Downey & Lenkov LLC

Labor & Employment Newsletter

October 2025

Falling Back, Staying Compliant: Timekeeping Tips for Employers This Season

As clocks shift back with the end of daylight saving time, it is a good reminder for employers to review their timekeeping practices. Accurate tracking of employee hours is critical to avoid costly wage and hour violations under the Fair Labor Standards Act (FLSA) and state laws. Here are some practical tips to keep in mind:

1. Account for the Extra Hour
When clocks "fall back," overnight employees working the graveyard shift may work an extra hour. Employers must ensure this additional hour is recorded and compensated appropriately.

2. Avoid Off-the-Clock Work
Employees must be paid for all hours worked, including pre-shift preparation, post-shift wrap-up, or responding to after-hours emails. Supervisors should be trained not to encourage or overlook off-the-clock work.

3. Monitor Automatic Deductions
Automatic meal or break deductions can be risky if employees often work through breaks. Employers should provide a mechanism for employees to report when a meal period was missed or interrupted.

4. Keep Records Accessible and Accurate
Electronic timekeeping systems are helpful, but records must be retained and easily accessible in the event of an audit or dispute. Conduct periodic audits to verify accuracy.

5. Train Managers and Employees
Employees should know how to record their time properly, and managers should understand their role in enforcing compliant practices. Consistent communication reduces errors and liability.

Practice Tip:
As the season shifts, taking time now to audit your company's timekeeping and payroll practices can prevent wage disputes later. Proactive attention to timekeeping can help keep your organization compliant with wage laws.

Vaccine Verdict: Jury Awards $425K to Ex-CTA Worker in Religious Bias Case

An Illinois federal jury rendered a striking decision in favor of former Chicago Transit Authority (CTA) employee Kevin McCormick, a practicing Catholic, awarding him $425,000 in compensatory damages in *McCormick v. Chicago Transit Authority*, No. 1:23-cv-01998 (N.D. Ill. Aug. 29, 2025). The jury found that the CTA unlawfully discriminated against McCormick based on his religious beliefs when denying him an exemption from the agency's COVID-19 vaccination mandate.

Facts at a Glance

- Who: Kevin McCormick, a former CTA employee terminated in April 2022 for refusing the COVID-19 vaccine.
- Basis of Refusal: McCormick invoked his Catholic faith, specifically objecting due to the vaccine's use of fetal cell lines in development or testing.
- Legal Claim: He filed suit under Title VII of the Civil Rights Act, asserting religious discrimination and failure to accommodate.

Jury's Determination

- Following a four-day trial and around six hours of deliberation, the jury sided with McCormick, finding that the CTA failed to properly evaluate or grant his request for religious accommodation.
- The award of **$425,000** reflects the jury's assessment of harm suffered due to the CTA's actions.

Practice Tip:
This case underscores that employers, even public agencies like the CTA, must navigate vaccine accommodation requests with care and genuine consideration. A failure to do so can result in heavy financial and reputational costs. Now more than ever, proper handling of such requests is both a legal necessity and good policy.

Illinois Enacts Military Leave Act, Expanding Protections and Adding Paid Funeral Honors Leave

Effective August 1, 2025, Illinois has amended its Family Military Leave Act, renaming it the Military Leave Act and significantly expanding its scope. Under SB0220, signed into law by Governor Pritzker, the Act now includes a new paid leave requirement for certain employees participating in military funeral honors.

New Paid Leave for Funeral Honors Duties
Employers with 51 or more employees are now required to provide paid leave for employees who serve on funeral honors details. Covered employees may take up to 8 hours per calendar month, with a maximum of 40 hours per calendar year, unless the employer permits additional time.

Who Qualifies?
To qualify for this leave, an employee must:

- Be trained to participate in a funeral honors detail for a veteran's funeral; and
- Be either:
  - A retired or active member of the U.S. Armed Forces, or
  - An authorized provider or registered member of an organization authorized to provide such honors.

Employer Requirements

- Compensation: Leave under the Act must be paid at the employee's regular rate of pay.
- Leave Integrity: Paid time used under the Act must not reduce other forms of paid leave to which the employee is entitled.
- Notice and Documentation: Employees must provide reasonable notice, and employers may request proof of eligibility for the leave.
- Right to Deny Leave: Employers may deny a leave request in limited circumstances, including if granting the leave would result in staffing falling below established minimum levels or impair the safe operation of:
  - Nursing homes
  - Assisted living or independent living facilities
  - Other 24/7 or congregate care facilities

Practice Tip:
Illinois employers with 51+ employees should update their leave policies immediately to reflect the new paid funeral honors leave requirements and ensure compliance with the revised Military Leave Act. HR departments should be prepared to verify employee eligibility and manage scheduling concerns while honoring the Act's intent to support military service.

Changes to Nursing Mothers in the Workplace Act

On August 1, 2025, Governor Pritzker signed into law SB0212, an amendment to the Nursing Mothers in the Workplace Act (the "Act"). The Act requires employers to provide reasonable break time to an employee who needs to express breast milk each time the employee has the need, for one year after the child's birth.

The new amendment to the Act mandates that the employer shall pay the employee during the break time at the employee's regular rate of compensation. Employers cannot require the employee to use paid leave during the break time or reduce the employee's compensation during the break time in any other manner.

Practice Tip:
Employers should review their current policies and update them accordingly to comply with this new law. Employers should also change their timekeeping practices to eliminate any reduction in hours by nursing mothers.

Illinois Federal Court Dismisses Challenge by DOJ

In August 2025, U.S. District Judge Sharon Johnson Coleman issued a ruling dismissing a federal challenge by the U.S. Department of Justice (DOJ) to Illinois' Right to Privacy in the Workplace Act (the "Act"). In the lawsuit, *United States v. State of Illinois*, No, 1:25-cv-04811 (N.D. Ill. 2025), the DOJ alleged that amendments to the Act are preempted by federal law. The amendments to the Act currently prevent employers in the state from terminating employees if their information does not match other forms in the E-Verify program. It also requires employers to notify employees of their rights under E-Verify programs and similar systems. The DOJ claimed these new E-Verify requirements confuse employers, thereby discouraging the use of the program across the state, which it said violates the supremacy clause of the U.S. Constitution.

Judge Coleman dismissed the federal challenge, affirming that Illinois may regulate employment practices in this area. Judge Coleman further ruled that the Act does not improperly intrude upon the federal government's constitutional powers in the space of immigration and foreign affairs. Also, the state's restrictions are lawful and within its authority.

Practice Tip:
This ruling is a clear reminder that when operating in Illinois, employers must stay informed about and be compliant with state-specific employment laws that may diverge from federal policies.

Allegations of Sex and Age Discrimination in Wisconsin Defeated by Consistent Performance Concerns

In *Hagen v. Fond du Lac School District*, No, 24-1688 (7th Cir. 2025), the court considered an allegation by a 54-year-old woman that she was reassigned, due to her sex and/or age, to a job as a principal for an elementary school, after previously being a principal at a high school. Plaintiff alleged violations of Title VII and the ADEA.

In Plaintiff's performance reviews received from the superintendent as a high school principal, there were consistent concerns about "culture" and "climate" as it related to the operations of the high school. Plaintiff was told she would be a "better fit" at the elementary school where she would be principal. Plaintiff was replaced by a 39-year-old male at the high school.

Under Title VII, the court must determine whether Plaintiff's sex was a "motivating factor," while under the ADEA, a Plaintiff must establish that she would not have been moved to another position "but for" her age

The court considered allegations by Plaintiff including:

1. that the superintendent belonged to an exclusively male lunch group, whose members included a male who the superintendent did not fire despite knowing about that teacher's affair with another teacher; and

2. that the superintendent gave a higher evaluation to a member of that male group than was recommended by other staff members. In response to this, the court noted that there were other reasons for this higher evaluation provided to the male teacher, and the failure to fire the other male teacher for an inter-school affair was not factually similar enough to create a presumption of discrimination in this case.

With respect to the age complaints, the court noted that the male teacher who replaced Plaintiff had 15 years of experience as a teacher in the district and had equivalent principal experience as Plaintiff had when she was initially hired as the high school principal. Therefore, the court did not believe that Plaintiff's ADEA discrimination claim was sufficient.

Overall, the court found that Plaintiff was removed from her position as a high school principal because she consistently received poor evaluations as it related to culture and climate and was moved to an elementary school for those non-discriminatory reasons. Further, the court reasoned that the younger male who replaced Plaintiff consistently received better reviews related to the culture and climate factors when he was principal at the elementary school.

Practice Tip:
When making determinations as to adverse employment actions, particularly concerning individuals with protected status, employers should consider whether those employment actions are based upon consistent and documented concerns to support non-discriminatory reasons for the adverse actions. In the case above, Plaintiff did not prevail because the school district had consistently expressed concerns about the culture and climate of her high school and replaced her with a younger male principal whose reviews in those exact areas were superior.

Illinois Workplace Transparency Act: Harsher Restrictions Ahead for 2026 Overview

On August 15, 2025, Governor Pritzker signed the updated Workplace Transparency Act (HB 3638) with the revisions set to take effect June 1, 2026. These amendments significantly broaden employee safeguards and restrict certain employer-imposed contract terms.

1. Expanded Definition of "Unlawful Employment Practice"

The amended Act now covers violations of any federal or Illinois employment law, extending far beyond its earlier emphasis on discrimination, harassment, or retaliation. This includes rules enforced by agencies such as IDHR, IDOL, OSHA, NLRB, EEOC, and the U.S. DOL.

2. Now Protecting "Concerted Activity"

Securing yet more protections, the revised Act forbids employers from hampering employees or even job applicants from engaging in concerted activities, such as group discussions about working conditions or union-related endeavors, aligning with NLRA and Illinois labor statutes.

3. Stricter Rules on Employment and Release Agreements

The Act puts the brakes on one-sided contractual terms. Unilateral clauses, those imposed solely by employers as conditions of employment, such as mandatory arbitration, non-disparagement, or confidentiality provisions tied to releases or settlements, are curtailed. To stand, such clauses must now be mutually agreed upon, accompanied by valid consideration, and meet more exacting criteria than before.

4. Confidentiality Clauses—Now Time-Limited

Termination and settlement agreements will no longer permit indefinite confidentiality:

- These provisions must now expire within five years of the underlying incident.
- This ensures workplace events (especially allegations of misconduct) cannot be indefinitely cloaked.

5. New Remedy: Consequential (Compensatory) Damages

Beyond attorney's fees and court costs, employees can now pursue compensatory damages when challenging unenforceable or unfair contractual provisions. This heightens employer risk in cases involving unlawful terms.

Practice Tip:
Employers should prepare for these changes by revamping standard contract language and work with experienced employment counsel to review all employment, release, and settlement templates to ensure mutuality and compliance under the new framework.

Teacher's Termination Upheld by Seventh Circuit Despite First Amendment Concerns

In *Hedgepeth v. Britton*, No. 24-1427 (7th Cir. 2025), the Seventh Circuit Court of Appeals considered a case involving a high school social studies teacher who was terminated after posting inflammatory messages on her Facebook account. In the wake of the George Floyd protests, Plaintiff posted a series of comments and memes that several of her former students believed were racially insensitive and vulgar. The Facebook posts in question related to a civil war starting and referenced images of high-pressure water hoses being used against civil rights protesters in the 1960s, which indicated protestors in support of George Floyd should have had a pressure cannon pointed at them. Plaintiff set her account to private and did not accept friend requests from current students, but the posts quickly circulated throughout the school community, resulting in complaints from students, parents, staff, as well as media attention. As a result of the disruption caused by her post and a prior suspension for similar conduct, Plaintiff was terminated.

Plaintiff requested a review hearing before the Illinois State Board of Education in which she argued that the Facebook posts were protected by the First Amendment. The Illinois State Board of Education applied the *Pickering* balancing test for government employee speech, which courts use to determine whether a public employer violated an employee's freedom of speech. In *Pickering*, the United States Supreme Court held that "when employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." Whether an employee's speech addresses a matter of public concern, the court indicated, must be determined not only by its content but also by its context. The Illinois State Board of Education determined that the dismissal did not violate her constitutional rights.

Subsequently, Plaintiff filed suit in the Northern District of Illinois, alleging violation of 42 USC 1983, including a First Amendment violation. The District Court granted summary judgment for the Defendant, using the same balancing test. On appeal, the Seventh Circuit affirmed the District Court's Judgment. The court concluded that the school district's interest in addressing actual and potential disruption outweighed the teacher's interest in free expression, and her posts were not entitled to First Amendment protection.

In reaching its conclusion, the court considered the factors under *Pickering* and pointed to a wealth of undisputed evidence of the actual disruption of the high school as a result of the posts. The resulting chaos included the school district needing to change the allocation of resources in order to respond to the public outcry caused by these posts. The court confirmed the lower findings and held that Plaintiff could be terminated without a violation of the First Amendment.

Practice Tip:
In cases involving government employees, employers should strongly consider the nature of the statements made by any employee, coupled with any other issues that employees had, which may compound any basis for dismissal of that employee.

In this case, the court determined that the news media frenzy, the public outcry and the statements made by Plaintiff did not allow for protection of her speech and therefore she was appropriately terminated. If any such issues arise amongst any clients who are public employers, it is worth analyzing the nature of the speech as well as the Pickering test described above in order to determine whether discipline and or termination are appropriate.

Illinois Shifts Fact-Finding Process, Adds New Fines for Employers Under IHRA

Starting January 1, 2026, Illinois will implement two significant updates to how the Illinois Department of Human Rights (IDHR) enforces the Illinois Human Rights Act (IHRA). Notably, fact-finding conferences will no longer be automatically required, and new civil penalties will become available against employers who violate the law.

1. Fact-Finding Conferences: Discretion, Not Duty

Under the existing framework, IDHR must conduct a fact-finding conference for every charge filed, regardless of the case's strength. This mandatory requirement is being replaced by a discretionary model. However, if both parties submit a written request within 90 days of the charge filing date, a conference must proceed, unless the IDHR has already issued its findings. Submitting the request also requires the parties to agree to a 120-day extension of the IDHR's deadline for issuing its findings report. If a party fails to attend a scheduled conference without good cause, the case may be dismissed or result in default.

2. Public-Interest Civil Penalties

For the first time, the IDHR will have the authority to impose civil penalties "to vindicate the public interest" when an employer is found to have violated the IHRA. Penalties may be levied per individual act of discrimination. There will be established caps for the penalties depending on prior violation history as follows:
For respondents with no prior violations under the IHRA, the maximum penalty is $16,000.

If the respondent has one civil rights violation under the IHRA in the prior five-year period from the date of the filing of the charge, the maximum penalty is $42,500.

If the respondent has two or more civil rights violations under the IHRA in the seven-year period from the date of the filing of the charge, the maximum penalty is $70,000.

What Employers Should Do Now:

1. Strategize early for IHRA charges: With conferences no longer mandatory, promptly decide whether to request one and manage the accompanying timeline and extension. These conferences can still be a valuable tool for gathering information and managing case strategy.
2. Upgrade anti-discrimination defenses: Given the new financial risks, employers should reinforce training and monitor workplace culture closely.
3. Monitor IDHR enforcement trends: While the law now allows for civil penalties, the frequency and contexts in which IDHR will use them remain to be seen, so stay alert to emerging patterns.

Firm **News**

Jessica Jackler Secures Dismissal With Prejudice on Defamation and Wrongful Discharge Case

Income Member Jessica Jackler recently secured a dismissal with prejudice from the Will County Circuit Court of a complaint alleging defamation and wrongful discharge by a former employee.

The ruling was issued after a detailed oral argument was presented to the court, which included legal reasons such as failure to state and claim and other affirmative matters warranting dismissal with prejudice. Because the ruling was with prejudice, the plaintiff cannot refile or amend the complaint.

Storrs Downey Successfully Defended an Employment Case Before the ICRC

Capital Member Storrs Downey successfully defended an employment case before the Indiana Civil Rights Commission (ICRC). Based on the evidence Storrs presented, and the lack of such evidence submitted by the complainant, the ICRC found that the complainant was not disabled under the law, he was not terminated based on an alleged disability and he was not denied a reasonable accommodation by the employer.

The ICRC further found that the complainant could perform essential job functions, and reasonable accommodation was provided by the employer despite not requesting the same. Furthermore, they found that he was terminated due to specific noted job misconduct, and he failed to present evidence of similarly situated non-disabled employees who were likewise insubordinate and not terminated.

Congratulations to both Jessica and Storrs!

Downey & Lenkov Attorneys Recognized as Best Lawyers®

We are pleased to announce that four Downey & Lenkov attorneys have been recognized in the 2026 edition of The Best Lawyers in America®.

- Capital Members Kirsten Kaiser Kus and Michael Milstein received this accolade for **Workers' Compensation Law –Employers.**
- Of Counsel Werner Sabo received this accolade for **Construction Law and Litigation.**
- Income Member Timothy Furman has been selected for the **2026 Best Lawyers: Ones to Watch in America list for Workers' Compensation – Employers.**

Kirsten Kaiser Kus Recognized as Influential Women of the Year

Congratulations to Capital Member Kirsten Kaiser Kus! She was recognized as Influential Woman of the Year in Law at the Northwest Indiana Influential Women Association Annual Awards Banquet.

This honor highlights her leadership and contributions alongside more than 1,000 community leaders celebrating the bright future of women in business and law.

Downey & Lenkov LLC

Downey & Lenkov Co-Sponsored AWWC Illinois Event

Downey & Lenkov was proud to co-sponsor the Alliance of Women in Workers' Compensation Illinois Chapter's event on 9/17/25 featuring bestselling author and entrepreneur Jess Ekstrom. Jess shared insights on staying motivated by reconnecting with purpose, sparking creativity and sustaining energy over the long term.

Management & Professional Liability Alliance™

We are a proud co-originating firm of the Management & Professional Liability Alliance (MPLA) which consists of independent law firms which share a commitment to excellence, affordable representation, and integrity in the representation of management and professionals.

The independent law firms of MPLA have extensive experience in handling all types of defense litigation including employment and all professional lines. MPLA firms practice in multiple states including Illinois, Indiana, and Wisconsin amongst several others.

They offer complimentary webinars and actively participate in regional and national conferences. For more information, please contact Ryan Danahey and visit the website at https://www.mplalliance.org/.

Who We Are

Downey & Lenkov LLC is a full-service law firm with offices in Illinois and Indiana. Our expertise spans across several practice areas, providing transactional, regulatory and business solutions for clients across the nation. The firm's continued growth is a result of an aggressive, results-oriented approach. Unlike larger law firms however, we do not face massive overhead and are able to charge more reasonable rates that both small and larger employers can more readily afford.

We evolve with our clients, representing Fortune 500 and small companies alike in all types of disputes. Downey & Lenkov is a team of experienced, proactive and conscientious attorneys that have been named Leading Lawyers, Super Lawyers, Rising Stars and AV Preeminent

Cutting Edge Continuing Legal Education

If you would like us to come to you for a free seminar, Click here or email Storrs Downey.

Our attorneys provide free seminars on a wide range of general liability topics regularly. We speak to individuals and companies of all sizes. Some national conferences that we've presented at are:

- American Conference Institute's National Conference on Employment Practices Liability Insurance
- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-Conference
- Employment Practices Liability Insurance ExecuSummit
- National Workers' Compensation and Disability Conference & Expo
- National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Newsletter Contributors

Jessica Jackler and Ryan Danahey contributed to this newsletter.

View more information on our **Labor & Employment practice.**

- Business Law
- Condominium Law
- Construction Law
- Entertainment Law
- General Liability
- Healthcare Law
- Insurance Law
- Intellectual Property
- Products Liability
- Professional Liability
- Real Estate
- Transportation Law
- Workers' Compensation