CLIENT ALERTS & INSIGHTS

Illinois Employers Take Note: Expanded Requirements Under the Illinois Workplace Transparency Act Go into Effect in 2026

OCTOBER 27, 2025

Authors: Margo Wolf O'Donnell, Charles B. Leuin, Emma Graham

Key Takeaway

- **Illinois employers should review all employment-related agreements, especially those involving confidentiality, restrictive covenants and settlement terms, to ensure compliance with the amended Workplace Transparency Act ("WTA"), which takes effect January 1, 2026.**

Effective January 1, 2026, amendments to the Illinois Workplace Transparency Act ("WTA") expand employer obligations and employee protections with respect to employment-related agreements.

Confidentiality in Settlement and Separation Agreements

The Act allows settlement and separation agreements that include promises of confidentiality regarding unlawful employment practices, provided certain conditions are met (including documentation and notification requirements; valid, bargained for consideration and mutual benefit; and periods for consideration and revocation).

Under the amended WTA, any confidentiality provision in a settlement or separation agreement must be supported by bargained-for consideration that is *separate* from consideration provided for a full release of claims and other terms. We expect that one way to satisfy this new requirement when including a confidentiality provision in a settlement or separation agreement is to allocate a portion of the total consideration to the promise of confidentiality when the settlement/separation offer is made and in the written agreement. Further, employers may not unilaterally include a clause in a settlement or separation agreement stating that the promise of confidentiality is the preference of the employee. The Act also prohibits confidentiality provisions restricting "future or prospective concerted activity related to workplace conditions."

Prohibited Unilateral Conditions of Employment or Continued Employment

The amended WTA expands the scope of prohibited unilateral terms in employment agreements. The Act prohibits "any agreement, clause, covenant, or waiver that is a unilateral condition of employment or continued employment and requires the employee or prospective employee to waive, arbitrate, or otherwise diminish any existing or future claim, right, or benefit related to an unlawful employment practice to which the employee or prospective employee would otherwise be entitled under any provision of State or federal law." The amended WTA adds the following categories of provisions that are deemed unlawful and void if "unilaterally" imposed:

- A provision that applies "non-Illinois law to an Illinois employee's claim"
- A provision that requires "a venue outside of Illinois to adjudicate an Illinois employee's claim"
- A provision that "purports to shorten the applicable statute of limitations"

Mutual Conditions of Employment or Continued Employment

The Act allows agreements that are a mutual condition of employment or continued employment and contain "provisions that would otherwise be against public policy as a unilateral condition of employment or continued employment" if they meet certain conditions, including that the agreement acknowledges the right of the employee or prospective employee to engage in certain protected conduct. "Mutual condition of employment or continued employment" is "any contract, agreement, clause, covenant, or waiver negotiated between an employer and an employee or prospective employee in good faith for consideration in order to obtain or retain employment." The amended WTA:

- Requires acknowledgement of the employee's right to "participate in a proceeding related to unlawful employment practices, including any litigation brought by any federal, State, or local government agency or any other person who alleges that the employer has violated any State, federal, or local regulation or rule"
- Requires acknowledgement of the employee's right to "engage in concerted activity to address work-related issues"

Broadened Definition of "Unlawful Employment Practice"

These amendments expand the WTA's definition of "unlawful employment practice" to encompass practices made unlawful not just by the Illinois Human Rights Act and Title VII of the Civil Rights Act of 1964, but also "any other State or federal rule or law governing employment," including those enforced by the Illinois Department of Labor, Illinois Labor Relations Board, United States Department of Labor, Occupational Safety and Health Administration, or National Labor Relations Board. Previously, the definition was limited to unlawful discrimination, harassment, or retaliation "actionable under the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, or any other related State or federal rule or law that is enforced by the Illinois Department of Human Rights or the Equal Employment Opportunity Commission."

Addition and Definition of "Concerted Activity"

The amended WTA provides new protections for "concerted activity," or "activities engaged in for the purpose of collective bargaining or other mutual aid or protection as provided in [the National Labor Relations Act], as it existed on January 19, 2025, and the Illinois Education Labor Relations Act, Illinois Public Labor Relations Act, and Labor Dispute Act."

The amended WTA prohibits the use of employment agreements that prevent an employee or prospective employee from "engaging in concerted activity to address work-related issues."

Expanded Rights for Employees to Testify

The amended WTA permits employees, prospective employees and former employees to testify in administrative, legislative or judicial proceedings concerning alleged criminal conduct and unlawful employment practices, but also in arbitral proceedings. Employees may participate in depositions in any such proceedings pursuant to a court order, subpoena or written request from an administrative agency or the legislature.

Damages

The amended WTA provides for an award of "consequential damages," in addition to reasonable attorneys' fees and costs, upon a final, non-appealable action in favor of the individual on the question of the validity and enforceability of the agreement or for defending an action for breach of a confidentiality agreement pursuant to the Act.

Next Steps: What Should Illinois Employers Do Now?

Employers should review their employment-related agreements, including confidentiality, restrictive covenant, settlement, and separation agreements, and consult legal counsel regarding compliance with the WTA and its recent amendments before January 1, 2026.

Benesch attorneys are ready to assist with compliance with these amendments to the Illinois Workplace Transparency Act. For more information, please contact Benesch's Labor & Employment Law attorneys listed below.

Margo Wolf O'Donnell at modonnell@beneschlaw.com or 312.212.4982.

Charles Leuin at cleuin@beneschlaw.com or 312.624.6344.

Emma Graham at egraham@beneschlaw.com or 312.273.1615.