



Illinois Employers Face New Minimum Wages, Higher Gas Taxes, and New Workplace Harassment and Discrimination Protections

By Andrew Gilkerson on October 22, 2020
Posted in Employment Law

This post was written when associate attorney Andrew Gilkerson was a HeplerBroom Summer Associate.

Last year, Illinois lawmakers passed legislation to increase the gas tax and the statewide minimum wage annually. This year the gas tax increased only a fraction of a cent (from \$0.38 per gallon to \$0.387 per gallon). The statewide minimum wage increased from \$9.25 to \$10 per hour. Although these increases were planned, they came at a difficult time for Illinois business owners trying to recover from decreased business caused by the global pandemic. New workplace harassment and discrimination laws requiring annual reports and training, among other things, also went into effect on July 1, 2020.

Gas Tax

Last summer, Governor J.B. Pritzker signed into law a new infrastructure plan funded in part by gas tax increases. This law is now codified in 35 ILCS 505/2. The statute doubled the gas tax last year and set up a new formula that will automatically increase the tax every year. Thus, every year on July 1, the tax will increase by the same percentage that the Consumer Price Index for All Urban Consumers increases. (The Consumer Price Index for All Urban Consumers is a monthly measure published by the U.S. Bureau of Labor Statistics of the average change over time in the prices paid by consumers for a market basket of consumer goods.) This means that the Illinois gas tax will increase in relation to the national economy, not just the economy of the State of Illinois.

If the Consumer Price Index decreases or remains unchanged, the gas tax will stay at the same amount as the previous year. The new law does not provide any safeguards against increases that are disproportionate to the economic success of Illinois. Therefore, although the gas tax increased by only \$0.007 this year, there is no way to predict how it may change in years to come. Business owners should be cautious and look to the national economy to plan for future costs. Keeping an eye on the Consumer Price Index will help employers predict future gas tax increases.

Minimum Wage

In a similar vein, last year Governor Pritzker signed a law increasing the statewide minimum wage. Unlike the gas tax, the rate of increase for the minimum wage (contained in 820 ILCS 105/4) is set in stone. The initial increase—from \$8.25 to \$9.25 per hour—took effect January 1, 2020. On July 1, 2020, the minimum wage increased to \$10 per hour. The minimum wage will continue to increase by \$1 per hour every January 1 until 2025, when the statewide minimum wage will hit \$15 per hour. *Id.* § 4(a)(1).

The law contains limited exceptions for new workers under the age of 18 and employees who customarily receive tips.

Workers Under the Age of 18

1. Employers are allowed to pay minors no more than \$0.50 less than the minimum wage rate for the first 90 days of their employment. § 4(a)(2).
2. After those 90 days, employers are required to pay minor employees who work more than 650 hours during any calendar year the same hourly rate they are required to pay employees who are over the age of 18. § 4(a)(3).
3. Employees under the age of 18 who work fewer than 650 hours in any given year must be paid \$8 per hour from January 1, 2020, through December 31, 2020.
4. The minimum wage for minors in 2021 will increase to \$8.50.
5. After 2021, the minimum wage rate for minors will continue to increase on the first day of the year until it reaches \$13 per hour in 2025.

Workers Who Receive Tips

Businesses that employ workers who customarily receive tips as part of their payment will be allowed to take an allowance of up to 40% of the minimum wage rate. 820 ILCS 105/4(c). To receive this allowance, employers must provide substantial evidence that the amount claimed as an allowance was actually received by the employee. *Id.*

Chicago and Cook County have enacted their own minimum wage requirements that go above and beyond what is required in the rest of the state.

Chicago Employers with 21 or More Employees

1. July 1, 2020 – minimum wage increased from \$13 to \$14 per hour. § 1-24-020(b)(1)(A) (2019).
2. July 1, 2021 – minimum wage increases to \$15 per hour. § 1-24-020(b)(1)(B).
3. July 1, 2022 and every July 1 thereafter – minimum wage will increase annually to reflect increases in Consumer Price Index. § 1-24-020(b)(1)(c); (b)(2)(E).

Chicago Employers with More than 3 But Fewer than 21 Employees

1. July 1, 2020 – minimum wage increased from \$13 to \$13.50 per hour. § 1-24-020(b)(2)(A) (2019).
2. July 1, 2021/2022/2023 – minimum will increase by \$0.50 each year until it hits \$15 per hour in 2023. § 1-24-020(b)(2)(B)-(D).
3. July 1, 2024 and every July 1 thereafter – minimum wage will increase annually to reflect increases in Consumer Price Index. § 1-24-020(b)(2)(E); (b)(1)(C).

Chicago Employees Who Receive Tips

1. Will receive a minimum wage that is at least 60% of the minimum wage of employees who do not receive tips. § 1-24-030(a).

Cook County

1. Minimum wage increased from \$12 to \$13 per hour. Cook County, Ill. Code § 42-13(d).
2. Minimum wage for tipped employees increased from \$5.25 to \$5.30 per hour. Cook County, Ill. Code § 42-14(a)(2).
3. On July 1, 2021, and every year thereafter, the Cook County minimum wage will increase to the greater of (a) the minimum hourly wage set by the minimum wage law, (b) the minimum hourly wage set by the Fair Labor Standards Act, or (c) the hourly wage from the previous year increased in proportion to the increase in the Consumer Price Index. Cook County, Ill. Code §§ 42-13(e), 42-14(a)(2).
4. When tracking the Consumer Price Index, these yearly increases are capped at 2.5%, which provides some predictability for employers in the future.
5. In each initial paycheck, employers in Cook County are required to post and provide a notice of the current minimum wage. Cook County, Ill. Code §§ 42-19.

NOTE: Cook County employers should check with their local municipality as some have chosen to opt out of this ordinance.

Workplace Harassment and Discrimination Protections

On July 1, 2020, amendments to the Illinois Human Rights Act (IHRA) expanded its application to employers with one or more employees within the state during 20 or more weeks in a calendar year. 775 ILCS 5/2-101(B). Before this change, the IHRA only applied to employers with 15 or more employees. Illinois law is now stricter than the Federal Civil Rights Act, which only applies to employers with 15 or more employees. 42 USC § 2000e-2(a)(1).

The IHRA prohibits discrimination in employment, financial credit, public accommodations, and real estate transactions based on race, color, religion, sex, sexual harassment, national origin, ancestry, military status, age, order of protection status, marital status, sexual orientation, gender identity, and physical and mental disability. *Id.* § 2-102, 1-103. Under the IHRA, employers are required to provide annual sexual harassment prevention training to all Illinois employees by December 31, 2020. *Id.* § 2-109. This requirement applies to any employer with employees working in Illinois, even employers based in other states or countries. *Id.* § 2-101(B). Employers are encouraged to use the model training program released by the Illinois Department of Human Rights but can use their own programs if the programs meet certain requirements. *Id.* § 2-109(C). (The model program can be found on the Department's website.) Employers in the restaurant and bar industry must provide additional supplemental training to their employees. *Id.* § 2-110(c). Restaurants and bars are encouraged to use the model supplemental training (which can also be found on the Department's website). *Id.* § 2-110(D).

Employers who fail to provide this training are subject to civil penalties of up to \$5,000, depending on the size of the employer's organization and number of offenses. *Id.* § 2-109(D); 2-110(E).

Additionally, the IHRA amendments now require employers to disclose annually any adverse judgment or administrative ruling relating to unlawful harassment or discrimination against the employer in the preceding year. *Id.* § 2-108(B). Employers are not required to file a report if no judgments or rulings have been made against them in the previous year. The Illinois Department of Human Rights provides a reporting form that must be submitted. The Department will publish an aggregated report of the disclosures once a year. *Id.* § 2-108(E). Employers do not need to disclose settlements related to sexual harassment or unlawful discrimination unless they are being investigated by the Department. *Id.* § 2-108(c). The deadline for the 2019 calendar year is October 31, 2020. In the future, the deadline will be July 1. An employer who fails to make these disclosures is subject to civil penalties of up to \$5,000, depending on the size of the employer's organization and number of offenses. *Id.* § 2-108(F).

The Hotel and Casino Employee Safety Act (HCESA) will soon provide further protection for employees working in those specific businesses. Beginning March 1, 2021, hotels and casinos are required to provide employees who work alone in certain areas (such as a housekeeper in a guest room) with a notification or safety device to allow the employees to quickly call for help in the event of an ongoing crime, sexual harassment, sexual assault, or other emergency. 820 ILCS 325/5-10(a). Additionally, on March 1, 2021, the HCESA will require hotels and casinos to implement anti-sexual harassment policies that allow an employee to take paid time off to file police reports or criminal complaints. *Id.* § 5-10(b).

(A more detailed discussion of general harassment, gender violence, and training requirements can be found in HeplerBroom's August 13, 2020, blog post.)

Tags: Minimum Wage, Taxes, Workplace Harassment