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CLIENT UPDATE

November 2003

Criminal Identification Act

20 ILCS 2630/5 *et. al.*

On July 18, 2003 the Governor approved Senate Bill 788. You may be wondering, what is Senate Bill 788 and how does it apply to me? Senate Bill 788, now known as Public Act 93-0211, amends the Criminal Identification Act, the means by which **all** employers are able to gain important information about an applicants criminal history.

Under the newly revised act, persons convicted of or placed under supervision for a misdemeanor or arrested without conviction are provided with the option of automatic sealing the arrest and conviction records after a certain number of years as provided by law and completion of the defendant's sentence, *if* the defendant does not have a criminal conviction or supervision within that period.

How Employers Will Be Affected

On January 1, 2004 any criminal record expunged or sealed may not be considered by a private or public entity in employment matters, certification, licensing, revocation of certification or licensure, or registration, with the exception of law enforcement agencies, the Department

of Corrections, State's Attorneys, or other prosecutors. Likewise, applications for employment must be revised to reflect specific language from the statute in order to remain in compliance with the law.

Applications for employment must state that the applicant is not obligated to disclose sealed or expunged records of conviction or arrest. Further, employers may not ask if an applicant has had records expunged or sealed. The sealed records are exempt from disclosure under the Freedom of Information Act.

If you would like more information regarding this act or if you would like to discuss how you can revise your employment applications and interview processes to remain in compliance with the law, please contact our office.

Victims' Economic Security & Safety Act

Public Act 93-0591

Under new State law effective August 25, 2003, employers that employ at least 50 employees, school districts and other State agencies must afford their employees who are victims of domestic or sexual violence, or who have a family or householder member who are victims, up to



twelve weeks of unpaid leave to attend to medical and psychological services and legal assistance in responding to these issues.

The Act was designed to promote the State's interest in reducing domestic violence,

sexual assault and stalking by enabling victims of such violence to maintain the financial independence necessary to leave abusive situations, achieve safety, and to minimize the physical and emotional injuries that naturally occur as a result of such acts.

Employer Obligations

Entitlement for leave and employer obligations under the Act mirrors that required under the Family Medical Leave Act of 1993. Taking into consideration the nature of leave requested under the Victims' Economic Security and Safety Act ("Safety Act") [Public Act 93-0591] there are some notable differences from leave as provided under the FMLA.

In addition to obtaining medical and psychological services the Safety Act provides that an employee is entitled to leave for:

- Safety Planning: to include installation of necessary security measures (eg. Locks, change of telephone and/or moving to a new residence to avoid the aggressor).
- Legal Assistance: to include preparing for or participating in a civil or criminal legal proceeding related to or derived from the violent act(s).

Protection Not Just for Employees

The Act provides protection not only for the employee, but also members of the employee's family and household members are included as well. An employer is prohibited from discriminating against any individual for the following:

- If the individual is perceived to be a victim of violence;
- If the individual requests a reasonable accommodation (eg. Modified schedule, changed telephone number, implementation of a safety procedure in response to an actual or threatened act of violence); or
- If the workplace is disrupted by the action of a person whom the individual states has committed or threatened to commit an act of violence against the individual.

The Department of Labor is charged with the responsibility of enforcement and investigation of charges of discrimination under this Act. If an individual's rights have been violated they may within (3) years after the alleged violation occurs file a complaint with the Department. If discrimination is found to have occurred, the employer may be subject to damages including lost wages, benefits and other compensation including payment of attorney's fees and other costs of bringing the action.

A notice must be placed in your workplace summarizing the requirements under the Act. You can download the notice by going to www.state.il.us/agency/idol/vessa/vessa.htm.

This newsletter should not be regarded as legal advice. Please contact our office to discuss how you can ensure compliance with the laws discussed. This Newsletter can also be viewed online at www.Rhodeandjackson.com.