

Illinois Regulates Employers' Use of AI in Decision-Making

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Employers are increasingly embracing [artificial intelligence](#) (AI) tools for recruiting and supervising employees. Those who do so should consider the applicable laws and potential legal risks. For example, Illinois recently passed legislation requiring employers to notify employees about the employer's specific uses of AI.

Illinois Governor JB Pritzker signed House Bill 3773 (HB 3773) into law on August 9, 2024. HB 3773 amends the Illinois Human Rights Act (775 Ill. Comp. Stat. 5/1-101 *et seq.*, IHRA) effective January 1, 2026. The IHRA applies broadly to those having one or more employees in Illinois at the time of an alleged civil rights violation or for 20+ weeks "within the calendar year or preceding the alleged violation." Some religious establishments are exempt from the Act. "Employee[s]" include individuals working for compensation within the state and apprentices.

HB 3773 explicitly defines "artificial intelligence" as: "a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments." It further defines "generative artificial intelligence" as: "an automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content, including, but not limited to... textual outputs... image outputs... multimedia outputs... and [] other content that would otherwise be produced by human means."

The IHRA already prohibits covered employers from making employment decisions "on the basis of unlawful discrimination, citizenship status, or work authorization status." HB 3773 makes explicit that employers cannot use AI in a way that has a discriminatory impact "on the basis of protected classes." The law also prohibits employers from using zip codes "as a proxy for" protected classes.

But HB 3773 imposes additional obligations on employers who use AI for decision-making. Beginning January 1, 2026, covered employers must notify employees if the employer uses AI for "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment." The legislation charges the Illinois Department of Human Rights with drafting rules to implement and enforce the notice requirement, including "the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice."

Five Takeaways for Employers about HB 3773:

1. Employers who use AI for decision-making, or rely on vendors using AI, should consider developing a compliance program. Elements of an AI compliance program may include identifying permissible and prohibited uses of AI and providing training to employees.
2. In some cases, using AI in making employment decisions has had a disparate impact on people in protected classes. To guard against the risk of algorithmic discrimination, companies may want to conduct periodic impact assessments/bias audits. (Some jurisdictions, such as Colorado, will require this in some circumstances beginning in February 2026.)
3. Illinois employers should monitor guidance from the state's [Department of Human Rights](#) to learn more about HB 3773's notice requirement.
4. Employee handbooks and policies may require updating based on AI use.
5. AI laws are rapidly evolving. Businesses may benefit from consulting legal counsel.



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