

ILLINOIS EMPLOYER ALERT: Illinois Notably Amends the Human Rights Act and Personnel Records Review Act in Employees' Favor

Labor & Employment Law Update

By Heather Bailey and Kevin Kleine on August 22, 2024

Illinois continues to change the landscape for employers, allowing employees more leeway when it comes to the Illinois Human Rights Act (IHRA) and Illinois Personnel Records Review Act (IPRRA).

RECENT AMENDMENTS TO THE ILLINOIS HUMAN RIGHTS ACT

Senate Bill 3310 (SB 3310) amends the IHRA to extend the statute of limitations for filing a charge with the Illinois Department of Human Rights (IDHR) from 300 days to **2 years** – joining the ranks of a few other states doing the same. Effective January 1, 2025, employees will now have 2 years from the date of an alleged civil rights violation to file a discrimination, harassment, and/or retaliation charge against their employer in Illinois. This is a significant development that should prompt all Illinois employers to carefully evaluate their employment separation practices and procedures, including document retention practices and policies. A lot can happen within 2 years following an employee's departure or an alleged incident, including faded memories, relevant witnesses or supervisors departing from employment, and relevant documents can get lost or destroyed. Thus, it is more important than ever now for employers to ensure they take steps to document, record, and preserve all facts and evidence related to employee issues that could lead to or result in a discrimination or harassment complaint being filed against the employer.

This change applies only to Illinois law and does not affect federal law or the federal statute of limitations employees have to file discrimination complaints against their employers with the Equal Employment Opportunity Commissions (EEOC), which is 300 days. Thus, an employee can miss the federal statute of limitations, but then still have longer to bring their charge under Illinois law instead.

House Bill 2161 (HB 2161) amends the IHRA to prohibit discrimination, harassment, or retaliation against employees based on their “family responsibilities” for their provision of “personal care” to a “family member” (these changes will also take effect on **January 1, 2025**). The terms “personal care” and “family member” are defined by the Illinois Employee Sick Leave Act.

“Personal care” includes activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met, for example providing transportation to or attending a family member's medical appointments, or staying home from work to care for a sick child or parent. Personal care also includes being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.

Covered “family member” includes an employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Note: this change does not require Illinois employers to accommodate employees or modify existing policies and rules with respect to the added family responsibility protections for employees.

House Bill 4867 (HB 4867) amends the IHRA to prohibit discrimination against employees based on their “reproductive health decisions,” including, use of contraception, fertility or sterilization care, assisted reproductive technologies, miscarriage management care, healthcare related to the continuation or termination of pregnancy, or prenatal, intranatal, or postnatal care. This change will take effect on **January 1, 2025**.

House Bill 3773 (HB 3773) amends the IHRA to prohibit employment discrimination with respect to an employer's use of artificial intelligence (AI) tools in hiring and employment decisions, if such AI tools have a discriminatory effect. Effective January 1, 2026, employers must notify employees and applicants whenever they use AI 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.” HB 3773 also prohibits discrimination based on “zip codes as a proxy for protected classes,” meaning, AI cannot be used as a means to discriminate against individuals or groups based on where they are geographically located. For example, AI cannot be used to exclude certain zip codes with high concentrations of minority populations from consideration in hiring or employment decisions.

In light of this, Illinois employers should carefully review and evaluate their AI systems and software to ensure they are not designed to, or used as a means to discriminate against employees or applicants, including having no disparate impact on these decisions and use. This may require review of existing agreements/policies with the providers of AI systems/software or consideration for such potential outcomes when negotiating agreements for AI systems/

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RECENT AMENDMENTS TO THE ILLINOIS PERSONNEL RECORDS REVIEW ACT

House Bill 3763 (HB 3763) significantly amends the IPRRA to include the following changes as of **January 1, 2025**:

- Requests for personnel records must be in writing, which includes any electronic communications, such as email or text messages.
- The bill sets forth an exact procedure employees (or their representatives) must follow when requesting personnel records.
- Employees can now request personnel records related to their benefits, employment agreements, employee handbooks, employer policies and procedures the employee may be subject to that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.
- Requires employers to grant at least 2 requests per employee per calendar year.
- Excludes certain costs/fees an employer can charge to provide the records.
- Records related to an employer's trade secrets, client lists, sales projections, and financial data do not have to be produced or turned over in an employee's request for personnel records.
- Adds that employees may file a lawsuit against the employer in court if the Illinois Department of Labor (IDOL) does not resolve a complaint within 180 days from the date the complaint was made to the IDOL.

PRACTICE TIPS:

- Illinois employers should modify their existing policies and employee handbooks to reflect all of these new amendments and added rights for Illinois-based employees.
- All investigation reports and supporting documentation should be preserved to reflect the new Illinois statute of limitations period of 2 years.
- Update existing preservation policies.
- All management should be trained on these amendments.
- Work with your data privacy counsel on the use of any AI during employment decisions.
- Continue to monitor this blog for additional updates as we hear from the IDHR.

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