



**The Journal of Robotics,
Artificial Intelligence & Law**

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Illinois Enacts New Law Regulating Employer Use of Artificial Intelligence

Holly H. Williamson and Alyce Ogunsola*

In this article, the authors discuss a new law in Illinois requiring all Illinois employers to notify employees and applicants when they use artificial intelligence to make employment decisions.

Illinois Governor J.B. Pritzker has signed House Bill (HB) 3773 into law, requiring all Illinois employers to notify employees and applicants when they use artificial intelligence (AI) to make employment decisions. The law broadly defines AI to mean:

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.

AI includes generative artificial intelligence.¹

Additionally, the law prohibits employers from using AI for recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or other terms, privileges, or conditions of employment in a way that is discriminatory based on protected classes. The new law also prohibits employers from using ZIP codes as a proxy for protected classes.

HB 3773 directs the Illinois Department of Human Rights to adopt any rules necessary for the implementation and enforcement of the law, including rules on the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice.

When Does the Law Go into Effect?

The legislation will go into effect on January 1, 2026.

Who Is Covered by the Law?

Any person or entity that employs at least one employee in Illinois.

How Did We Get Here?

In recent years, the use of AI in employment has grown tremendously. Employers have used AI for automated candidate sourcing, résumé screening, applicant testing, and performance management. As employer use of AI has increased, so has federal and state legislative efforts to regulate its use.

Even though there is currently no federal law regulating employer use of AI, federal agencies have issued instructive guidance.

For example, on May 12, 2022, the Equal Employment Opportunity Commission issued guidance, “The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees.” The guidance explains how the use of AI may violate the Americans with Disabilities Act and provides tips on how to avoid doing so.

On April 29, 2024, the Department of Labor (DOL) issued DOL Field Assistance Bulletin No. 2024-1, “Artificial Intelligence and Automated Systems in the Workplace Under the FLSA and Other Federal Labor Standards,” to address potential issues under the Fair Labor Standards Act (FLSA) when employers use AI to perform tasks such as setting work schedules and tracking work hours.

Also, on May 16, 2024, the Department of Labor (DOL) developed “Artificial Intelligence and Worker Well-Being: Principles for Developers and Employers” as directed by President Biden’s October 30, 2023, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.

Various states have also enacted laws governing employer use of AI.

In May 2024, Colorado became the first state to mandate disclosures to employees and applicants when employers use AI in employment decisions. Also, Maryland regulates the use of facial recognition services to create a facial template during an applicant’s interview without a signed waiver by the applicant.

HB 3773 is not Illinois' first attempt to regulate the use of AI in employment decisions. Effective January 1, 2020, Illinois enacted the Artificial Intelligence Video Interview Act (AIVI Act), which requires employers to provide applicants with advance notice that they may use AI, inform applicants how AI works, obtain applicant's consent to be evaluated by AI, and delete the video within 30 days of the applicant's request. Under the AIVI Act, employers are prohibited from sharing applicant video except with people whose expertise is necessary to evaluate the applicant. As of January 1, 2022, employers who use AI analysis of video interviews as the sole method of determining whether an applicant is selected for an in-person interview must collect and report the race and ethnicity of applicants.

Finally, on May 17, 2024, the California Civil Rights Council announced a notice of proposed rulemaking to prevent discrimination due to the use of AI in employment decisions.

Takeaways

The legal landscape surrounding the regulations for employer use of AI in employment decisions is rapidly changing. Employers must ensure that their use of AI complies with current law. Employers are encouraged to consult their legal counsel to assess whether their use of AI complies with federal, state, and local law.

Notes

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1. See 775 ILCS 5/2-101(M).