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New Illinois #MeToo Legislation Targets Sexual Harassment In The Workplace

April 3, 2019 | | Workplace Culture And Conduct,Employment Discrimination,Labor And Employment

As the #MeToo movement continues to sweep across the country, Illinois lawmakers are considering two proposed laws aimed at curbing sexual harassment in the workplace.

Workplace Transparency Act

Illinois's proposed Workplace Transparency Act (WTA) challenges the confidentiality of an employee's nondisclosure agreement. The WTA states that more than one third of the U.S. workforce is bound to their company by a nondisclosure agreement, which can force employees to be silent about sexual misconduct, retaliation, and unlawful discrimination.

The intent of the WTA, therefore, is to narrow the application of nondisclosure agreements, placing restrictions on language that places the resolution of sexual harassment, retaliation, or unlawful discrimination in private arbitration.

Specifically, the WTA provides that employers may not require an employee or prospective employee – as a condition of new employment or continued employment – to sign an agreement containing a provision that limits the disclosure of sexual misconduct, retaliation, or unlawful discrimination, or suppresses information relevant to an investigation of such a claim.

The WTA also does not require an employee to sign a nondisclosure agreement that waives a substantive or procedural right or remedy relating to a sexual misconduct, retaliation, or unlawful discrimination claim. The WTA further provides that such a provision would be void as against public policy and unenforceable.

Notably, the WTA does not prohibit a settlement agreement, entered into between an employer and an employee or former employee claiming sexual

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harassment, retaliation, or unlawful discrimination, from containing confidentiality provisions.

Mandatory Harassment Training in Restaurants

Illinois's Restaurant Anti-Harassment Act (RHA) would require restaurants to implement a sexual harassment training policy and provide training to all of its employees, as well as unpaid interns. The mandatory training would require separate trainings for employees and supervisors or managers, but common topics for both groups include:

1. An explanation of the impact sexual harassment can have on victims, businesses, and harassers
2. How to recognize inappropriate conduct in the workplace
3. How to report sexual harassment

The mandatory training for managers and supervisors would also include a required discussion on employer and manager liability for reporting and addressing sexual harassment, and how to investigate sexual harassment claims in the workplace.

While the training allows multiple options for presentation of the training, including online or in person, the proposed bill does not include a required duration for the training. Training would need to occur within 90 days of the RHA's passage or within 30 days of employment, and every two years thereafter.

New York and California have already passed similar laws. New Jersey has a comparable bill, but Illinois's proposed RHA is broader in that it covers all restaurants regardless of the number of employees.

Illinois's Restaurant Anti-Harassment Act and Workplace Transparency Act continue a growing trend of employee #MeToo rights throughout the country. As such, it is important that employers review sexual harassment policies and nondisclosure agreements, and anticipate the potential implementation of mandatory sexual harassment training for the entire workforce.

In case you missed it, see our previous post on recently passed laws for Illinois employers.