

## New laws that can affect your business in 2022

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Some businesses found 2021 to be very profitable; others not so much.

One thing that all businesses can agree on is that the political noise was loud, and it was a challenging year. Those businesses that did the best seemed to have three qualities – they were adaptable, totally focused and persistent. They were going to carry that ball down to the finish line and score that touchdown.



As we go into 2022, there are several changes in Illinois law that businesses should be aware of so they can avoid expensive legal issues and keep their focus on profits and growth.

One of the changes involves how companies may use noncompete and non-solicitation agreements, which are sometimes referred to as restrictive covenants. Sometimes these restrictive covenants are written into employment agreements that are signed by employees. Sometimes these are stand-alone documents that businesses have their sales team sign.

One use for these restrictive covenants is to protect the company from a sales representative who left the employ of the business and then immediately contacted their clients from that position (and was paid a commission by their previous company), in order to have the customers move over to their new company.

The state law around these covenants was done to protect the businesses that are left by the sales rep and to give a time frame for the business to hire a new rep, and keep the relationship intact, if possible.

As is sometimes the case, companies started using these restrictive covenants to make all employees sign forms to agree to those restrictive covenants, not just higher-paid sales representatives. Some of the restrictive covenants precluded the employee who signed them from working in that industry or working within the geographic location of the business (some included the entire country, or the entire metropolitan area of Chicago), which meant that the employee would be precluded from working in the industry that had worked in at all for a period of years.

The new law, which went into effective on Jan. 1, tightens up when these restrictive covenants can be used:

- Employers cannot have employees sign noncompetition clauses with employees who earn \$75,000 or less and cannot use non-solicitation agreements with employees who earn less than \$45,000 a year or less.
- The salary restrictions for each listed above are adjusted upward in the statute over a number of years.
- The employers must advise employees to consult with an attorney and give time for that to happen.
- There are restrictions also using the restrictive covenants where the employee was laid off due to COVID-19.

Here are other laws impacting businesses in Illinois that took effect on Jan. 1:

- Employers are restricted from asking an applicant's salary history when applying for a job.
- Employers are not permitted to discriminate against an individual because of their association with a person with a disability.
- Employers must provide unpaid time off to victims and family members who have experienced domestic violence.

- Employers may use artificial intelligence to determine if they should have an in-person interview and have to gather data about the race and ethnicity of the applicants who are not afforded an in-person interview.
- Requires that businesses in the hospitality business give training for recognizing human trafficking.
- Provides that an employee whose disciplinary report is disclosed may file a complaint with the Department of Labor.
- Allows an employer to eliminate a child from health insurance coverage in the event that the employer either no longer has a group health insurance plan or the child is no longer eligible for coverage due to federal or state restrictions.
- Lowers the number of employees to five for the Illinois Secure Choice Savings Program to apply to the company. This concerns 401(k) or retirement plans.

Every year, there are changes in the law that impact the employer/employee relationship, as well as many other areas within your business. It is sometimes difficult to keep up with these changes across the board.

Business owners and leaders should take the key step of working with an attorney either on staff, or as an outsourced general counsel. This is the best, most proactive way, to make sure you are up to date on what the new laws entail and how they will affect the way you do business.

- Denice Gierach is an attorney, CPA, Northwestern University business master's graduate, and has owned several businesses from real estate to manufacturing.

She is the lead attorney at Gierach Law Firm in the Chicago area. With more than 30 years of experience, she has been a respected and sought-after resource for businesses looking to grow, sell, solve problems, and succeed long term. Her insights across business areas gives a fuller lens to business issues and needed solutions. Her firm helps businesses grow and succeed with less time spent on legal issues and other time-consuming problems.

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