



Insights

Recent Updates to the Illinois Human Rights Act Presents New Risk to Employers that Use AI in Hiring Decisions

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By: Alex C. Wimmer and Stephen G. Luehrs

Effective January 1, 2026, amendments to the Illinois Human Rights Act (IHRA) impose strict transparency and accountability requirements on employers that use AI or who rely upon others who use AI in decisions to hire or fire employees. The requirements apply to any employer that has at least one employee in Illinois during 20 or more calendar weeks. Contrary to previous Illinois law, the new law does not allow for employers to hide behind decisions made by AI and claim “plausible deniability,” as to any effects that AI had on hiring decisions. Instead, the new law requires employers to proactively monitor, take inventory of, and understand how each AI system is used and whether it produces discriminatory effects on protected classes. In addition, there are numerous reporting, notice, and data/document retention requirements.

Who Is Covered and What Systems Are Regulated

Regulated AI includes any machine-based system that influences or facilitates employment decisions such as recruitment, hiring, promotion, retention, training selection, discharge, discipline, tenure, or other terms of employment. Covered tools include, for example, resume screeners, video interview analytics, candidate ranking systems, and promotion recommendation engines, whether or not these tools fully automate or merely influence a decision. Notice is required even when AI assists rather than replaces human decision-making.

Illinois Notice and Disclosure Requirements

Employers must (i) provide clear and conspicuous disclosures identifying the specific AI tools or AI tools vendors used and (ii) disclose which employment decision(s) the system affects. Notices must appear in all job postings for applicants and in an annual notice to current employees affected by such systems. Failure to provide proper notice is a civil rights violation under the IHRA and can result in penalties up to \$5,000 per violation. It is unclear at this point how the Courts will define “per violation” as it could be defined per failure to notify or could even be interpreted to be \$5,000 per employee who did not receive a notice.

Prohibited Practices and Liability

AI systems that yield discriminatory effects on protected classes are prohibited, and using zip codes or zip code-derived proxies as a data point that could create disparate impact is expressly barred. *Liability does not depend on discriminatory intent; the statutory focus is the effect of the system.* Federal EEOC guidance treats vendor-provided tools as employer agents, foreclosing any “vendor defense” and assigning outcome liability to employers directly. In this context even if a recruiter or vendor violates the law it could be imputed onto the employer even if they lacked knowledge of the use.

Key Deadlines and Timelines in Illinois



- Illinois IHRA amendments are effective January 1, 2026, requiring compliant disclosures in job postings and annual employee notices to all employees who may be affected by internal employment decisions utilizing AI.

Practical Steps for Employers

- **Inventory the Use of AI:** Identify all AI based tools that influence employment decisions.
- **Eliminate Prohibited Data and Practices:** Remove zip code data and any other data points that could create a disparate impact.
- **Implement Required Notices and Disclosures:** Embed the proper disclosures in every job posting and institute an annual review with procedures to issue periodic notices to all current employees of new updates.
- **Human Oversight and Documentation:** Maintain human oversight and retain required documentation of compliance.
- **Vendor Contract Overhaul:** Amend all agreements with vendors to require bias-testing, algorithm transparency, indemnification, insurance covering the employer as an “additional named insured” and audit cooperation provisions.
- **Risk Management and Auditing:** Conduct adverse impact analysis and bias audits on a regular basis.
- **Governance and Monitoring:** Adopt a documented AI governance program with periodic review to monitor and comply with evolving applicable law.
- **Seek competent legal advice** to ensure the measures planned and to be implemented are sufficient to gain substantial compliance and also to determine the potential for hiring vendors offering consultative compliance advice.

How we can help

In a very fluid labor and employment law environment, it is critical to be proactive as the risk of liability for assuming your company is too small to be of concern, or that your HR Director is well versed and that therefore your existing employment practices must be compliant. Too often awareness of non-compliance comes in the form of a violation notice or a demand letter alleging statutory damages per occurrence. Our team continues to closely monitor Court decisions that will affect the use of AI in employment decisions. Employers with questions about compliance requirements regarding their own employment decisions and the AI use by their vendors are encouraged to contact our attorneys who can introduce you to Alex C. Wimmer or Stephen G. Luehrs who have prepared this legislative update. We have developed streamlined checklists that we believe your HR Directors will find invaluable in developing their own compliance modeling.

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