LEXVID

MAX BARACK, PARTNER, THE GARFINKEL GROUP, LLC

DISCLAIMER

- This is just a brief overview of one general cause of action within employment law in the context of the COVID-19 pandemic.
- We do not have time to cover everything relevant, so please keep in mind that this is not exhaustive.

DISCL AIMER

- Employers and employees have other rights and obligations not enumerated in this presentation. The U.S. and Illinois Departments of Labor, the National Labor Relations Board ("NLRB"), the Equal Employment Opportunity Commission ("EEOC"), the Illinois Department of Human Rights ("IDHR"), the Occupational Safety and Healthy Administration ("OSHA"), the Centers for Disease Control ("CDC"), and U.S. and Illinois Departments of Health provide countless fact sheets, guidelines, and other helpful and user-friendly resources that people should consult for more exhaustive and detailed requirements and best practices.

OVERVIEW

- This includes some of the options for representing workers during the Covid-19 pandemic that frequently come up in the context of whistleblower and retaliatory discharge actions.
- Presentation intended to provide a framework for what you should consider.
- Feel free to reach out for clarification or follow-up questions.

AT-WILL EMPLOYMENT

- General Rule in Illinois (and most states):
  - It means that an employer can terminate an employee at any time for any reason, except an illegal one, or for no reason without incurring legal liability.
  - Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences.
  - Empty employment agreements are common.

AT-WILL EMPLOYMENT (CONTINUED)

- Common restrictions on work movement, access to legal action.
  - Restrictive covenants
  - Mandatory arbitration
  - Jury waivers

EXCEPTIONS TO AT-WILL EMPLOYMENT

- Your "tools" for plaintiff-side employment law representation:
  - Common law exception(s)
  - Statutory exceptions:
    - State
    - Federal
    - Municipal

STATUTORY EXCEPTIONS

- Illegal reasons for firing someone (NON-EXHAUSTIVE BRIEF OVERVIEW):
  - Based on protected characteristics under various civil rights statutes:
    - Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* ("Title VII") prohibits employment discrimination on the basis of:
      - Race, color, religion, sex, and national origin.
        - "Sex" now covers gender identity and sexual orientation.

STATUTORY EXCEPTIONS (CONTINUED)

- Illegal reasons for firing someone (NON-EXHAUSTIVE BRIEF OVERVIEW CONTINUED):
- Illinois Human Rights Act, 775 ILCS 5 *et seq*. ("IHRA")
  - Race, color, religion, sex, national origin, citizenship status (with regard to employment) ancestry, age (40 and over), order of protection status, marital status, familial status (with regard to housing), physical or mental disability, arrest record, military status, sexual orientation, and unfavorable discharge from military service.
    - Now covers employers with one employee.

STATUTORY EXCEPTIONS (CONTINUED)

- Illegal reasons for firing someone (continued):
  - Age Discrimination in Employment Act of 1967 ("ADEA") forbids employment discrimination on the basis of:
    - Age (people aged 40 or older it does not protect workers under the age of 40).

STATUTORY EXCEPTIONS (CONTINUED)

- Americans with Disabilities Act of 1990 ("ADA") prohibits employment discrimination on the basis of:
  - Individuals with a disability, as defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE

- At-will remains the general rule.
- Common law exception.
- The tort was first recognized by the Illinois Supreme Court in *Kelsey v. Motorola, Inc.*, 74 Ill.2d 172 (Ill. 1978).
  - Workers' compensation retaliatory discharge.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- To sustain a cause of action for retaliatory discharge based upon the filing of a workers' compensation claim, an employee must prove:
  - (1) that they were an employee before the injury;
  - (2) that they exercised a right granted by the Act; and
  - **(3) that they were discharged and that the discharge was causally related to his filing a claim under the Act.**
    - *Siekierka v. United Steel Deck, Inc.*, 868 N.E.2d 374, 380 (3d Dist. 2007).
- Causation usually the issue.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Under *Kelsey* – You cannot force a worker to choose between their job and pursuing workers' compensation rights.
- Illinois Supreme Court begins to recognize workers' compensation retaliatory discharge.
  - *Kelsey* court:
    - Affirms compensatory damage award.
    - Reverses punitive damages for that specific case, but makes clear that such damages are available moving forward.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Post-*Kelsey*: workers' compensation retaliatory discharge: remains a viable cause of action – codified under the Workers' Compensation Act:

> (h) It shall be unlawful for any employer, insurance company or service or adjustment company to interfere with, restrain or coerce an employee in any manner whatsoever in the exercise of the rights or remedies granted to him or her by this Act or to discriminate, attempt to discriminate, or threaten to discriminate against an employee in any way because of his or her exercise of the rights or remedies granted to him or her by this Act.

820 Il. Comp. Stat. Ann. 305/4.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Other notes:
  - Plaintiffs can only bring causes of action against their employers, not the employee or agent of the employer (in a workers' compensation retaliatory discharge case). *See Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill.2d 12 (1998).

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Other notes:
  - Plaintiff must be fired (or forced to resign).
  - There is no cause of action for a demotion or discrimination. *See Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill.2d 29 (1994).
    - Note: *Hartlein v. Illinois Power* Co., 151 Ill. 2d 142, 176 Ill. Dec. 22, 601 N.E.2d 720 (1992) (directing employee on disability, collecting workers' compensation, to begin search for job with other employer since no light duty positions were available does not violate public policy).

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Relevance to Covid-19 exposure (REMINDER: I AM NOT A WORKERS' COMPENSATION ATTORNEY):
  - Rebuttable presumption in Illinois for workplace contracted Covid-19 between March 9, 2020 and December 31, 2020.
  - If fired for contracting Covid-19 at work AND filing a workers' compensation claim…protected by common law retaliatory discharge.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- *Post-Kelsey*, the tort expands to cover discharges that violate public policy.
  - *Palmateer v. International Harvester Company,* 85 Ill.2d 124, 52 Ill.Dec. 13, 421 N.E.2d 876 (1981):
    - Illinois Supreme Court expanded the tort to protect "whistle-blowers," *i.e.* those who report illegal or improper conduct.
    - Same general elements of tort must be proven.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Elements of the non-workers' compensation/whistleblower retaliatory discharge claim are the same:
  - To succeed on a claim of retaliatory discharge, a plaintiff must show "that she was (1) discharged; (2) in retaliation for her activities; and (3) that the discharge violates a clear mandate of public policy." *Lanning v. Morris Mobile Meals, Inc.*, 308 Ill.App.3d 490 (3d Dist. 1999).
- Causation *still* usually the issue.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CITIZEN CRIME FIGHTER CONTINUED)

- Whistleblower retaliatory discharge:
  - "A discharged employee may sue her employer for the common law tort of retaliatory discharge if her discharge was in retaliation for certain actions that are protected by the public policy of Illinois, including retaliation for complaints about an employer's unlawful conduct." *Brandon v. Anesthesia & Pain Mgt. Associates, Ltd.*, 277 F.3d 936, 940–41 (7th Cir. 2002).

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Protected activity recognized:
  - Reporting to government body/agency
  - Reporting/complaining internally
    - *Lanning v. Morris Mobile Meals, Inc.*, 308 Ill.App.3d 490 (3d Dist. 1999)
  - Refusing to engage in certain behaviors
    - *Wheeler v. Caterpillar Tractor Co.,* 108 Ill.2d 502, 509-11, 485 N.E.2d 372, 376-77 (1985)

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Public policy – found in Illinois's constitution and statutes and, when they are silent, in its judicial decisions. *See Daoust v. Abbot Laboratories*, 2007 WL 118414 (N.D. Ill. 2007) (unreported).
  - Question of law, not fact.
- There is no precise definition of what constitutes a clearly mandated public policy. *Geary v. Telular Corp.,* 341 Ill.App.3d 694 (Ill.App.Ct.2003).
- Not necessary to cite a specific statute. *See Stebbings* and *Belline v. K-Mart Corp.*, 940 F.2d 184, 187 (7th Cir. 1991).

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Public policy –
  - "There is no precise definition of the term. In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. It is to be found in the State's constitution and statutes and, when they are silent, in its judicial decisions. [Citation.] Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed." *Palmateer v. International Harvester Co.,* 85 Ill.2d 124, 132-133, 421 N.E.2d 876, 878-879 (Ill. 1981)).

    Stebbings v. Univ. of Chicago, 312 Ill. App. 3d 360, 365, 726 N.E.2d 1136, 1140 (2000)

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- Examples of discharges that violate public policy:
  - Reporting public health concerns
  - Refusals to work in unsafe working conditions (as opposed to reporting):
    - *Wheeler v. Caterpillar Tractor Co.*, 108 Ill.2d 502, 509-11, 485 N.E.2d 372, 376-77 (1985):
      - The Illinois Supreme Court holds that an employee may maintain a retaliatory discharge claim when he is terminated for refusing to work under conditions that contravene a clearly mandated public policy

WHEELER V. CATERPILLAR TRACTOR CO.

- Reporting public health concerns
- Refusals to work in unsafe working conditions (as opposed to reporting):
  - *Wheeler v. Caterpillar Tractor Co.,* 108 Ill.2d 502, 509-11, 485 N.E.2d 372, 376-77 (1985):
    - The Illinois Supreme Court holds that an employee may maintain a retaliatory discharge claim when he is terminated for refusing to work under conditions that contravene a clearly mandated public policy.

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- *Wheeler v. Caterpillar Tractor Co.*:
  - Illinois Supreme Court
  - Applied the tort of retaliatory discharge in a situation where a worker was fired for refusing to engage in conduct that violated public policy (as opposed to reporting an employer for violating the law).

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- *Wheeler v. Caterpillar Tractor Co.*:
  - An employee of Caterpillar Tractor Company alleged he was fired for refusing to use a machine with radioactive material.
  - Plaintiff alleged that the unit was in a dangerous condition that violated federal safety regulations promulgated by the Nuclear Regulatory Commission.
  - The supreme court recognized as a basis for his claim the policy of "protection of the lives and property of citizens from the hazards of radioactive material."

FIRST TOOL: COMMON LAW RETALIATORY DISCHARGE (CONTINUED)

- *Stebbings v. Univ. of Chicago*, 312 Ill. App. 3d 360, 726 N.E.2d 1136 (2d Dist. 2000):
  - Illinois Appellate Court upheld plaintiff's retaliatory discharge claim.
  - Plaintiff alleged he was fired for insisting that the radon exposure to participants in a university study be reported to the institution funding the project.
  - The court held that the tort protects whistleblowers who report illegal or improper conduct.

STEBBINGS (CONTINUED):

- Plaintiff argued that his firing violates the public policy behind *Wheeler* and section 5851 of the Energy Reorganization Act (42 U.S.C. § 5851 (1994)) of protecting of the lives and property of citizens from the hazards of radioactive material.
- Plaintiff argued that this policy was also demonstrated in the Personnel Radiation Monitoring Act (420 ILCS 25/0.01 *et seq.* (West 1996)), the Radiation Installation Act (420 ILCS 30/0.01 *et seq.*, the Radon Mitigation Act (420 ILCS 50/1 *et seq.*, and the Radiation Protection Act of 1990 (420 ILCS 40/1 *et seq.*
- Defendant argued that the statutes in question did not apply to the laboratory work in question – the court disagreed.

STEBBINGS (CONTINUED):

- "The test for determining if the complaint states a valid cause of action is whether the public policy clearly mandated by the cited provisions is violated by the plaintiff's discharge." *Stebbings v. Univ. of Chicago*, 312 Ill. App. 3d at 368, 726 N.E.2d at 1142 (*quoting Barr,* 106 Ill.2d at 527, 88 Ill.Dec. 628, 478 N.E.2d at 1357.
- "The application of this test necessarily involves determining what the public policy is behind the enactment or adoption of the particular provision." *Id.*

FREDRICK V. SIMMONS AIRLINES, INC.

- *Fredrick v. Simmons Airlines, Inc.,* 144 F.3d 500 (7th Cir.1998)
  - The plaintiff was an airline pilot.
  - Plaintiff alleged that he was fired for attempting to warn people about an unsafe model of airplane used by his airline employer.
  - Plaintiff alleged that his firing was contrary to the state public policy of providing safe air travel, as expressed in the Illinois Aeronautics Act (620 ILCS 5/1 *et seq.*).

FREDRICK V. SIMMONS AIRLINES, INC. (CONTINUED)

- Section 42 of the Illinois Aeronautics Act provides, "The general public interest and safety, the safety of persons operating, using, or traveling in, aircraft, and of persons and property on the ground, and the interest of aeronautical progress requir[e] that aircraft operated within this State should be airworthy." 620 ILCS 5/42.

FREDRICK V. SIMMONS AIRLINES, INC. (CONTINUED)

- *Frederick* defendant argued that Plaintiff could not invoke the policy he cited because it did not apply to aircraft engaged in interstate or international commercial flights, like the planes that about which the plaintiff complained.
- In short: defendant argued the public policy plaintiff cited did not apply.
- The 7th Circuit rejected defendant's logic.

FREDRICK V. SIMMONS AIRLINES, INC. (CONTINUED)

- The general public policy declared by the statute in *Fredrick (*airplanes operated in Illinois should be airworthy) was not limited to just the planes in the statute.
- Ties to *Stebbings*, *Wheeler*?
  - "In the same way, *Wheeler* and the statutes cited *Stebbings* declare a general policy of protecting Illinois citizens from the hazards of radioactive material. This policy is not limited to the particular people who work in the environments regulated by the laws."

    Stebbings v. Univ. of Chicago, 312 Ill. App. 3d 360, 369, 726 N.E.2d 1136, 1143 (2000)

PUBLIC HEALTH & SAFETY RETALIATORY DISCHARGE

- Takeaway?
  - The statute does not have to apply to the firing, but the firing must violate the public policy articulated by the statute.

SO WHAT?

- Retaliatory discharge is an option to protect workers fired for complaints or refusals related to Covid-19.
- How?
  - Think *Stebbings*, *Wheeler, Frederick*.

ILLINOIS WHISTLEBLOWER ACT

- Illinois Whistleblower Act 740 Ill. Comp. Stat. Ann. 174/1, *et seq.* ("IWA") prohibits:
  - Wider array of protections than the tort of retaliatory discharge does.
    - (i.e., not just protection against termination for specific disclosures or refusals).

ILLINOIS WHISTLEBLOWER ACT (CONTINUED)

- Who's covered?
  - "Employer" means: an individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State, including a political subdivision of the State; a unit of local government; a school district, combination of school districts, or governing body of a joint agreement of any type formed by two or more school districts; a community college district, State college or university, or any State agency whose major function is providing educational services; any authority including a department, division, bureau, board, commission, or other agency of these entities; and any person acting within the scope of his or her authority express or implied on behalf of those entities in dealing with its employees.

    740 Ill. Comp. Stat. Ann. 174/5

ILLINOIS WHISTLEBLOWER ACT (CONTINUED)

- Who's covered?
  - "Employee" means any individual who is employed on a full-time, part-time, or contractual basis by an employer. "Employee" also includes, but is not limited to, a licensed physician who practices his or her profession, in whole or in part, at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State.

    740 Ill. Comp. Stat. Ann. 174/5

PROHIBITED POLICIES

- § 10. Certain policies prohibited. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

740 Ill. Comp. Stat. Ann. 174/10

RETALIATION FOR CERTAIN DISCLOSURES PROHIBITED

§ 15. Retaliation for certain disclosures prohibited.

- (a) An employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.
- (b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

740 Ill. Comp. Stat. Ann. 174/15

RETALIATION FOR CERTAIN REFUSALS PROHIBITED

§ 20. Retaliation for certain refusals prohibited.

- An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act.

740 Ill. Comp. Stat. Ann. 174/20

OTHER RETALIATION

§ 20.1. Other retaliation.

- Any other act or omission not otherwise specifically set forth in this Act, whether within or without the workplace, also constitutes retaliation by an employer under this Act if the act or omission would be materially adverse to a reasonable employee and is because of the employee disclosing or attempting to disclose public corruption or wrongdoing.

740 Ill. Comp. Stat. Ann. 174/20.1

THREATENING RETALIATION

§ 20.2. Threatening retaliation.

- An employer may not threaten any employee with any act or omission if that act or omission would constitute retaliation against the employee under this Act.

740 Ill. Comp. Stat. Ann. 174/20.2

DAMAGES

§ 30. Damages. If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate:

- (1) reinstatement with the same seniority status that the employee would have had, but for the violation;
- (2) back pay, with interest; and
- (3) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

740 Ill. Comp. Stat. Ann. 174/30

STATUTE VS. COMMON LAW

- Internal and external (common law) vs. just external (statute).
- Both cover refusals.
- No punitive damages by statute.

STATUTE VS. COMMON LAW (CONTINUED)

- Specific statute, guidelines, policy must be cited (statute).
  - "Similarly, plaintiff's fraud allegation cannot serve as the predicate for his claim under the Whistleblower Act because he fails to cite any state or federal law, rule, or regulation that defendant violated resulting in fraud on the students enrolled in HeaPro 101."
  - "Therefore, irrespective of whether plaintiff refused to participate, his Whistleblower Act action must nevertheless fail because plaintiff did not sufficiently plead that the appointment of the instructors violated a statute, rule, or regulation, as required by section 20 of the Whistleblower Act. 740 ILCS 174/20 (West 2014). Count II in plaintiff's second amended complaint was therefore properly dismissed."

Roberts v. Bd. of Trustees of Cmty. Coll. Dist. No. 508, 2019 IL 123594, ¶¶ 44-45, 135 N.E.3d 891, 901

BRIEF (RELEVANT) DETOUR: OSHA PROTECTIONS

- OSHA ("Occupational Safety and Health Act"), is the main federal law that regulates workplace safety.
- OSHA gives workers the right to have a safe and hazard free workplace.
  - Random workplace inspections.
  - Field, investigate complaints.
  - Some states have state OSHA laws.

OSHA PROTECTIONS (CONTINUED)

- Covered workers?
  - Almost all private sector employees.
  - Federal employees
  - Not covered by OSHA:
    - State and local government employees (the public sector);
      - Can be covered by state-level OSHA statutes (Illinois has one).
    - Independent contractors; and
    - Family farm workers.

OSHA – EMPLOYER REQUIREMENTS

- Employer duties:
  - Provide a workplace free from serious recognized hazards.
  - Compliance with OSHA regulations.
  - Examining the workplace to ensure that equipment and practices conform to OSHA requirements.
  - Ensuring workers properly use tools and equipment.
  - Ensure equipment is safe.
  - **Inform employees about potential hazards.**
    - Key part: known hazards.

OSHA – EMPLOYER REQUIREMENTS

- Employer duties (continued):
  - Train employees in dealing with hazards.
  - Report any fatal or serious injuries to OSHA within 8 hours.
  - Provide employees with a reasonable procedure for reporting work-related injuries or illness.
  - Keep records of workplace injuries and make these records available upon request to employees and former employees.

OSHA PROTECTIONS (CONTINUED)

- OSHA Rights:
  - To notify your employer or OSHA about workplace hazards (you can complain to OSHA confidentially).
  - To request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in the inspection.
  - To see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violation.
  - **You can file a complaint with OSHA within 30 days of discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.**

OSHA PROTECTIONS (CONTINUED)

- Employers must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- To copies of your medical records or records of your exposure to toxic and harmful substances or conditions.
- Your employer must notify all employees of their right to report work-related illnesses or injuries.
  - This obligation may also be satisfied by posting the OSHA *Job Safety and Health* poster.
    - Covid infections/exposures.

OSHA PROTECTION & RETALIATORY DISCHARGE:

- Even if the 30 days passes after a firing, OSHA can still be a tool for whistleblower causes of action.
  - OSHA guidelines
    - Even if not an OSHA-driven claim, think *Stebbings*, *Wheeler*, *Fredrickson*.
  - Spirit vs. letter of law (policy).
- Statutory protections (IWA), safety precautions (common law)
  - Useful for establishing Illinois Whistleblower Act vs. retaliatory discharge claims.

ANY OTHER TOOLS?

- File a charge with the NLRB
  - Even non-union.
  - For "silencing" and threats, among other issues.
- File a charge of discrimination
  - Under applicable circumstances, if ADA discrimination, retaliation occurs.

WAGE-BASED RETALIATORY DISCHARGE

- Illinois Wage Payment & Collection Act, 820 ILCS 115/1 *et seq.*
  - Final paychecks if discharge.
    - Includes all "earned" compensation (bonuses, commissions, paid days off).
  - Any changes to compensation placed in writing at time of change (if possible).
    - No retroactive changes if money already earned.
  - No secret pay deductions.
  - Agreements, not contracts.
  - Penalties
    - Individual liability
    - Attorneys' fees
    - Interest penalties

WAGE-BASED RETALIATORY DISCHARGE

- (c) Any employer, or any agent of an employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, to the Director of Labor or his authorized representative, in a public hearing, or to a community organization that he or she has not been paid in accordance with the provisions of this Act, or because that employee has caused to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty, upon conviction, of a Class C misdemeanor. An employee who has been unlawfully retaliated against shall be entitled to recover through a claim filed with the Department of Labor or in a civil action, but not both, all legal and equitable relief as may be appropriate. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.

  820 Ill. Comp. Stat. Ann. 115/14

TIP OF THE ICEBERG

- This presentation only touches on some aspects of some relevant issues.
- Included in materials are additional useful (and free) resources to consult.

TAKEAWAYS

- Options exist to protect workers and get around at-will employment, but…
  - They are limited and specific.
  - Be specific when pleading.
  - Be specific when blowing the whistle.

OTHER RESOURCES

- **U.S. Department of Labor** - emergency paid sick leave and paid FMLA
  https://www.dol.gov/agencies/whd/pandemic
- **U.S. DOL has extensive resources on the FMLA generally, the ADA, and FLSA.**
- **Illinois Department of Labor** - state employment issues
  https://www2.illinois.gov/idol/Pages/default.aspx
- **Illinois Department of Employment Security** - unemployment benefits
  https://www2.illinois.gov/ides/Pages/default.aspx
- **Legal Assistance Foundation (LAF)** - news generally
  https://www.legalaidchicago.org/newsroom/in-the-news/covid-19/
- **National Employment Lawyers Association (NELA-IL)**
  https://nela-Illinois.org/
- **https://www.pregnantatwork.org/**

QUESTIONS?

Contact Me!

Max Barack
Member/Partner – Garfinkel Group, LLC
6252 N. Lincoln Avenue, Suite 200
Chicago, IL 60659
312-736-7991
max@garfinkelgroup.com