

# Labor Law Bulletin

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Labor and employment law trends of interest to our clients and other friends.

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## ILLINOIS ENACTS MORE EMPLOYEE-FRIENDLY LAWS

The Illinois General Assembly passed, and the Governor signed, three new pieces of legislation imposing additional obligations on Illinois employers. The laws address plant closings and mass layoffs, military service and breastfeeding.

### ***New Illinois WARN Act Exceeds Federal Requirements***

Effective January 1, 2005, Illinois employers with 75 or more full-time employees must give 60 days' notice to affected employees and to governmental officials of workforce reductions and facility closings. The new Illinois Worker Adjustment and Retraining Notification Act ("Illinois WARN Act") resembles the federal WARN Act, with three key differences.

First, the Illinois WARN Act covers some employers not covered under the federal WARN Act. The Illinois WARN Act applies to businesses employing 75 or more full-time employees, while the federal WARN Act applies to businesses with 100 or more full-time employees. Although likely the case, it is not clear whether the new state law applies only to employers having 75 or more employees in Illinois.

Second, the Illinois law requires giving notice to more local government officials. Under Illinois law, notice must be given to the chief elected officials for both the county and the municipality in which the facility is located. Under federal law, notice must be given only to the local governmental entity where the employer pays the most taxes. (A previous Illinois law requires expanded notice to

state and local government officials if the employer received state or local government financial assistance to build, expand, or upgrade a facility.)

Third, the Illinois WARN Act requires advance notice of a "mass layoff" when reductions at a single site result in the termination of either (a) the greater of 25 employees or one-third of the workforce, or (b) 250 or more employees. The federal WARN Act has higher thresholds; there must be single site terminations of either (a) the greater of 50 employees or one-third of the workforce, or (b) 500 or more employees.

The Illinois and federal laws both require advance notice of a "plant closing," defined as the shutdown of a single site of employment, or a division or operating unit, that results in the termination of 50 or more full-time employees. Both laws contain limited exceptions for mass layoffs and plant closings triggered by natural disasters and unforeseen business circumstances. Finally, both laws provide for recovery of back pay and benefits and fines of up to \$500 per day.

### ***New Protection for Reservists and National Guard Members***

The Illinois Citizen Soldier Initiative became law on August 16, 2004. It amends the Illinois Human Rights Act, the state's primary nondiscrimination law, to protect National Guard members and Armed Forces reservists from discrimination because of their military status. Up to now, the Human Rights Act protected only those individuals on active duty in the Armed Forces.

Members of the National Guard and Reserves already enjoyed protection against employment discrimination under the federal Uniformed Services Employment and Reemployment Rights Act (“USERRA”). The new Illinois law does not appear to break new ground in this area. However, although USERRA prohibits discrimination only in employment, the Illinois Human Rights Act applies to real estate and credit transactions, education and public accommodations as well as employment.

### ***More Rights for New Mothers***

Also effective August 16, 2004, the Illinois Right to Breastfeed Act gives nursing mothers the right to breastfeed their babies “in any location, public or private, where the mother is otherwise authorized to be.” Places of worship are partially exempted,

but workplaces are not. On its face, under the new law employers must allow employees to breastfeed at work (in the unlikely event that the employer allowed children at work) and allow customers or other authorized visitors to nurse on their premises.

Illinois employers already are covered by the Nursing Mothers in the Workplace Act. That law, which took effect in July 2001, requires employers with 5 or more employees to allow employees to express breast milk in the workplace during break periods, and to make a reasonable effort to provide a private place other than a toilet stall for employees to do so.

If you have any questions about these developments, please call Bruce Alper (312/609-7890), Tom Hancuch (312/609-7824), Joe Mulherin (312/609-7725) or Ethan Zelizer (312/609-7515).

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