

October 2024 Legal and Legislative Report

6 Important Changes to the Illinois Employment Law Landscape for 2025: What Employers Should Do to Prepare

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Following a busy 2024 session for the Illinois legislature that will impose new requirements on employers, Governor JB Pritzker signed into law a number of additional bills that will take effect on January 1, 2025, and have important implications for employers doing business in Illinois.

What are the six most important changes to the workplace law landscape Illinois employers should be mindful of heading into 2025?

1. Greater Employee Access to Paystubs

Illinois lawmakers amended state law to provide current and former employees greater access to their paystubs; meaning you will have some new obligations. Thanks to the Wage Payment and Collection Act amendments, businesses should be prepared to update payroll practices, payroll recordkeeping, and responses to requests for paystubs. The new law clarifies the definition of *paystub*, requires businesses to maintain paystub copies for three years, and to furnish copies of an employee's (or former employee's) paystubs upon request.

2. Increased Time for Workers to File Illinois Human Rights Act (IHRA) Claims

The Illinois Human Rights Act (IHRA) will also undergo some changes in 2025. The IHRA is the state-level antidiscrimination and antiharassment statute in Illinois. It is the state equivalent to Title VII of the Civil Rights Act of 1964. Generally, the IHRA requires supposedly angry employees to file a *Charge of Discrimination* with a state agency before they are able to file a lawsuit and seek monetary relief.

New amendments will more than double the amount of time that an employee has to file a Charge with the applicable state agency from 300 days to two years.

3. Boosted Penalties for Certain IHRA Claims

Effective on January 1, 2025, the IHRA will need to provide for increased civil penalties for pattern-and-practice determinations. This means that if an employer is found to have repeatedly discriminated against multiple employees in the same manner, that employer can be subjected to increased civil penalties.

4. Expanded IHRA Protections

The final IHRA change for 2025 is that the statute will now protect employees from discrimination or harassment based upon their *family responsibilities* and *reproductive health decisions*, both of

which are specifically defined in the IHRA amendment. These additions to the statute will greatly expand employee protections in the new year.

5. New E-Verify Obligations

SB0508 will grant additional protections to employees who receive a *no match* designation from the federal E-Verify system. Specifically, the new law prevents Illinois employers from imposing work authorization requirements greater than those required under federal law. This law also creates certain notice obligations and exclusions for employers who receive notice of a discrepancy in an employee's employment verification information, either from the employee directly or from a federal or state agency (Social Security Administration or IRS).

Most importantly, this Act states that employers are prevented from taking "any adverse employment action against the employee, including the re-verification, based on the receipt of the notification." The notification of discrepancy will trigger certain obligations for employers, as they must provide the affected employee with:

- The specific documents deemed to be deficient and the reason for the deficiency.
- Instructions on how the employee might correct the discrepancy, if required to do so by law.
- An explanation of the employee's rights to have representation present during any subsequent meetings, discussions, or proceedings with the employer.
- An explanation of any rights the employee may have in connection with the discrepancies.

Illinois employers who continue to use the federal E-Verify system, whether they are required to do so or not, should be aware of these policies and incorporate the requirements into their employment verification practices.

6. Changes to the Illinois Whistleblower Act (IWA)

Lastly, the Illinois Whistleblower Act will change effective January 1, 2025. This statute protects employees who disclose or threaten to disclose an employer's illegal activity to a government agency or law enforcement agency.

The most notable change is the addition of a *good faith* requirement by employees. The amendment also adds a definition for *adverse employment action* to the statute. Under the IWA, an adverse employment action means an action that a reasonable employee would find materially antagonistic. An action is materially adverse when it could dissuade a reasonable employee from disclosing or threatening to disclose information protected by the statute. These amendments broaden the scope of reportable conduct by employees.

Employers should review their procedures for investigating employee complaints, even those of which are unrelated to harassment or discrimination. In the event that the employer activity at issue is not actually harmful or illegal, employers should nevertheless take precautions to ensure that the reporting employee understands why this is the case and is not subjected to any changes in the

terms or conditions of their employment on the basis of their having reported the activity in good faith.

Conclusion

Employers should take this time to review all of their policies and to ensure that they have programs in place which effectively train managers on these changes in Illinois law. Human resources professionals should also review their internal processes for handling complaints of alleged workplace misconduct to make sure problems are dealt with quickly and effectively.

Illinois Holds the Second Worst Unemployment Rate in the Nation

Ravi Mishra October 22, 2024 Illinois Policy Institute

Illinois' latest employment figures show the state is struggling to maintain job growth and is still suffering from high unemployment.

Illinois' unemployment rate was tied with California for the second highest in the U.S. in September 2024, maintaining at 5.3%, according to the latest data release from the U.S. Bureau of Labor Statistics.

Illinois' unemployment rate continued to exceed the national average of 4.1% in September 2024 and it was higher than in any neighboring state.

Illinois has seen job growth of 35,400 since September 2023 which ranked Illinois 47th among all states for non-farm job growth (0.58%). This is far behind the national growth of 1.56% in the same period.

The sector with the best job growth in Illinois was Government. The state government added 8,800 jobs which is an increase of 6.14%. Local government added 33,800 new jobs, or 5.73% increase, and *other sectors* with 10,100 new jobs, or 4.01%. Meanwhile, the professional and business sector saw the largest net decline during the 12-month period, reporting 32,000 fewer positions than a year earlier.

The information sector and finance sector also saw sharp declines, shedding 3.89% and 2.24% of their respective workforces.

Illinois saw modest gains in only 4 out of 11 industries, not including government. Illinois ranked last in job growth rate among neighboring states from September 2023 to September 2024 at 0.58%. Missouri reported the strongest job growth at 2.9%.

Illinois' job recovery rate since the pandemic ranks 44th in the nation, with only 26,500 more jobs than were available in January 2020, a 0.43% increase. This ranks last among neighboring states.

The primary culprit in Illinois' slow economic growth and high unemployment is an unfriendly business environment resulting from high taxes under a constantly mismanaged budget. Data from

the U.S. Census Bureau shows that the state lost approximately 32,800 residents in 2023, and 3 in 4 Illinois communities lost residents. This marks 10 consecutive years of net population decline.

Illinois' state and local tax burden is the highest in the Midwest. The state also levies the second-highest corporate income tax in the nation, and its tax code is among the least friendly for businesses in the Midwest.

Despite this, the state continues to overspend, with over \$1.1 Billion in new taxes in the latest budget. Illinois continues to foster an environment that makes it more difficult for Illinoisans to find work and reduces wage growth prospects for those who are employed.

Illinois has many advantages, however, like its diverse economy, central location, and strong infrastructure. To take advantage of this, Illinois must focus on strengthening its fiscal position, removing regulatory burdens and providing real tax relief to both workers who are already finding it difficult to remain and to job creators who are desperately trying to stay.

<https://www.illinoispolicy.org/illinois-holds-second-worst-unemployment-rate-in-the-nation/>

Labor Department Gets Specific on Employers' Artificial Intelligence Use

Rebecca Rainey

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What DOL Wants From Artificial Intelligence

<https://news.bloomberglaw.com/construction-labor/punching-in-labor-department-gets-specific-on-employers-ai-use-28?context=search&index=10>

The US Department of Labor is drawing attention surrounding the use of artificial intelligence in the workplace, warning that employers shouldn't use the technology to interfere with labor organizing, or to reduce wages, break time, or benefits.

New DOL guidance released last week made it clear that the Biden administration expects a worker-protective approach from both employers using AI and the developers that make it. While some of the recommendations seem fairly obvious, the document sets the tone for future policy and enforcement efforts.

“The decisions that we make today are going to shape the impact of AI on workers for years to come,” Acting Labor Secretary Julie Su said during an Oct. 16 event announcing the new best practices guide. “That’s why it’s so critical that we all take action now so that AI in the workplace doesn’t create harm, doesn’t deepen existing inequalities, but instead empowers workers and unleashes expansive opportunity.”

The efforts come as employers, unions, and policy makers have been insisting on some clarity regarding how to mitigate the legal risks created by artificial intelligence in the workplace, while also urging the government to not overly restrict innovation.

Some of the biggest considerations the DOL wants AI users and developers to keep in mind include ensuring that employers are not relying on AI alone to make “significant” employment decisions, and that workers and unions receive disclosures about when AI is being deployed.

The guidelines also urge companies to “minimize” and limit electronic monitoring wherever feasible and ensure there’s a “legitimate” business purpose for collecting data on employees.

Employers should also keep fair scheduling practices in mind as well and ensure that AI technology doesn’t “make work more erratic or unpredictable, with insufficient rest time between shifts, or less notice prior to scheduling changes.”

The DOL is also placing responsibility on developers by calling on them to restrict or contractually prohibit uses of their technology that could present risks to workers’ rights or safety, and to make sure their systems allow for monitoring and oversight.

These guidelines are built on a series of AI principles released by the administration earlier this year and help to clarify the types of employment practices and policies the agency will be scrutinizing in its enforcement of federal labor laws. These follow the recent release of a framework for employers to incorporate practices to prevent AI systems from discriminating against workers with disabilities. President Joe Biden directed these efforts in an executive order on safe artificial intelligence in 2023.