

Legislative Update: A Review of New (and Proposed) Laws Affecting Illinois Community Colleges' Risk Management Practices

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Quick Quiz

- As of August 27, 2019, how many bills has Governor Pritzker signed into law?

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Answer

- As of August 27, 2019, Governor Pritzker has signed 605 bills into law, and vetoed 8.

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Public Act
101-0251

*Mental Health
Early Action on
Campus Act*



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Public Act
101-0251

- Creates the *Mental Health Early Action on Campus Act, 110 ILCS 58/*
- Became law on August 9, 2019
- Effective July 1, 2020 (except for funding provision, which is effective immediately)

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Public Act
101-0251

- Creates the *Mental Health Early Action on Campus Act*, 110 ILCS 58/
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Public Act
101-0251

- Public colleges and universities must attempt to meet a benchmark ratio of one clinical, non-student staff member for every 1,250 students.
- Allows institutions to use a combination of on-campus mental health services, agreements with local service providers, and/or contracts with telehealth therapy services to meet this target.

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Public Act 101-0251

- Other key provisions require colleges to:
 - Implement student orientation sessions aimed at raising awareness about mental health conditions
 - Require Mental Health First Aid or similar training for resident assistants, advisors, and campus security before they begin duties
 - Distribute messages to students during high stress periods
 - Develop a peer support program

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Cannabis Regulation and Tax Act



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Cannabis Regulation and Tax Act

- Public Act 101-0027
- Signed into law on June 25, 2019
- Effective January 1, 2020

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What Does the Act Permit?

- Permits the personal, recreational use of cannabis by adult (21 and older) residents of Illinois, subject to restrictions.
- Allows adult residents to possess up to 30 grams (roughly one ounce) of cannabis flower, 5 grams of cannabis concentrate and 500 milligrams of THC contained in a cannabis-infused product, subject to restrictions.

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The Act's Limitations



• Limitations on Use and Possession – Section 10-35

- Nothing in the Act shall require an individual or business entity to violate the provisions of federal law, including colleges or universities that must abide by the *Drug-Free Schools and Communities Act Amendments of 1989*, that require campuses to be drug free.

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Recommendations for Colleges



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Employment-Related Recommendations

- Review existing drug testing policies and procedures.
- Train supervisors and managers on the Act's requirements and how to recognize symptoms of impairment and/or under the influence of cannabis.

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Employment-Related Recommendations

- Develop procedures for implementing discipline for employees determined to be under the influence/impaired by cannabis in the workplace.
- Be aware of possible bargaining implications related to policy and/or procedural changes.

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Student-Related Recommendations



- Colleges and universities that receive federal financial assistance may (and should) continue to prohibit the possession, use, and distribution of marijuana by students while on school property, including in student housing.

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Student-Related Recommendations

- Institutions may continue to prohibit public intoxication and disruptive behavior, including disruptive behavior by a student who is under the influence of marijuana (regardless of whether the marijuana use is lawful, and regardless of whether the marijuana is used on or off campus).

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Specialty Program Recommendations

- Specialty programs that require drug testing as an admissions or clinical placement requirement may not deny adult students admission to their programs as a result of a positive marijuana test.
- These programs may consider removing marijuana altogether from the list of substances included in their drug tests.

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Proposed Title IX Regulations



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Background and Timeline

- September 22, 2017 – U.S. Department of Education releases Dear Colleague Letter formally withdrawing two key Obama-era guidance documents:
 - OCR’s April 4, 2011 Dear Colleague Letter on Sexual Violence
 - OCR and U.S. Department of Education’s April 29, 2014 Q&A on Title IX and Sexual Violence

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Background and Timeline

- November 16, 2018 – U.S. Department of Education releases proposed Title IX regulations
- January 20, 2019 – end of 60 day public comment period
- 105,842 public comments received

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Key Provisions

- Would require significant policy and procedure revisions related to:
 - Institution's definition of sexual harassment
 - Reporting process
 - Investigatory obligations when reporting party elects not to file a formal complaint

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Key Provisions

- Would require significant policy and procedure revisions related to:
 - Grievance procedures, which must include a live hearing with cross-examination
 - Parties' access to investigatory materials
 - Due process protections for the accused

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What Happens Next?

- Following the comment period, the Department of Education can:
 - Terminate the rule-making process (unlikely)
 - Publish a supplemental proposed rule
 - Proceed with a final rule
- No set timeframe on next steps

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Public Act 101-0001



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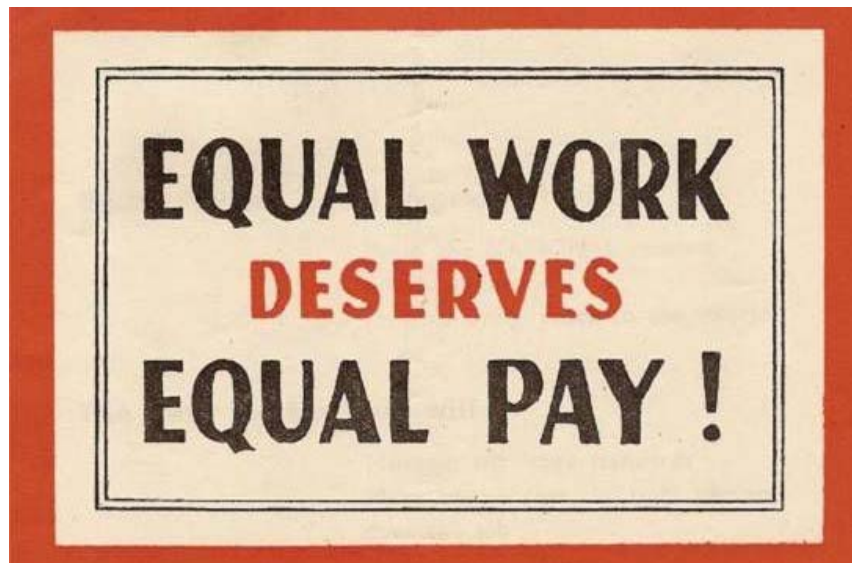
Public Act
101-0001

- The following table illustrates the applicable state minimum wage rates starting January 1, 2020:

Date	State Minimum Wage (per hour)
January 1, 2020	\$9.25
July 1, 2020	\$10.00
January 1, 2021	\$11.00
January 1, 2022	\$12.00
January 1, 2023	\$13.00
January 1, 2024	\$14.00
January 1, 2025	\$15.00

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Equal Pay Act
Public Act 101-0177



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Public Act
101-0177

- Effective September 29, 2019, the Equal Pay Act prohibits employers from asking job applicants about their salary history.
- Aimed at closing the wage gap between men and women.

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Public Act
101-0177

- The Prohibitions:
 - Discriminating on the basis of sex, where employees are performing substantially similar work on jobs that require “substantially similar skill.”
 - Requiring an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing information about the employee's wages, salary, benefits, or other compensation.

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Public Act
101-0177

• The Prohibitions:

- Screening job applicants based upon their current or prior wages or salary histories.
- Requesting or requiring wage or salary history as a condition of any step in the hiring process.
- Requesting or requiring wage or salary history as a condition of employment.
- Seeking wage or salary history from a job applicant's current or former employer(s), unless it is a matter of public record or an internal applicant.

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*Illinois Wage
Payment and
Collection Act*



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Public Act
100-1094

- The *Illinois Wage Payment and Collection Act* now imposes an affirmative duty on Illinois employers to reimburse certain expenses incurred by its employees.

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Public Act
100-1094

- Employers must reimburse employees for “all reasonable expenditures or losses required of the employee in the discharge of employment duties” 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.

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*Budget
Implementation
Bill*



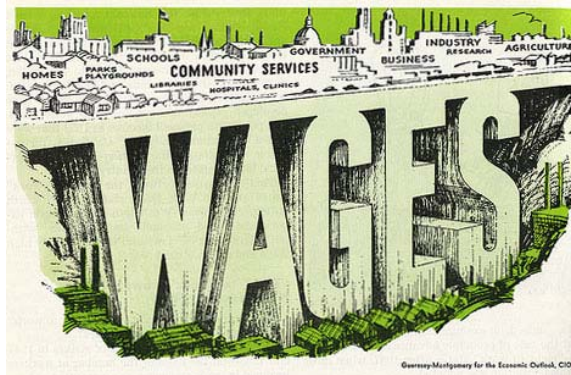
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Public Act
101-0010

- The *Budget Implementation Bill* included amendments to the SURS Articles of the *Illinois Pension Code* to revert back to the 6% rule for end-of-career earnings increases for participants.
- The reversion from 3% to 6% was retroactive to June 2018 – it is as if 3% never happened.

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Prevailing Wage Requirements



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Public Act 100-1177

- Effective June 1, 2019, this amendment means public bodies no longer need:
 - To determine the prevailing wage rate. Instead, the IDOL will set the applicable wage rates for each locality.
 - To approve an annual prevailing wage ordinance or resolution each June.
 - To receive objections to the prevailing wage schedule or participate in hearings. The IDOL will hear all objections.

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Public Act
100-1177

- In addition, by April 1, 2020, the IDOL is required to develop and maintain an electronic database capable of accepting certified payrolls to the online database.
- This new process will eliminate the record-keeping requirements for the public body to keep certified payroll records for a period of 5 years from the last payment for work.

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Questions??



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2019

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFD Spring Conference (April 2019)

Bargaining Updates, 3%, and Q & A, Northwest Personnel Administrators (October 2018)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., The Ohio State University, The Mortiz College of Law, 1993

M.A., The Ohio State University, 1987

B.A., *with honors*, The Ohio State University, 1985

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Western District of Wisconsin

Recent Amendments and Changes to State and Federal Employment Laws, Illinois CUPA-HR Spring Conference (May 2018)

Supreme Court of Illinois

SURS Legislation Update, ICCCFD Spring Conference (April 2018)

Supreme Court of Wisconsin

Navigating Employment Law Changes in the Midst of the State Budget Crisis, NICCHR Conference (May 2016)

Superior Court for the District of Columbia

Employment Actions and RIFs in the Midst of the State Budget Crisis, ICCCFD Spring Conference (April 2016)

ORGANIZATIONS

American Bar Association

Effective Negotiation Strategies to Address Salary/Benefits Issues, Illinois ASBO Joint Annual Conference (November 2015)

Associated Colleges of Illinois, Trustee

Employment/Labor Law Update, ICCTA Annual Conference (November 2015)

Council of School Attorneys

Federal Bar Association

Illinois Association of School Business Officials

Illinois Bar Association

National School Boards Association

Wisconsin Bar Association

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Emily practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding student discipline, Title IX, student records issues and policy development. She assists school districts and community colleges in responding to complaints from the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General and Illinois Department of Human Rights. Emily regularly represents public school districts in due process hearings, student discipline hearings and residency hearings, and in state and federal court on claims of discrimination, harassment and due process violations.

Prior to joining Robbins Schwartz, Emily represented students with disabilities in special education matters.

RECENT PUBLICATIONS

"Disabled Athlete Can't Support ADA Claims," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Student Social Media Use: Legal Considerations for Colleges (September 2018)

Helping Students "Exercise" Free Speech in Ways Which Keep First Amendment Rights and Students in Good Shape (October 2017)

The Ever-Changing Landscape Under Title IX, Joint meeting of Illinois Community College Presidents, Chief Academic Officers and Chief Student Services Officers (January 2017)

FERPA and FOIA: Compliance and Considerations, Illinois Community College Chief Student Services Officers Winter Meeting (January 2017)

Residency and Homelessness: Legal Update and Considerations When Challenging a Student's Status (October 2016)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., *with honors*, George Washington University Law School, 2015

B.S., *cum laude*, Vanderbilt University, 2010

ADMITTED TO PRACTICE

U.S. Court of Appeals for the Seventh Circuit

U.S. District Court for the Northern District of Illinois

Supreme Court of Illinois

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Chicago Bar Association

Illinois Council of School Attorneys

National Council of School Attorneys

