



# Illinois Employers Using AI for Workplace Purposes Will Soon Need to Provide Notice: 10 Quick Takeaways and 5 Things You Should Do to Prepare

Insights

9.20.24

Thanks to a new law signed into effect by Governor J.B. Pritzker, Illinois employers will need to provide notice to applicants and workers if they use artificial intelligence for hiring, discipline, discharge, or other workplace-related purposes. The recent amendments (HB 3773) to the state's Human Rights Act will also prohibit employers from using AI in ways that result in workplace discrimination starting in 2026. What are the 10 things employers need to know about this new law and the five steps to prepare? *For more information about AI workplace regulation around the country, join us for our next AI Forum on September 25 – [register here](#).*

## 1. Broad Definition of AI

The amendment creates new obligations for employer use of artificial intelligence. But how is AI defined by the new law? Very broadly. It includes any machine-based system that infers how to generate outputs – such as predictions, content, recommendations, or decisions – from the input it receives. The definition also expressly includes “generative artificial intelligence,” better known as GenAI, which is any automated computing system capable of producing outputs that simulate human-produced content when prompted by human inputs (think of results from ChatGPT, Claude, Gemini, etc.).

## 2. Discrimination Prohibited

The amendments provide AI cannot be used to discriminate – either intentionally or unintentionally – against any protected class covered by Illinois state law. This includes race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from military service, citizenship status, or work authorization status. Notably, however, the Act specifically cautions that it should not “be construed to prevent the use of predictive data analytics to support the inclusion of diverse candidates in making employment decisions.”

## 3. Covers Broad Array of Employment Practices

Workplace actions covered by this AI discrimination prohibition specifically call out recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge,

hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.

#### **4. Employers Must Provide Notice When AI Used**

If employers use AI or GenAI for any of those same employment-related purposes – from recruiting to discharge and just about everywhere in between – the amendments require employers to inform the applicant or employee about that AI use starting January 1, 2026.

#### **5. Stay Tuned for More Details About Notice**

The specific requirements for this notice – including circumstances, conditions, timing, content, and delivery method – will be determined by expected rules to be issued prior to the effective date by the Illinois Department of Human Rights.

#### **6. Clarifying Regulations Are To Come**

Speaking of the Department, the amendments give authority to the agency to adopt clarifying rules necessary to implement and enforce the new law. You can expect them to drop sometime in 2025 in advance of the January 1, 2026, effective date.

#### **7. Zip Code Discrimination Also Prohibited**

Tucked into the amendments is a provision prohibiting employers from using zip codes as a proxy for race in AI applications. This means employers cannot indirectly discriminate against protected classes by targeting or excluding applicants or employees based on their geographic location.

#### **8. Stiff Consequences for Violations**

Both the Illinois Department of Human Rights and the state's Human Rights Commission will be charged with enforcing the law once it takes effect. Applicants or workers who believe they have faced violations can file administrative charges, and after exhausting that process, private lawsuits and seek the same remedies available under the now current discrimination law, including uncapped compensatory damages, back pay, reinstatement or front pay, lost benefits, emotional damages, and attorneys' fees.

#### **9. Works Hand-in-Hand With State's Video Interview Law**

This new law follows Illinois's first foray into the field of AI workplace regulation. In 2020, the state passed a law requiring employers to obtain consent from interviewees if using AI to analyze video job interviews, and also jump through additional hoops to minimize potential discrimination.

#### **10. Illinois Joins Colorado and NYC in Regulating Workplace AI Activity**

While Illinois's new law is groundbreaking, it is not the first AI workplace discrimination law. Colorado became the first state to enact legislation prohibiting employers from using artificial intelligence to discriminate against their workers earlier this year – and it also requires companies to take extensive measures to avoid such algorithmic discrimination. This law also will fully take effect in 2026 and target discrimination arising from AI used to make important decisions – such as hirings and firings. And New York City requires employers to take several critical steps to prevent AI workplace bias, such as arranging for an independent bias audit and complying with notice requirements. Interestingly, California lawmakers failed to pass a similar law this legislative term but are eyeing 2025 as the year that they join the fold.

## 5 Things to Do to Prepare

Illinois employers have some time to gear up for the new law in advance of the January 1, 2026, effective date – but that doesn't mean you should put off preparations. We recommend the following five steps:

- 1. Audit Your AI Systems** – What better way to minimize risk than to look under the hood and make sure that your workplace AI tools aren't unintentionally discriminating against applicants or workers? Work with your FP counsel and consider using legal counsel to assist in order to gain the protections of the attorney-client privilege.
- 2. Ask the Right Questions of Vendors** – Most legal analysts, agencies, and courts that have examined the early stages of the AI discrimination and privacy era have concluded ignorance is no excuse. Employers might not be able to point the finger at the developers of the relevant technology or AI system to blame them for discrimination. Work with your legal counsel to develop a list of questions to ask your AI vendors and third-party providers to ensure you are in the best position to avoid liability.
- 3. Stay Tuned for the Required AI Notice Details** – As noted above, state regulators will provide more details about the required notice. We will update employers once that is released, so make sure to sign up for the FP Insight System to receive the news directly in your inbox.
- 4. Prepare for Changes to Your Policies and Handbook** – Employers should affirm their commitment to compliance with the new law in their policies, handbooks, and any other written materials. Work with your legal counsel to develop updated materials this coming year, including updating and revising your applications – and be ready for 2026.
- 5. Train Your Managers** – Ensure those involved in hiring and supervision are aware of this new law and what your related policies allow them to do and prohibit them from.

## Want to Know More?

If you want to know more about this law and other AI workplace regulations bubbling up around the country, [join us for our next AI Forum with our special California Insider guest, Ben Ebbink, on September 25.](#)

## **Conclusion**

We continue to monitor AI developments and will provide updates to this state law as appropriate, so make sure you are subscribed [to Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [AI, Data, and Analytics Practice Group](#) or [Chicago](#) office.

## ***Related People***

---



**Danielle Kays**  
Partner  
312.260.4751  
[Email](#)

## ***Service Focus***

Counseling and Advice  
Employment Discrimination and Harassment  
AI, Data, and Analytics

## ***Related Offices***

Chicago