

Illinois' Workplace Transparency Act Limits Certain Workplace Agreements (Part I)

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The new Illinois Workplace Transparency Act (WTA) significantly changes the contours of employment, separation, and settlement agreements in Illinois. The requirements and restrictions concerning these types of agreements become effective January 1, 2020. The WTA also makes changes to the Illinois Human Rights Act; changes to the Human Rights Act will be discussed in [Part II](#) of this labor and employment alert series.

Arbitration Agreements

The WTA changes how and when employers may use workplace arbitration agreements. Any agreement that is a unilateral condition of employment or continued employment and requires the employee or prospective employee to waive, arbitrate, or otherwise diminish any existing or future claim, right, or benefit related to an unlawful employment practice to which the employee or prospective employee would otherwise be entitled under any provision of state or federal law, is against public policy, void to the extent it denies an employee or prospective employee a substantive or procedural right or remedy related to alleged unlawful employment practices, and severable from an otherwise valid and enforceable contract.

It remains to be seen whether this restriction on arbitration agreements will be found to conflict with recent U.S. Supreme Court's decisions broadly upholding arbitration.

Confidentiality and Non-Disparagement Clauses

The WTA prohibits employers from entering into employment agreements, separation agreements, and settlement agreements containing nondisclosure or non-disparagement clauses for harassment or discrimination claims. Employers may enter into separation or settlement agreements with such clauses if: (1) the parties mutually agree to the clause; (2) the clause mutually benefits both the employer and employee; (3) the individual has 21 days to consider the agreement before executing it; (4) the claims arose before

the agreement is signed; and (5) the individual then has seven days after execution in which to revoke the agreement.

Disclosures to Government Agencies

The WTA provides that no agreement may prohibit, prevent, or otherwise restrict an employee, applicant employee, or former employee from reporting any allegations of unlawful conduct to government officials for investigation, including alleged criminal conduct or unlawful employment practices. Any such agreement is against public policy, void, and severable from any otherwise enforceable contractual provisions.

The WTA further prohibits any agreement that **unilaterally** imposes as a condition of employment or continued employment and has the purpose or effect of preventing an employee or applicant from making truthful statements or disclosures about alleged unlawful employment practices. Such an agreement is against public policy, void to the extent it prevents such statements or disclosures, and severable from an otherwise valid and enforceable contract.

An agreement that is a **mutual** condition of employment or continued employment may include provisions that would otherwise be against public policy as a unilateral condition of employment or continued employment only if: (1) the agreement is in writing; (2) demonstrates actual, knowing, and bargained-for consideration from both parties, and (3) acknowledges the right of the employee or applicant employee to: report any good faith allegation of unlawful employment practices to any appropriate government agency enforcing discrimination laws; report any good faith allegation of criminal conduct to any appropriate official; participate in a proceeding with any appropriate government agency enforcing discrimination laws; make any truthful statements or disclosures required by law; and request or receive confidential legal advice. Failure to comply with these provisions establishes a rebuttable presumption that the agreement is a unilateral condition.

Conclusion

Employers should review their employment, separation and settlement agreements to ensure they comply with the WTAs prohibitions and restrictions. If an employee successfully challenges an agreement's enforceability that is found to violate the WTA, the employee is entitled to recover his or her attorney's fees and costs. Contact your Vorys lawyer if you have questions about the act or similar laws in other jurisdictions.