

 **ILLINOIS COUNCIL OF SCHOOL ATTORNEYS** 33rd ANNUAL
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Labor & Employment Lightning Round

Administrator Severance Agreements

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 **ILLINOIS COUNCIL OF SCHOOL ATTORNEYS**

Severance Agreements Due to Sexual Harassment and Sexual Discrimination (50 ILCS 205/3c) Effective 8/23/19

Applies to a severance agreement between a unit of local government, school district, community college district or other local taxing body, and an employee or contractor who has been “found to have engaged in sexual harassment or sexual discrimination.”

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Severance Agreements Due to Sexual Harassment and Sexual Discrimination (50 ILCS 205/3c) Effective 8/23/19

Within 72 hours of approval of the severance agreement, the public body is required to publish on its website and make available to the news media for inspection and copying:

1. the full name and title of the employee or contractor;
2. the amount of the severance payment;
3. the finding that the employee or contractor has engaged in sexual harassment or sexual discrimination; and
4. the date, time, and location of the meeting at which the severance agreement was approved.

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Severance Agreements Due to Sexual Harassment and Sexual Discrimination (50 ILCS 205/3c) Effective 8/23/19

This information may be withheld if it is determined that disclosure would:

1. interfere with pending or actually and reasonably contemplated law enforcement proceedings;
2. interfere with pending or reasonably contemplated legal or administrative proceedings initiated by the victim;
3. result in the direct or indirect disclosure of the identity of a victim who has not consented to disclosure; or
4. endanger the life or safety of the victim.

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Severance Agreements Due to Sexual Harassment and Sexual Discrimination (50 ILCS 205/3c) Effective 8/23/19

The disclosure requirements of the statute do not supersede the confidentiality provisions of the severance agreement and do not limit disclosure under the Freedom of Information Act.

A unit of local government does not incur liability as a result of compliance with the statute, except for willful or wanton misconduct.

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Government Severance Pay Act (5 ILCS 415/1) Effective 1/1/19

Applies to severance pay provisions in a contract between a unit of local government and an officer, agent, employee, or contractor.

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Government Severance Pay Act (5 ILCS 415/1) Effective 1/1/19

Amended effective 8/2/19 to exclude contracts or employment agreements for individuals employed by the department of intercollegiate athletics of a college or university when the employee's compensation is funded by non-State-appropriated funds.

Non-State-appropriated funds include revenues from athletic events or activities, gifts or donations, or any combination thereof.

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Government Severance Pay Act (5 ILCS 415/1) Effective 1/1/19

Any contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, which contains a provision for severance pay must include the following provisions:

1. a limit on the severance pay to an amount not greater than 20 weeks of compensation; and
2. a prohibition of severance pay when the officer, agent, employee, or contractor has been fired for misconduct as defined in the statute.

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Government Severance Pay Act (5 ILCS 415/1) Effective 1/1/19

Misconduct Includes:

1. A deliberate violation of reasonable standards of behavior;
2. Intentional carelessness or negligence to a degree that manifests culpability or wrongful intent;
3. Chronic absenteeism or tardiness following a written reprimand or warning;
4. A willful and deliberate violation of State standards that could cause employer to be sanctioned or lose its license; and
5. A knowing violation of an employer's reasonable rules.

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Government Severance Pay Act (5 ILCS 415/1) Effective 1/1/19

Severance pay is defined as actual or constructive compensation, including salary, benefits, or perquisites for employment services yet to be rendered by an employee who has recently been or is about to be terminated.

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Workplace Transparency Act (101 ILCS 0221) Effective 1/1/20

In relevant part to this discussion, applies to settlement agreements and termination agreements. Settlement agreements are defined as an agreement between an employee, prospective employee, or former employee and an employer to resolve a dispute or legal claim. Termination agreements are defined as an agreement between an employee and an employer terminating the employment relationship.

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Workplace Transparency Act (101 ILCS 0221) Effective 1/1/20

A settlement or termination agreement may contain promises of confidentiality provided:

1. confidentiality is the documented preference of the employee and is mutually beneficial to both parties;
2. the employee is notified in writing of his or her right to have an attorney review the agreement prior to execution;
3. there is valid, bargained for consideration;
4. the agreement does not waive any claims that arise after the date of execution;

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Workplace Transparency Act (101 ILCS 0221) Effective 1/1/20

A settlement or termination agreement may contain promises of confidentiality provided: (continued)

5. the employee is given 21 calendar days to consider the agreement before signing but may sign at any time during the 21 days knowingly and voluntarily waiving any further time for consideration;
6. the employee has 7 calendar days after signing to revoke the agreement unless knowingly and voluntarily waived;



Workplace Transparency Act (101 ILCS 0221) Effective 1/1/20

The agreement may not unilaterally prohibit the employee from making truthful statements or disclosures regarding unlawful employment practices or to testify in a proceeding concerning alleged criminal conduct or unlawful employment practice on the part of the employer.

The agreement may not prohibit an employee from reporting allegations of unlawful conduct to federal, State, or local officials for investigation or participating in proceedings before any federal, State, or local government agency enforcing discrimination laws.