

# Engage PEO Client Alert:

## Illinois - Workplace Transparency Act (WTA) Updates

Illinois employers should be aware of new laws that will go into effect in 2020:

- Pursuant to the Workplace Transparency Act (“WTA”), effective January 1, 2020, employers must provide harassment prevention training to all employees on an annual basis; and
- Ensure that their employment, arbitration, and settlement agreements conform to new requirements.
- In addition, effective July 1, 2020, employers must make annual disclosures regarding the prior year’s number of adverse judgments or rulings in sexual harassment and discrimination cases.

### Review Separation and Settlement Agreements

Under the WTA, employers should review their separation and settlement agreements with current, former, and prospective employees. **A confidentiality provision will only be enforceable if it includes certain provisions demonstrating the mutual benefit of the provision, and gives the employee 21 days to consider and 7 days to revoke the agreement.**

The WTA also prevents employers from unilaterally including a clause in the agreement that prohibits the employee from making truthful statements regarding unlawful employment practices. Failure to follow these provisions will make the confidentiality provision void.

The WTA further prohibits certain provisions in agreements that create a “unilateral condition of employment or continued employment,” such as in confidentiality, arbitration, or other employment agreements. An agreement that prevents an employee or applicant from making truthful disclosures about unlawful employment practices will be considered void.

Finally, an agreement that requires an employee or applicant to waive, arbitrate, or otherwise diminish any future claim for discrimination, harassment, or retaliation will be considered void. However, these provisions may be enforceable if the agreement is in writing, demonstrates “actual, knowing, and bargained-for consideration from both parties,” and acknowledges the employee or applicant’s right to report and seek redress for unlawful employment practices.

## Changes to Illinois Human Rights Act (IHRA)

The WTA also makes some changes the IHRA:

- Harassment claims brought by an employer's independent contractors and consultants are now covered by the IHRA;
- Unlawful discrimination includes discrimination against a person based on actual or perceived membership in a protected class;
- "Working environment" is not limited to the place where the employee performs their duties; and
- Employers can be responsible for harassment committed by nonmanagerial staff only if the employer becomes aware of the conduct and fails to take remedial action.

## Annual Harassment Prevention Training

The WTA also requires that all Illinois employers provide annual sexual harassment prevention training to all employees on an annual basis.

- **A webinar training module is available from Engage that meets the compliance requirements for Illinois. ([Webinar registration link](#)).**

Employers who fail to provide required training are subject to civil penalties based on the employer's size and history of offenses. **Further, Illinois bars and restaurants must provide all employees with a written sexual harassment policy in the first week of employment.** The policy must include certain substantive information about harassment and employees' avenues for redress.

## Annual Disclosures - Adverse Judgments/Rulings in Sexual Harassment and Discrimination Cases.

Beginning July 1, 2020, the WTA also requires employers to make annual disclosures to the Illinois Department of Human Rights (IDHR) regarding the number of adverse judgments or administrative rulings in sexual harassment and discrimination cases.

Further, if the IDHR is currently investigating a charge, the employer may be required to submit the total number of settlements entered into during the preceding 5 years that relate to sexual harassment or discrimination. Employers may also be required to submit a breakdown of the total number of settlements by harassment or discrimination type.

The IDHR will publish an annual report covering the amount of adverse judgments or administrative rulings in the previous year. However, the information will be aggregated to avoid exposing individual employer data to the public, and the information provided to the IDHR to create the report will be exempt from the Freedom of Information Act.

**Please contact your Engage HR Consultant if you have any questions regarding these changes.**