.S. 135 (2008), justified the disparate rates based on the time value of money. Kentucky’s plan was based on one’s pension status, not on age like in the present case. In addition, the ADEA’s safe harbor provision is not a defense to the challenged disparate treatment because it does not address employee contribution rates and it does not permit employers to impose contribution rates that increase with the employer’s age. The county’s retirement plan, which required a contribution rate based on age, violated the ADEA because age was the cause of the disparate treatment.

*Jones v. City of Boston*, No. 12-2280 (1st Cir. May 7, 2014)

***Facts:*** Ten African-American city police officers challenged the city’s drug-testing program under Title VII of the Civil Rights Act, § 1983, and the ADA, claiming that the program caused a disparate impact on the basis of race. The city used hair samples to test cadets, applicants, and officers for the use of various illegal drugs. All of the plaintiffs tested positive for cocaine. According to the plaintiffs, the racial bias of the hair testing was demonstrated by (1) the significant statistical difference between the number of black and white officers, applicants, or cadets who tested positive for cocaine; and (2) the chemical and physical characteristics of hair associated with race related false positives. The district court granted the city’s motion for summary judgment on all claims.

***Summary:*** The appeals court vacated the district court’s grant of summary judgment to the city and reversed its denial of partial summary judgment for the plaintiffs on plaintiffs’ Title VII claim. The court determined that the plaintiffs sufficiently stated a prima facie case of disparate impact under Title VII because there is a statistically significant correlation between the outcomes of the drug-testing program and race. In addition, Title VII does not require plaintiffs to prove that the observed differential is practically significant in order to establish a prima facie case of disparate impact.

However, the appellate court affirmed the district court on the remaining claims. The court determined that, although nine of the ten plaintiffs had a constitutionally-protected interest in their employment, they did not sufficiently state a § 1983 claim under the Due Process Clause because the city provided sufficient process. In addition, the plaintiffs’ ADA claim failed because they failed to provide a factual basis that they were fired because they were addicts or were perceived as addicts.

*Harper v. Fulton County*, No. 13-2553 (7th Cir. April 8, 2014).

***Facts:*** The plaintiff was the county treasurer, who sued the county for sex discrimination under § 1983 after it voted not to raise her salary. The plaintiff had been the county treasurer since 1994. Throughout most of the time, she and the county clerk (a male) were paid the same. In 2010, however, the county board began paying the clerk annual pay raises while denying the same to the treasurer. The county identified a number of justifications for denying her pay raises, most of them centered on her work performance. After carefully examining the direct and indirect methods of sex discrimination, the district court granted summary judgment in the county’s favor. The Seventh Circuit affirmed.

***Summary*** The Seventh Circuit determined that the plaintiff failed to make her case under either the direct or indirect method. The testimonial evidence presented by the female members of the county board was not sufficient to establish either direct or circumstantial evidence of sex discrimination upon the plaintiff. And, even assuming the plaintiff established a prima facie case of sex discrimination, she failed to show that the county’s reasons for denying her pay raises were pretextual.

**UNION FAIR REPRESENTATION**

Federal Courts

*Zepperi-Lomanto v. American Postal Workers Union*, No. 12-1384 (7th Cir. May 2, 2014)

***Facts:*** Plaintiff was a custodian for the U.S. Postal Service. The position was a “bid job” with a fixed schedule, awarded on the basis of seniority under the collective bargaining agreement. Pursuant to the CBA, plaintiff could work as a supervisor on a reassignment basis but have her custodial position held open for her, so long as the reassignment did not last more than four months. The union steward warned plaintiff that she was in violation of the four month rule because she had not returned to her custodial position for a full pay period before accepting a new supervisor assignment. Several months later, the union steward filed a grievance against the Plaintiff for filing false information about sick leave. Management denied the grievance and questioned the steward’s motives. The union steward then filed a grievance against Plaintiff for violating the four month rule regarding the supervisor assignment. Management confirmed she violated the policy.

***Summary:*** Plaintiff filed suit against the union for breaching its duty of fair representation claiming that the union had retaliated against her by filing the grievance. She sought reinstatement to the custodial position, punitive damages, compensatory damages and attorneys fees. Since the employer was not a party and the union could not reinstate her, that portion of the claim was dismissed. Additionally, punitive damages are not recoverable by a union member against its union, so that claim for relief was denied. The court also summarily dismissed her claim for emotional distress and attorneys fees.

**DISABILITY BENEFITS**

Illinois Courts

*Wright v. Board of Trustees, State Universities Retirement System of Illinois,* 2014 IL App 130719 (4th Dist. May 22, 2014)

***Facts:*** Plaintiff filed an application for disability benefits as a result of an on-the-job accident. The notice she received awarding her disability claim stated that if she qualified for any State or Federal worker’s compensation or other benefits during the time she was paid disability benefits, her benefits would be reduced accordingly. Thereafter, plaintiff received a worker’s compensation settlement and SURS sought reimbursement of a portion of her disability payments. Plaintiff claimed her settlement held her harmless from any subrogation.

***Summary:*** Despite the fact that the worker’s compensation settlement was paid after the disability payments were received, the settlement proceeds covered the same time period. As such, the worker’s compensation benefits/award gave rise to the offset provision.

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