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Illinois Passes Amendment Providing Expanded Employer Responsibility for Employers Using E-Verify

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The Illinois Right to Privacy in the Workplace Act (the "Act") has been amended to address the steps an Illinois employer using E-Verify must take in the event it receives *written notification* from the federal government (such as the Social Security Administration or the IRS), an outside vendor, or an insurance company that an employee has a discrepancy with their taxpayer ID number or other identifying documents. These written notifications (such as an SSA "no-match" letter) are not uncommon and have been a thorn in the side of employers for years.

The Amendment prohibits employers from taking adverse action (such as termination of employment) against an employee *solely* based on the receipt of the written notification. Rather, the employer is required to provide the written notification to the employee (and to any authorized representative such as a union) within five business days of either receipt or after determining that the employee has an obligation to respond.

The Amendment requires the employer to deliver the original written notification to the employee in person, if possible (otherwise by mail and email). The employer must also advise the employee that (1) it has been notified by the federal agency (or other source) that the employee's identification documents do not appear to match, (2) the time-period in which the employee has to respond (if any), and (3) any action the employer is requiring the employee to take (such as resolving a discrepancy over a social security number). Employees are permitted to have a representative of their choosing in any meeting on the topic with the employer.

Employers who violate the Act can face penalties through enforcement by the Illinois Department of Labor, the Attorney General or by private right of actions. Civil penalties can range from $100 to $1,000 ***per violation***. In addition and similar to the recent amendment to the Illinois Day and Temporary Services Act, "interested parties" may now also bring actions for civil penalties under the Amendment. "Interested parties" are not-for-profit corporations that monitor compliance with worker safety and privacy laws, wage and hour requirements, or other statutory requirements. Interested parties may seek injunctive relief and 10% of statutory penalties assessed, plus attorney's fees and costs.

If you have any questions about how these changes impact your business, or if you receive such a written notification from the federal government or an insurer, please do not hesitate to contact any of the attorneys in Gould & Ratner's Human Resources and Employment Law Practice to discuss the effects of these new measures to your business.