

Illinois Governor Signs New Severance Law, Limiting Public Employee Severance Options

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The Government Severance Pay Act (P.A. 100-895) has implications of severely limiting the ability of public employers to negotiate severance packages and reduce litigation risks. The new law, which was signed on August 14, 2018, by the Governor and which is effective January 1, 2019, requires that any covered unit of government that enters into or renews a contract or employment agreement must include the provisions in the contract which restrict severance pay to no more than 20 weeks of compensation and restrict the availability of severance payment at all if the employee is terminated for “misconduct.” The Act defines “misconduct” to include:

- conduct that is a deliberate violation or disregard of reasonable standards of behavior of an employee
- intentional and substantial disregard of the employer's interests or the employee's duties
- chronic absenteeism or tardiness in deliberate violation of known policy after a reprimand
- willful and deliberate violation of a state standard or regulation
- violation of the employer's rules
- other conduct, including criminal assault or battery on an employee, customer, invitee or abuse or neglect of someone under the employee's professional care

While the Act explicitly states that it does not create an entitlement to severance pay, it is very likely that once these provisions are placed in a contract, separating employees will demand severance pay – even in the absence of a cognizable claim against the employer. Further, the Act drastically eliminates an employer's ability to negotiate a separation and release where the departing employee has substantial claims and allegations that would result in costly litigation.

The Act is silent as to its effect on existing contracts and collective bargaining agreements, but all public employers should be mindful of these new requirements in drafting contracts, moving forward.