LAW OFFICES

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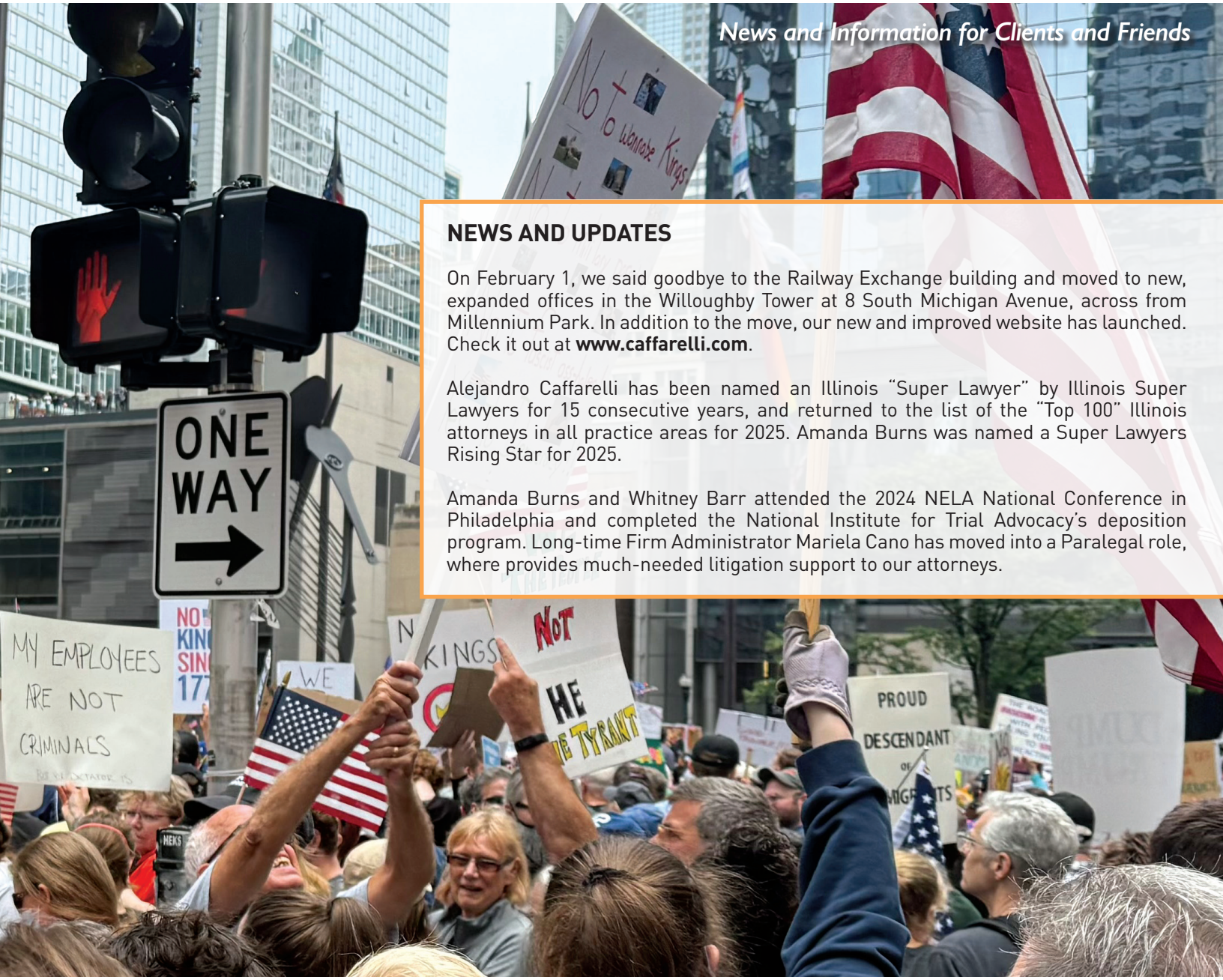
News and Information for Clients and Friends



NEWS AND UPDATES

On February 1, we said goodbye to the Railway Exchange building and moved to new, expanded offices in the Willoughby Tower at 8 South Michigan Avenue, across from Millennium Park. In addition to the move, our new and improved website has launched. Check it out at **www.caffarelli.com**.

Alejandro Caffarelli has been named an Illinois "Super Lawyer" by Illinois Super Lawyers for 15 consecutive years, and returned to the list of the "Top 100" Illinois attorneys in all practice areas for 2025. Amanda Burns was named a Super Lawyers Rising Star for 2025.

Amanda Burns and Whitney Barr attended the 2024 NELA National Conference in Philadelphia and completed the National Institute for Trial Advocacy's deposition program. Long-time Firm Administrator Mariela Cano has moved into a Paralegal role, where provides much-needed litigation support to our attorneys.

In this Issue...

A Call for Comprehensive Fee Shifting for Employment-Law Claims

By: Alejandro Caffarelli

Access to justice in employment law remains an elusive promise for the vast majority of American workers. While an array of federal and state laws purport to protect workers, the mechanisms for enforcing those rights are often inaccessible, rendering them meaningless.

Administrative agencies and state equivalents tasked with investigating discrimination and wage violations, for example, are often chronically underfunded and subject to political erosion. As demonstrated by recent changes at the Equal Employment Opportunity Commission and National Labor Relations Board, entire enforcement wings can be defanged or hollowed out through attrition and budget cuts, or through the selective non-enforcement.

Even sympathetic political leadership and well-meaning civil servants can buckle under the volume of claims. In the not-too-distant past, claims languished at the Illinois Human Rights Commission for years, often taking over a decade to adjudicate.

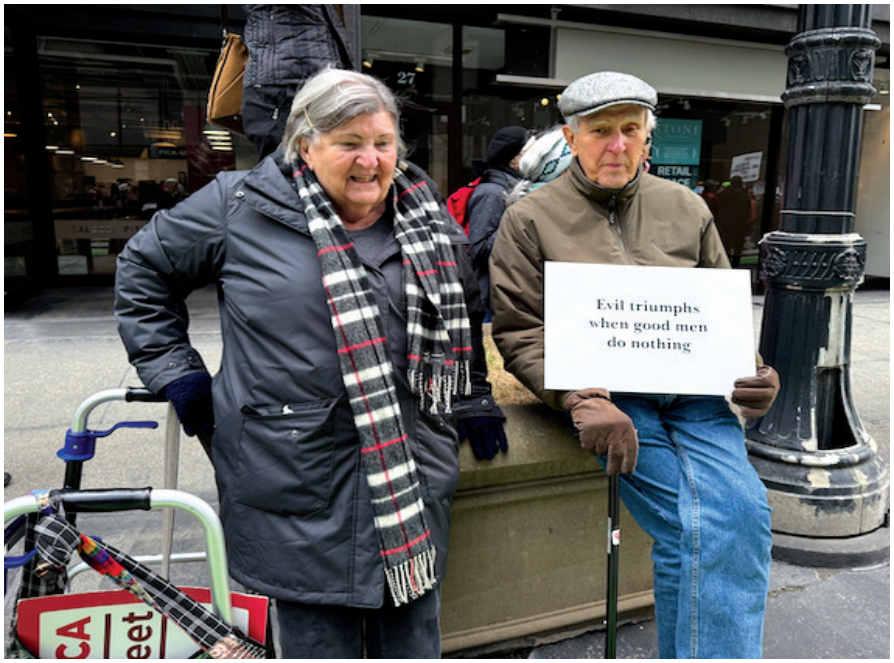
Many employment laws allow employees to file their claims directly in court, but the cost of retaining private counsel remains prohibitive. According to the Legal Services Corporation ("LSC") 92% of low-income Americans receive inadequate or no legal help when needed. See *https://justicegap.lsc.gov/ resource/ executive-summary*. Not surprisingly, the Trump Administration's FY 2026 budget proposes eliminating the LSC altogether, which supports civil legal aid organizations nationwide and helps 5 million low-income Americans each year.

Employment claims are complex, fact-intensive, and vigorously defended by employers with ample resources. The reshaping of the federal judiciary that started under Richard Nixon resulted in a relaxed summary judgment standard, upending the Seventh Amendment and robbing workers of the constitutional right to be heard by a jury of their peers. This has incentivized defense counsel to reflexively file complex and burdensome dispositive motions.

The only durable and structurally sound remedy for the growing justice gap in employment law is the expansion of robust fee-shifting provisions for *all* employment law claims – similar to those contained in the federal Fair Labor Standards Act or the Illinois Minimum Wage Law – which require employers that violate the law to pay a prevailing employee's attorneys' fees and costs. Fee shifting incentivizes attorneys to represent individuals with viable claims but little resources on a contingent-fee basis, and disincentivizes the filing of meritless claims.

The key language for this legislation at the State level could be as simple as "Any current or former employee may bring a private right of action to enjoin or otherwise enforce any statute related to the employment relationship. A prevailing employee shall be entitled to recover attorneys' fees and costs, in addition to all other remedies available at law or in equity."

Fee-shifting ensures that employees with meritorious claims are able to obtain competent representation, filters out non-meritorious claims, and ensures that the pursuit of justice is not limited to the wealthy. Without meaningful access to counsel, statutory rights are illusory. Courts, legislatures, and the bar must reaffirm their commitment to robust fee-shifting in favor of prevailing employees as the cornerstone of access to justice in the workplace.



The Freelance Workers Protection Act 820 ILCS 193/1 *et seq.*

By: Amanda Burns

Perhaps one of the most frustrating stumbling blocks of representing a client who has been stiffed on payment is their status as an Independent Contractor. Historically, independent contractors primarily relied on obtaining relief through breach of contract claims. As of July 1, 2024, a new avenue has been made available to Illinois workers: the Freelance Worker Protection Act ("FWPA"). 820 ILCS 193/1 *et seq*. The new FWPA applies to independent contractors and "freelance workers" located in Illinois who contract to provide products or services for at least $500. The FWPA does exclude construction workers and anyone who is an "employee" under the Illinois Wage Payment and Collection Act.

The FWPA requires a written contract between the contracting entity and the freelance worker. The contract must include: (1) name and contact information of both parties; (2) an itemization of all products and services to be provided, the value of the products and services, the rate and method of compensation; (3) the date of payment or the mechanism by which the date will be determined (no later than 30 days after the products or services are provided); and, if necessary, (4) the date the freelance worker must submit a list of products or services rendered under the contract. As an added safeguard, the FWPA does not allow the contracting entity to change the compensation amount once the individual has begun preparation of the product or performance of the service contracted.

Under the various sections of the FWPA, a prevailing plaintiff may recover: double the underpayment, injunctive relief, and attorneys' fees and costs (Section 10: failure to pay final compensation); $500 in statutory damages and, if combined with a successful claim under another FWPA section, damages equal the greater of $500 or the contract's value (Section 15: contract requirements); and/or statutory damages equal to the value of the underlying contract and attorneys' fees and costs (Section 20: nondiscrimination).

Through this Act, a longstanding gap in the legislative protection of Illinois workers is finally starting to close. Now, contractors and freelance workers have a new right of action that helps balance the playing field and makes recovery more attainable.

Expanded Protections Under the Illinois Gender Violence Act

By: Whitney L. Barr

Gender-based violence is a form of sex discrimination that includes physical aggression, sexual intrusions, and threats of violence based on the victim's gender. With its broad definitions of gender-based violence and workplace, generous statute of limitations, and allowance for punitive damages, the Illinois Gender Violence Act is a powerful tool for advocates representing victims of gender-related violence in the workplace.

Before January 1, 2024, victims of gender-based violence in the workplace could only seek civil relief through federal or state anti-harassment laws. While the Illinois Gender Violence Act ("GVA") has long provided a path for civil recovery, earlier versions did not explicitly hold employers directly liable for such violence. A recent amendment changed that: the GVA now holds employers civilly liable for gender-related violence committed by their employees or agents in certain workplace contexts.

The GVA defines "gender-related violence" broadly. Crucially, the GVA does *not* require plaintiffs to prove that the conduct was "severe or pervasive," a standard imposed by federal anti-harassment laws. A single threat or incident — without physical contact — can be sufficient to state a claim under the GVA. The statute intentionally captures a wide range of conduct, offering broader protections than federal and state civil rights laws.

The Act similarly defines "workplace" expansively. Gender-based violence need not occur at a physical office or job site for the employer to be held liable. Any location where the employee is performing work-related duties is considered a "workplace" for purposes of the GVA.

Additionally, the GVA provides a longer window for victims to bring claims than traditional civil rights statutes. Victims have seven years from the date of the act to sue the perpetrator; and four years to bring a claim against an employer. This is a stark

Expanded Protections Under the Illinois Gender Violence Act (cont.)

contrast to the 300-day window for filing a charge with the EEOC or the 2-year deadline provided by the Illinois Human Rights Act. The extended limitations period under the GVA gives victims more time to process their experiences and consider whether they want to pursue legal action.

L to R: Amanda Burns, Whitney L. Barr, Alejandro Caffarelli, Alexis D. Martin

Finally, the GVA allows plaintiffs to seek punitive damages, which is a powerful tool for increasing the value of claims and incentivizing early settlement. This is significant as the Illinois Human Rights Act does not permit punitive damages and Title VII of the Civil Rights Act of 1964 caps punitive damages based on employer size. The GVA imposes *no cap* on the damages a prevailing plaintiff may recover.

Seventh Circuit Confirms ADA Liability for Improper Medical Inquiries

By: Alexis D. Martin

In April, the Seventh Circuit ruled in *Nawara v. Cook County*, 132 F.4th 1031 (7th Cir. 2025), that employers may be held liable for violating the medical inquiry provisions of the Americans with Disabilities Act (ADA) even where the employee is neither disabled nor regarded as disabled. In *Nawara*, the Court held that medical inquiries or exams — if not job-related or consistent with business necessity — are improper and still constitute unlawful discrimination under the ADA even when no actual or perceived disability exists.

John Nawara, a correctional officer for the Cook County Sheriff's Office, was placed on paid leave and required to undergo a fitness-for-duty exam following confrontations with supervisors. He was told to sign two medical release forms to proceed with the evaluation, which he initially refused, resulting in unpaid leave. Eventually, Nawara complied and was reinstated. He sued pursuant to § 12112(d)(4)(A) of the ADA, which prohibits an employer from requiring a medical exam or inquiring into an employee's disability status unless job-related and consistent with business necessity. A jury found the Sheriff's Office violated this provision by requiring Nawara to undergo a fitness-for-duty examination and disclose his medical records, but awarded no damages. The jury was not asked to determine whether Nawara had or was perceived as having a disability. Nawara then filed a post-trial motion that sought equitable relief in the form of back pay and restoration of seniority. The district court restored Nawara's seniority but denied back pay, interpreting the ADA as requiring a showing of disability to obtain such relief.

On appeal, the Seventh Circuit **affirmed** the restoration of seniority and **reversed** the denial of back pay. The Seventh Circuit considered the broad remedial purpose Congress intended to effectuate through the ADA and read the multiple provisions at issue holistically, rather than piecemeal. Through this, the Court found that the definition of "discrimination ... on the basis of disability" includes medical examinations and inquiries into an employee's disability.

The *Nawara* decision resolves a remedial ambiguity in ADA litigation and significantly broadens the scope of potential employer liability under § 12112(d). This decision reinforces that employers who violate the ADA's medical inquiry and examination rules—even in cases involving non-disabled employees—may still face consequences, including monetary damages.