

Labor Law Bulletin

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

January 21, 2005

ILLINOIS AMENDS HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BECAUSE OF SEXUAL ORIENTATION

On January 21, 2005, Illinois Governor Rod Blagojevich signed into law an amendment to the Illinois Human Rights Act which prohibits discrimination on the basis of sexual orientation by employers, lenders and landlords. The new amendment will apply to any Illinois employer having 15 or more employees, and any employer which has a state contract.

The amendment defines “sexual orientation” as “actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person’s designated sex at birth.” The latter term appears to prohibit discrimination against transsexuals, or persons who seek to change their gender or consider themselves a different gender than they were born. However, the amendment excludes a physical or sexual attraction to a minor by an adult, and does not require an employer to give preferential treatment or special rights based on sexual orientation, or to implement affirmative action policies or programs based on sexual orientation.

Illinois employers should be aware that the amendment will not only change existing Illinois law, but also will provide much broader protection against discrimination on the basis of sexual orientation than federal law currently does. The Seventh Circuit Court of Appeals has held that, strictly speaking, Title VII does not apply to discrimination based on homosexuality. *Spearman v. Ford Motor Co.* (2001). Although Title VII covers discrimination because a person does not meet an individual or group notion of what a person of that gender should act and look like (so called, gender stereotyping), such discrimination is prohibited on the grounds that it is discrimination *because of* that individual’s sex. *Ulane v. Eastern Airlines, Inc.* (1994). Under Illinois law as now amended, it is not required that discrimination on the basis of sexual orientation constitute gender stereotyping to be actionable.

Vedder Price will continue to provide analysis and guidance on the new law. If you have any questions about these developments, please call Bruce Alper (312/609-7890) or Chris Nybo (312/609-7729).

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