

Illinois Employers, It's Time to Review and Revise Your Employment Agreements

Labor & Employment Law Update

By Kevin Kleine and Jeffrey Risch on October 28, 2025

On August 15, 2025, Governor Pritzker signed House Bill 3638 (H.B. 3638) into law, which amends the Illinois Workplace Transparency Act (the "Act") to provide current, former, and prospective employees with greater rights and protections when executing employment agreements with an employer. **The amendments under H.B. 3638 take effect on January 1, 2026, and apply to employment contracts entered into, modified, or extended on or after January 1, 2026,** except for collective bargaining agreements. Accordingly, employers need to carefully review their existing employment agreements and ensure they comply with the new requirements under H.B. 3638 by January 1, 2026.

Greater Protections for Employees Who Engage in Protected Activity

The Act prohibits provisions in agreements that restrict current, former, and prospective employees from reporting or disclosing unlawful conduct to federal, state, or local officials for investigation, including unlawful employment practices.

H.B. 3638 expands these protections for employees by broadening the definition of "unlawful employment practice" to mean and include any practice made unlawful under any state of Illinois or federal law governing employment.

Additionally, H.B. 3638 adds new protections for current, former, or prospective employees who engage in "concerted activity" by prohibiting provisions in employment agreements that restrict employees from engaging in protected concerted activity to address work-related issues. "Concerted activity" is defined to mean "activities engaged in for the purpose of collective bargaining or other mutual aid or protection" under the federal National Labor Relations Act, and certain Illinois labor laws impacting the public sector mostly (the Illinois Education Labor Relations Act and the Illinois Public Labor Relations Act) as well as the Illinois Labor Dispute Act.

Impact on Venue Selection, Choice of Law Provisions, and Statutes of Limitation

H.B. 3638 also adds new protections for employees governing the choice of law and venue selected for adjudicating unlawful employment practice claims. Additionally, H.B. 3638 amends the Act to prohibit provisions in agreements that shorten an applicable statute of limitation. Specifically, the new protections prohibit employment agreements (including arbitration agreements) that apply non-Illinois law to an Illinois employee's claim or require a venue outside of Illinois to adjudicate an Illinois employee's claim, or in any way attempts to shorten applicable statutes of limitation.

Additional Consideration Requirements for Obtaining an Employee's Confidentiality to Not Disclose Alleged Unlawful Employment Practices

H.B. 3638 amends the Act to require employers to provide employees with separate consideration in exchange for an employee promising to not make disclosures related to alleged unlawful employment practices. Additional consideration, separate from that which was given to obtain a release/waiver of claims, must be provided to the employee. Put simply, beginning January 1, 2026, employers will have to pay employees separately to obtain their confidentiality and a release and waiver of claims under a settlement or separation/severance agreement.

The amendments also provide that an employee's promises of confidentiality under a settlement or separation/severance agreement related to allegations of unlawful employment practices do not apply to future or prospective concerted activity related to workplace conditions. In other words, employers cannot restrict or prohibit employees from engaging in protected concerted activities under applicable labor laws.

Lastly, the new amendments under H.B. 3638 preclude the employer from unilaterally inserting any clause in a settlement or separation/severance agreement that states that the promises of confidentiality are the *preference of the employee*.

New Legal Remedies Available to Employees

The Act allows current, former, and prospective employees to recover attorney fees and costs for successfully challenging the validity and enforceability of an employment agreement falling under the protections of the law (i.e., employees who obtain a judgment or ruling in their favor that finds the employer violated the Act).

H.B. 3638 amends the Act to now allow recovery of consequential damages, in addition to an award of attorney fees and costs, for employees who successfully allege violations of the Act. And, beginning January 1, 2026, employees who

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successfully defend against an employer's claim that the employee breached their confidentiality obligations under an agreement can also recover consequential damages, attorney fees and costs.

Conclusion

The new requirements for certain employment agreements under H.B. 3638 are very employee friendly and expand rights and protections to employees under the Act. Therefore, it is critical for employers to have experienced labor and employment counsel review employment agreements to ensure they comply with the new amendments to the Act by the January 1, 2026 effective date. Key documents that should be reviewed and updated include, but are not necessarily limited to, the following:

- Severance/Release Agreements
- Confidentiality/Non-Disclosure Agreements
- Restrictive Covenant Agreements
- Arbitration Agreements
- General Employment Agreements
- Incentive Plans

Of course, employers should always consult with labor and employment counsel when negotiating and entering into employment agreements with current, former and prospective employees.

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