Insights, News & Events

SNEAK PEEK: ILLINOIS AI WORKPLACE NOTICE RULEMAKING IS COMING – WHAT TO EXPECT + YOUR 5-STEP ACTION PLAN

Insights
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As Illinois employers that use AI in employment decisions ready themselves for the new anti-discrimination, notice, and record-keeping requirements starting January 1, the Illinois Department of Human Rights is in the process of drafting the long-anticipated rules for compliance. Indeed, the Illinois Department of Human Rights (IDHR) recently met with stakeholders to propose rules to implement the new law. How will this big change impact your workplace? Here's what you need to know about the state's new employment-related AI law, the proposed rule, and the five steps you can take now to prepare.

Quick Review of New Illinois AI Obligations

Under the new law, employers will need to provide notice to applicants and workers if they use artificial intelligence for hiring, discipline, discharge, or other workplace-related purposes. Employers are also prohibited from using AI in ways that result in workplace discrimination.

The act includes a broad definition of AI and covers a variety of employment decisions.

AI 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

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human inputs (think of results from ChatGPT, Claude, Gemini, etc.).

Workplace actions covered by this AI discrimination prohibition specifically call out recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment. You can read more details about the new law here.

Key Compliance Points in the Draft Rules

While we wait for a final version of the rules implementing the new law, the IDHR's current proposal lends some insight on how to prepare for compliance. Here are some answers to your top questions.

When is Notice Required?

Employers are barred from using AI "to influence or facilitate" covered employment decisions unless they provide notice to employees and job applicants. Examples include:

- Using computer-based assessments or tests (like questions, puzzles, or games) to:
  - Make predictive determinations about a job applicant or employee;
  - Measure their skills, dexterity, reaction-time, or other mental or physical abilities;
  - Measure personality traits, aptitude, attitude, or cultural fit; or
  - Screen, evaluate, categorize, or recommend prospective or current employees.
- Using AI to direct certain job advertisements or recruiting materials to targeted groups or areas.
- Screening resumes for particular terms or patterns.
- Analyzing facial expressions, word choice, or voices in interviews.
- Analyzing applicant or employee data acquired from third parties.

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Are There Any Exceptions?

Yes. Notice is not required in the following circumstances:

- **Using AI for business purposes other than covered employment decisions**, such as to generate text or images for promotional purposes.
- **Using an automated computer system that does not qualify as AI** – such as word processing software, spreadsheet software, or map navigation systems – so long as the technology isn't being used to make or influence covered employment decisions based on predictions, content, or recommendations it creates from the input it receives.
- Operating a computer system that has AI capabilities **without actually using those AI features** to make or influence any covered employment decisions.

What Information Must Be Included?

The notice should be in plain language and a readable format, available in the languages commonly spoken by your workforce, and reasonably accessible to employees with disabilities. It should include all the following information:

- The AI product name, developer, and vendor, if applicable
- Covered employment decision the AI system is influencing or facilitating (such as recruiting, hiring, or disciplinary decisions)
- The purpose of the AI system, including the categories of personal information or employee data collected or processed (like summarizing or scoring resumes or analyzing video interviews)
- The relevant job types
- A point of contact, such as a hiring manager or HR staff member, who can answer questions about the system and its use
- The right to request a reasonable accommodation and instructions on how to request the accommodation
- Certain AI-related anti-discrimination language from the Illinois Human Rights Act (775 ILCS 5/2-102(L))

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When and How Should Notice Be Provided?

Current employees should receive notice on an annual basis and within 30 days of adopting or substantially updating AI tools used for covered employment decisions. Job postings should also include this information.

Employers will need to provide notice in all the following ways, as applicable:

- in any employee handbook, manual, or policy document;
- in a conspicuous location at any worksite where notices are customarily posted;
- in a conspicuous location on any intranet or external website where you customarily post notices to employees and job applicants – with a clear link on your website's homepage; and
- in any job notice or posting.

How Long Do Records Need to Be Kept?

The proposed rule adds AI-specific records to existing preservation duties for employers, labor organizations, and employment agencies. Notices, postings, and disclosures about AI use under the act, and records of that AI use, need to be preserved and maintained for four years.

What's Next?

Note, these rules are *proposed*, not *final.* Some employer advocates argue that the broad notification and record-keeping requirements are too burdensome on small businesses and could hinder their ability to use AI hiring and HR tools. All impacted employers are encouraged to review the proposal and submit feedback to the Illinois Department of Human Rights.

Thus, these requirements could change, or if implemented as is, they may become binding upon the law's January 1 effective date. In the meantime, Illinois employers that use or plan to use AI in employment decisions should consider taking immediate action to ensure compliance by January 1.

5-Step Employer Action Plan

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1. Assess AI Use: Identify AI tools that may be covered by the new law and confirm whether AI features are actually used to make or influence the law's covered employment decisions, including recruitment, hiring, promotion, training selection, discipline, discharge, or other terms and conditions of employment.

2. Create and Be Ready to Post Notices: Ensure notices have all the required information noted above and develop a system to ensure they are posted in each required physical and online location. Don't forget about annual notices and requirements when new or substantially updated AI tools are used.

3. Prepare for Changes to Your Policies and Handbook: Revise anti-discrimination, hiring, and technology policies as needed. You should affirm your commitment to compliance with the new law in your policies, handbooks, and any other written materials. Work with your legal counsel to develop updated materials for 2026, which may include updating and revising your applications.

4. 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? Consider using legal counsel to assist and gain the protections of the attorney-client privilege. You may also want to work with 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.

5. Train Your Managers: Ensure those involved in hiring and supervision are aware of this new law – including notice, recordkeeping, and anti-discrimination provisions – and what your related policies allow and prohibit.

Conclusion

We continue to monitor these proposed rules and provide updates if they are adopted, as well a monitor other AI developments, 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.

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