CLIENT ALERTS & INSIGHTS

Developments in AI Restrictions in the Workplace

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Beginning January 1, 2026, Illinois employers must notify workers when using artificial intelligence ("AI") to make employment-related decisions and could face regulatory enforcement and civil lawsuits if the deployment of AI results in discriminatory actions.

Signed by Governor Pritzker, House Bill 3733 amends the Illinois Human Rights Act to specifically prohibit employers from using AI to discriminate in the recruitment, hiring, promotion, training, discipline, tenure, and discharge of workers. This may happen in a number of ways, including using an applicant's zip code to screen for jobs as a way to preclude residents of predominately minority neighborhoods or emphasizing certain schools over others.

The amendment defines AI as 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."

The move by Illinois follows a national trend set earlier this year by the U.S. Department of Labor ("DOL"), which issued guidance on employers' use of AI and other automated systems in the workplace. The guidance outlines employment compliance issues that employers may face when using these advanced technologies, and urges employers to understand the design, programming, and training that drive an AI tool's algorithm.

Otherwise, DOL warned, reliance on AI, absent human oversight, can put employers at risk of violating the Fair Labor Standards Act ("FLSA"), the Family Medical Leave Act ("FMLA"), and Equal Employment Opportunity laws. For example, systems that automatically deduct meal breaks from an employee's compensable work hours may result in an FLSA violation if the employee is not completely relieved from duty. Employers that use AI or other technologies to calculate wage rates are responsible for ensuring that employees are paid in accordance with federal minimum wage and overtime, even when wage rates vary substantially.

Although AI may increase efficiency and productivity in employment decisions, DOL concluded that such systems may also perpetuate unlawful bias and automate unlawful discrimination.

In light of the DOL's guidance, Colorado became the first state to pass a comprehensive act addressing AI-imposed bias. The law includes a notice-and-appeal provision which imposes an affirmative requirement on employers to provide detailed notices to applicants who are negatively affected by an AI-assisted decision. In addition, Colorado job applicants can challenge a company's decision not to hire them. The law will take effect in February 2026.

We anticipate DOL and states like Illinois will issue best practice guidelines for employer implementation and use of AI. In the meantime, employers using AI systems should establish internal procedures to ensure compliance with state and federal labor standards.

For more information, contact a member of Benesch's Labor and Employment Practice Group and continue to follow Benesch's AI Commission as we address the evolving regulatory landscape of AI, impacts of new regulations, and steps toward compliance.

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