

THOUGHT LEADERSHIP

Service

Labor & Employment

Professionals

ANNE M. MAYETTE

CHICAGO:

312.341.9844

ANNE.MAYETTE@

HUSCHBLACKWELL.COM

SARAH K. QUINN

CHICAGO:

312.526.1646

SARAH.QUINN@

HUSCHBLACKWELL.COM

JENNIFER RALPH

CHICAGO:

312.526.1623

JENNIFER.RALPH@

HUSCHBLACKWELL.COM

LEGAL UPDATES

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Amendments to Illinois Acts Impose New Compliance Obligations on Employers

Overview

Effective January 1, 2023, employers with employees in Illinois will be subject to a number of expanded compliance obligations. First, employers will be required to provide employees with additional meal periods. Second, employers will be required to provide eligible employees with at least 24 hours of rest in every consecutive seven-day period, as opposed to in every calendar week. Third, employers will be required to provide employees with expanded unpaid bereavement leave. And finally, the definition of race in the Illinois Human Rights Act will be expanded to prohibit discrimination based on traits associated with race.

Meal period and day of rest requirements

Currently, the Illinois One Day Rest in Seven Act (ODRISA) requires employers to permit employees who work 7.5 or more continuous hours to take at least a 20-minute meal period. The meal period must begin no later than five hours after the start of the employee's work period. Employers must also permit eligible employees at least 24 consecutive hours of rest in every calendar week. In May 2022, Governor JB Pritzker signed into law amendments to the ODRISA that expand these requirements beginning next year.

Additional meal periods required

Pursuant to the amendments to the ODRISA, in addition to requiring employers to permit employees who work 7.5 continuous hours to take at least a 20-minute meal period, employers will be required to permit employees who work in excess of 7.5 continuous hours an additional 20-minute meal period

for every additional 4.5 continuous hours worked. In other words, an employee who works a 12-hour shift will be entitled to two 20-minute meal periods.

Day-of-rest requirement amended

The amendments to the ODRISA also expand the Act's day-of-rest requirement. As amended, the Act requires every employer to allow eligible employees at least 24 consecutive hours of rest in every consecutive seven-day period, as opposed to in every calendar week. The requirement does not apply to certain employees, such as part-time employees whose total work hours during a calendar week do not exceed 20 and those who are employed in a bona fide executive, administrative or professional capacity, or in the capacity of an outside salesman, as defined by the Fair Labor Standards Act. When the amendment becomes effective, employers will need to review eligible employees' schedules on a rolling seven-day basis for compliance, as opposed to monitoring just calendar weeks.

Increased penalties

Currently, an employer who violates any provision of the ODRISA is guilty of a petty offense and subject to fines of not less than \$25 but not more than \$100. The amendments to the ODRISA will significantly increase these penalties. The amended Act provides that an employer who violates the ODRISA is guilty of a civil offense and subject to the following civil penalties:

For employers with less than 25 employees, penalties not to exceed \$250 per offense, payable to the Department of Labor, and damages up to \$250 per offense, payable to the employee(s) affected

For employers with 25 or more employees, penalties not to exceed \$500 per offense, payable to the Department of Labor, and damages up to \$500 per offense, payable to the employee(s) affected.

Each week an employee is found to not have been allowed 24 consecutive hours of rest as required by the Act will constitute a separate offense. Moreover, each day an employee is found not to have been provided a meal period as required by the Act will constitute a separate offense.

Employers are also required to post a notice, to be provided by the Illinois Department of Labor, summarizing the Act's requirements and informing employees how to file a complaint with the Illinois Department of Labor. Employers with employees who do not regularly report to a physical workplace, and instead work remotely or travel for work, must also provide notice by email to employees or on their website regularly used to communicate work-related information. Failure to comply with the notice requirement constitutes a single offense under the amended Act subject to a civil penalty not to exceed \$250, payable to the Illinois Department of Labor. The Director of Labor enforces the Act in accordance with the Illinois Administrative Procedure Act.

Bereavement leave requirements

In June 2022, Governor Pritzker signed the Family Bereavement Leave Act, which amends the Illinois Child Bereavement Leave Act to expand the unpaid bereavement leave available to Illinois employees. Currently, under the Child Bereavement Leave Act, an employer employing 50 or more employees is required to provide eligible employees with up to 10 workdays of unpaid bereavement leave to attend the funeral of their child, make arrangements necessitated by the death of the child or to grieve the death of the child.

Effective January 1, 2023, the Family Bereavement Leave Act will permit employees to use bereavement leave in connection with the death of not just a child, but of any covered family member. A covered family member includes an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent.

Notably, the Act will also permit eligible employees to take unpaid bereavement leave for a miscarriage, an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure, a failed adoption match or an adoption that is not finalized because it is contested by another party, a failed surrogacy agreement, a diagnosis that negatively impacts pregnancy or fertility, or a stillbirth.

While employers may require employees to provide reasonable documentation in connection with their use of bereavement leave, employers may not require employees to identify the category of event necessitating their leave. The Family Bereavement Leave Act indicates that the Illinois Department of Labor will provide a form that can be filled out by a health care practitioner who has treated an employee or their spouse or domestic partner in connection with a miscarriage, an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure, a failed adoption match or an adoption that is not finalized because it is contested by another party, a failed surrogacy agreement, a diagnosis that negatively impacts pregnancy or fertility, or a stillbirth and that such documentation shall constitute reasonable documentation. Reasonable documentation will also include documentation from an adoption or surrogacy organization that an employee worked with certifying that the employee or their spouse or domestic partner experienced a qualifying event.

Illinois Human Rights Act amendment

Governor Pritzker also signed the CROWN Act in June 2022, which amends the Illinois Human Rights Act's definition of race. Effective January 1, 2023, the Human Rights Act will provide that race, as used in the Act, "includes traits associated with race, including but not limited to hair texture and protective hairstyles such as braids, locks, and twists." Thus, the Act will prohibit discrimination on the basis of hairstyles associated with race.

What this means for employers

While the above-described amendments do not become effective until next year, employers should prepare now to comply with the amendments. Employers should:

1. Review and revise meal period policies to comply with the ODRISA, particularly if the organization has employees who work 12-hour shifts or longer.
2. Review scheduling practices and implement systems to prevent eligible employees from being scheduled to work, or working, for seven consecutive days.
3. Monitor the Illinois Department of Labor's website to obtain the ODRISA poster upon it becoming available.
4. Review and revise bereavement leave policies to comply with the new Family Bereavement Leave Act requirements.
5. Review policies, including grooming and dress code policies, to ensure compliance with the amended Illinois Human Rights Act.

Contact us

For questions related to compliance with the Illinois One Day Rest in Seven Act, Family Bereavement Leave Act, or Illinois Human Rights Act, contact Anne Mayette, Sarah Quinn, Jillian Molz, Jennifer Ralph, Julie Garabedian or your Husch Blackwell attorney.