

# Cray • Huber

## **Labor and Employment Law Notes**

### **EMPLOYER'S ALERT:**

#### ***Illinois Human Rights Act to Expand to Add New Protected Class***

The Illinois Human Rights Act (IHRA) will expand on January 1, 2010 to add a new class of persons protected under the IHRA. IHRA Section 1-102 (A) currently states: the Act is meant “to secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation or unfavorable discharge from the military service in connection with employment, real estate transactions, access to financial credit and the availability of public accommodations.” That section will now also include “order of protection status.” In simple terms it means that employers cannot discriminate against individuals on the basis of being under “order of protection status.” That means a person’s status as being a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act (IDVA) of 1986 or an order of protection issued by a court of another state will be protected under the IHRA.

“Unlawful discrimination” will now include discrimination against a person because of his or her status as being protected under an order of protection. As a practical example, what this means is that an employer in Illinois cannot refuse to hire or fire someone because they are under an order of protection issued pursuant to the IDVA or an order of protection issued by a court of another state. While an employer may be reluctant to hire someone who is under an order of protection for fear that the person against whom the order applies will appear at their workplace resulting in a conflict or some other larger scale workplace violence. Also, an employer may want to terminate someone who happens to be under an order of protection because of having to miss time off to obtain an order of protection or to enforce an order of protection. That would constitute discrimination under the IHRA beginning in January 2010. Employers must now be cognizant of employees or applicants for employment under orders of protection lest they run afoul of the IHRA starting in January 2010.

#### **New Federal Anti-Discrimination Law on the Radar**

Congress has introduced a long-debated measure that would ban employment discrimination against gay, bi-sexual and transgender employees. The legislation, known as the Employment Non-Discrimination Act of 2009 (ENDA), has been proposed in one version or another for more than 30 years. The ENDA is intended to create workplace protection for lesbian, gay, bi-sexual and transgender individuals. The ENDA would ban employment discrimination on the basis of sexual orientation and gender identity and expression. It creates express protection for lesbian,

gay, bi-sexual and transgender people similar to those available under 15 federal discrimination laws for other protected classes of workers.

The bill doesn't have bi-partisan support in Congress and President Obama has made passage of an inclusive ENDA as one of the priorities of his civil rights agenda. Currently, 12 states, the District of Columbia and more than 100 localities have non-discrimination protections that protect all gay, lesbian, bi-sexual and transgender workers, covering nearly 40 percent of Americans. Initially, more than 150 Fortune 500 companies have enacted non-discrimination policies protecting LGBT workers. Were ENDA to pass, employers in all states would need to modify their employee handbook and training to address this new protected class and how to avoid violating the ENDA in the workplace. Moreover, the passage of the ENDA would broaden the current coverage afforded to employers under employment Practice Liability Insurance policies. Employers and their insurers would need to anticipate an influx of EPLI-related claims based on claims of discrimination against gay, bi-sexual, lesbian and transgender employees. Insurance claims personnel not previously familiar with these types of claims for this particular protected class would need to undergo training to familiarize themselves with the issues involved in such claims of discrimination in the workplace. It is not a matter of if such a bill will pass, but it is a matter of when. Employers and their insurance providers would do well to prepare themselves for that inevitability and the impact it will have in the workplace and on a number of claims under EPLI policies.