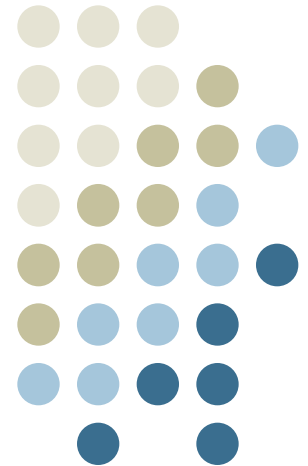
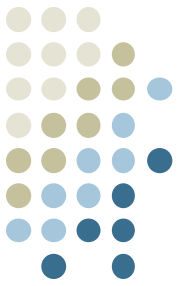


Preparing for 2019 and the Effects of the 2018 Election

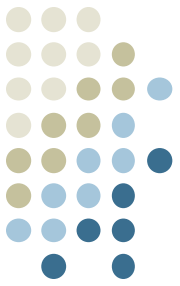
Sara Zorich
SmithAmundsen LLC
November 15, 2018





WHAT LAWS ARE ALREADY IN PLAY IN ILLINOIS GOING INTO 2019

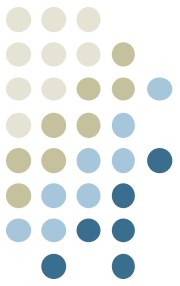
Reimbursement For Costs Related to Work



- Illinois Wage Payment and Collection Act was amended.
- Effective Jan. 1, 2019, employees must be reimbursed for costs incurred that directly relate to their work. The costs must be within the scope of employment and authorized or required, and appropriate documentation must be provided – **ALL PRIVATE SECTOR EMPLOYEES ARE COVERED.**
 - “Necessary expenditures” means all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of the employer.
 - An employer is not responsible for losses due to an employee’s own negligence, losses due to normal wear, or losses due to theft unless the theft was a result of the employer’s negligence.
 - An employee shall submit any necessary expenditure with appropriate supporting documentation within 30 calendar days after incurring the expense, except that an employer may provide additional time for submitting requests for reimbursement in a written expense reimbursement policy. Where supporting documentation is nonexistent, missing, or lost, the employee shall submit a signed statement regarding any such receipts.

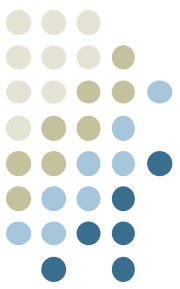


Reimbursement For Costs Related to Work (cont'd)



- An employee is not entitled to reimbursement if: (i) the employer has an established written expense reimbursement policy, **and** (ii) the employee failed to comply with the written expense reimbursement policy.
- An employer is not liable for reimbursement unless the employer authorized or required the employee to incur the necessary expenditure or the employer failed to comply with its own written expense reimbursement policy.
- If the written expense reimbursement policy of an employer establishes specifications or guidelines for necessary expenditures, the employer is not liable for the portion of the expenditure amount that exceeds the specifications or guidelines of the policy so long as the employer does not institute a policy that provides for no reimbursement or de minimis reimbursement.
- Note, this law has a 10 year statute of limitations.

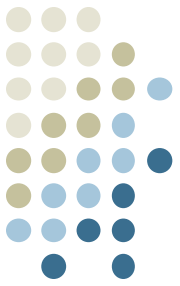
Reimbursement For Costs Related to Work (cont'd)



- Practical Implications
 - No more charging employees for uniforms required by the employer.
 - IRS mileage for all driving on behalf of the employer (not commuting).
 - Cell phone reimbursement for any employee required to use their cell phone for work & internet for computer use at home.
 - Limits in your policy of how much certain expenses can be (i.e., \$100 for any business lunch, no alcohol reimbursement, limits on hotel expenses, etc.).

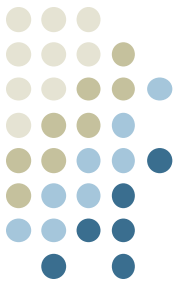


Reimbursement For Costs Related to Work (cont'd)



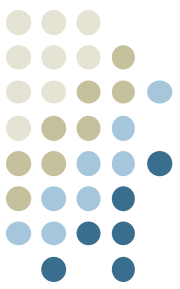
- Practical Implications
 - Supervisor training... make sure supervisors are NOT regularly contacting employees on their cell phones for work related business unless you plan to reimburse for the phone expense. This has been a cautionary wage and hour issue (recording compensable work time) for years, but now it also has reimbursement implications also.

Wage Payment Law Reminder...



- Employers must pay wages at least twice a month, and must be within 13 days after the end of a pay period.
- Employers must pay wages to employees who receive wages on a weekly pay period within seven days after the end of the weekly pay period in which the wages were earned.
- Employers must pay wages to employees who earn wages on a daily basis either on the same day as the wages were earned, or within 24 hours after the day on which the wages were earned.
- Monthly paydays are allowed for executive, administrative, and professional employees as well as employees on commission, who are covered under the Fair Labor Standards Act. Employers may pay wages to executive, administrative, and professional employees by 21 days after the period during which they are earned.
- Employers must pay employees who receive wages by check or cash, and who are absent on the payday, on demand within five days after the payday or, after the five-day period, within five days of demand and by mail if requested.





Illinois Human Rights Act

- Effective September 18, 2018, state employers, employers with federal contracts, and employers with 15 or more employees must display the Illinois Department of Human Rights' Sexual Harassment and Discrimination in the Workplace posting.
 - <https://www2.illinois.gov/dhr/Publications/Documents/SH%20and%20DISCRIMINATION%20EMPLOYEE%20POSTER.pdf>
- Employer notice from IDHR: Must post poster AND put information concerning the employee's rights in the employee handbook!
 - https://www2.illinois.gov/dhr/Publications/Documents/IDHR_Employer_Notice.pdf

YOU HAVE THE RIGHT TO BE FREE FROM JOB DISCRIMINATION AND SEXUAL HARASSMENT.



The Illinois Human Rights Act states that you have **the right to be free from unlawful discrimination and sexual harassment**. This means that employers may not treat people differently based on race, age, gender, pregnancy, disability, sexual orientation or any other protected class named in the Act. This applies to all employer actions, including hiring, promotion, discipline and discharge.

REASONABLE ACCOMMODATIONS

You also have the right to reasonable accommodations based on pregnancy and disability. This means you can ask for reasonable changes to your job if needed because you are pregnant or disabled.

RETALIATION

It is also unlawful for employers to treat people differently because they have reported discrimination, participated in an investigation, or helped others exercise their right to complain about discrimination.



REPORT DISCRIMINATION

To report discrimination, you may:

1. Contact your employer's human resources or personnel department.
2. Contact the Illinois Department of Human Rights (IDHR) to file a charge.
3. Call the Illinois Sexual Harassment and Discrimination Helpline at 1-877-236-7703 to talk to someone about your concerns.

Chicago:
James R. Thompson Center
100 West Randolph Street, Suite 10-100
Chicago, IL 60601
(312) 814-6200
(866) 740-3953 (TTY)
(312) 814-6251 (Fax)

Springfield:
535 W. Jefferson Street
1st Floor
Springfield, IL 62702
(217) 785-5100
(866) 740-3953 (TTY)
(217) 785-5106 (Fax)

Website: www.illinois.gov/dhr
Email: IDHR.Intake@illinois.gov

Employers shall make this poster available and display it where employees can readily see it.
This notice is available for download at: www.illinois.gov/dhr

Printed by the Authority of the State of Illinois - 9/18 - web version - IOC119-0181





EMPLOYER NOTICE

Under the Illinois Human Rights Act (Act), all workers have the right to employment free from unlawful discrimination or sexual harassment. In Illinois, it is a civil rights violation under Article 2-102(K) of the Act for an employer to fail to include in a posting on the premises, AND in an employee handbook, information concerning the rights of employees to:

- 1 - Be free from unlawful discrimination or sexual harassment in the workplace;
- 2 - File a charge of discrimination or sexual harassment; and
- 3 - Obtain certain reasonable accommodations such as those based on pregnancy and disability.

The required poster is available for download on the Illinois Department of Human Rights' website. The poster includes language suitable for inclusion in an employee handbook.

The poster also includes information on the Illinois Sexual Harassment and Discrimination Helpline, which provides additional resources and information.

Everyone has a right to be free from illegal discrimination and sexual harassment in the workplace and is protected from retaliation for reporting incidents of discrimination, participating in an investigation, or helping others exercise their rights.

IDHR can investigate charges of employment discrimination filed against an employer, public contractor, employment agency, labor organization or union.

For further information, contact IDHR at:

Website: www.illinois.gov/dhr

Chicago:
James R. Thompson Center
100 West Randolph Street, Suite 10-100
Chicago, IL 60601
(312) 814-6200
(866) 740-3953 (TTY)
(312) 814-6251 (Fax)

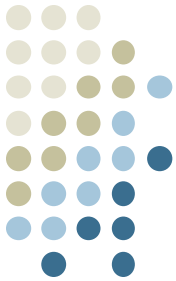
Springfield:
535 W. Jefferson Street
1st Floor
Springfield, IL 62702
(217) 785-5100
(866) 740-3953 (TTY)
(217) 785-5106 (Fax)

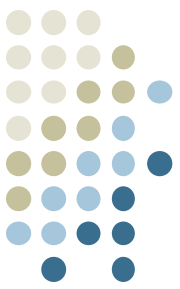
Illinois Sexual Harassment and Discrimination Helpline

1-877-236-7703 or TTY: 711

Monday to Friday, 8:30 a.m. to 5:00 p.m.

www.illinois.gov/sexualharassment

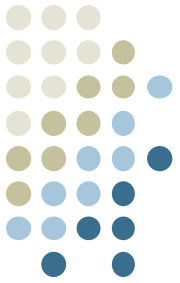




Illinois Human Rights Act

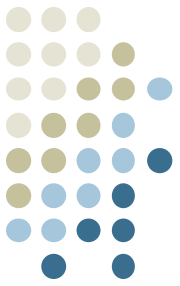
- Change to 300 Days
 - Employees and applicants can file charges with the Department (or it can issue charges) within 300 days after alleged violations occur. This was modified on June 8, 2018 to increase the filing period from 180 to 300 days.
- Change to Allow Right To Sue Letter
 - Effective August 24, 2018, for charges filed on or after that date, the Illinois Department of Human Rights investigates charges unless employees/applicants choose to opt out within 60 days after being notified of their right to opt out. Employees/applicants who exercise this right can seek a right-to-sue notice from the Department and file a lawsuit within 90 days after receiving the notice. If they file the lawsuit, the Department ceases its investigation, dismisses charges, and rejects the filing or refiling of substantially similar charges arising from the same incident of discrimination or harassment.

Sexual Harassment in Higher Education Act – Posting Requirement



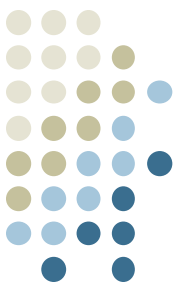
- Sexual Harassment in Higher Education Act Posting Requirement (means a public university, a public community college, or an independent, not-for-profit or for-profit higher education institution located in Illinois)
 - Post and keep posted at each campus in common area locations easily accessible to all students including, but not limited to residence halls, administration buildings, student unions, cafeterias, and libraries; or
 - Post annually at each campus in common area locations easily accessible to all students including, but not limited to, residence halls, administration buildings, student unions, cafeterias, and libraries, with an electronic copy of the sexual harassment laws and policies also sent to each student at the time registration materials are emailed; or
 - On campuses that provide for online registration of student classes, such information pertaining to sexual harassment laws and policies may be included with the registration materials so that students must review and acknowledge receipt prior to registering.
 - Any of the three posters may be downloaded and printed. Each photo poster is paired with language to explain the posting law. Before printing the text poster, please note that IDHR has provided within the text a live field for information (name, contact, agency, etc.) to be provided by each institution.
 - https://www2.illinois.gov/dhr/Publications/pages/packet_shhe.aspx

Sexual Harassment in Higher Education Act – Posting Requirement



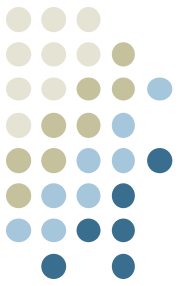
- Sexual Harassment in Higher Education Posting Requirement
 - On campuses that provide for online registration of student classes, such information pertaining to sexual harassment laws and policies may be included with the registration materials so that students must review and acknowledge receipt prior to registering.
 - For electronic posting within your registration site, the IDHR has provided a document of the text complete with an acknowledgement statement:
 - https://www2.illinois.gov/dhr/Publications/Documents/Poster_Language.pdf

Illinois Emergency Response Leave



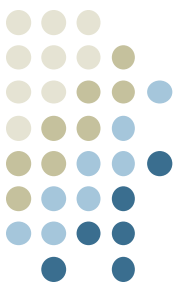
- Change in definition of “voluntary emergency workers”. It was expanded and the new definition is:
 - Workers who serve as members of a fire department for a fire protection district, municipality, or other government unit, but not on a full-time career basis. They must meet the requirements for volunteer status under 29 C.F.R. § 553.106 and U.S. Dep't of Labor, Wage & Hour Div., Opinion Letters (Aug. 7, 2006; Nov. 10, 2005).
 - Workers who serve on a volunteer basis as licensed emergency medical responders, emergency medical technicians, or paramedics or as ambulance drivers or attendants, provided they do not work in one of these capacities for another fire department, fire protection district, or government entity on a full-time career basis.
 - Certain volunteer members of a local emergency services and disaster agency, auxiliary police officers, and auxiliary sheriff's deputies.

Illinois Emergency Response Leave



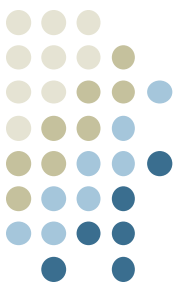
- Employers must allow employees to take leave or arrive late to work in order to respond to an emergency in their role as volunteer emergency workers.
 - Public and private employers are covered by the emergency response leave provisions. The provisions do not apply to employers that are municipalities with a population of 7,500 or more. The retaliation prohibition regarding discipline does not apply to employees of vehicle service providers when they are performing services as emergency medical services personnel, as defined in the Illinois Emergency Medical Services Systems Act (210 Ill. Comp. Stat. 50/3.5).
- Reminder... employers with 15 to 50 employees must provide up to 15 days of Civil Air Patrol leave to eligible employees, and employers with more than 50 employees must provide up to 30 days of this leave to eligible employees.





Nursing Mothers Break Time

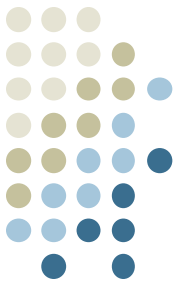
- Effective August 21, 2018, the requirement to provide break time to employees who are nursing mothers is revised to permit a break each time they need to express breast milk, for one year after childbirth and without a loss of compensation.
- Such time must be provided, unless to do so would create an undue hardship.
- The break time needed to express milk IS PAID.
- The time needed to express milk does not have to run concurrently with existing break time.
- Employers with fewer than five employees are exempt from this requirement.



Nursing Mothers Break Time

- Practical implications:
 - Need to meet with the employee who is requesting the break time.
 - Find out how many breaks she is going to need per day to express milk, and how long she intends the breaks to take.
 - Make sure you have ongoing communication with her (monthly) during the year-long period to inquire whether the necessary number or duration of the breaks has changed. Women may need longer and more frequent breaks at the beginning of their nursing period which may change over time.
 - Can make one of the breaks over the unpaid lunch period depending on the time of day when the breaks are needed.
 - Make sure supervisors are aware of this law and notify HR if an employee has requested these breaks.

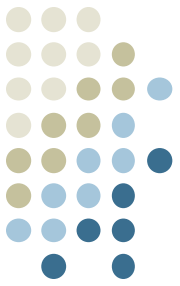
Smoking in the Workplace Law



- Effective January 1, 2019, the workplace smoking provisions also are enforced by the Illinois departments of Natural Resources and State Police.
- Anyone can file complaints with any of those agencies, which can issue citations and assess fines for violations. Employers can request a hearing before the Illinois Department of Public Health to contest fines. The agencies and anyone affected by repeat violations also can seek court orders to stop violations.
- Employers that violate the workplace smoking provisions can be fined \$250 for a first violation, \$500 for a second violation within one year of a first violation, and \$2,500 for each additional violation within one year of a first violation. Each day that a violation occurs is considered a separate violation. These fines apply to employers that own, operate, or otherwise control workplaces or public places where violations occur. Employers also can be ordered to stop violations.



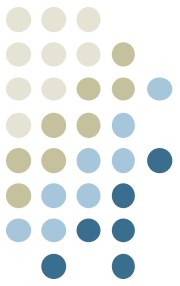
Smoking in the Workplace Law



- What does the law require?
 - Smoking is prohibited in workplaces, in public places, and within 15 feet of their entrances. It is also prohibited within 15 feet of entrances, exits, windows that open, or ventilation intakes for enclosed areas of workplaces or public places. Smoking means carrying, smoking, burning, inhaling, or exhaling a lighted pipe, cigar, cigarette, hookah, weed, herb, or other lighted smoking equipment. Employers must reasonably ensure that smoking is prohibited in workplaces and public places.
- Employers can designate non-enclosed areas of workplaces or public places, including outdoor areas, as areas where smoking also is prohibited if they own, occupy, lease, operate, manage, or otherwise control these areas and conspicuously post signs in accordance with the mandatory poster provisions.



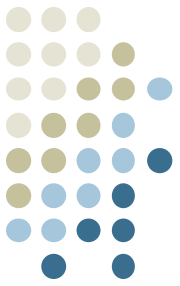
Military Leave – Private & Public Employers



- Effective January 1, 2019, the military leave provisions are repealed and replaced by the Illinois' Service Member Employment and Reemployment Rights Act, which follows parts of the federal Uniformed Services Employment and Reemployment Rights Act (330 ILCS 61/) regarding employees who take leave for military service.
 - Essentially it mirrors USERRA with a few additions for both Public and Private employers
 - Does not change the Illinois Family Military Leave Act.
 - Requires ALL Illinois employers to post an ISERRA posting for their employees. The definition of EMPLOYER is very broad so includes any Company with at least 1 employee.
(http://www.illinoisattorneygeneral.gov/rights/mvrb_iserra_poster_0818.pdf)



Military Leave – Private & Public Employers

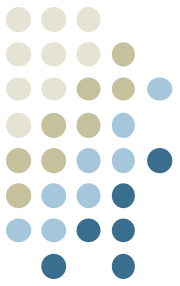


- All Employers:
 - Section 330 ILCS 61/5-5(3) addresses performance reviews. While an employee is on military leave... his/her performance during the off period can't be negatively impacted.
 - Need to address this in your handbooks:
 - Sample language “The employee’s performance review subsequent to his/her return from military leave will not be negatively impacted by the leave the employee takes pursuant to the Illinois Service Member Employment and Reemployment Rights Act. When assessing the employee’s performance following the employees return from military leave, the Company will credit the employee for the period missed for military leave with the average of the efficiency or performance ratings or evaluations received for the 3 years immediately before the absence for military leave commenced or the most immediate performance period prior to the military leave, whichever is more favorable to the employee. This provision does not prohibit the Company from evaluating and taking into consideration the employee’s work performance during the evaluation period for which the employee was not on military leave.”

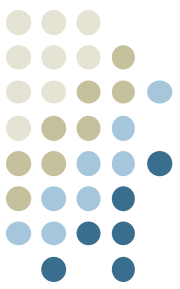
Military Leave – Private & Public Employers



- Public Employers:
 - Benefit increase for public employers... DOL rules coming...
 - The law also preempts home rule authority.
 - Law addresses paying wage differentials.
 - Will require new policies for Public Employers.



WHAT IS COMING BASED ON THE 2018 ELECTION



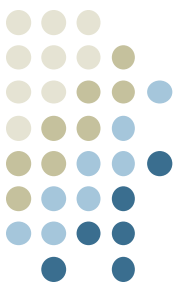
JB Pritzker... 2019

- His election is likely to ...
 - Increase infrastructure spending.
 - Increase prevailing wage jobs (the Prevailing Wage Act governs the wages that a contractor or subcontractor is required to pay to all laborers, workers and mechanics who perform work on public works projects).
 - Watch out if you have not been complying over the past 4 years!!
 - Also...could be an expansion of the Prevailing Wage Act to private projects financed by state, financed by local grants, and/or projects receiving state tax credits.

JB Pritzker... 2019

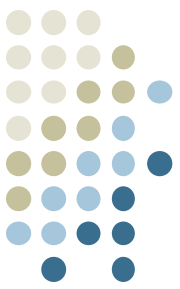


- His election is likely to ...
 - Seek more aggressive enforcement efforts by state agencies charged with regulating employers and protecting employees.
 - Going to see more enforcement at the IDOL and especially prevailing wage.
 - Increase the minimum wage – fight for 15 will be alive and well!



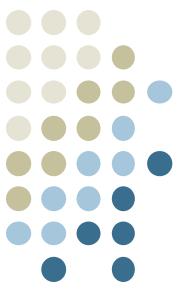
JB Pritzker... 2019

- His election is likely to ...
 - Lead to expansions to employee protections under the Illinois Human Rights Act (apply to all employers with at least 1 employee down from 15) & mandatory training for managers and employees.
 - Have the General Assembly make a much stronger consideration for legislation favorable to employees.



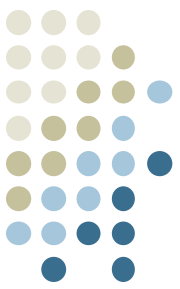
JB Pritzker... 2019

- His election is likely to ...
 - Lead to expansions of the Equal Pay Act that were vetoed under Rauner.
 - **Watch out...** This law will make it difficult for employers to set wages because you need to be VERY specific on the factor for determining the pay... need to pick 1 and stick to it.
 - Going to prohibit any inquiry about wage, salary, benefits or compensation history of applicants or in the hiring process.
 - Penalties under this law are HUGE – interest, compensatory damages, punitive damages, injunctive relief and attorney’s fees/costs.



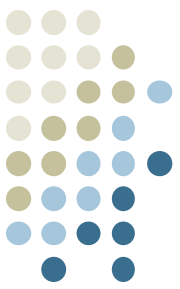
JB Pritzker... 2019

- His election is likely to ...
 - Give more traction to adult use of recreational marijuana. Bills are already in the draft stage and will likely be put to a vote in 2019.
 - Now is the time to start getting your supervisors in a reasonable suspicion training class so they know how to identify employees who are under the influence.
 - Consider implementing a reasonable suspicion documentation form/checklist for supervisors to document their suspicions -- see SHRM Samples:
 1. <https://www.shrm.org/ResourcesAndTools/tools-and-samples/hr-forms/Pages/reasonablesuspiciondocumentationform.aspx>
 2. https://www.shrm.org/resourcesandtools/tools-and-samples/hr-forms/pages/cms_007163.aspx



JB Pritzker... 2019

- His election is likely to ...
 - Give more traction to adult use of recreational marijuana. Bills are already in the final draft stage and will likely be put to a vote in 2019.
 - Pave the way for a bill for paid sick leave statewide (especially after the landslide vote in the 2018 Cook County Referendum in favor that all cities in Cook County should be complying with the Minimum Wage and Sick Leave Laws).
 - Pave the way for a bill for Illinois FMLA, including some sort of paid time off.



JB Pritzker... 2019

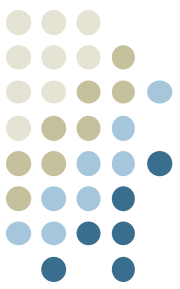
- His election is likely to ...
 - Bring gaming to the Chicagoland area.
 - Increase taxes (service taxes, mileage taxes, income taxes and employer taxes).



Indiana Election Impact

Indiana

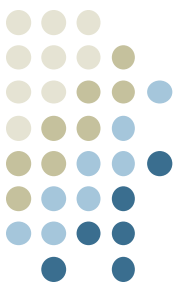
- We do not expect to see any significant state-level employment/business changes in Indiana.
- Republicans maintained their supermajority in both chambers of the Indiana Statehouse and swept every statewide race on the ballot.
- Republican Eric Holcomb (elected to his first four year term in 2016) will continue as Indiana's Governor.



Wisconsin Election Impact

Wisconsin

- Governor Walker's departure will mean attempted changes in Wisconsin.
- Tony Evers campaigned on promises to cut income taxes by 10% for people making less than \$100,000 and for families making less than \$150,000.
- Evers has also stated that it is his goal to eliminate the limitations on unions (known as Act 10). However, with the legislature remaining primarily Republican, such a goal will likely remain out of reach.

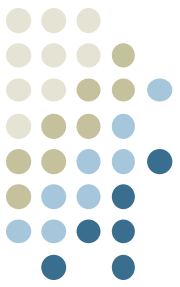


Missouri Election Impact

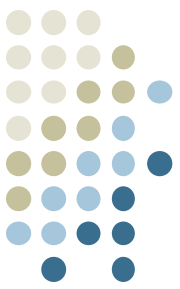
Missouri

- Missouri's minimum wage will increase to \$8.60 on January 1, 2019.
 - Proposition B increases the state's current \$7.85 minimum wage incrementally over the next five years to: \$8.60 in 2019, \$9.45 in 2020, \$10.30 in 2021, \$11.15 in 2022 and \$12.00 in 2023. After 2023, the minimum wage will automatically increase or decrease based on Consumer Price Index for Urban Wage Earners and Clerical Workers.
 - The measure also increases the penalty for employers paying employees less than minimum wages. Affected workers can now recover the full amount of the wage rate and an additional amount equal to twice the unpaid wages as liquidated damages.

Missouri Election Impact (cont'd)



- Missouri voters approved a ballot initiative that allows for medical use of marijuana to treat qualifying medical conditions.
- Under the initiative, which is expected to take effect December 6, 2018, employers can prohibit employees from being under the influence of marijuana at work and can discipline them for working or trying to work while under the influence of marijuana.

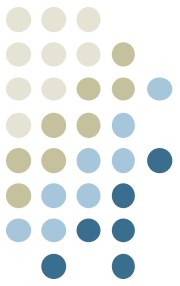


Iowa Election Impact

Iowa

- We do not expect to see any significant state-level employment/business changes in Iowa.
- Republicans maintained their majority of the Iowa General Assembly (both House and Senate).
- Republican Kim Reynolds will continue as Iowa's Governor as she was voted in on her first full term.

Questions ???



Presented by:

Sara Zorich

Partner, SmithAmundsen LLC

Labor & Employment

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