

# Illinois bars discriminatory AI and zip-code proxies in employment decisions

Source copy kept by wheresthe.ai for the story "Illinois bars discriminatory AI and zip-code proxies in employment decisions" (<https://wheresthe.ai/d/us-il-hb3773-ai-employment-law-2024-08/>).

Source: <https://www.morganlewis.com/pubs/2024/09/illinois-passes-new-law-to-address-ai-in-the-workplace>

Text saved 18 Oct 2026 (the page as published).

SHA-256 of the saved text: f0fa00b8ef61e90aa68f3336b27916ab211241fbb6d221d51cd294ce5c9788a4

---

## SUBSCRIBE

LawFlash

### Illinois Passes New Law to Address AI in the Workplace

September 12, 2024

Despite the rapid rise in the use of artificial intelligence (AI) in the workplace, legislation regulating employers' use of AI remains sparse. Until recently, only New York City and Colorado had passed laws governing an employer's requirements when using AI to make employment decisions, but on August 9, 2024, Illinois joined them when Governor J.B. Pritzker signed a new law into effect specifically addressing employer use of AI.

HB 3773, while not as comprehensive as the Colorado and New York City laws, still includes important requirements for employers using AI to make employment decisions. The new law amends the Illinois Human Rights Act (the Act), making it a civil rights violation to (1) use AI that has the effect of subjecting employees to discrimination or to use zip codes as a proxy for protected classes, and (2) fail to notify employees of the employer's use of AI. The new provision takes effect January 1, 2026.

HB 3773 applies to employers, which are defined under the Act as any person (which includes organizations and corporations) employing one or more employees within Illinois and, of note, does not expressly impose liabilities on employment agencies.

The Illinois Department of Human Rights will likely provide additional clarity on the scope and implementation of this new law before the January 1, 2026 effective date.

#### The Law Broadly Characterizes AI

HB 3773 stated that the term "artificial intelligence" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, recommendations, or decisions that can influence physical or virtual environments." This definition includes, but is not limited to, "generative artificial intelligence," a type of AI that uses sophisticated algorithms to "produce outputs that simulate human-produced content" such as essays, poetry, artistic images, and videos. As the definition is ambiguous and not specifically limited to generative AI, the current language could potentially cover a rules-based machine system even if it is not actually using AI to create outputs.

#### The Law Bars Employers from Using AI That Discriminates Against Protected Classes

The new provision makes clear that employers cannot "use artificial intelligence that has the effect of subjecting employees to discrimination on the basis of protected classes under [the Act] or to use zip codes as a proxy for protected classes. . . ." Although the law only specifically references zip codes, it implies that employers should not use any other variable when making employment decisions that could serve as a proxy for a protected category.

The provision is framed broadly to cover employer use of AI in decision-making related to hiring, recruitment, training, discipline, discharge, or other contexts in which an employer sets "the terms, privileges, or conditions" of employment. While this statement is not novel in that employers were already prohibited from engaging in discrimination, the language emphasizes that Illinois, like other jurisdictions, is keenly focused on the use of AI in the workplace and will treat AI models just like other tools or criteria used to make employment decisions.

Additionally, the new provisions highlight the dangers of using proxy variables, specifically zip codes, which

appear neutral on their face but may be correlated with protected classes in certain circumstances. While the law is focused only on the use of zip codes “as a proxy” for protected classes, this reference serves as a reminder that employers should carefully monitor AI systems that they use for potential disparate impacts, even when a model only processes facially neutral data.

#### The Law Requires Employers to Notify Employees When Using AI to Make Employment Decisions

The new provision requires employers to notify an employee when it uses AI in “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.” The Act provides no detail about what specific types of employment actions are covered, for example whether using AI to assist in writing performance reviews or disciplinary warnings.

The Act also does not provide any information on when and how notice must be provided, but instead states that the Illinois Department of Human Rights shall adopt further rules necessary for the implementation and enforcement of this provision including “rules on the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice.” This guidance may provide more clarity on the types of actions that necessitate providing notice and when and how that notice must be distributed.

#### Implications for Employers

Employers with employees in Illinois that use AI tools in their employment decision-making processes should monitor for new communications, rules, regulations, and guidelines related to the notice requirements in HB 3773 that will be promulgated by the Illinois Department of Human Rights between now and the effective date of January 1, 2026. Employers should also take the opportunity to review their use of AI in employment, including services provided by third-party vendors, to ensure compliance with the new provision and existing nondiscrimination requirements.

#### Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following:

##### Authors

Stephanie L. Sweitzer

Zachary W. Shine

Chicago

Jonathan D. Lotsoff

Stephanie L. Sweitzer

Washington, DC

Sharon Perley Masling

Philadelphia

W. John Lee

Silicon Valley

Dion M. Bregman

Andrew J. Gray IV