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Legal Update for Illinois Community College Chief Financial Officers

Presented by Matthew Gardner

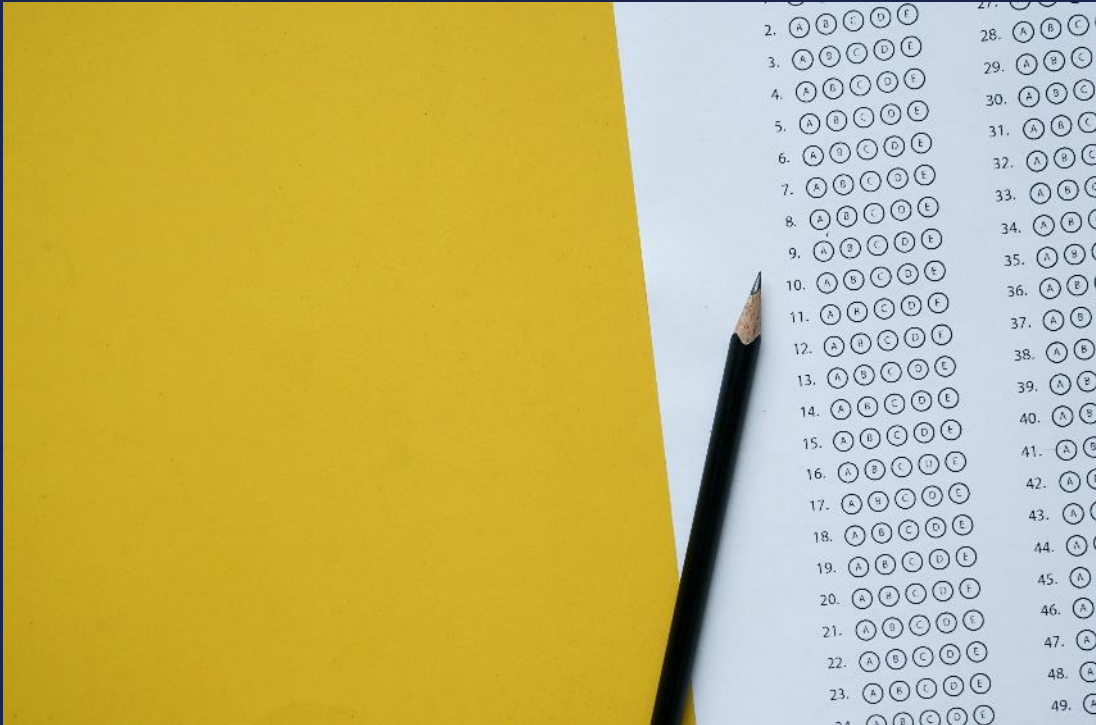
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Introductions



Matthew J. Gardner

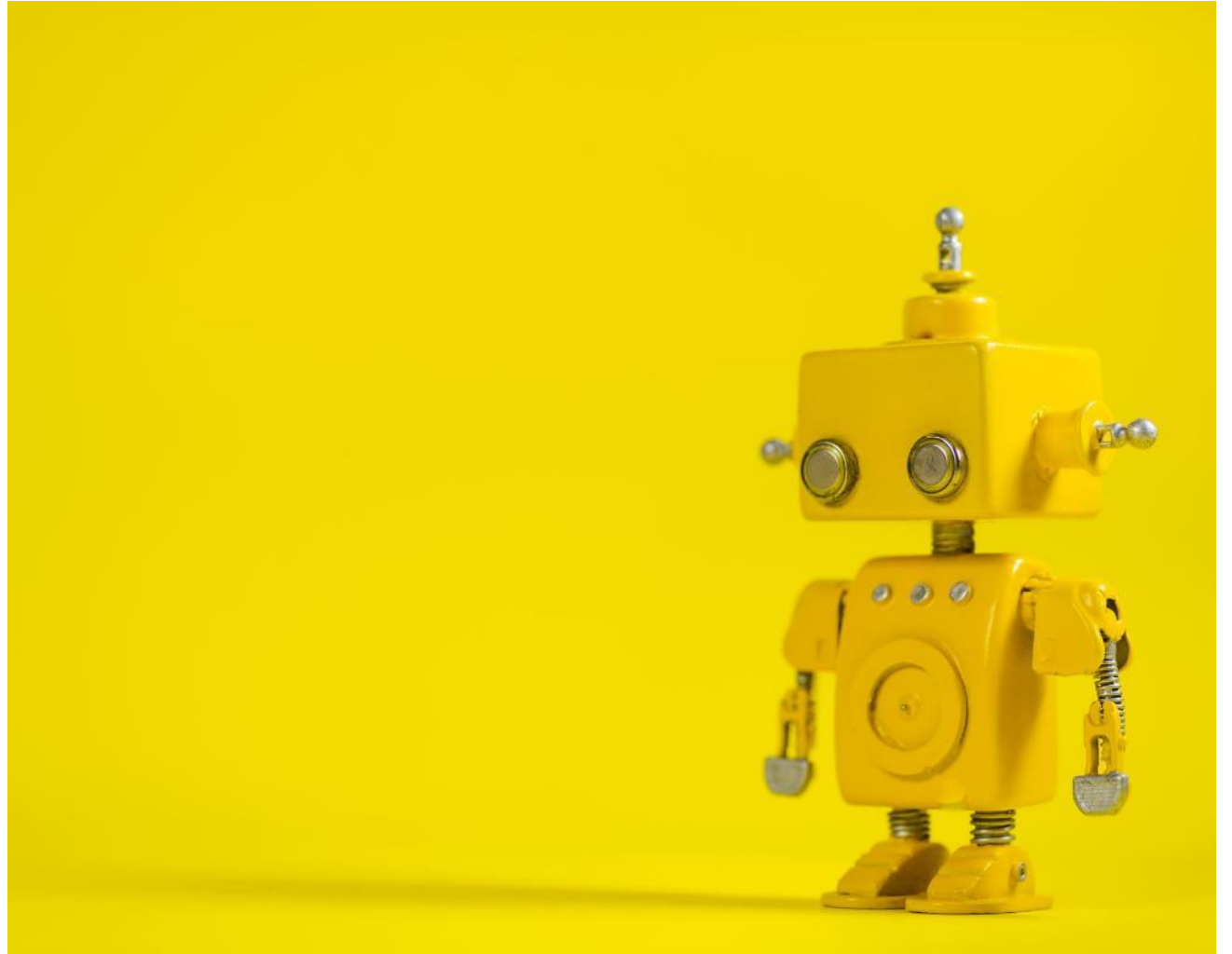
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Agenda

- Paid Leave for All Workers Act
- Department of Education's Third-Party Service Provider Reporting Change
- Decennial Committee Requirement
- Proposed Title IX Changes

Paid Leave for All Workers Act



Paid Leave for All Workers Act, 820 ILCS 192/

- This Act will take effect on January 1, 2024
- Goal is to establish minimum paid leave standard for all workers in Illinois. /5(b)(1)
- Who does the Act apply to?
 - Applies to all private employers and most government employers
 - Relevant exclusions:
 - Enrolled students who are employed part-time on a temporary basis
 - Short-term employees in higher education

Paid Leave For All Workers Act: Employers' Responsibilities

- Must provide paid leave equal to one hour every 40 hours worked, up to a total of 40 hours of paid leave in a 12-month period.
- May offer this leave in two ways:
 - (1) Leave accrues for one hour every 40 hours worked beginning 90 days after the individual begins employment.
 - Unused leave carries over to the next 12-month period.
 - (2) Make the minimum annual amount of paid leave available on the first day of individual's employment or the first day of the 12-month period.
 - Not required to carryover paid leave to the next 12-month period.

Paid Leave For All Workers Act: Employers' Options

- Notice Requirements: Employers can require that employees provide notice in accordance with policy which can require 7 days' notice if foreseeable and as soon as practicable after the employee learns of the reason for the leave if not foreseeable.
- Minimum Increments: Employers can set a minimum increment of use of paid leave which cannot exceed 2 hours per day
- 12 Month Period: Employers may designate any consecutive 12-month period if designated in writing at the time of hire; employer may change the 12-month period if notice given in writing and the change does not reduce the eligible accrual rate or paid leave available to the employee.

Paid Leave For All Workers Act: Employees' Use of Paid Leave

- Can Use for Any Reason: Employees are not required to provide a reason for the leave or to provide documentation in support of leave.
- Date to Use Paid Leave: Employees can begin to use paid leave 90 days after they begin employment.
- Priority Use: Employees may choose to use paid leave provided under this Act prior to using any other leave provided by the employer or state law.
- Rate of Paid Leave: Paid their hourly rate; if gratuities and commissions are typically part of their remuneration, then the employer will pay at least the full minimum wage in that jurisdiction.
- Transferred Employees: Entitled to retain all paid leave.
- Unused Time: No right to payment for unused paid leave at the end of the benefit year.

Paid Leave For All Workers Act (Continued)

- Records: Must make and retain records related to the number of hours worked, paid leave accrued and taken, and remaining balance of paid leave. Must maintain for at least 3 years.
- Waiver of the Act: A bona fide collective bargaining agreement may waive the Act's requirements if waiver is clear and conspicuous. An agreement with an employee that waives the requirements of the Act is void against public policy.
- Retaliation: An employer may not threaten to take or take action against an employee for exercising or attempting to exercising rights under this Act.
- Penalties: \$2,5000 per each separate offense.

Department of
Education Third
Party Service
Provider Reporting
Requirements



Third Party Service Provider Reporting

- On February 15, 2023, the U.S. Department of Education issued guidance to institutions of higher education that contract with third-party service providers to administer any aspect of the institution’s participation in financial aid programs under Title IV of the Higher Education Act of 1965. [Requirements and Responsibilities for Third-Party Servicers and Institutions \(Updated Feb. 28, 2023\) | Knowledge Center](#)
- Applies particularly to “online program managers” (OPMs), companies that are part of a growing industry of services related to recruitment, retention, provision of software products and services involving financial aid activities, and the provision of educational content and instruction.
- Guidance clarifies that these entities are third-party service providers and subject to reporting requirements.
- Institutions are also subject to reporting requirements for these OPMs.
- Effective September 1, 2023.

Third Party Service Provider Reporting (continued)

- Guidance includes charts distinguishing factors that make an entity a third-party servicer vs. “not a third-party servicer”.
- Guidance covers topics such as recruitment and application-related services, student and institutional eligibility, consumer information, default prevention, delivery of Title IV funds, computer services/software and record maintenance, retention, instructional content, consulting and audit, and Perkins loans.
- Generally speaking, the more involved the entity is with specific students the more likely to a third-party servicer.
- If an entity is a third-party servicer, the entity and the college are joint and severally liable for any violation by the third-party servicer.

Third Party Service Provider Reporting (continued)

- Institutions are required to:
 1. Ensure their third-party servicer contracts include specified terms clearly and thoroughly describing the third-party servicer's services, functions, and responsibilities;
 2. Obtain a signed certification from each third-party servicer; and
 3. Ensure their E-App is updated to identify each third-party servicer.
- Vendors are required to:
 1. Have compliant contracts;
 2. Submit to the Department a Third-Party Servicer Data Form;
 3. Meet annual audit requirements and be subject to information security requirements established by the Federal Trade Commission for financial institutions; and
- Joint and several liability

Third Party Service Provider Reporting (continued)

- Summary:

- Analyze online program managers (OPMs) and compare with guidance in Department of Education's letter to determine if the OPM is a third-party servicer under the Department's guidance. Remember, these new definition may mean the OPM has no direct role in administering financial aid.
- If OPM is a third-party servicer, ensure contract complies with Department of Education's requirements and OPM otherwise complies with Department requirements.

- Legal Challenges:

- Lawsuits by OPMs have already been filed claiming that the Higher Education Act does not allow these Department regulations, and that such regulations were not issued properly.
- Generally, claim that the new definitions of third-party servicers applying to entities that do not directly administer financial aid is overly broad and goes against decades of the Department's prior interpretations.

Decennial
Committees on
Local Government
Efficiency Act
50 ILCS 70/



Decennial Committees

- P.A. 102-1088, effective June 10, 2022, created the requirements for the Decennial Committees on Local Governmental Efficiency Act.
 - Who Does this Act Apply to?: Requires any local government that may levy a tax (does not apply to counties, municipalities, or school districts) to convene a Decennial Committee on Local Government Efficiency Act. This applies to community colleges.
 - What is the Committee's Purpose?: To study local efficiencies and report recommendations regarding efficiencies and increased accountability to the County Board.
 - When Does the Committee Need to be Formed?: No later than June 10, 2023. Recommend that the Board pass a resolution to establish the committee and giving the committee the powers and duties provided in the Act.

Decennial Committees (continued)

- Who is on the Committee:
 - All trustees (elected or appointed members of the governing board);
 - An officer of the College (President, CFO, Chief of Staff, etc.);
 - At least two individuals that reside in the college's district, appointed by the Board Chair with the advice and consent of the Board; and
 - The Board Chair may appoint additional members of the Committee as the Chair deems appropriate.
 - The Board Chair may be the Chair of the Decennial Committee or may designate another person to serve as the Chair (the Board Chair must be a member of the Committee).
- Recommend Board pass a resolution approving the appointment of committee members.

Decennial Committees (continued)

- Committee Duties:

- Study the governmental unit's statutes, ordinances, rules, procedures, powers, jurisdiction, shared services, intergovernmental agreements, and interrelationships with other governmental units and the State.
 - Recommendation – Make manageable goal/charge. Focus on one or two topics the Committee can focus on.
- Collect data, research, and analysis to prepare a report, and may employ or use specialists or consultants.
- Hold at least 3 public meetings with a majority of the Committee present. Meeting subject to Open Meetings Act and must survey residents who attended the meeting asking for input on matters discussed (email survey is acceptable).

Decennial Committees (continued)

- Committee Duties:

- Summarize findings in a written report which shall include recommendations regarding increased accountability and efficiency.
- Must provide the report to the administrative office of each county board in which the governmental unit is located, no later than 18 months after the formation of the committee.
- After making the report available to the public, the committee is dissolved until it is re-established with new members in accordance with the Act (June 2033, June 2043, etc.).



Department of Education Proposed Rulemaking Under Title IX Regarding Transgender Athletes

Title IX Proposed Rulemaking

- The Department of Education released a notice of proposed rulemaking on April 6, 2023, regarding transgender student participation in athletics.
- The proposed rule:
 - Establishes that colleges violate Title IX if they categorically ban transgender students from participating on sports teams consistent with their gender identity.
 - Recognizes that in some instances, particularly in competitive sports, colleges may adopt policies that limit transgender students' participation.
 - Would provide a framework for colleges to develop criteria to protect students from being denied equal athletic opportunities, while giving colleges the flexibility to develop their own participation policies.

Title IX Proposed Rulemaking

- Under the proposed rule, colleges would have the flexibility to develop team eligibility criteria that serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injuries.
- Limiting policies must account for the sport, level of competition, and grade or education level.
 - The Department's notice explicitly states that it expects sex-related criteria limiting participation in competitive sports may be permitted for high school and college sports.
- Must minimize harms to students whose participation would be limited or denied.
- The proposed regulation is open for public comment until May 8, 2023.



QUESTIONS & ANSWERS



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