

EMPLOYMENT LAW- ILLINOIS STATUTES EFFECTIVE JANUARY 1, 2014

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The Compassionate Use of Medical Cannabis Pilot Program Act becomes effective January 1, 2014. The Act authorizes a four-year pilot program for dispensing and using medical marijuana in Illinois. The Act provides that individuals may obtain access to medical marijuana if they are diagnosed with one of the debilitating medical conditions listed in the statute and they register with the Illinois Department of Public Health. Patients must possess a physician's recommendation, be diagnosed with one of the stated "debilitating medical conditions" such as cancer, HIV or multiple sclerosis and must not possess a felony drug conviction to participate in the program. An employer may not discriminate against an individual in its drug policies "solely for his or her status as a registered qualifying patient." The employer may not refuse to hire, terminate or take adverse action against an individual because that individual is allowed access to medical marijuana. The only exception is if the failure to discipline the individual would cause the employer to lose monetary or licensing related benefits under federal law. However, no cause of action will exist against an employer who terminates or disciplines an employee who, based upon the employer's good faith belief, used or possessed marijuana on the employer's premises and/or was impaired while working on the employer's premises. Employers may continue to enforce drug testing, zero-tolerance and drug-free workplace policies and may discipline a registered qualifying patient for violating a workplace drug policy provided that such policy is applied in a nondiscriminatory manner.

Independent contractors are not covered by most employment laws since they are not "employees." Also, since independent contractors are not subject to payroll taxes, this classification deprives federal and state governments of tax revenue for such individuals. Effective January 1, 2014, the **Employee Classification Act (820 ILCS 185/1)** enhances the reporting obligations and penalties for state construction contractors. The law requires state construction contractors to file annual reports with the Illinois Department of Labor when a contractor pays an individual, sole proprietor or partnership for construction services if the payee is not classified as an employee. If the Department determines that a contractor failed to file the required reports, the Department may impose a civil fine against the contractor and repeat violators may be disbarred from receiving state contracts. The law also requires the Department to notify contractors of misclassification complaints filed with the Department and creates an administrative hearing process for the Department to pursue misclassification claims against contractors. The Act provides that when the Department recovers a monetary penalty against contractors that misclassified workers, the Department shall distribute 10 percent of the penalty to the affected employees. The Act creates individual liability for officers and agents of a corporation that "knowingly permit" violations of the law. It is a violation of the Act to discharge or retaliate against an individual for exercising rights under the Act. A private right of action exists in which the individual may recover damages including lost wages, benefits compensatory damages and attorney's fees.

Illinois has narrowed its social media privacy law. Effective on January 1, 2014, S.B.2306 amends the law amends the **Right to Privacy in the Workplace Act (820 ILCS 55/1)**.

The amended law clarifies that the Act applies only to personal accounts used exclusively for personal communications that are not related to the employer's business purposes. The law will not apply to professional accounts or services provided by the employer or that are used for business and work-related purposes. Also, where the employer seeks a password, account information or access related to a professional account, an employer is not restricted from complying with its duty to screen employees and applicants prior to hiring or to monitor or retain employee communications as required under Illinois insurance, federal law or by a self-regulatory organization as defined by the Securities Exchange Act. Professional accounts are those "created, maintained, used, or accessed by a current or prospective employee for business purposes of the employer." Employers are still prohibited from requesting or requiring that an employee or applicant provide the log-in information for a "personal account" which means and "account, service or profile on a social networking website that is used by a current or prospective employee exclusively for personal communications unrelated to any business purpose of the employer."

A new section of the **Code of Civil Procedure, Section 2-2301, entitled "Settlement of claims; payment" (735 ILCS 5/2-2301)**, will take effect on January 1, 2014. The law is intended to expedite the payment process in personal-injury, property damage, wrongful-death and tort actions and to prevent non-governmental defendants in certain civil suits from delaying payment after agreeing to settle a claim. The provisions require the settling defendant to tender a release to the plaintiff with 14 days of written confirmation of the settlement which includes all communication by written means. Within 30 days after a plaintiff returns the executed release, the defendant is required to pay all sums due under the agreement. The law will impact employers that settle tort claims including such actions as defamation, infliction of emotional distress, tortious interference and retaliatory discharge claims.

Joette S. Doran has her law practice in Hoffman Estates. She concentrates in employment law and handles employment law actions in state and federal administrative agencies and courts. She is the Co-Chair of the NWSBA Employment Law Committee. For more information please visit her website at www.joettedoran.com.