

Illinois Amends Human Rights Act to Address AI Use in Hiring and Employment

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Highlights

Illinois continues to regulate the use of AI in employment

The Illinois Human Rights Act extends non-discrimination obligations to AI tools

Effective Jan. 1, 2026, employers that use AI must provide notice to employees and applicants

On Aug. 9, 2024, Illinois enacted legislation prohibiting employers' discriminatory use of artificial intelligence (AI) technology and software. Effective Jan. 1, 2026, the Illinois Human Rights Act (IHRA) will be amended to prevent employers from using AI in a discriminatory manner, including using an individual's ZIP code as a proxy identifier for characteristics, and to require employers to provide notice to individuals and employees that AI is being used.

The amendments require notice be sent when AI is being used in processes related to "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms or privileges, or conditions of employment."

The IHRA amendments expand on the Equal Employment Opportunity Commission's (EEOC) May 2023 guidance on the use of AI software for recruitment, selection, and hiring processes. The EEOC warned employers they may be responsible for violations under Title VII if the AI software was found to be discriminatory on the basis of any protected characteristic. Specifically, the EEOC indicated that some AI algorithms may have an adverse effect on protected groups if the automated selection rate of one particular group is substantially less than the rate for another group.

Under the amendments, the Illinois Department of Human Rights is tasked to develop and enforce rules regulating the notice requirement for the use of AI, including when and how to properly provide notice. While these rules are being promulgated, Illinois employers should consider adhering to the EEOC's guidance to avoid pitfalls with the use of AI software.

Specifically, employers should have an in-depth understanding of the algorithms, whether for resume-screening, video interviewing, or worker management, so they know how decisions are being made. Many employers may outsource to third-party vendors, but this does not reduce or eliminate liability for AI use. Employers should collaborate with their vendors to ensure measures are in place that monitor and detect potential discriminatory results of any algorithmic decision-making tool and evaluate whether the results negatively affect any protected class.

In addition, Illinois employers who use AI in interviews must adhere to the Illinois Artificial Intelligence Video Interview Act that was passed in 2020. Employers who use AI to analyze a candidate's interview video submission must do the following before the applicant submits the video: 1) notify the applicant that AI may be used to evaluate the candidate's fitness for the position, 2) explain how AI will work to evaluate the applicant, including characteristics used to make determinations, and 3) obtain the applicant's consent to be evaluated by AI.

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