**Section 130.40 Eligible Individuals**

a) An eligible individual must be:

1) Diagnosed with a substance use disorder and/or mental illness; and

2) In a state of wellness and recovery from said substance use disorder and/or mental illness. This includes the eligible individual reporting that they are receiving treatment for, or have completed a course of treatment for, their substance use disorder and/or mental illness.

b) The qualified employer is solely responsible for determining whether an eligible individual meets the criteria under subsection (a). The qualified employer must maintain confidential documentation supporting this determination, which may be requested by the Department for audit purposes.

c) The qualified employer must maintain the confidentiality of the eligible individual's protected health information consistent with all applicable laws and regulations including, but not limited to, the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110], the Health Insurance Portability and Accountability Act (Public Law 104-191) and associated regulations (45 CFR 160, 162, 164), and the Americans with Disabilities Act (42 U.S.C. 12101). The qualified employer must take steps to ensure that the eligible individual's protected health information is not disclosed to other employees or to members of the public.

d) The eligible individual's disclosure of their substance use disorder and/or mental illness must be completely voluntary. The qualified employer must securely maintain documentation, such as a release of information, confirming that the eligible individual's health information was disclosed voluntarily.

e) *A relapse in an individual's state of wellness shall not make the individual ineligible, so long as the individual shows a continued commitment to recovery that aligns with an individual's relapse prevention plan, discharge plan, or recovery plan.* [35 ILCS 50/3-10]

f) The eligible individual must be newly hired by the qualified employer on or after January 1, 2023.

g) The qualified employer may only determine an employee's status as an eligible individual after the employee is hired, rather than before hiring.

h) *The eligible individual must have been employed by the qualified employer in* the State of Illinois *for a minimum of 500 hours* during the calendar year in which they are hired*.* [35 ILCS 50/3-15(c)]

i) *The tax credit* qualification period *may only begin on the date the eligible individual is hired by the qualified employer.* The qualification period will end *on December 31 of that calendar year or the date that the eligible individual's employment with the qualified employer ends, whichever occurs first.* [35 ILCS 50/3-15(c)]

j) *Only one tax credit may be awarded for any eligible individual while employed by the same or related qualified employer.* [35 ILCS 50/3-15(c)]

k) *The hours of employment of two or more eligible individuals may not be aggregated to reach the minimum number of hours.* [35 ILCS 50/3-15(c)]

l) If an eligible individual has worked more than 500 hours but fewer than 2,000 hours between the date of hiring and December 31 of the same year, a qualified employer can elect to compute and claim a credit for such eligible individual in that year based on the hours worked by December 31. Alternatively, the qualified employer may choose to count the hours worked between the date of hiring and December 31 of the following year, or the last day of employment, in claiming the credit for the year following the date of hiring.