

# Thought Leadership

## Illinois Enacts Artificial Intelligence Legislation Affecting Employment Practices

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Client Updates

Illinois Governor JB Pritzker recently signed HB 3773 into law, amending the Illinois Human Rights Act (the "Act") to regulate the use of artificial intelligence (AI) in employment practices. Amendments to the Act, which were enacted August 9, 2024, but do not take effect until January 1, 2026, prohibit the use of AI in a manner that results in illegal discrimination in employment decisions. Clients who use any automated tools to make employment-related decisions in Illinois should be familiar with this law as they formulate and implement policies regarding the use of AI in employment decisions.

The Act defines AI broadly, covering the use of both (1) traditional AI—"a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments"—and (2) generative AI—"an automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content." Importantly, the law applies to the use of AI in nearly all manner of employment decisions, including recruitment, hiring, promotion, termination, and discipline.

The Act provides that, with respect to employment decisions, it is a civil rights violation for an employer to (i) use AI that has the effect of subjecting employees to discrimination on the basis of protected classes or to use zip codes as a proxy for those protected classes; or (ii) fail to notify an employee that the employer is using AI to make employment decisions. An "employer" under the statute includes any person employing one or more employees within Illinois during 20 or more calendar weeks preceding the alleged violation, as well as various government entities and parties to public contracts.

Amendments to the Illinois Act follow on the heels of the 2020 Illinois AI Video Interview Act, which requires employers that use AI to analyze video interviews to obtain informed consent from applicants, and to gather and report, in some circumstances, demographic data for applicants to ensure the AI analysis does not result in bias against any protected classes. Other states and localities have similarly enacted AI legislation calling for protective measures. New York City, for example, requires employers to conduct and publicize a formal bias audit of automated employment decision tools and provide certain notices to employees and applicants. Colorado, meanwhile, has enacted a more comprehensive law requiring both developers and deployers of certain AI systems to implement risk management policies and programs, conduct impact assessments, and provide certain notices and disclosures.

Although federal law does not currently require employers to notify employees or job applicants that they intend to use artificial intelligence in employment decisions, this topic has been a recent focus and priority of the EEOC, which has issued important guidance regarding the potential for disparate impact discrimination in the use of AI and maintains that employers are ultimately responsible for the effects of the AI they use.

As states increasingly enact AI legislation, clients should consider what software and practices they have in place that use AI that could be impacted by these statutes. In addition to monitoring new state and local laws, clients must also consider existing laws, and how the agencies responsible for interpreting those laws may apply them to AI in employment. After canvassing their AI tools, clients should consider conducting thorough impact assessments or bias audits to ensure their AI tools do not inadvertently lead to discrimination. Clients operating in multiple states, in particular, should also consider engaging legal counsel to help navigate the complexities of the patchwork of AI regulations and to develop appropriate policies and procedures. Finally, clients should be prepared to update their employment notices and train their HR personnel on the evolving requirements and remain vigilant to further developments. Staying informed and proactive in response to these developments will be critical for clients to manage risk and maintain compliance.

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