


Mercado v. S&C Electric Company

- The circuit court granted S&C's motion to dismiss finding that Plaintiffs' alleged underpayment was satisfied in whole by the adjusted payments made to S&C.
- The court also found that any bonuses "that are not measured by or dependent on hours worked" are properly excluded from the "regular rate of pay" for calculation of overtime wages.
- The appellate court upheld the dismissal, and Plaintiffs appealed to the Illinois Supreme Court.

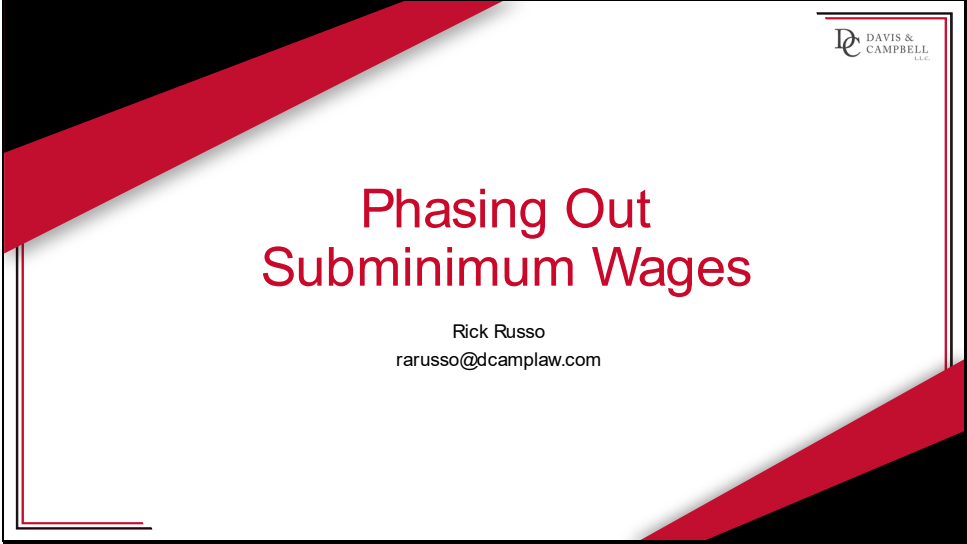


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Mercado v. S&C Electric Company

- The Illinois Supreme Court reversed the lower courts' rulings and reinstated Plaintiffs' complaint.
- The Illinois Supreme Court found that a non-discretionary incentive bonus does not fit within the statutory exclusion if it was tied to employees' work performance metrics and not given freely as a gift would be.
- The Illinois Supreme Court also found that Plaintiffs claims for damages were valid because the adjusted payments did not include monthly interest, treble damages, attorney fees or costs.





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Phasing Out Subminimum Wages


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Fair Labor Standards Act §14(c)

- Section 14(c) of the FLSA provides employers with ability to apply for and obtain certificates from the Department of Labor that authorize employers to pay subminimum wages to workers with disabilities that impair their productivity for the work they perform.
- A worker who has disabilities for the job being performed is one whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury.
- Disabilities which may affect productive capacity include blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism and drug addiction.


Fair Labor Standards Act §14(c)


- The following, taken by themselves, are not considered to be disabilities for purposes of paying subminimum wages: education disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.
- Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed. The fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of a subminimum wages.

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The Status of E-Verify in Illinois


- 1996 – E-Verify established through Act of Congress
- 2007 – State of Illinois passed a law barring employers from using E-Verify
- 2009 – federal court in Springfield ruled that the Illinois law violated the Supremacy Clause of the U.S. Constitution
- 2010 – Illinois amends the Right to Privacy in the Workplace Act by adding Section 12, requiring employers enrolling in E-Verify to review information on the Illinois DOL website on the accuracy of the system and the approximate financial burden and expenditure of time that the system requires of employers; also requires employers to post notices and take E-Verify training.

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The Status of E-Verify in Illinois


- January 1, 2025 – Section 13 added to Right to Privacy in the Workplace Act
- If employer contends there is discrepancy in employment verification information, employer must provide specific documents (the originals) on which contention is based to employee, with instructions on how the employee can correct the required document, and provide employees the right to representation during meetings with employer.



The Status of E-Verify in Illinois


- Subsection (j) of Section 13 of the Right to Privacy in the Workplace Act provides that nothing in the section shall be interpreted, construed or applied to restrict or limit an employer's compliance with a memorandum of understanding concerning the use of the E-Verify system.

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The Status of E-Verify in Illinois

- *United States v Illinois*
- On May 1, 2025, the federal government filed suit against Illinois in federal court in Chicago, alleging that the E-Verify portions of Sections 12, 13 and 15 of the Right to Privacy in the Workplace Act were pre-empted by federal immigration law (the Immigration Reform and Control Act).
- On August 19, 2025, the federal district court granted the State's motion to dismiss the lawsuit and denied a motion for preliminary injunction filed by the U.S., leaving the state law in place.
- Employers are required to comply with the notice, posting and training requirements and the personal representative requirement in the RPWA.

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**The Change to the
Workweek Ordinance**

- A covered employee previously had to make less than \$50,000 per year (\$26.00/hour)
- Effective 7/1/25, it is now \$62,561 per year (\$36.00/hour)

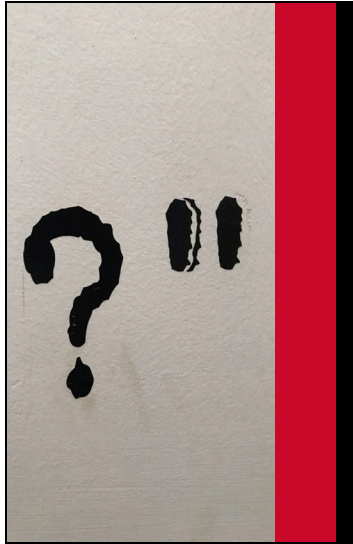
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IDHR Changes No Longer Require Fact Finding Conferences

- Senate Bill 2487 was signed into law on August 15, 2025, which eliminated mandatory fact-finding conferences at the IDHR.
- This will help streamline the process and reduce costs to employers.
- Can still have a conference if both parties request it in writing within 90 days of the charge being filed. The IDHR also may call one as well.
- Applies to charges filed After August 15, 2025.


What Did The Court Do?

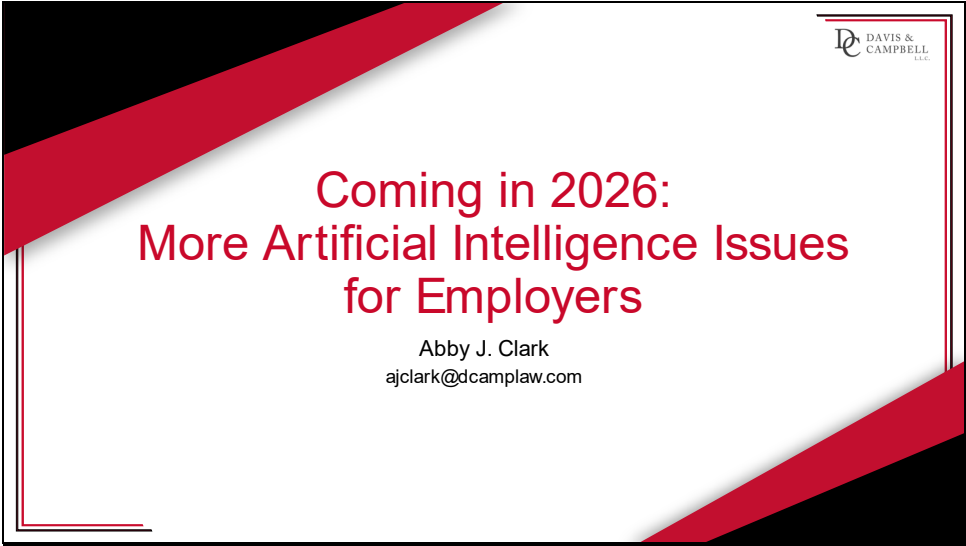
- Goodrich thus argued Martin's claims were barred by the ODA's exclusive remedy provisions, and that she was not entitled to an administrative recovery because Rodney's cancer did not timely develop within the statutory timeframes for seeking compensation under the act.
- The Illinois Supreme Court held that the Illinois General Assembly's amendments to the ODA allow plaintiffs to seek relief in court under certain circumstances, waiving the statute's exclusive remedy provisions when an employee's injury does not manifest within the ODA's limitations periods.



What Does This Mean?

- Illinois employers may be liable in civil court for exposure to employees outside the time frame of the Occupational Disease Act.
- Employers cannot claim it is time barred or that the administrative hearing process is the only remedy.
- This would appear to put employers on notice where there are known exposures to chemical (or unknown) and prepare for possible claims based upon those exposures (such as asbestos).

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Coming in 2026: More Artificial Intelligence Issues for Employers

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Family Neonatal Intensive Care Leave Act

- Employer may require reasonable verification of child's length of stay in NICU but may not request protected health information.
- Health insurance benefits must be maintained during period of leave.
- Employer cannot require employee to provide replacement worker.
- Employee is entitled to reinstatement to former position or substantially equivalent one upon conclusion of leave.



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Family Neonatal Intensive Care Leave Act

- Act contains a prohibition against retaliation.
- Employee may file complaint with Illinois DOL within 60 days after last event constituting alleged violation.
- IL DOL may file suit to collect unpaid wages, damages and civil penalties of up to \$5,000.
- Employee may file private lawsuit in circuit court. Circuit court may order injunctive relief and any other equitable relief necessary and appropriate to redress the violation.



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Credits



Activity ID: 716243
4 Credit Hours Awarded



Activity ID: 25-MQUHM
4 SHRM PDC Awarded

What to Expect?

You'll receive a follow-up email tomorrow, which will include your HRCI & SHRM credits (*also available on the last page of your handout*), a link to the 'Resource Page', and the survey link.

Tomorrow we will be hosting this program again, but virtually. That program will be recorded. Once the recording is available, it will be added to the 'Resource Page. That recording will be available to you until December 16, 2025.
