



MAY 15, 2026

Illinois Opens for Public Comment Proposed Regulations Implementing the Use of AI in Employment Act

Illinois initiated a 45-day public comment period regarding proposed regulations implementing the Use of AI in Employment Act (HB 3773, the “AI Act”), which took effect January 1, 2026. The AI Act amends the Illinois Human Rights Act (the “IHRA”) by imposing certain notice, non-discrimination, and record-keeping requirements on Illinois employers who use artificial intelligence (“AI”) when making employment decisions. Illinois employees can enforce the AI Act and potentially recover damages through the private right of action provided under the IHRA.

As a component of the IHRA, the Illinois Department of Human Rights is charged with implementing and enforcing the AI Act, including through the issuance of the regulations. While the proposed regulations provide many details for how Illinois employers can comply with the AI Act, some ambiguities remain unresolved for now. Those wishing to provide comments may submit them in accordance with the notice of the [proposed regulations](#) and may also attend a public comment hearing scheduled for June 10, 2026.

BROAD DEFINITION OF “USE” AND “AGENT”

Under the AI Act, it is a civil rights violation to “use” AI to make employment decisions when the AI “has the effect of subjecting employees to discrimination on the basis of protected classes[.]”

The proposed regulations broadly define “use” to mean “*any instance in which the output of an artificial intelligence system influences or facilitates a covered employment decision.*” Under this definition, human-involvement in the decision-making process does not remove the employment decision from coverage under the Illinois’ AI Act. Thus, Illinois employers should understand the AI Act to apply broadly to any AI technology used to recruit, source, or assemble applicants or resumes; interview applicants or otherwise analyze their qualifications, abilities, aptitude, or personality; rank or categorize applicants or employees; or track or analyze employee productivity or performance; making assignments when the assignments have tangible benefits.

The regulations also expand employer liability under the AI Act by holding employers responsible for their agents’ use of AI not in compliance with the Act. An agent means “any third party acting on behalf of an employer to exercise control over the employer’s actions with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.” This could include not only staffing agencies, but also professional employer organizations, consultants, or trainers.

DETAILED GUIDANCE ABOUT NOTICE

Under the AI Act and the proposed regulations, it is a violation for employers to use AI to make a consequential employment decision without providing notice to applicants, employees, and union representatives. Unlike other Illinois laws, like its Biometric Information Privacy Act, neither the AI Act nor the proposed regulations require *advanced* notice—that is, notice of the use of AI before it is actually used. Instead, the proposed regulations provide the specific timing for providing notice to applicants and employees. For applicants, notice is required as part of a job notice or posting. Notably, for AI tools that gather resumes, this means that AI may have been used on an applicant without the applicant having first seen a notice on a job posting. For employees, notice is required on an annual basis and within 30 days of adopting a new AI tool, and must be included in an employee handbook, on the employer's internal or external website, and in a conspicuous location on the employer's physical workplace (*i.e.*, with other employment posters).

Notable requirements for the content of the notice include the developer, product, and vendor name of the AI tool, which could pose challenges for employers who regularly change their technology products or vendors, or who work through consultants without full access to the suite of tools being used. Employers are also required to state the purpose of the AI system and the types of data being collected, as well as the positions and employment decisions the tool is being used for. Finally, the regulations require employers to identify a point of contact to whom questions about the AI tool may be directed or from whom a reasonable accommodation may be requested. The notice itself must meet accessibility requirements for individuals with disabilities and must use clear language and be available in the language commonly spoken within the workforce.

VAGUE RECORD KEEPING REQUIREMENTS

Employers are required to preserve records of their notices, postings, and disclosures regarding the use of AI and “records of such use” for a period of three years following such use. The proposed regulations do not further describe what types of records regarding an employer's use of AI must be maintained beyond the notices. At minimum,

employers should consider also retaining the following types of records regarding AI employment tools: all contracts, invoices, or terms of use; any documents or data fed into the AI tool, and any output received from the AI tool; and any requests for accommodation regarding the AI tool. Additionally, Illinois employers should require that their vendors/developers of AI tools maintain all records for a minimum of three years.

Enforcement of Illinois' and other states' AI Acts continues to evolve, as the federal government seeks to put forward a national strategy on AI. For more information or assistance, please contact [Rachel L. Schaller](#), [Daniel R. Saeedi](#), or another member of Blank Rome's [Business Litigation, Labor & Employment](#), or [Privacy, Security & Data Protection](#) groups.

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