



JK DEFENSE

Indiana Updates

- **Indiana's Unemployment Insurance Fraud Prevention Plan**2
- **Which Indiana Employers are Prohibited From Microchipping their Employees?**2
- **Indiana Enacts Pregnancy Accommodations Law**3
- **Indiana Teachers' First Amendment Right to Refrain from Joining and Paying Dues to a Union**3
- **Indiana's "Say Yes to No More Work Permits"**4
- **New Indiana Law Grants Immunity Related to COVID-19**4

Illinois Updates

- **Illinois Provides Additional Protection to Workers with Criminal Records** 5
- **New Equal Pay Certification for Illinois Businesses**..... 5
- **Illinois Minimum Wage Increase** 6

Kentucky Updates

- **Kentucky Amends its Adoption Leave Act to Ensure Equal Treatment**..... 7
- **New COVID-19 Immunity Protections in Kentucky**..... 7

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NEWS FROM JACKSON KELLY PLLC

While the pandemic slowed down various aspects of our daily lives, it didn't slow down lawmakers. During the most recent legislative session, law makers in Indiana, Illinois, and Kentucky tackled issues ranging from workplace accommodations for pregnant employees (Indiana), the use of employee conviction records in hiring decisions (Illinois), and the type of leave available for adoptive parents (Kentucky). As such, employers in the Tri-State should take note of the new laws and changes outlined below that impacts labor and employment in the region. Below is a summary of some of these new laws.

INDIANA

Indiana's Unemployment Insurance Fraud Prevention Plan

State unemployment systems saw a huge increase in unemployment claims during the pandemic. However, an increase of fraud closely followed. The [U.S. Department of Labor](#) estimates that up to 10% of unemployment insurance benefits were fraudulent.

To help combat this, Governor Holcomb signed House Bill 1152 into law on April 8, 2021. Beginning July 1, 2021, an individual will be liable to repay an overpayment of benefits if the individual falsifies a material fact or fails to disclose wages in order to render it eligible for benefits. These changes should make it easier for the Indiana Department of Workforce Development to detect fraud and collect overpayments.

Which Indiana Employers are Prohibited From Microchipping their Employees?

Last year, Indiana lawmakers made a pre-emptive strike towards implantable technol-

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ogy. Beginning July 1, 2020, employers were prohibited from requiring the implantation of devices as a condition of employment. Fast forward a year, Indiana lawmakers voted to clarify the definition of an “employer” prohibited from microchipping its employees or prospective employees. Beginning July 1, 2021, an “employer” will include the state or an individual, entity, or other governmental entity with one or more employees.

Indiana Enacts Pregnancy Accommodations Law

Joining a majority of states, Indiana has enacted a law addressing pregnancy accommodations. The new law only applies to employers with at least 15 employees. Beginning July 1, 2021, employees may request accommodations for pregnancy, and employers must respond to the requests within a reasonable time frame. Most notably, the law does not require an employer to grant the accommodation nor does the legislation impose a duty upon an employer to make an exception to its policies. However, existing federal or state law may require an accommodation to be provided (*e.g.*, the Pregnancy Discrimination Act of 1978 or the Family and Medical Leave Act). Additionally, the new law prohibits an employer from disciplining, terminating, or retaliating against an employee for seeking or using an accommodation.

Indiana Teachers’ First Amendment Right to Refrain from Joining and Paying Dues to a Union

Beginning July 1, 2021, school employees (*e.g.*, teachers) may now resign from their union at any time. This right is non-waivable by the employee. The new law will also require teachers to authorize union payroll deductions on a yearly basis and school employers to give an annual notice to employees of their right to cease paying dues and to withdraw from their union.

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Indiana's "Say Yes to No More Work Permits"

Starting July 1st, the responsibility of tracking and reporting youth employment will shift from schools to employers. Under the new law, minors will no longer need to obtain work permits through their school. However, employers who employ five or more minor employees per location must register those employees in the Indiana Department of Labor's Youth Employment System ("YES"), while employers with fewer than five minor employees are not required to participate in YES.

The new law will eliminate the need for employers to complete Intent to Hire paperwork and wait for prospective minor employees to get work permits from their schools. It should make hiring and employing minors more efficient and easier. However, the new provisions do not change the work-hour limits for minors, and employers must still comply with these restrictions along with the work hazard restrictions.

New Indiana Law Grants Immunity Related to COVID-19

Beginning February 18, 2021, a person is immune from "civil tort liability for damages arising from COVID-19: (1) on the premises owned or operated by the person; (2) on any premises on which the person or an employee or agent of the person provided property or services to another person; or (3) during an activity managed, organized, or sponsored by the person," unless the person's actions or omissions constituted gross negligence or willful or wanton misconduct. A person is defined as an individual or an entity (*e.g.*, a corporation, company, limited liability company, etc.). While this new law went into effect on February 18, 2021, it is retroactive and applies to a cause that accrues on or after March 1, 2020.

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ILLINIOS

Illinois Provides Additional Protection to Workers with Criminal Records

The Illinois legislature has acted to further limit the extent to which an employer may use conviction records to make employment decisions. On March 23, 2021, Governor Pritzker signed into law the Employee Background Fairness Act. The new law amends the Illinois Human Rights Act and makes it a civil rights violation for an employer to use a conviction record when making employment-related decisions unless the conviction bears a “substantial relationship” to the employment or granting or continuing employment will pose an unreasonable risk to the property of the business or the safety of the public.

775 ILCS 5/2-103.1 defines “substantial relationship” as “a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.” If the employer determines that there is a substantial relationship between the criminal offense and the job or that there is a safety risk, it must consider the following mitigating factors ¹ before taking any adverse action:

- The length of time since the conviction.
- The number of convictions on the record.
- The nature and severity of the conviction.
- The facts or circumstances surrounding the conviction.
- The age of the person at the time of the conviction.
- Evidence of rehabilitation efforts.

¹ These mitigating factors mirror the factors listed by the EEOC in its [2012 Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act](#).

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If the employer determines the employee's conviction record disqualifies the employee, the employer is required to notify the employee of its preliminary decision. The notice must include the disqualifying conviction(s) that was the basis for the decision, a copy of the conviction history, and an explanation of the employee's rights to respond to the employer's preliminary decision. An employer must give the employee five business days to respond to the employer's notification before the employer's decision can be final.

In addition to the pre-adverse action notification, the employer is also required to provide the employee with post-adverse action notification. This notification must include the basis for disqualification and inform the employee/applicant of their right to file with the Illinois Department of Human Rights.

New Equal Pay Certification for Illinois Businesses

Illinois businesses with more than 100 employees in the state are now required to obtain an equal pay registration certificate from the Illinois Department of Labor by March 23, 2024 and recertify every two years. To obtain the certificate, the employer must pay a filing fee and must provide the gender, race, and ethnicity of each employee, along with the employee's total wages. Among other requirements, an employer must also attest that the business is in compliance with various federal and state laws and that it evaluates and corrects wage and benefits disparities. An employer failing to comply with this new certification may be subject to a civil penalty equal to 1% of the employer's gross profits.

Illinois Minimum Wage Increase

Back in 2019, Governor Pritzker signed into law legislation that would annually increase the minimum wage by \$1/hour until it reaches \$15/hour in 2025. On January 1, 2021, the statewide minimum wage increased to \$11/hour.

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KENTUCKY

Kentucky Amends its Adoption Leave Act to Ensure Equal Treatment

Currently, Kentucky's Adoption Leave Act only provides an employee with 6 weeks of reasonable personal leave (*i.e.*, unpaid leave) if the adoptive child is under 7. However, beginning June 28, 2021, the law expands an employee's eligibility by allowing adoptive parents leave if the adoptive child is under 10 and requires employers to treat adoptive parents equal to birth parents. While the minimum duration of leave is still 6 weeks, an employer who provides a greater leave period for birth parents will be required to provide this same amount of leave for adoptive parents. Also, employers are required to match leave benefits (*e.g.*, type, amount, and duration of paid leave) provided to birth parents for adoptive parents. The amended law does, however, exclude from eligibility adoptive parents who are the "fictive kin, stepparent, stepsibling, blood relative, including a relative of half-blood, first cousin, aunt, uncle, nephew, niece, and a person of a preceding generation as denoted by prefixes of grand, great, or great-great, or a foster parent" of the adoptive child.

New COVID-19 Immunity Protections in Kentucky

At the beginning of the COVID-19 pandemic, Governor Beshear signed [Senate Bill 150](#) into law, which protected health care providers from liability when rendering care or treatment to a COVID-19 patient. However, with vaccination rates increasing and COVID-19 cases decreasing throughout the state, Kentucky lawmakers shifted their focus to those ailing businesses and service providers impacted by COVID-19. On April 11, 2021, Kentucky lawmakers enacted [Senate Bill 5](#) to help protect Kentucky business from lawsuits related to COVID-19. The new law provides that premises owners "who follow any executive action to prevent the spread of COVID-19 during the COVID-19" cannot be held liable for COVID-19-related injuries, unless they engaged in "gross negligence, or wanton, willful, malicious, or intentional misconduct." Moreover, under the new law, "essential service providers" cannot be held liable for a "COVID-19 claim," unless the claim arises from the gross negligence, or wanton, willful, malicious, or intentional misconduct of the essential service

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provider. Under the new law, a “COVID-19 claim” means any “claim or cause of action for an act or omission arising from COVID-19 that accrued on or after the date the emergency was declared on March 6, 2020, and until the emergency declaration is withdrawn, revoked, or lapses.” The new law also broadly defines essential service providers to include, among others, charitable and social service providers, health care providers, transportation providers, financial institutions, etc.

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