

January 2020 Newsletter Article

Happy New Year! Cannabis is not the only thing on everyone's mind in this new year- there is other legislation affecting community associations, management companies and property owners. The Illinois Workplace Transparency Act, for example, has already foisted new obligations on employers beginning in 2019, and continuing in 2020. Additionally, Cook County landlords have new requirements imposed upon them as a result of the 2020 Just Housing Ordinance. We hope you enjoy both articles.

If you have any questions about the articles that follow, please contact Chuck Keough at cmk@kmlegal.com. All of us at Keough & Moody appreciate your continued support. Please write us a review by clicking on one of the links at the bottom of the newsletter!

Chuck Keough

Broader Employee Protections

The Illinois Workplace Transparency Act brings changes and additions to existing law that has increased discrimination and harassment protections for Illinois employees (and even non-employees). Most notable are the provisions related to sexual harassment. All Illinois employers, including management companies, must now provide annual sexual harassment prevention training to its employees by the end of the year. The first deadline for such training is effectively December 31, 2020. Evidence of such training must be provided to the Illinois Department of Human Rights (IDHR) upon request. The IDHR will offer a free online training program.

The new Act has also created certain limits on the use of non-disclosure and non-disparagement agreements, and arbitration clauses, for addressing harassment, discrimination and retaliation claims. The intent here is to prevent employers from using employment policies or other agreements to dissuade reports of sexual harassment. Boards and managers should consult with legal counsel when reviewing, modifying or drafting any such documents.

Another notable change is that non-employees are now also protected against harassment. This means that non-employees (e.g, independent contractors) who were previously excluded from harassment protections can now bring unlawful harassment claims. A claim for unlawful discrimination or harassment can now be based on "actual or perceived" protected status (e.g., race, religion), and a work environment is no longer limited to a physical location. Managers who become aware of harassment should be advised to take immediate corrective measures and keep records of all measures taken. Effective July 1, 2020, an employer must file a report for any year in which an adverse judgment or ruling was made against it for any employment discrimination or workplace harassment claim.

See Illinois Public Act 101-0221 (Illinois Workplace Transparency Act)

Rental Application Screening

A recent amendment to the Cook County housing ordinance impacts the way that landlords located in Cook County, including association landlords, must handle screenings of applicants' criminal records when selecting tenants for association rentals. It is now unlawful to deny housing or modify the terms of a rental agreement based on an *arrest* record, juvenile record, or conviction that has been expunged, sealed or pardoned.

Additionally, there is now a mandatory pre-screening process for prospective tenants. First, after notifying prospective tenants of the selection criteria that the association will use in making its decision, those prospective tenants must be pre-screened and notified of the results of the pre-screening before a criminal history is requested. Next, if the prospective tenant has a criminal record including a conviction, within five days, he or she must be provided a copy the criminal conviction record and five days to question the accuracy and relevance of the criminal history. Thereafter, a written decision must be issued to the prospective tenant within three days. In making its decision, the association must conduct an individualized assessment of convictions from the previous three years and any convictions that require sex offender registration or child sex offender residency restrictions. Note that the association is not required to rent to a person who requires sex offender registration or has child sex offender residency restrictions. Any denial must be based on a determination that the prospective tenant poses a "demonstrable risk." That is, he or she is likely to harm others or cause serious damage to property. If the association decides to deny housing, written notice of the decision must include the reasons for the denial and the right to file a complaint with the Cook County Human Rights Commission.

This recent amendment, known as the Just Housing Ordinance, will not be enforced until January 31, 2020. Thus, associations have some additional time to ensure that their rental applicant screening procedures are compliant with the ordinance.

See Section 42-38 of the Cook County Human Rights Code (Just Housing Ordinance)