



LEGAL UPDATE Aug 30, 2024

Legal Update: New Illinois AI Law Requires Employee Notice, Affirms Existing Employer Nondiscrimination Duties

Seyfarth Synopsis: *On August 9, 2024, Illinois joined Colorado on the list of states that have enacted legislation specifically imposing obligations and restrictions on employers' use of artificial intelligence to make employment decisions, when Governor J.B. Pritzker signed Illinois HB 3773 into law. While not as broad as Colorado's AI law, passed in May 2024, Illinois HB 3773 requires employers to provide notice to applicants and employees that the employer is using AI for various employment decisions, prohibits the use of zip codes, and contains an explicit statement that employers may not use AI in a way that subjects employees to discrimination – an obligation that already existed under federal and state law.*

Illinois HB 3773 largely sailed under the radar, and until its passage on August 9, it largely escaped both media attention and controversy.^[1] While HB 3773 went through some amendments since its introduction in early 2023, in April 2024 it was approved in the Illinois House in a 106-0 vote (with one “present” vote), and in May 2024 it was approved in the Illinois Senate in a 57-0 vote.

With Governor Pritzker's signature on August 9, the new Illinois AI law will go into effect on January 1, 2026.

Legislation specifically regulating employers' use of AI in employment decisions remains rare, even though many states, including Illinois, have enacted laws addressing other AI-related issues. These issues include laws concerning the use of facial-recognition

technology, AI-generated “deepfakes”, and regulations regarding state governments’ own use of AI and various AI funding initiatives. But currently in the United States, only New York City, Colorado, and now Illinois have passed laws that directly address employers’ obligations when using AI for employment-related decisions. Thus, the enactment of Illinois HB 3773 places Illinois among a select group of jurisdictions taking concrete steps to regulate AI in the workplace.

1. Disclosure Requirements

The new Illinois law requires employers to notify employees when the employer uses AI for employment decisions. The reach of this disclosure obligation is expansive, covering an employer’s use of AI in “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.” The statutory language appears to encompass any “use” of AI for these purposes, not just fully automated decision-making. This broad wording appears to extend the disclosure requirement to a wide range of AI applications in the employment context.

While the exact nature of the required disclosure is unclear from the statutory text, the Illinois Department of Human Rights (IDHR) has been granted authority to “adopt any rules necessary for the implementation and enforcement of this subdivision, including, but not limited to, rules on the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice.” Although IDHR has been granted broad rulemaking authority here, it remains to be seen whether IDHR will attempt to use that authority to impose a broad-based substantive consumer-facing disclosure requirement, similar to the controversial disclosure framework required by Colorado, or the more-detailed disclosure obligations present in draft legislation under consideration by other states.

2. Nondiscrimination Provisions

The new Illinois AI law explicitly states that it is unlawful for an employer to use artificial intelligence that has the effect of subjecting employees to discrimination on the basis of protected classes under Illinois law. While at first blush these provisions may appear sweeping in their scope, upon closer inspection employers may realize that these new provisions do not introduce any new legal obligations for employers. It was already a violation of the Illinois Human Rights Act, 775 ILCS 5/2-102, for an employer to engage in discriminatory conduct on the basis of protected classes.

The IHRA already prohibits employers from engaging in discriminatory conduct, and the statutory text of the new AI law parallels the existing list in IHRA, *i.e.*, “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment”.

For many years, leaders from federal civil rights agencies have been warning that existing civil rights laws apply to the results of decisions made by or with the assistance of AI. This message was articulated clearly and unambiguously by EEOC Commissioner Keith Sonderling as early as 2021, and was later amplified by other leaders and in multiple federal agency pronouncements, including multi-federal agency press releases in [April 2023](#) and [April 2024](#).

The inclusion of an explicit nondiscrimination provision in the new Illinois law, while it may appear redundant, underscores legislative and regulatory expectations that AI-driven decisions must comply with existing non-discrimination principles.

3. Restrictions on the use of Zip Codes

The new Illinois law contains a specific prohibition against using “zip codes as a proxy for protected classes” when employing artificial intelligence tools for various employment purposes. It has long been understood that zip codes can strongly correlate with race and national origin, which can potentially lead to disparate impact findings. The plain language of the law does not prohibit the use of zip codes generally but takes a narrower approach in prohibiting uses in which zip codes act “as a proxy” for protected classes.

Finally, on its face, the statutory text of the new Illinois law only speaks to the use of zip codes, and does not restrict the use of geolocation data more broadly. Employers could potentially use other forms of location data in their AI systems without violating this specific provision of the new Illinois law.

Nevertheless, employers using AI in their employment processes would be well-advised to review their use of zip code and other location data to assess compliance issues.

4. Illinois’ Pattern of Targeted AI and Privacy Legislation

Illinois’ enactment of HB 3773 continues Illinois’ trend of enacting targeted legislation addressing specific technological issues in employment and privacy. In 2008, Illinois passed the Biometric Information Privacy Act (BIPA) (740 ILCS 14/), which regulates the

collection and use of biometric data, including in employment contexts. This was followed in 2019 by the Artificial Intelligence Video Interview Act (AIVIA) (820 ILCS 42/), which governs employers' use of AI analysis in video interviews. AIVIA requires employers using "an artificial intelligence analysis" of job applicants' video interviews to provide various notices, obtain certain consents, and have specific data-management practices.

Illinois' new AI legislation, in the context of BIPA and AIVIA, underscores Illinois' ongoing commitment to addressing technological impacts on employment and privacy through focused statutory measures. While none of these laws impose comprehensive regulations on AI in employment, they represent significant, yet narrow steps regulating the use of technology in the workplace, and highlight Illinois' position at the forefront of these legislative efforts.

Implications for Employers

Illinois employers should pay close attention to the new disclosure requirements in Illinois' new AI law, effective January 1, 2026, and closely monitor activity relating to clarifying guidelines issued by the Illinois Department of Human Rights. Additionally, Illinois employers would be well-advised to review their current use of AI in employment decisions in order to ensure compliance with both the new law and their existing non-discrimination obligations.

More broadly, employers across the country should take note of this development as part of the ongoing trend of state-level AI regulation. While Illinois' approach is less comprehensive than Colorado's recent law, it reflects the growing attention being paid to the use of AI in employment at the state level. Employers using or considering AI tools should stay informed about these evolving legal requirements and consider how they are identifying, managing, and mitigating AI risks.

We will continue to closely monitor the new Illinois AI law and efforts to implement or clarify its provisions, as well as other developments related to AI regulation across the country. For additional information, please contact the authors of this alert, a member of Seyfarth's People Analytics team, or any of Seyfarth's attorneys.

[1] This lack of controversy stands in marked contrast to Colorado's broad-sweeping AI law passed in May 2024, and Connecticut's SB 2. The Connecticut bill, like Colorado's law, attempted to regulate a multitude of AI concepts. It passed the Connecticut Senate in April 2024 but stalled at the end of the legislative session after Governor Ned Lamont

threatened a veto. Both the Colorado and Connecticut bills drew significant criticism from businesses, which argued that these legislatures were implementing complex compliance regimes that would chill business activity.

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