

Illinois Adopts AI-in-Employment Regulations: What Employers Must Know for 2026

5 min read

Feb 26, 2026

By: Kelechi Ajoku

Illinois recently expanded the state's prohibitions on the use of artificial intelligence (AI) in employment. In 2020, Illinois enacted the Artificial Intelligence Video Interview Act (AIVIA), which regulates employers' use of AI in the interview and hiring process. Under this Act, employers are obligated to inform applicants when AI technology is used during the course of a video interview, provide an explanation of the AI technology's mechanics, and obtain prior consent from the applicant.

The Illinois Department of Human Rights unveiled draft rules for implementing Illinois' regulations on AI discrimination in employment. The draft rules, "**Subpart J: Use of Artificial Intelligence in Employment,**" implement changes to the Illinois Human Rights Act (IHRA), which was amended by House Bill 3773.

- The amendments include a broader prohibition on the use of AI—including generative AI—in hiring or promotion decisions that result in discrimination based on protected characteristics.
- The draft rules also make an employer's failure to provide notice to employees or applicants that the employer is using AI in an employment decision a violation of the Illinois Human Rights Act (IHRA).
- House Bill 3773 took effect on **January 1, 2026**, and the Department of Human Rights is tasked with adopting rules to implement and enforce these new requirements that were recently released in its draft regulations detailing the proposed notice and policy requirements.

Key Definitions

- The draft rules apply broadly to "**employers**" under the IHRA and their agents, including recruiters and other third parties acting on an employer's behalf. Notice obligations are triggered whenever an employer "uses" AI to "influence or facilitate" a covered employment decision,
- The definition of "**use**" is intentionally broad, capturing any instance where an AI system's outputs influence or facilitate an employment decision, which includes recruitment, hiring, promotion, renewal,

training/apprenticeship selection, discharge, discipline, tenure, and terms/conditions of employment.

- **“Covered AI”** is defined as any machine-based system that infers from inputs to generate outputs such as predictions, recommendations, or decisions. This means common practices may trigger notice obligations, including AI-driven resume screening, targeted job advertising, computer-based assessments, analysis of facial expressions or speech during video interviews, and use of third-party data analytics.

When Notice Is Required—and When It Isn’t

As stated, notice is required whenever AI is used to influence or facilitate employment decisions, regardless of whether or not the use of AI “has the purpose or effect of subjecting employees to unlawful discrimination.”

Examples of AI Use Requiring an Employer Notice

The draft rules lay out a broad array of situations where AI is commonly used that would trigger an employer’s notice requirements. Examples include:

- computer-based assessments or tests used to predict performance or measure mental or physical abilities, personality traits, or cultural fit;
- resume screening for key terms or patterns;
- targeting job ads to particular groups or locations;
- analyzing facial expressions, word choice, or voice during video or online interviews; and
- analyzing applicant or employee data obtained from third parties.

Additionally, notice is required where AI is used to direct job postings or advertisements to specific groups or populations, screen resumes, analyze facial expressions, word choice, and voice during online or video interviews, or analyze data acquired from third parties.

Examples of AI Use Not Requiring an Employer Notice

Not all technologies or use cases require notice. No notice is needed for AI used solely for non-employment-decision business operations, such as generating marketing copy, or when an automated tool does not qualify as AI under the IHRA and is not used to infer or recommend employment outcomes—for example, word processing, spreadsheets, spam filtering, or other routine software.

Likewise, if a system has AI features but the employer does not use those features to influence covered decisions, notice is not required.

Required Notice Content and Accessibility Standards

If the use of AI by an employer is such that notice is required, the proposed rules would require the notice to include:

- the AI product name and its developer/vendor;
- the employment decisions the AI influences or facilitates;
- the AI's purpose and the categories of personal/employee data it processes, with practical descriptions of functionality;
- the types of job postings for which the AI will be used;
- a point of contact for questions;
- the right to request a reasonable accommodation and how to request it; and
- required statutory language.

Notices must use plain language, be available in languages commonly spoken in the workforce, and be accessible to employees with disabilities.

When and How Notice Should Be Provided

Current employees should receive notice annually and within 30 days of adopting a new or substantially updated AI system. Prospective employees would be required to receive notice via the job posting. Employers would also be required to provide notice in all of the following:

- employee handbooks or manuals;
- in a “conspicuous location” on the employer’s physical premises where notices are usually posted;
- in a “conspicuous location” on the employer’s intranet or external website; and
- in any job notice or posting.

Recordkeeping

Recordkeeping obligations extend to AI-related materials. An employer must preserve notices, postings, and disclosures relating to AI for four years.

Penalties

As with other allegations of employment-related civil rights violations, an employer in violation of the AI provisions in HB 3773 may be liable for actual damages, civil penalties, attorneys’ fees, compliance reporting obligations, and any other actions as may be necessary to make the complainant whole.

Practical Next Steps for Employers

Although the IDHR could revise the draft rules based on feedback before publishing them and opening a formal public comment period, significant changes appear unlikely. Nevertheless, the draft rules offer valuable insight into how the IDHR intends to implement the notice provisions of House Bill 3773.

To prepare for compliance, employers should take the following streamlined steps:

1. **Assess AI use by identifying covered tools** and confirming whether the services provided fall within the scope of the “make or influence covered employment decisions” as defined by the proposed rules.
2. **Create and post required notices**—both initially and on an annual basis—and ensure they appear in all required physical and online locations, including when new or substantially updated AI tools are introduced.
3. **Update policies and handbooks to reflect anti-discrimination, hiring, and technology requirements**, affirming compliance and preparing revised materials for 2026.
4. **Audit AI systems for potential disparate impact**; consider engaging counsel to guide reviews, preserve privilege, and frame due diligence questions for vendors and third-party providers.
5. **Complete due diligence and review third-party vendor technology** for compliance, legal, and business risk allocation, as well as compliance with other applicable laws regarding data protection and data security.
6. **Train managers and decision-makers** on the law’s notice, recordkeeping, and anti-discrimination requirements and on your updated policies.

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Authors



Kelechi Ajoku

Associate

📞 212-655-3837

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