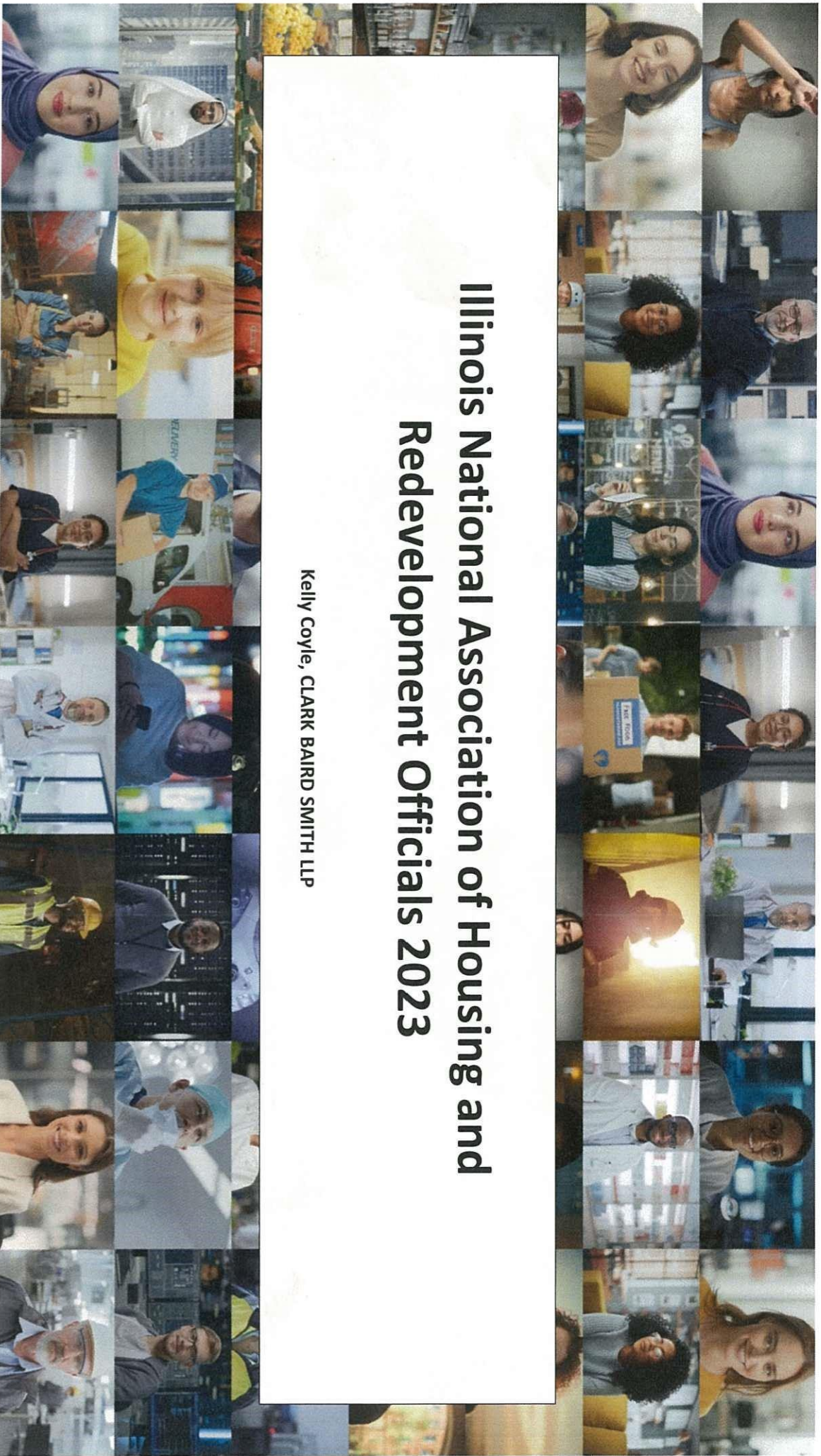


# Illinois National Association of Housing and Redevelopment Officials 2023

Kelly Coyle, CLARK BAIRD SMITH LLP





# AGEN

## Section 1 Employment Law Update

## Section 2 Handling Employee Complaints, Investigations and Progressive Discipline

### Applicable Laws for Investigations

- Constitution
- Illinois Public Labor Relations Act
- Any CBAs
- Your Internal Policies

### Receiving and Investigating Complaints

- When to investigate
- Who should investigate
- How to conduct investigation

### Issuing Effective Discipline

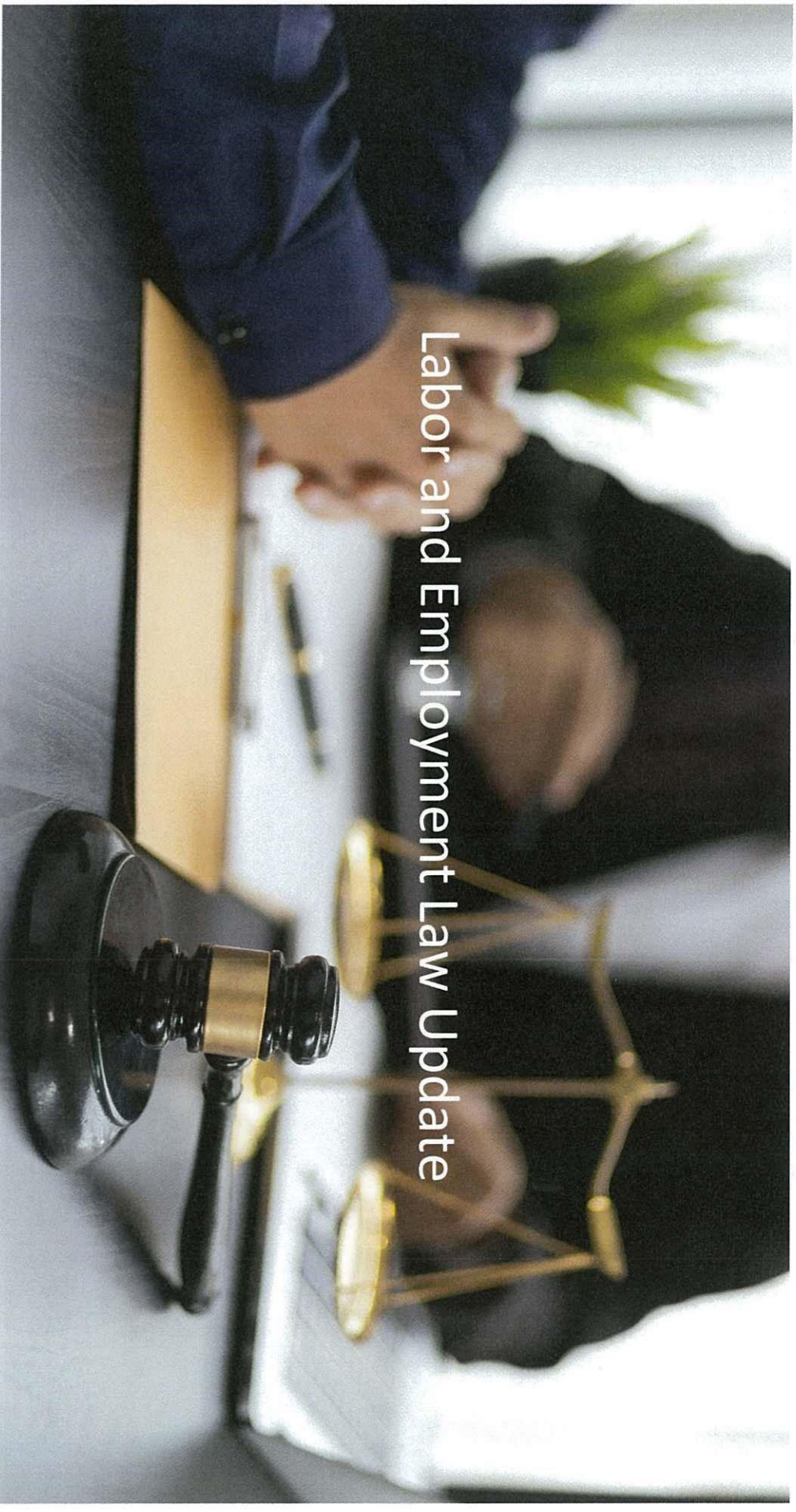
- Determining what level of discipline is appropriate
- Just Cause
- Outside Forces

## Section 3 HR Trends and Ask the HR Attorney

- Flexibility in employment
- Adjusting how you analyze applicants
- Effective leadership
- Diversity, Equity, and Inclusion
- Ask the HR Attorney!



# Labor and Employment Law Update





# Benefits, Leaves, and Accommodations



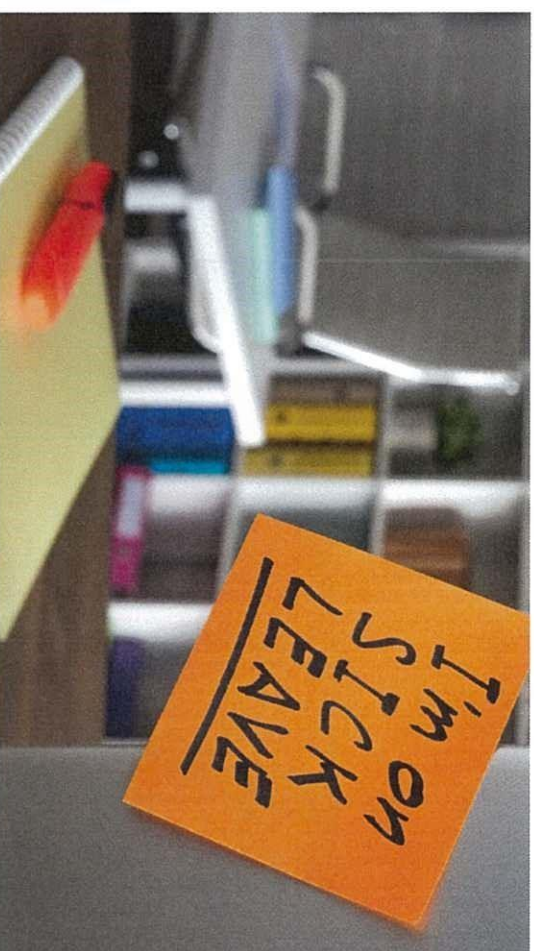


## **Benefits, Leaves And Accommodations**

# Paid Leave for All Workers Act

Effective January 1, 2024, (most) employers are required to provide paid leave for their employees, which must meet certain requirements:

- Applies to full-time AND part-time employees
- Generally, must provide 40 hours of PTO per 12 months
- Accrual 1 hour per 40 hours worked
- If the employee is exempt, assume a 40-hour workweek unless the employee actually works less
- Employer can set the 12-month period (calendar vs. anniversary)
- Employer can also front-load time





# Paid Leave for All Workers Act

## Using paid Time Off:

- Can set minimum usage, but no more than 2 hours
- Can take for ANY reason, do documentation required
- However, you can require certain notice before taking leave
- Allowed to carry over but not required to provide more than 40 hours per month

***“But is there anything I can do???”***







## Paideia for All Workers Act

### What Can We Do...

- [Learn how to use the app](#)
- [How to use the app to get help](#)
- [Beginner's guide to the app](#)
- [FAQs](#)





# Pregnancy Updates



- Federal Pregnant Workers Fairness Act
  - Illinois Pregnancy Laws
  - Enforced by EEOC
- Makes Pregnancy Protections Similar to the ADA
  - Accommodate Unless “Undue Hardship”
  - Covers All Pregnant or Postpartum Workers Irrespective of “Disability”
  - Requires “Interactive Process”
- Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act
  - Illinois Law “ Bathroom” versus “Toilet Stall”

# 1

**s. Leaves**  
**commodations**

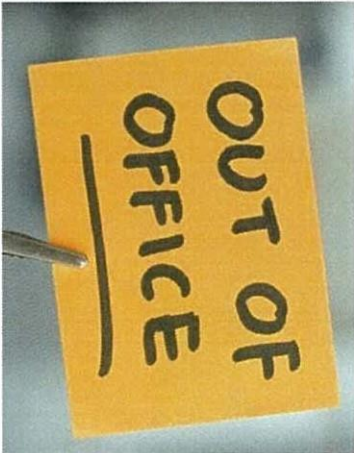
## 2 Day Rest In Seven

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The One Day Rest In Seven Act (ODRISA) allows Illinois employees the right to take one day off in seven, plus breaks during a workday.

- Likely does not apply to public-sector employers!
- Employees must get a minimum of 24 hours of rest every seven days.
- Employers may obtain a permit from the Illinois Department of Labor that allows employees to voluntarily work on the seventh day, as long as the employee earns the overtime rate if applicable.
- Employees get a meal period of at least 20 minutes for every 7.5-hour shift, beginning no later than 5 hours after the start of the shift.
- Employees get an additional 20-minute meal period if working a 12-hour shift or longer.
- Reasonable restroom breaks, in addition to the meal break, must be provided.





## Family Bereavement Leave Act

The FBLA guarantees two weeks, or ten working days, of unpaid leave following the death of a family member.

This time is meant to be used to handle planning and attending a funeral or similar service, as well as to grieve.

Illinois recently expanded the FBLA to cover additional family members.

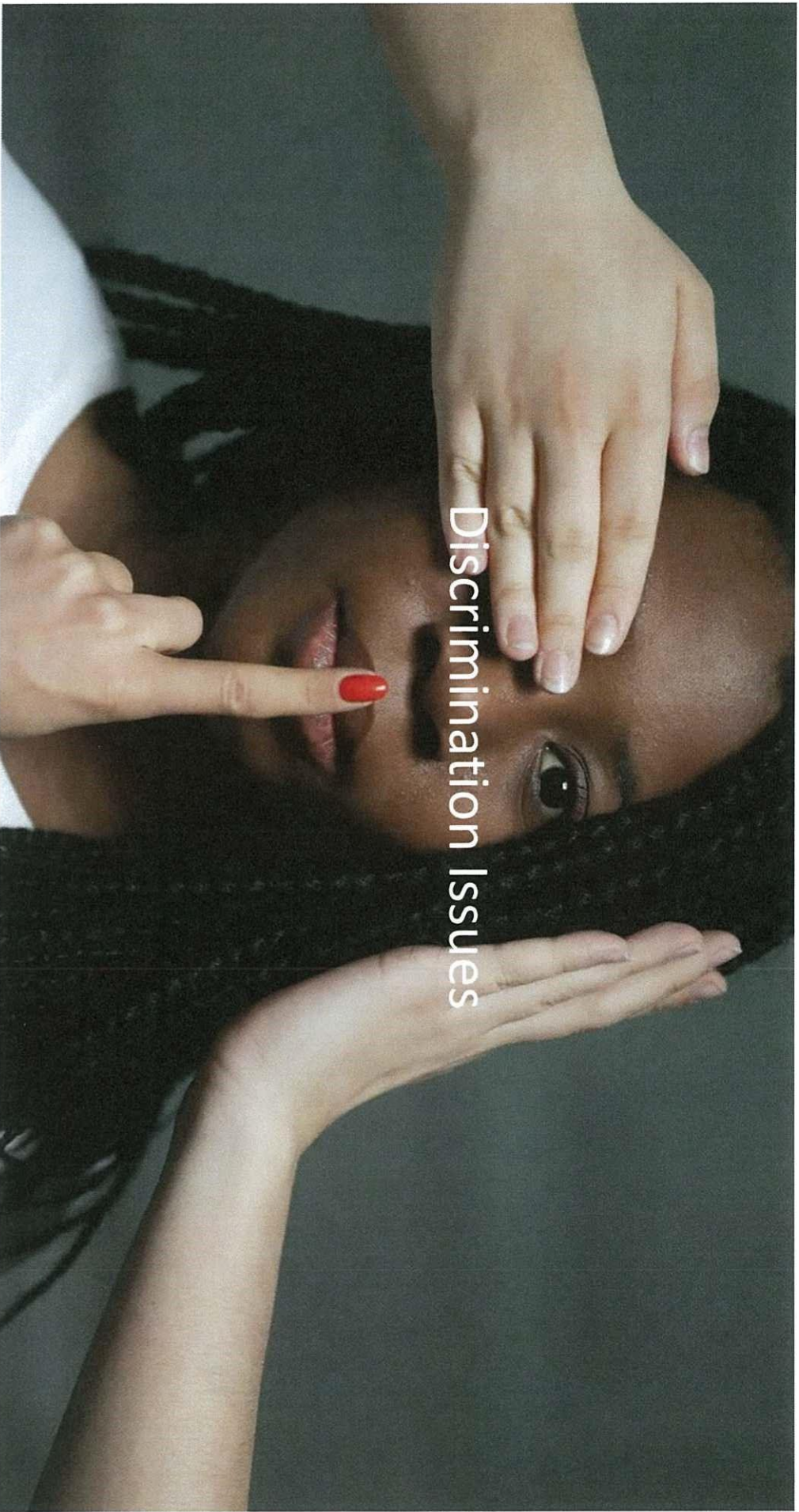
Bereavement leave can be utilized to attend the funerals or services of the following people: Child, Stepchild, Spouse, Domestic partner, Sibling, Parent, Mother-in-law, Father-in-law, Grandchild, Grandparent, or Stepparent.

It also expands the circumstances for bereavement leave which now include :

- A miscarriage, An unsuccessful round of intrauterine insemination (IUI),
- An unsuccessful round of any "assisted reproductive technology procedure" like in vitro fertilization (IVF),
- A failed adoption match, An adoption that is not finalized because it is contested
- A failed surrogacy agreement, A diagnosis that negatively impacts pregnancy or fertility, or a stillbirth.









## The CROWN Act

### Create a Respectful and Open Workplace for Natural Hair

- Creating a Respectful and Open World for Natural Hair Act of 2022 or the CROWN Act of 2022, prohibits discrimination based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin.
- Specifically, the bill prohibits this type of discrimination against those participating in federally assisted programs, housing programs, public accommodations, and employment.
- Persons shall not be deprived of equal rights under the law and shall not be subjected to prohibited practices based on their hair texture or style.
- The bill provides for enforcement procedures under the applicable laws.





## Equal Pay Act

In May 2023, Illinois passed amendments to Illinois Equal Pay Act going into effect January 1, 2025:

- Unlawful for employers with 15 or more employees to not include pay scale information in job postings.
- Make sure any third-party vendors are in compliance.
- Also requires the posting of internal job opportunities to current employees the same day outside posting occurs.











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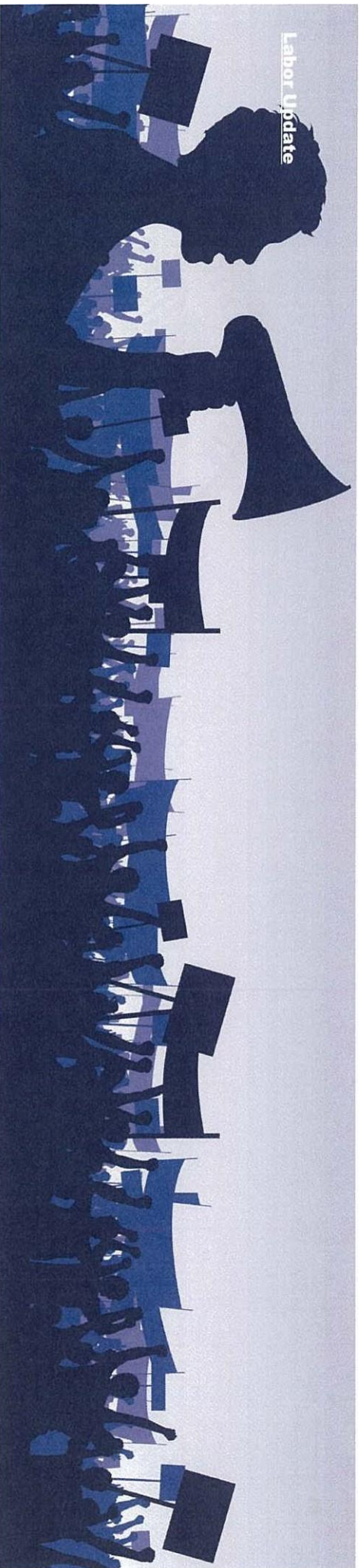




# Labor Update







## Supreme Court Decision, *Glacier Northwest v. Int'l Brotherhood of Teamsters*

What happens if striking employees damage equipment?

Analysis:

State law preempts contradictory state law

Not absolutely preempt state tort claims for destruction of property in labor dispute  
assessment required

State law union failed to take "reasonable precautions"

pute

# Illinois Amendments to Labor Dispute Act

## HB 2907 Section 1.

The Labor Dispute Act is amended by changing Section 1 and by adding Section 1.4a as follows:

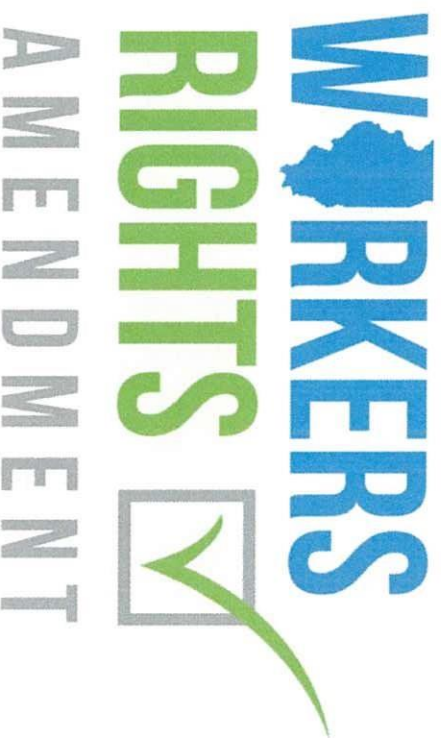
- No restraining order, award of monetary damages, except for damage done to an employer's property as a result of conduct prohibited by law, or injunction shall be granted by any court of this State in any case involving or growing out of a dispute concerning terms or conditions of employment . . . .

## HB 3396 Section 5.

The Labor Dispute Act is amended by changing Section 1.4 as follows:

- Amends the Labor Dispute Act. Provides that a person who, with the intent of interfering with, obstructing, or impeding a picket or other demonstration or protest, places any object in the public way commits a Class A misdemeanor with a minimum fine of \$500.

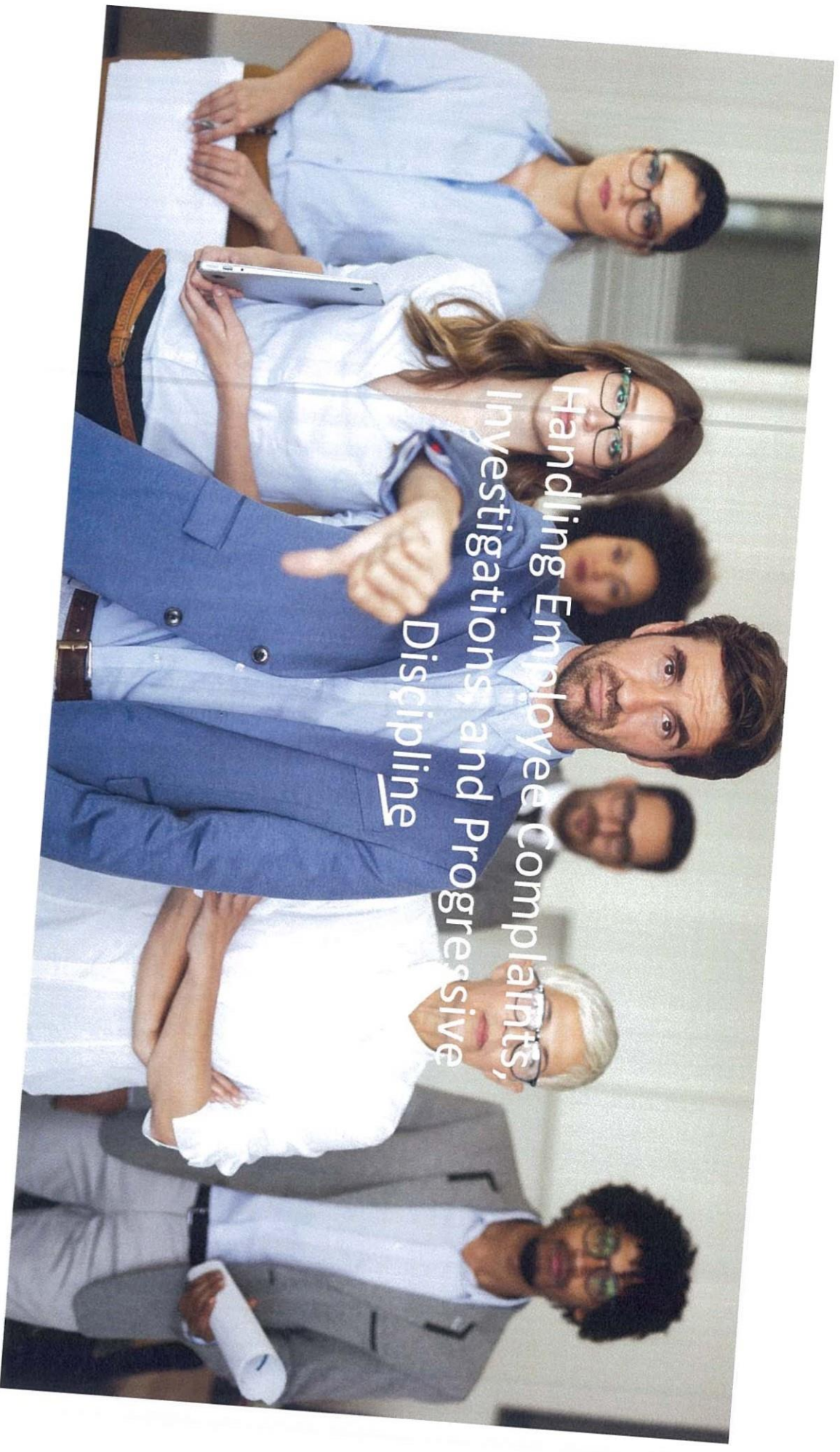




## The Workers Rights Amendment Does Three Main Things:

1. Makes Collective Bargaining a Constitutional Right
2. Prohibits Enactment of any Law Interfering With, Negating or Diminishing Collective Bargaining Rights and workplace safety
3. Prohibits Enactment of Right-to-Work Ordinances

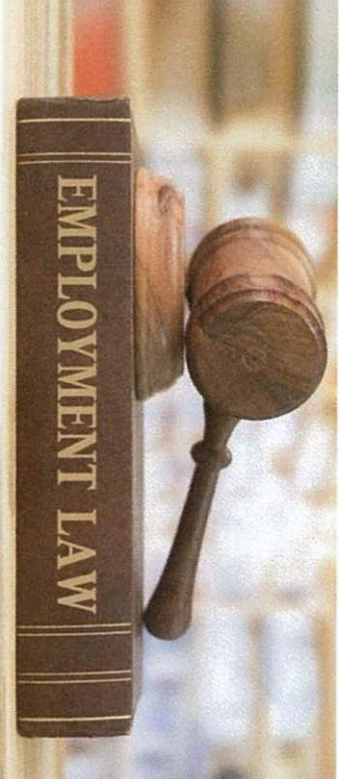




Handling Employee Complaints,  
Investigations, and Progressive,  
Discipline

Applicable law for

Investigation



Constitution

Your Internal Policies

Any CBAs

Illinois Public Labor  
Relations Act



# Constitutional Laws



## *Garrity v. State of New Jersey*, 385 U.S. 493 (1967)

- 5<sup>th</sup> and 14<sup>th</sup> Amendments prohibit use of coerced statements in criminal proceedings
- In cases involving potential criminal conduct → *Garrity* Warning

### *Garrity* Warning should include:

- Employee cannot refuse to answer based on right against self-incrimination
- If employee refuses to answer, may be subject to discipline or termination
- Nothing employee says can be used in a criminal proceeding.

## *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532 (1985)

- Employees with property interest in employment must be given due process before suspension/termination
- Due process typically = notice and opportunity to be heard



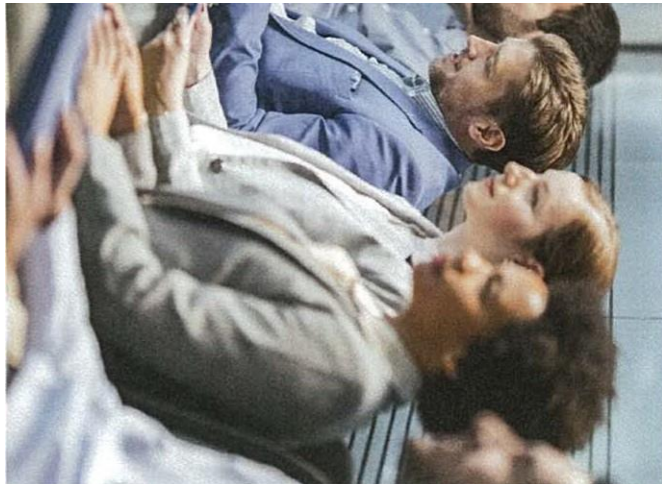
## IPLRA

### *Weingarten* Rights

- *Weingarten* rights = employee's right to union representation during investigatory interview when employee has reasonable fear that interview may result in discipline
- Generally, not required to give Miranda like warning to employee prior to interview
- Does not apply:
  - When issuing discipline to generally discuss performance
  - Correcting work, etc.



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## **IPLRA**

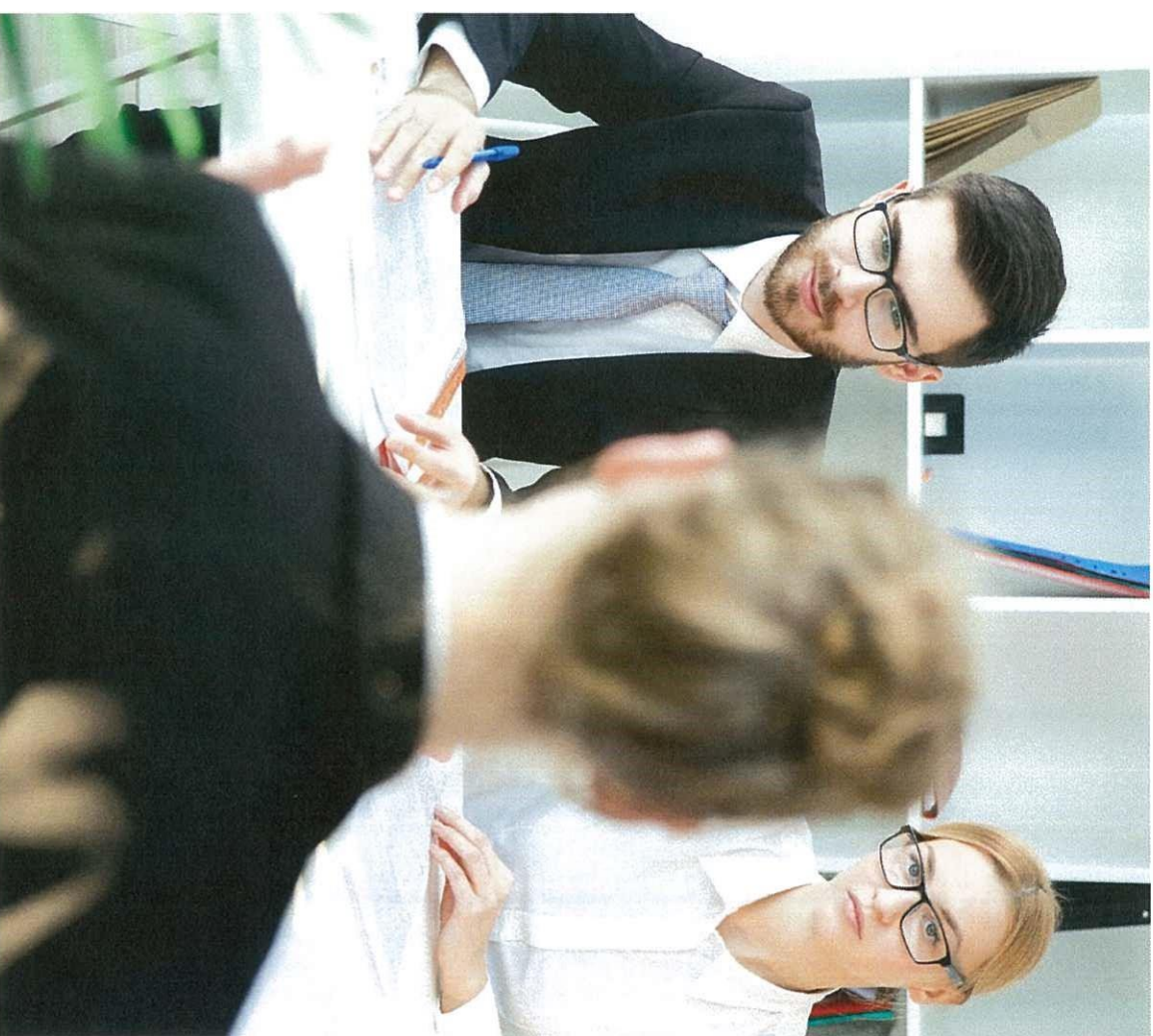
# *Weingarten Rights*

After Weingarten rights invoked, employer has three options:

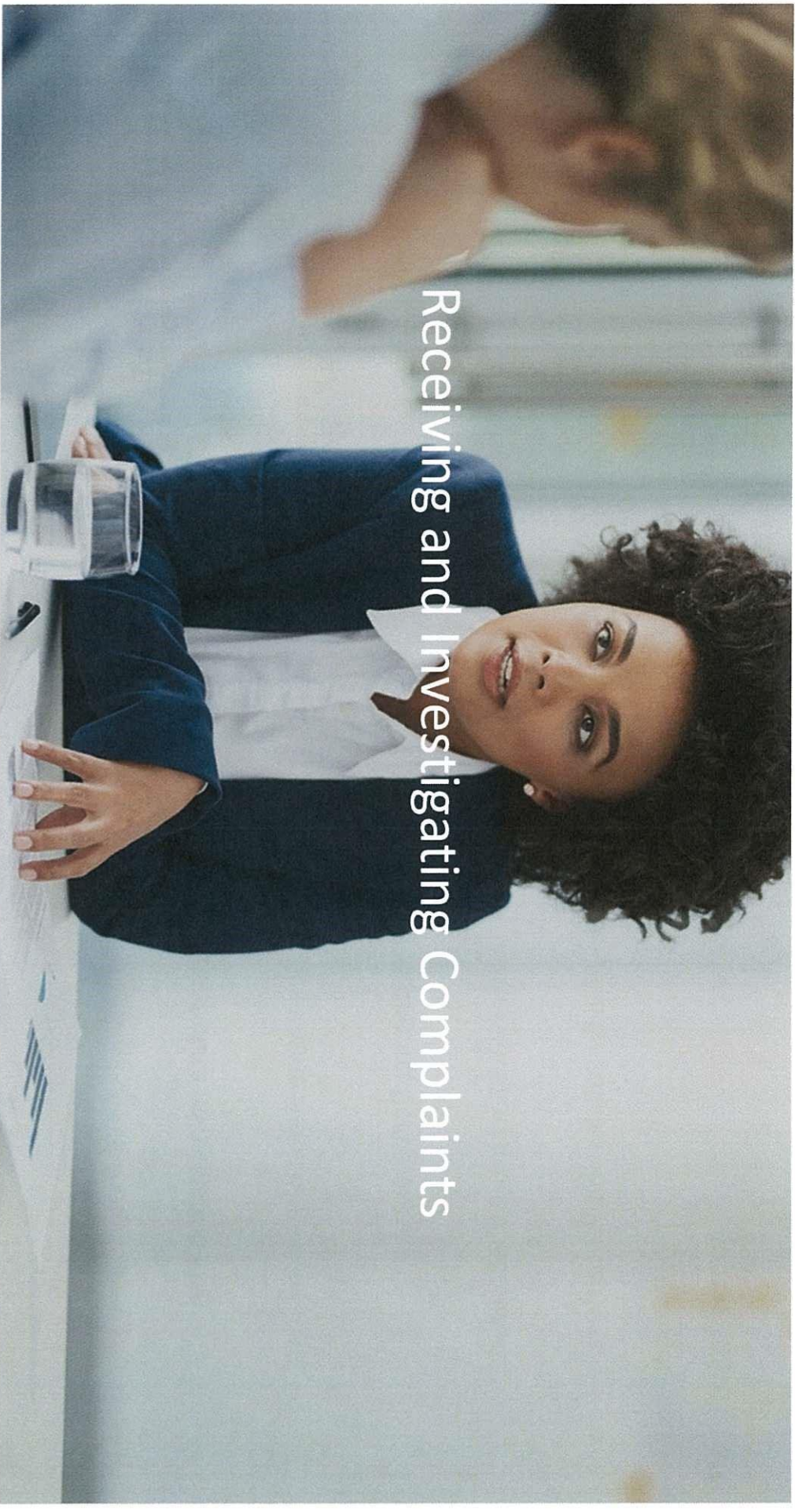
- 1) Grant the request
- 2) Discontinue the interview
- 3) Offer the employee a choice between
  - a. Discontinuing the interview or
  - b. Voluntarily continuing w/o representative

No right to specific representative

Representative can assist but can't interview on employee's behalf



## Receiving and Investigating Complaints





# Initial Investigatory Steps



Formulate Investigation Plan

Determine S

Interview Background Witnesses

Gathering Documents ∞

Interview Background V

Review Policies and Pro





## When to Investigate

- Allegations of harassment, discrimination, retaliation
- Public Complaints
- Allegations of illegal conduct
- Anything required by your policies
- Violations of internal rules
- It's the right thing to do



# Should Investigate

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Most investigations can be done internally

But consider an outside investigator for serious or high-profile issues

No matter what, make sure your investigator is neutral and properly trained





Receivables and Investments System - Overview | Investing.com

Receivables

Receivables by month

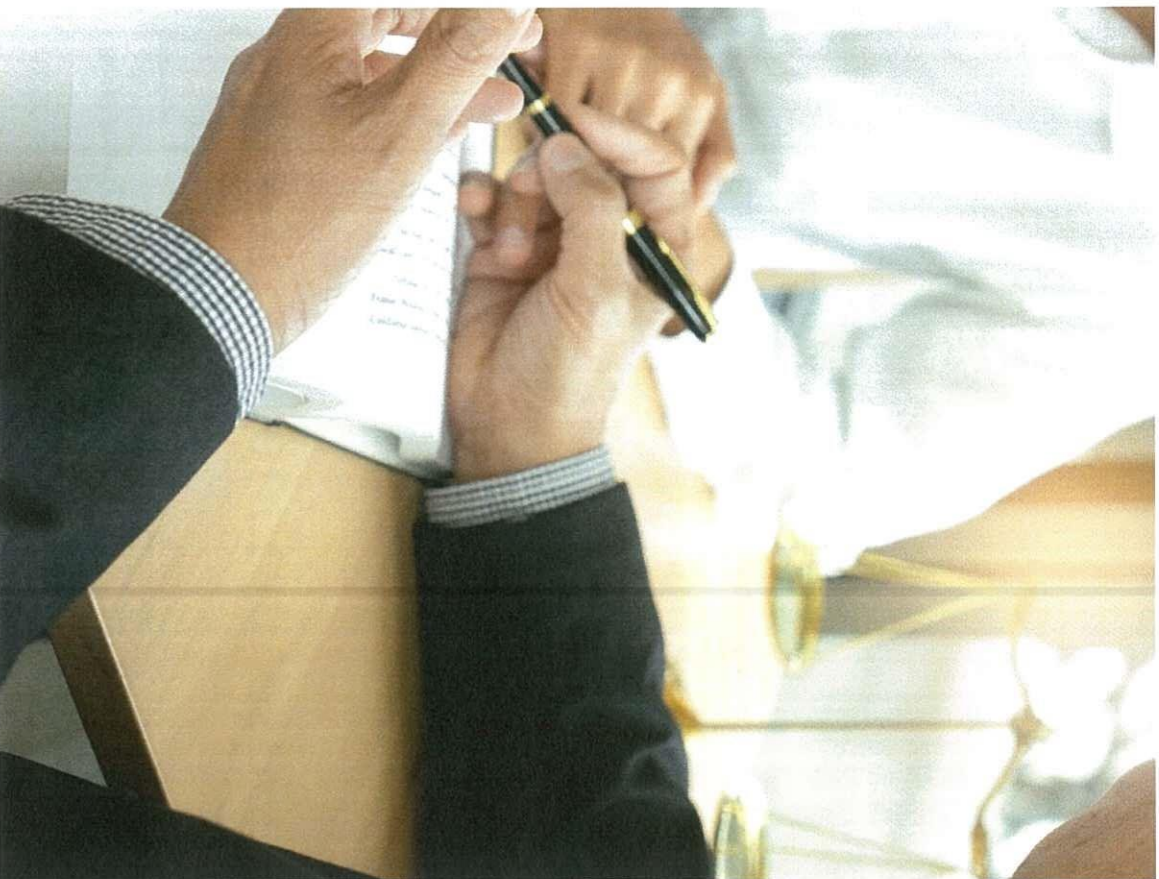
Receivables by month (What, Where, etc.)

Receivables by month (What, Where, etc.)

Receivables by month (What, Where, etc.)

Receivables by month (What, Where, etc.)





## How to Conduct Investigations – The Witnesses

Ask yourself, what is the purpose of this interview?

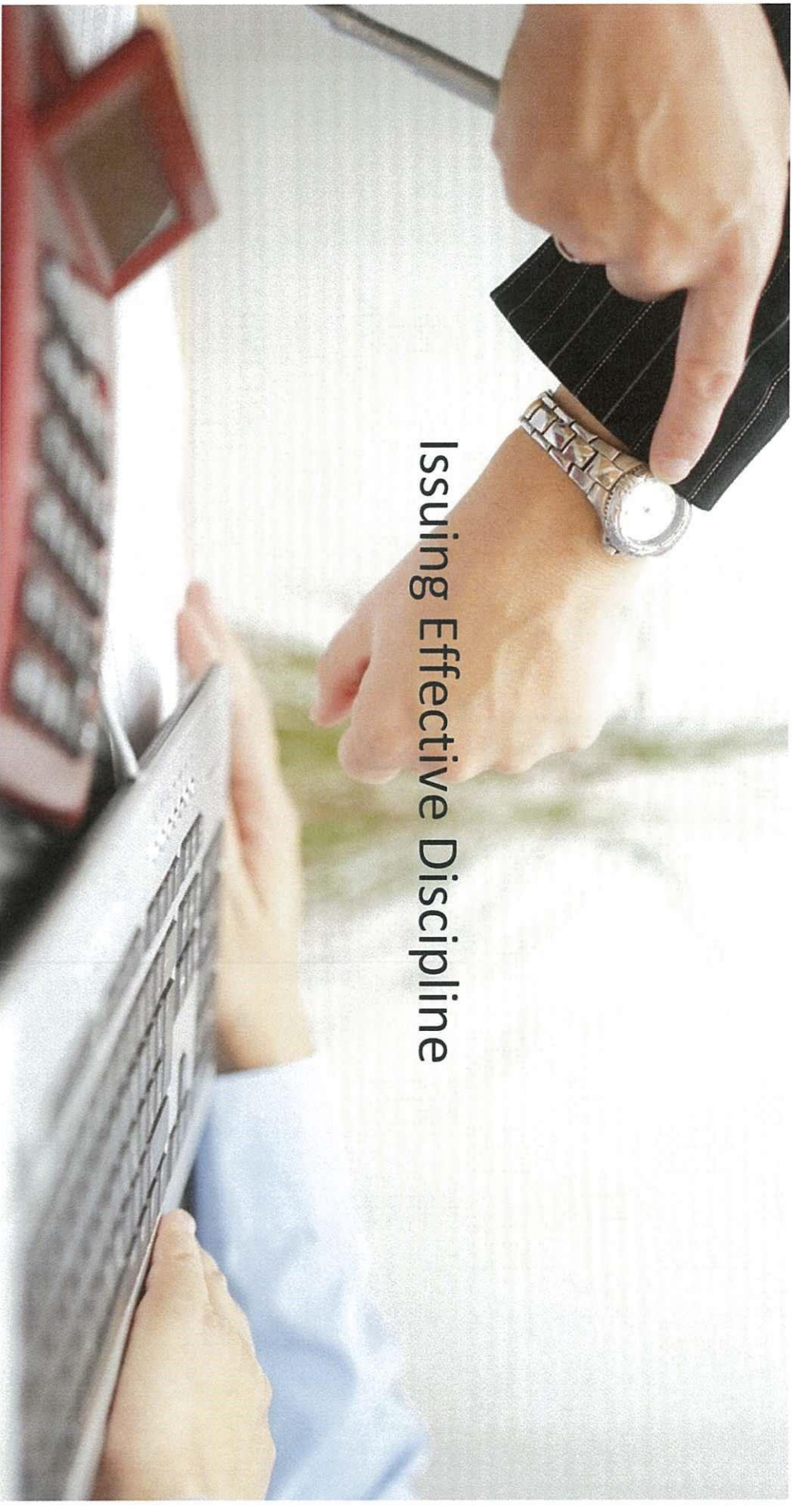
### **With the interviewee:**

- Set expectations
- Don't promise confidentiality
- Remind of retaliation policy
- Keep questions mostly open ended
- Avoid leading questions
- Determine personal vs. third-hand knowledge
- Does he/she have any relevant documents or evidence
- If the interviewee balks, determine why
- Don't use intimidation

**Depending on the direction of the interview, don't forget Garrity, Weingarten**



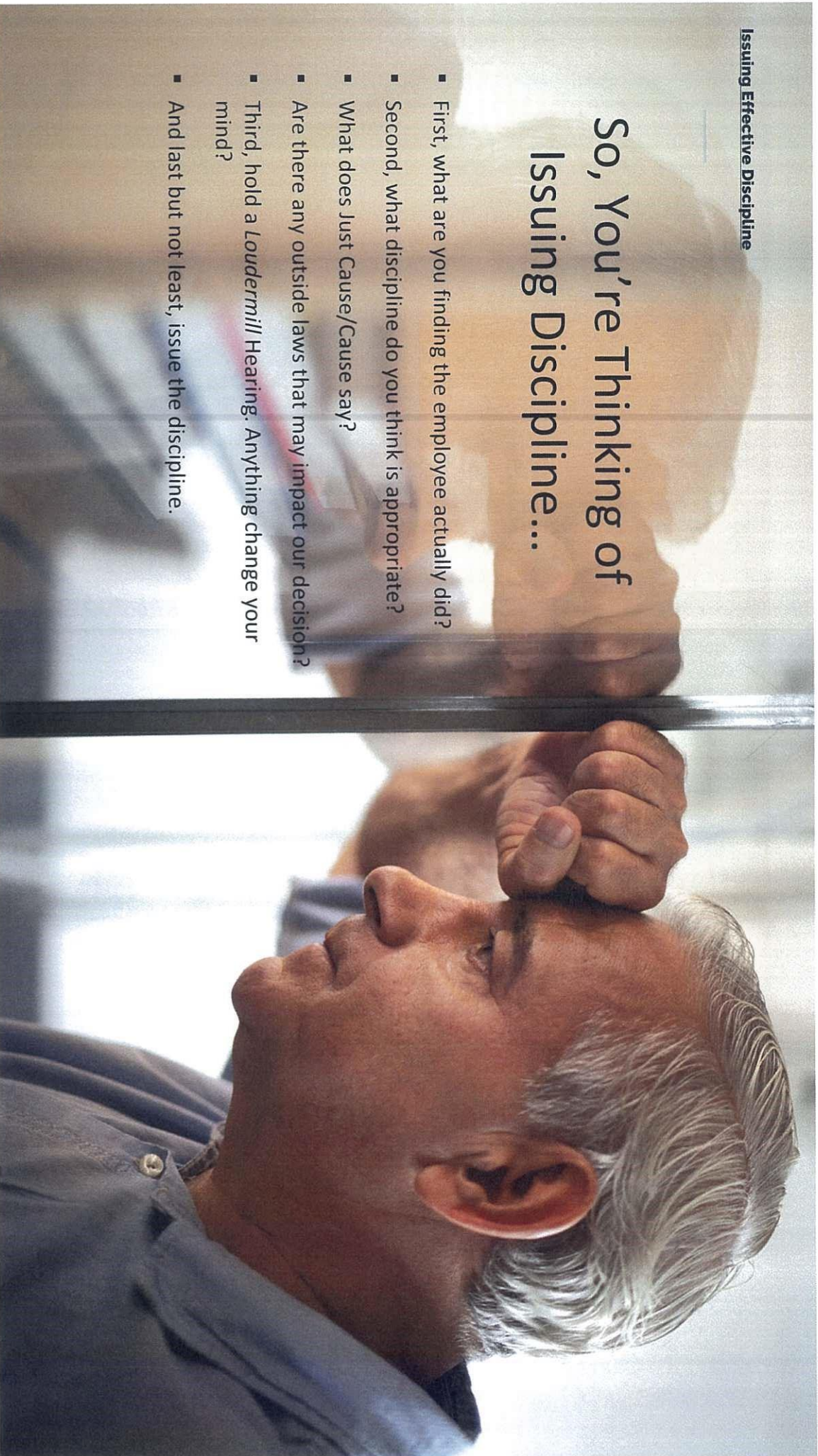
## Issuing Effective Discipline





## So, You're Thinking of Issuing Discipline...

- First, what are you finding the employee actually did?
- Second, what discipline do you think is appropriate?
- What does Just Cause/Cause say?
- Are there any outside laws that may impact our decision?
- Third, hold a *Loudermill* Hearing. Anything change your mind?
- And last but not least, issue the discipline.

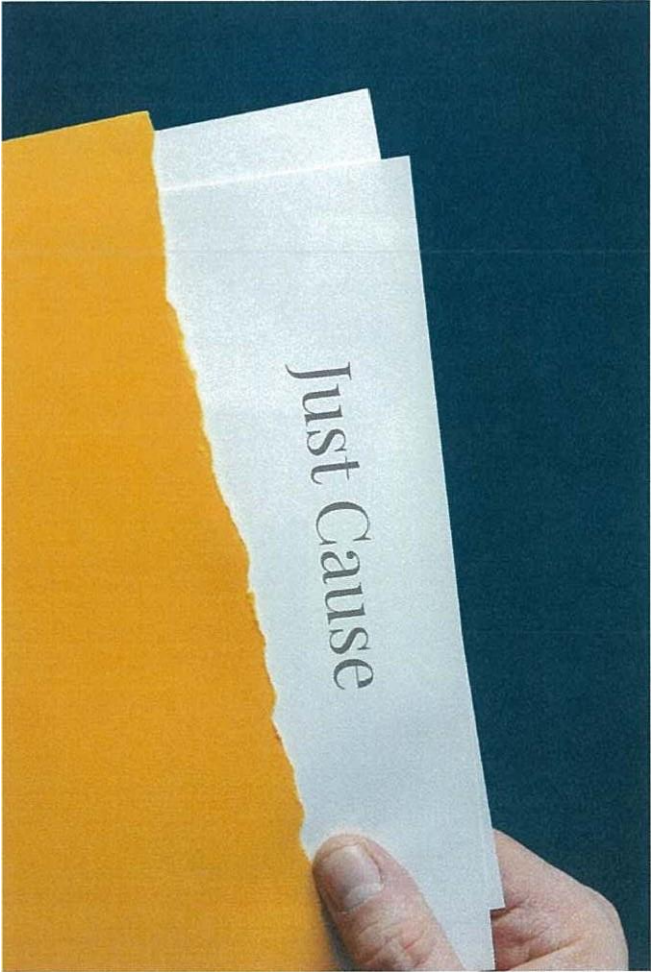




TheSevenTestsofJustCause

For public business purposes...

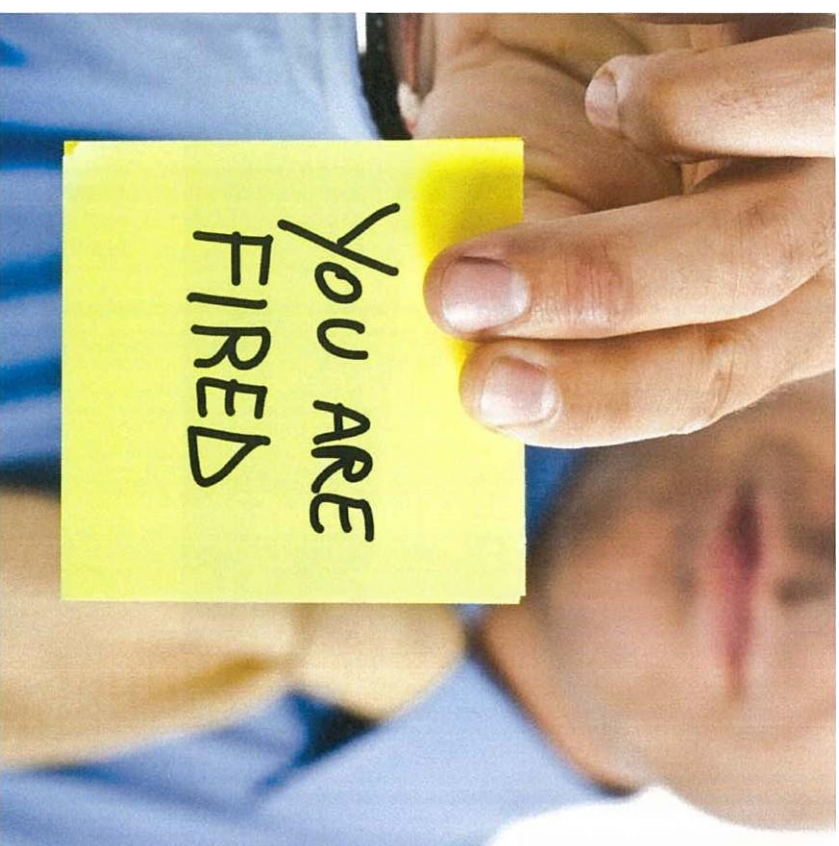
- 1. What is the purpose of the test?
- 2. What is the purpose of the test?
- 3. What is the purpose of the test?
- 4. What is the purpose of the test?
- 5. What is the purpose of the test?
- 6. What is the purpose of the test?
- 7. What is the purpose of the test?





## Determining What Level of Discipline is Appropriate

- Should be consistent with past practice
  - How have we disciplined similarly situated employees?
  - Look at same type of misconduct + same type of work record
- Can deviate from past practice if:
  - Work records from prior instances are dissimilar
  - Employees have different seniority
    - (i.e., probationary vs. 20-year officer)
  - Extenuating circumstances
    - (ex: An employee recently trained on issue)
- Each time you do (or don't) discipline, you're creating precedent





- First Amendment Issues
- Data Retention Issues
- Right to Privacy
- Protected, Concealed Activity
- Illinois Whistleblower Act
- Federal/State Discrimination Laws

**If any of these remotely apply, talk to Legal Immediately!**

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Flexibility in Employment

Realtime workable

Realtime workable

Keeping an open mind on where and how to work





# Adjusting how you Analyze Applicants

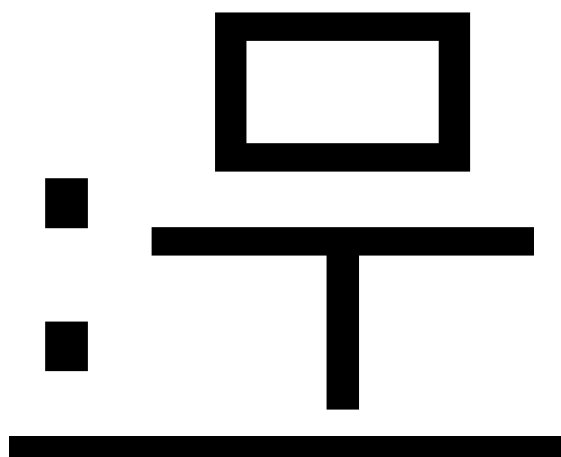
Take a hard look at your applications. Are you including  
Revamp your job descriptions. Are you accurately describing  
what you need from that position?

Broadening our perspective on what's considered "good  
qualities"

- Education vs Experience
- Potential for Growth

Narrowing our view of what's considered "deal breakers"





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# Effective Leadership

The background of the slide features three stylized silhouettes of people in business attire. One person is standing in the background, another is in the middle ground, and a third is in the foreground, all facing right. The silhouettes are dark blue against a lighter blue background.

## 1. Do your supervisors have the right skill set?

- Strong communication skills
- Problem solvers
- Not afraid to confront issues
- Decision-making
- Interpersonal skills
- Appropriate level of direction and oversight
- Comfortable with the role and employer's philosophy

## 2. Do they know the fundamental principles for managing people?

- Continually communicating expectations
- Addressing deficiencies or successes as they occur
- Practices fairness
- Documents, documents, documents



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## Diversity, Equity, and Inclusion

Equitable employers create diverse and inclusive workplaces where employees share unique perspectives, respect one another's individual needs, and reach their full potential without barriers.

As a result, inclusive workplaces see greater innovation and financial returns, outperform competitors, and improve employee experiences.

**Successfully delivering diversity, equity, and inclusion in the workplace can lead to:**

- A more extensive talent pool
- Increased employee engagement and satisfaction
- Higher retention and lower turnover
- Better decision-making
- Greater innovation
- Enhanced financial performance
- Ability to outpace the competition



## Ask the Attorney



# Thank you for Participating



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