Littler | Employer Library

STATE

Littler on

Illinois Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Illinois employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

TABLE OF CONTENTS

1. PRE-HIRE 1

1.1 Classifying Workers: Employees v. Independent Contractors 1

1.1(a) Federal Guidelines on Classifying Workers 1
1.1(b) State Guidelines on Classifying Workers 2

1.2 Employment Eligibility & Verification Requirements 8

1.2(a) Federal Guidelines on Employment Eligibility & Verification Requirements 8
1.2(b) State Guidelines on Employment Eligibility & Verification Requirements 9

1.2(b)(i) Voluntary Participation in the E-Verify Program 9
1.2(b)(ii) State Enforcement, Remedies & Penalties 11

1.3 Restrictions on Background Screening & Privacy Rights in Hiring 12

1.3(a) Restrictions on Employer Inquiries About & Use of Criminal History 12

1.3(a)(i) Federal Guidelines on Employer Inquiries About & Use of Criminal History 12
1.3(a)(ii) State Guidelines on Employer's Use of Arrest Records 12
1.3(a)(iii) Local Guidelines on Employer's Use of Arrest Records 14
1.3(a)(iv) State Guidelines on Employer's Use of Conviction Records 15
1.3(a)(v) Local Guidelines on Employer's Use of Conviction Records 17
1.3(a)(vi) State Guidelines on Employer's Use of Sealed or Expunged Criminal Records 17
1.3(a)(vii) State Enforcement, Remedies & Penalties 18
1.3(a)(viii) Local Enforcement, Remedies & Penalties 18

1.3(b) Restrictions on Credit Checks 18

1.3(b)(i) Federal Guidelines on Employer's Use of Credit Information & History 18
1.3(b)(ii) State Guidelines on Employer's Use of Credit Information & History 19
1.3(b)(iii) Local Guidelines on Employer's Use of Credit Information & History 21
1.3(b)(iv) State and Local Enforcement, Remedies & Penalties 22

1.3(c) Restrictions on Access to Applicants' Social Media Accounts 22

1.3(c)(i) Federal Guidelines on Access to Applicants' Social Media Accounts 22
1.3(c)(ii) State Guidelines on Access to Applicants' Social Media Accounts 22
1.3(c)(iii) State Enforcement, Remedies & Penalties 25

1.3(d) Polygraph / Lie Detector Testing Restrictions 25

1.3(d)(i) Federal Guidelines on Polygraph Examinations 25
1.3(d)(ii) State Guidelines on Polygraph Examinations 26

1.3(e) Drug & Alcohol Testing of Applicants 26

1.3(e)(i) Federal Guidelines on Drug & Alcohol Testing of Applicants 26
1.3(e)(ii) State Guidelines on Drug & Alcohol Testing of Applicants 27

1.3(f) Additional State Guidelines on Preemployment Conduct 27

1.3(f)(i) State Restrictions on Salary History Inquiries 27
1.3(f)(ii) State Restrictions on Job Application Fees, Deductions, or Other Charges 28
1.3(f)(iii) State Restrictions on Employers That Record Video Interviews and Use Artificial Intelligence Analysis of Applicant Submitted Videos 28

2. TIME OF HIRE 29

2.1 Documentation to Provide at Hire 29
2.1(a) Federal Guidelines on Hire Documentation 29
2.1(b) State Guidelines on Hire Documentation 32
2.2 New Hire Reporting Requirements 34
2.2(a) Federal Guidelines on New Hire Reporting 34
2.2(b) State Guidelines on New Hire Reporting 35
2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information 36
2.3(a) Federal Guidelines on Restrictive Covenants & Trade Secrets 36
2.3(b) State Guidelines on Restrictive Covenants & Trade Secrets 37
2.3(b)(i) State Restrictive Covenant Law 37
2.3(b)(ii) Consideration for a Noncompete 40
2.3(b)(iii) Ability to Modify or Blue Pencil a Noncompete 40
2.3(b)(iv) State Trade Secret Law 41
2.3(b)(v) State Guidelines on Employee Inventions & Ideas 43
3. DURING EMPLOYMENT 43
3.1 Posting, Notice & Record-Keeping Requirements 43
3.1(a) Posting & Notification Requirements 43
3.1(a)(i) Federal Guidelines on Posting & Notification Requirements 43
3.1(a)(ii) State Guidelines on Posting & Notification Requirements 47
3.1(b) Record-Keeping Requirements 52
3.1(b)(i) Federal Guidelines on Record Keeping 52
3.1(b)(ii) State Guidelines on Record Keeping 67
3.1(c) Personnel Files 75
3.1(c)(i) Federal Guidelines on Personnel Files 75
3.1(c)(ii) State Guidelines on Personnel Files 75
3.2 Privacy Issues for Employees 77
3.2(a) Background Screening of Current Employees 77
3.2(a)(i) Federal Guidelines on Background Screening of Current Employees 77
3.2(a)(ii) State Guidelines on Background Screening of Current Employees 77
3.2(b) Drug & Alcohol Testing of Current Employees 77
3.2(b)(i) Federal Guidelines on Drug & Alcohol Testing of Current Employees 77
3.2(b)(ii) State Guidelines on Drug & Alcohol Testing of Current Employees 77
3.2(c) Marijuana Laws 78
3.2(c)(i) Federal Guidelines on Marijuana 78
3.2(c)(ii) State Guidelines on Marijuana 78
3.2(d) Data Security Breach 80
3.2(d)(i) Federal Data Security Breach Guidelines 80
3.2(d)(ii) State Data Security Breach Guidelines 81
3.2(e) Additional State Privacy Protections 83
3.2(e)(i) State Guidelines on Biometric Privacy 83

3.3 Minimum Wage & Overtime 84
3.3(a) Federal Guidelines on Minimum Wage & Overtime 84
3.3(a)(i) Federal Minimum Wage Obligations 84
3.3(a)(ii) Federal Overtime Obligations 85
3.3(b) State Guidelines on Minimum Wage Obligations 85
3.3(b)(i) State Minimum Wage 85
3.3(b)(ii) Tipped Employees 85
3.3(b)(iii) Minimum Wage Exceptions & Rates Applicable to Specific Groups 86
3.3(b)(iv) Local Minimum Wage Ordinances 87
3.3(c) State Guidelines on Overtime Obligations 88
3.3(d) State Guidelines on Overtime Exemptions 88
3.3(d)(i) Executive Exemption 89
3.3(d)(ii) Administrative Exemption 89
3.3(d)(iii) Professional Exemption 89
3.3(d)(iv) Computer Professional Exemption 90
3.3(d)(v) Commissioned Sales Exemption 90
3.3(d)(vi) Outside Sales Exemption 90
3.4 Meal & Rest Period Requirements 91
3.4(a) Federal Meal & Rest Period Guidelines 91
3.4(a)(i) Federal Meal & Rest Periods for Adults 91
3.4(a)(ii) Federal Meal & Rest Periods for Minors 91
3.4(a)(iii) Lactation Accommodation Under Federal Law 91
3.4(b) State Meal & Rest Period Guidelines 92
3.4(b)(i) State Meal & Rest Periods for Adults 92
3.4(b)(ii) State Meal & Rest Periods for Minors 93
3.4(b)(iii) State Enforcement, Remedies & Penalties 93
3.4(b)(iv) Lactation Accommodation Under State Law 93
3.5 Working Hours & Compensable Activities 94
3.5(a) Federal Guidelines on Working Hours & Compensable Activities 94
3.5(b) State Guidelines on Working Hours & Compensable Activities 94
3.5(c) Local Predictive Scheduling Ordinances 95
3.6 Child Labor 99
3.6(a) Federal Guidelines on Child Labor 99
3.6(b) State Guidelines on Child Labor 100
3.6(b)(i) State Restrictions on Type of Employment for Minors 100
3.6(b)(ii) State Limits on Hours of Work for Minors 102
3.6(b)(iii) State Child Labor Exceptions 103
3.6(b)(iv) State Work Permit or Waiver Requirements 103
3.6(b)(v) State Enforcement, Remedies & Penalties 104
3.7 Wage Payment Issues 104
3.7(a) Federal Guidelines on Wage Payment 104
3.7(a)(i) Form of Payment Under Federal Law 104
3.7(a)(ii) Frequency of Payment Under Federal Law 106

3.7(a)(iii) Final Payment Under Federal Law 106
3.7(a)(iv) Notification of Wage Payments & Wage Records Under Federal Law 106
3.7(a)(v) Changing Regular Paydays or Pay Rate Under Federal Law 106
3.7(a)(vi) Paying for Expenses Under Federal Law 106
3.7(a)(vii) Wage Deductions Under Federal Law 107

3.7(b) State Guidelines on Wage Payment 109

3.7(b)(i) Form of Payment Under State Law 109
3.7(b)(ii) Frequency of Payment Under State Law 111
3.7(b)(iii) Final Payment Under State Law 111
3.7(b)(iv) Notification of Wage Payments & Wage Records Under State Law 112
3.7(b)(v) Wage Transparency 113
3.7(b)(vi) Changing Regular Paydays or Pay Rate Under State Law 114
3.7(b)(vii) Paying for Expenses Under State Law 114
3.7(b)(viii) Wage Deductions Under State Law 115
3.7(b)(ix) Wage Assignments & Wage Garnishments 116
3.7(b)(x) State Enforcement, Remedies & Penalties 117

3.8 Other Benefits 119

3.8(a) Vacation Pay & Similar Paid Time Off 119

3.8(a)(i) Federal Guidelines on Vacation Pay & Similar Paid Time Off 119
3.8(a)(ii) State Guidelines on Vacation Pay & Similar Paid Time Off 119

3.8(b) Holidays & Days of Rest 121

3.8(b)(i) Federal Guidelines on Holidays & Days of Rest 121
3.8(b)(ii) State Guidelines on Holidays & Days of Rest 121

3.8(c) Recognition of Domestic Partnerships & Civil Unions 122

3.8(c)(i) Federal Guidelines on Domestic Partnerships & Civil Unions 122
3.8(c)(ii) State Guidelines on Domestic Partnerships & Civil Unions 123

3.9 Leaves of Absence 123

3.9(a) Family & Medical Leave 123

3.9(a)(i) Federal Guidelines on Family & Medical Leave 123
3.9(a)(ii) State Guidelines on Family & Medical Leave 124
3.9(a)(iii) State Guidelines on Kin Care Leave 124

3.9(b) Paid Sick Leave 125

3.9(b)(i) Federal Guidelines on Paid Sick Leave 125
3.9(b)(ii) State Guidelines on Paid Sick Leave 125
3.9(b)(iii) Local Guidelines on Paid Sick Leave 129

3.9(c) Pregnancy Leave 136

3.9(c)(i) Federal Guidelines on Pregnancy Leave 136
3.9(c)(ii) State Guidelines on Pregnancy Leave 137

3.9(d) Adoptive Parents Leave 139

3.9(d)(i) Federal Guidelines on Adoptive Parents Leave 139
3.9(d)(ii) State Guidelines on Adoptive Parents Leave 139

3.9(e) School Activities Leave 139

3.9(e)(i) Federal Guidelines on School Activities Leave 139

3.9(e)(ii) State Guidelines on School Activities Leave 139
3.9(f) Blood, Organ, or Bone Marrow Donation Leave 140
3.9(f)(i) Federal Guidelines on Blood, Organ, or Bone Marrow Donation 140
3.9(f)(ii) State Guidelines on Blood, Organ, or Bone Marrow Donation 140
3.9(g) Voting Time 140
3.9(g)(i) Federal Voting Time Guidelines 140
3.9(g)(ii) State Voting Time Guidelines 140
3.9(h) Leave to Participate in Political Activities 141
3.9(h)(i) Federal Guidelines on Leave to Participate in Political Activities 141
3.9(h)(ii) State Guidelines on Leave to Participate in Political Activities 141
3.9(i) Leave to Participate in Judicial Proceedings 141
3.9(i)(i) Federal Guidelines on Leave to Participate in Judicial Proceedings 141
3.9(i)(ii) State Guidelines on Leave to Participate in Judicial Proceedings 141
3.9(j) Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime 142
3.9(j)(i) Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime 142
3.9(j)(ii) State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime 142
3.9(j)(iii) Local Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime 144
3.9(k) Military-Related Leave 144
3.9(k)(i) Federal Guidelines on Military-Related Leave 144
3.9(k)(ii) State Guidelines on Military-Related Leave 145
3.9(l) Other Leaves 149
3.9(l)(i) Federal Guidelines on Other Leaves 149
3.9(l)(ii) State Guidelines on Other Leaves 149
3.10 Workplace Safety 152
3.10(a) Occupational Safety and Health 152
3.10(a)(i) Fed-OSH Act Guidelines 152
3.10(a)(ii) State-OSH Act Guidelines 152
3.10(b) Cell Phone & Texting While Driving Prohibitions 152
3.10(b)(i) Federal Guidelines on Cell Phone & Texting While Driving 152
3.10(b)(ii) State Guidelines on Cell Phone & Texting While Driving 152
3.10(c) Firearms in the Workplace 153
3.10(c)(i) Federal Guidelines on Firearms on Employer Property 153
3.10(c)(ii) State Guidelines on Firearms on Employer Property 153
3.10(d) Smoking in the Workplace 153
3.10(d)(i) Federal Guidelines on Smoking in the Workplace 153
3.10(d)(ii) State Guidelines on Smoking in the Workplace 154
3.10(e) Suitable Seating for Employees 154

3.10(e)(i) Federal Guidelines on Suitable Seating for Employees 154
3.10(e)(ii) State Guidelines on Suitable Seating for Employees 154
3.10(f) Workplace Violence Protection Orders 154
3.10(f)(i) Federal Guidelines on Workplace Violence Protection Orders 154
3.10(f)(ii) State Guidelines on Workplace Violence Protection Orders 154
3.11 Discrimination, Retaliation & Harassment 155
3.11(a) Protected Classes & Other Fair Employment Practices Protections 155
3.11(a)(i) Federal FEP Protections 155
3.11(a)(ii) State FEP Protections 156
3.11(a)(iii) State Enforcement Agency & Civil Enforcement Procedures 158
3.11(a)(iv) Additional Discrimination Protections 159
3.11(a)(v) Local FEP Protections 161
3.11(b) Equal Pay Protections 164
3.11(b)(i) Federal Guidelines on Equal Pay Protections 164
3.11(b)(ii) State Guidelines on Equal Pay Protections 165
3.11(c) Pregnancy Accommodation 167
3.11(c)(i) Federal Guidelines on Pregnancy Accommodation 167
3.11(c)(ii) State Guidelines on Pregnancy Accommodation 170
3.11(d) Harassment Prevention Training & Education Requirements 170
3.11(d)(i) Federal Guidelines on Antiharassment Training 170
3.11(d)(ii) State Guidelines on Antiharassment Training 170
3.11(d)(iii) Local Guidelines on Antiharassment Training 171
3.12 Miscellaneous Provisions 172
3.12(a) Whistleblower Claims 172
3.12(a)(i) Federal Guidelines on Whistleblowing 172
3.12(a)(ii) State Guidelines on Whistleblowing 172
3.12(b) Labor Laws 173
3.12(b)(i) Federal Labor Laws 173
3.12(b)(ii) Notable State Labor Laws 174
4. END OF EMPLOYMENT 175
4.1 Plant Closings & Mass Layoffs 175
4.1(a) Federal WARN Act 175
4.1(b) State Mini-WARN Act 175
4.1(c) State Mass Layoff Notification Requirements 176
4.2 Documentation to Provide When Employment Ends 176
4.2(a) Federal Guidelines on Documentation at End of Employment 176
4.2(b) State Guidelines on Documentation at End of Employment 177
4.3 Providing References for Former Employees 178
4.3(a) Federal Guidelines on References 178
4.3(b) State Guidelines on References 178

1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see **LITTLER ON CLASSIFYING WORKERS**.

1.1(b) *State Guidelines on Classifying Workers*

In Illinois, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

To reduce instances of misclassification of employees as independent contractors, Illinois has entered into a partnership with the U.S. Department of Labor, Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts.[5] Both the Illinois Department of Labor and the Illinois Office of the Attorney General have agreements with the Wage and Hour Division.[6]

The Employee Classification Act. While there is no statewide statute on independent contractor status applicable to all industries, Illinois has a statute concerning employee classification in the construction industry. The Employee Classification Act (ECA) covers employee classification in construction, including the transportation of construction-related materials within or to and from a job site.[7] The ECA establishes specific criteria to determine whether an individual performing services in the construction industry is an employee or an independent contractor. Specifically, the ECA presumes that all individuals performing construction work are employees unless the employer or contractor can prove that:

1. the individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individual's contract of service and in fact;

---

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 340, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails.

[6] The Memorandum of Understanding with the Illinois Department of Labor is available at https://www.dol.gov/whd/workers/MOU/il.pdf; *see also* Amendment No. 1 to the Memorandum, *available at* https://www.dol.gov/whd/workers/MOU/il_1.pdf. The Memorandum of Understanding with the Illinois Office of the Attorney General is available at https://www.dol.gov/whd/workers/MOU/il-ag.pdf.

[7] 820 ILL. COMP. STAT. 185/1 *et seq.* Information about the ECA is available on the Illinois Department of Labor website at https://www.illinois.gov/idol/faqs/pages/ecafaq.aspx.

2. the service performed by the individual is outside the usual course of service performed by the contractor; and
3. the individual is engaged in an independently established trade, occupation, profession, or business, or the individual is deemed a legitimate sole proprietor or partnership.[8]

The Illinois Supreme Court has rejected constitutional challenges to the Act.[9] Moreover, the ECA prohibits employers from attempting to induce any individual to waive rights provided for under the Act.[10]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	State of Illinois Human Rights Commission ("Commission")	Common-law balancing test.[11] In making this determination, the Commission typically analyzes six factors relied upon by the Illinois Supreme Court in determining employee versus independent contractor status: • the amount of control and supervision; • the right of discharge; • the method of payment; • the skill required and the work to be done; • the source of tools, materials, or equipment; and • the work schedule.[12]
Fair Employment Practices Laws: Illinois Equal Pay Act[13]	Illinois Department of Labor	Under the equal pay law, an *employee* is defined as "any individual permitted to work by an employer."[14] Illinois Administrative Code title 56, section 320.130(a) further clarifies that for an individual to be considered an independent contractor rather than an employee,

[8] 820 ILL. COMP. STAT. 185/10.

[9] *Bartlow v. Costigan*, 13 N.E.3d 1216 (Ill. 2014).

[10] 820 ILL. COMP. STAT. 185/70.

[11] Illinois courts have not indicated what test they would apply to determine independent contractor status under the fair employment practices laws. However, the Commission has stated in opinions that it will examine traditional common-law factors and consider at least five factors when determining if a worker is an independent contractor or an employee, which is a fact-sensitive inquiry. *See, e.g.*, *Moore v. St. Mary's Hosp. & Med. Mgmt. Affiliates, Inc.*, 2000 WL 33301957 (Ill. Human Rights Comm'n Aug. 21, 2000); *Harris v. Illinois Dep't of Human Rights*, 1999 WL 33249685 (Ill. Human Rights Comm'n Nov. 2, 1999).

[12] *Harris*, 1999 WL 33249685 (citing the factors set forth in *Bob Neal Pontiac-Toyota, Inc. v. Industrial Comm'n*, 433 N.E.2d 678, 680 (Ill. 1982), with respect to workers' compensation). In *Harris*, the Commission also cited 16 factors identified in guidance from the U.S. Equal Employment Opportunity Commission (EEOC) as pertinent to a determination of independent contractor status, noting that not all, or even a majority, of the criteria must be met for the worker to be deemed an independent contractor.

[13] 820 ILL. COMP. STAT. 112/1 *et seq.*

[14] 820 ILL. COMP. STAT. 112/5.

Table 1. State Tests for Classifying Workers		
		the requirements of the ABC test must be met: • The individual must be free from "control"[15] and direction over the performance of their work, both under the individual's contract of service with the employer and in fact. • The individual must perform services which are either outside the usual course of business, or which are performed outside all of the places of business of the employer, unless the employer is in the business of contracting with third parties for the placement of employees. • The individual must be "independently engaged in an established trade, occupation, profession or business."[16] All three conditions must be satisfied for an individual to be considered an independent contractor rather than an employee.[17]
Income Taxes	Illinois Department of Revenue	Internal Revenue Service (IRS) twenty-factor test. The Illinois Income Tax Act (IITA) does not define the terms *employee* and *independent contractor*. However, section 102 of the IITA requires the Department of Revenue to follow the IRS's determination of whether an individual is an employee or independent contractor: "[e]xcept as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954…."[18]

[15] *Control* means "the existence of general control or right to general control, even though the details of work are left to an individual's judgment." ILL. ADMIN. CODE tit. 56, § 320.130(b).

[16] An *independently established trade, occupation, profession, or business* means "the individual performing the services has a proprietary interest in such business, to the extent that the individual operates the business without hindrance from any other person and as the enterprise's owner, may sell or otherwise transfer the business." ILL. ADMIN. CODE tit. 56, § 320.130(c). The inquiry is fact-based and advises: "In determining whether the exemption applies, the Department shall consider the actual, rather than the alleged, relationship between a respondent and a complainant. Designations and terminology used by the parties, as well as the individual's status for tax purposes, are not controlling." ILL. ADMIN. CODE tit. 56, § 320.130(f).

[17] ILL. ADMIN. CODE tit. 56, § 320.130(d).

[18] 35 ILL. COMP. STAT. 5/102; *see also* Illinois Dep't of Rev., Publication 130, *Who is Required to Withhold Illinois Income Tax* (Jan. 2017), *available at* https://www2.illinois.gov/rev/research/publications/pubs/Documents/PUB-130.pdf (referencing IRS Publication 15 Circular E, Employer's Tax Guide to determine who is an employee). Thus, persons for whom services are provided must look to federal income tax case law and Internal Revenue Service

Table 1. State Tests for Classifying Workers		
Unemployment Insurance	Illinois Department of Economic Security	Under the Illinois Unemployment Insurance Act (IUIA), all requirements of the ABC test must be met for an individual to be considered an independent contractor rather than an employee (language of the ABC test matches that under the Illinois Equal Pay Act).[19] Illinois Administrative Code title 56, section 2732.200 provides the following clarifying definitions on each part of the ABC test: • *Direction or control* in the A criterion means "that an employing unit has the right to control and direct the worker, not only as to the work to be done but also as to how it should be done, whether or not that control is exercised."[20] The regulation lists 25 questions the Department of Economic Security may ask and consider in determining whether "direction or control" exists.[21] • For the B criterion, the two factors are in the alternative and "[s]ervices that merely render the place of business more pleasant or are not necessary to the employing unit's business are outside the usual course of business" and "[b]ecause services are performed outside the employing unit's premises does not preclude an individual from being found to be in employment. This decision is based upon the occupation and the

(IRS) guidance for determining whether a service provider is an employee subject to withholding under Illinois income tax law.

[19] 820 ILL. COMP. STAT. 405/212. The Illinois Department of Employment Security has also published a summary of the employee versus contractor test. The summary is available at https://ides.illinois.gov/employer-resources/taxes-reporting/employee-misclassification.html#:~:text=Employee%20Misclassification%20Hurts%20Businesses%20and%20Employees&text=Misclassifying%20employers%20have%20artificially%20low,workers%27%20compensation%20for%20their%20employees. Courts have noted that the more inclusive statutory test, rather than common-law principles of master and servant and independent contractor, must control the determination of independent contractor versus employee status under the IUIA independent contractor exemption. *See, e.g.*, *AFM Messenger Serv. v. Department of Emp't Sec.*, 763 N.E.2d 272, 282 (Ill. 2001); *E-Z Movers, Inc. v. Rowell*, 61 N.E.3d 955 (Ill. App. Ct. 2016), *petition for leave to appeal denied*, 60 N.E.3d 872 (Ill. 2016) (drivers and helpers were employees of furniture moving company under the IUIA); *C.R. Eng., Inc. v. Department of Emp't Sec.*, 7 N.E.3d 864 (Ill. App. Ct. 2014), *appeal denied*, 20 N.E.3d 1251 (Ill. 2014) (over-the-road truck driver was an employee and did not qualify for independent contractor exemption of section 212 or truck owner-operator exemption of section 212.1; section 212 analysis limited to "services in employment" discussion).

[20] ILL. ADMIN. CODE tit. 56, § 2732.200(g).

[21] ILL. ADMIN. CODE tit. 56, § 2732.200(g).

Table 1. State Tests for Classifying Workers		
		factual context in which the services are performed."[22] • 'Engaged in an independently established trade, occupation, or business' . . . [the C criterion] means that the individual has a proprietary interest in the business that he or she can sell, give away or operate without hindrance from any other party. While no one factor will determine if an individual is engaged in an independently established trade, occupation, profession or business . . . the business reality or totality of circumstances will determine the presence of this condition."[23] There are 13 factors that the Department of Economic Security may consider in determining if an individual is engaged in an independently established trade, occupation, profession, or business.[24] The regulation further adds that "the designation or description which the parties apply to their relationship is not controlling;" the inquiry is fact-based and considers the totality of the circumstances.[25] The burden of proof is on the party seeking the independent contractor exemption under the IUIA.[26]
Wage & Hour Laws: Illinois Minimum Wage Law (IMWL) (minimum wage and overtime)	Illinois Department of Labor	Balancing test considering a totality of the circumstances, as set forth in statutory and regulatory guidance.[27] Illinois Administrative Code title56, section 210.110 defines *employee* as "any individual permitted or

[22] ILL. ADMIN. CODE tit. 56, § 2732.200(f).

[23] ILL. ADMIN. CODE tit. 56, § 2732.200(e).

[24] ILL. ADMIN. CODE tit. 56, § 2732.200(e).

[25] ILL. ADMIN. CODE tit. 56, § 2732.200(a)-(b).

[26] *Chicago Messenger Serv. v. Jordan*, 825 N.E. 2d 315, 319 (Ill. App. Ct. 2005) (citing *AFM Messenger Serv. v. Department of Emp't Sec.*, 763 N.E.2d 272, 282 (Ill. 2001).

[27] 820 ILL. COMP. STAT. 105/1-15; *see also* ILL. ADMIN. CODE tit. 56, § 210; *Brown v. BCG Atty. Search*, 2013 WL 6096932 (N.D. Ill. Nov. 20, 2013) (applying the six-factor test set forth in the IMWL regulation in holding that a writer for a staffing agency was an independent contractor; further acknowledging several cases finding that the IMWL and the federal Fair Labor Standards Act define *employer* similarly, and thus the economic realities test applicable to the FLSA is also applicable to the IMWL); *see also Wilkins v. Just Energy Grp., Inc.*, 308 F.R.D. 170, 185-89 (N.D. Ill. 2015), *on reconsideration in part*, 171 F. Supp. 3d 798 (N.D. Ill. 2016) (applying the same six-factor test to door-to-door salespersons seeking class certification under the IMWL).

Table 1. State Tests for Classifying Workers		
		suffered to work by an employer" and explains that the following factors will be considered "significant" in determining whether an individual is an employee or an independent contractor: • the degree of control the alleged employer exercised over the individual; • the extent to which the services rendered by the individual are an integral part of the alleged employer's business; • the extent of the relative investments of the individual and alleged employer; • the degree to which the individual's opportunity for profit and loss is determined by the alleged employer; • the permanency of the relationship; and • the skill required in the claimed independent operation. The regulation clarifies that: "[t]he common law standards relating to master and servant, the parties' designations and terminology, and the individual's status for tax purposes, are not dispositive. Rather, it is the total activity or situation which is controlling."[28]
Wage & Hour Laws: Illinois Wage Payment and Collection Act (IWPCA)[29]	Illinois Department of Labor	Under the IWPCA, an *employee* is defined as "any individual permitted to work by an employer in an occupation."[30] For an individual to be considered an independent contractor rather than an employee, the requirements of the ABC test must be met (the language of the ABC test matches that under the Illinois Equal Pay Act).[31] All three conditions must be satisfied for an individual to be considered an independent contractor rather than an employee.[32]

[28] ILL. ADMIN. CODE tit. 56, § 210.110.

[29] 820 ILL. COMP. STAT. 115/1 to 115/15.

[30] 820 ILL. COMP. STAT. 115/2.

[31] 820 ILL. COMP. STAT. 115/2; *see also* ILL. ADMIN. CODE tit. 56, § 300.460(a) (definitions of *control* and *independently established trade, occupation, profession, or business*). The inquiry is fact-based, and advises: "In determining whether this exemption applies, the Department shall consider the actual, rather than the alleged, relationship between an employer and a claimant; designations and terminology used by the parties are not controlling nor is the claimant's status for tax purposes controlling." ILL. ADMIN. CODE tit. 56, § 300.460(c).

[32] All three conditions must be satisfied for an individual to be considered an independent contractor rather than employee. ILL. ADMIN. CODE tit. 56, § 300.460(a); *see also Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1050 (7th Cir. 2016*)*

Table 1. State Tests for Classifying Workers		
Workers' Compensation	Illinois Workers' Compensation Commission	Common-law balancing test. Illinois courts have examined a number of different factors in determining independent contractor status, often emphasizing the importance of the right to control the manner of work. Among the factors that may be considered are: • whether the employer dictates the person's schedule; • whether the employer pays the person hourly; • whether the employer withholds income and social security taxes from the person's compensation; • whether the employer may discharge the person at will; • whether the employer supplies the person with materials and equipment; • whether the employer's general business encompasses the person's work; and • whether the employer may control the manner in which the person performs the work.[33]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Illinois does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new

(citing *Novakovic v. Samutin*, 820 N.E.2d 967, 973 (Ill. App. Ct. 2004), and explaining that under the IWPCA, the definition of *employee* incorporates the ABC test and that test is conjunctive); *see also Yata v. BDJ Trucking Co.*, 2021 WL 1738520 (N.D. Ill. May 3, 2021) (drivers were employees of trucking company because they were not free from company's control and direction over the performance of their work); *O'Malley v. Udo*, 2022 WL 129991 (Ill. App. Ct. Jan. 14, 2022) (discussion of usual course/place of business).

[33] *See, e.g.*, *Roberson v. Industrial Comm'n*, 866 N.E.2d 191, 200 (Ill. 2007) (noting that "[t]he right to control the manner of the work is often called the most important consideration"); *Esquinca v. Illinois Workers' Comp. Comm'n*, 51 N.E.3d 5 (Ill. App. Ct. 2016); *Steel & Machinery Transp. v. Illinois Workers' Comp. Comm'n*, 33 N.E.3d 674, 682 (Ill. App. Ct. 2015); *City of Bridgeport v. Illinois Workers' Comp. Comm'n*, 44 N.E.3d 652 (Ill. App. Ct. 2015); *Klemm Tank Lines v. Petrak*, 2015 WL 5774780 (Ill. App. Ct. Sept. 30, 2015) (noting that the right to control work and the nature of the work are established in case law as the two most considerations of the six factors); *Liberty Ins. Corp. v. Super Trucking Constr., Inc.*, 2018 WL 1954727 (Ill. App. Ct. Apr. 23, 2018) (truck drivers were independent contractors of trucking brokerage company); *The Final Call, Inc. v. Illinois Workers' Comp. Comm'n*, 2022 WL 17884134 (Ill. App. Ct. Dec. 23, 2022) (photographer was an employee of newspaper of the Nation of Islam).

hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[34]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[35] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[36]

For more information on these topics, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Voluntary Participation in the E-Verify Program*

Under the Illinois Right to Privacy in the Workplace Act (the Privacy Act),[37] it is voluntary for employers to participate in the federal E-Verify program and the Basic Pilot program.[38] However, employers that choose to participate are subject to certain requirements.

Upon initial enrollment, an employer enrolled in E-Verify must attest, under penalty of perjury, on a form from the Illinois Department of Labor:[39]

---

[34] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

[35] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[36] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[37] 820 ILL. COMP. STAT. 55/1 *et seq*.

[38] 820 ILL. COMP. STAT. 55/12(a).

- that the employer has received the E-Verify training materials from the federal Department of Homeland Security (DHS), and that all employees who will administer the program have completed the E-Verify Computer Based Tutorial (CBT); and
- that the employer has posted, in a place clearly visible to both prospective and current employees:
  - the notice from DHS indicating that the employer is enrolled in the E-Verify program; and
  - the antidiscrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.[40]

Record Retention & Reporting. Generally, Illinois employers must safeguard any information they input in E-Verify, should they use choose to use that system.[41] Moreover, employers that choose to participate in E-Verify are subject to record-keeping requirements. The employer must maintain the signed original of the attestation form prescribed by the Illinois Department of Labor, as well as all CBT certificates of completion, and make them available for inspection or copying by the Illinois Department of Labor at any reasonable time.[42]

Prohibitions. Employers that participate in E-Verify are prohibited from:

- failing to display the appropriate E-Verify related notices;
- allowing an employee who has not received CBT training to use the E-Verify system;
- failing to take reasonable steps to prevent an employee from using another's login and password in lieu of completing their own CBT training;
- using E-Verify to verify employment eligibility of an applicant prior to hiring, or using E-Verify to screen individuals prior to completing the Form I-9;
- terminating or otherwise taking adverse action against an employee prior to a receiving a final nonconfirmation notice from the Social Security Administration or DHS (for E-Verify related reasons);
- failing to notify an individual in writing of an employer's receipt of a tentative nonconfirmation and the individual's right to contest it; and
- failing to safeguard the information contained in the employment eligibility verification system and the means of gaining access to it.[43]

Additionally, it is a civil rights violation under the Illinois Human Rights Act for an employer:

- to require more or different documents than are required by the E-Verify program, or to refuse to honor documents that on their face reasonably appear to be genuine; or

[39] This form is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/laws-rules/legal/documents/attest.pdf.

[40] 820 ILL. COMP. STAT. 55/12(b).

[41] 820 ILL. COMP. STAT. 55/12(c)(7).

[42] 820 ILL. COMP. STAT. 55/12(b)(2).

[43] 820 ILL. COMP. STAT. 55/12(c).

- if participating in E-Verify, to refuse to hire or take other adverse employment action without following the procedures of E-Verify.[44]

Under the Human Rights Act, *employer* includes any person who employs one or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.[45]

1.2(b)(ii) *State Enforcement, Remedies & Penalties*

The Illinois Department of Labor enforces the Privacy Act. The Department will investigate and attempt to resolve any complaints filed by employees and applicants, and may file suit in the circuit court to enforce the Act. Where efforts to resolve the employee's or applicant's claim have failed and the Department has not commenced a civil action, the employee or prospective employee may file an action in the circuit court.[46]

For any employee or applicant prevailing in an action, the court will award: actual damages and costs; $200 plus costs, attorneys' fees, and actual damages for a willful and knowing violation of the Privacy Act; and $500 plus costs, reasonable attorneys' fees, and actual damages for a willful and knowing violation of certain violations[47] under the Privacy Act.[48]

An employer or prospective employer that violates the Privacy Act is also guilty of a petty offense. Likewise, an employer or prospective employer that discharges or discriminates against any employee or applicant because that employee or applicant has made a complaint is guilty of a petty offense.[49]

Employers found to have committed a civil rights violation pertaining to employment verification under the Illinois Human Rights Act may be:

- ordered to cease and desist;
- awarded actual damages, attorneys' fees, and other costs;
- requested to hire, reinstate, or upgrade a complainant with or without backpay;
- required to provide compliance reports;
- required to post notices; or
- take other actions necessary to make the individual complainant whole.[50]

[44] 775 ILL. COMP. STAT. 5/2-102(G).

[45] 775 ILL. COMP. STAT. 5/2-101(B)(1)(a).

[46] 820 ILL. COMP. STAT. 55/15(a)-(c).

[47] For violations under 820 ILL. COMP. STAT. 55/12(c) and (c-1).

[48] 820 ILL. COMP. STAT. 55/15(d).

[49] 820 ILL. COMP. STAT. 55/15(e)-(f).

[50] 775 ILL. COMP. STAT. 5/8A-104.

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[51] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Illinois Human Rights Act. Under the Illinois Human Rights Act, an employer may not inquire into or use the fact of (1) an arrest or (2) criminal history record information ordered expunged, sealed or impounded as a basis for recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or terms, as well as privileges or conditions of employment, unless otherwise authorized by law. However, an employer may rely on other information that indicates a person actually engaged in the conduct for which the person was arrested in making employment decisions.[52] *Employer* includes any person who employs one or more employees within

[51] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[52] 775 ILL. COMP. STAT. 5/2-103.

Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.[53]

Arrest record means:

- an arrest not leading to a conviction;
- a juvenile record;
- criminal history record information ordered expunged, sealed, or impounded under the Criminal Identification Act;[54] or

Illinois Ban-the-Box Law. Under the Job Opportunities for Qualified Applicants Act (JOQAA),[55] Illinois employers with 15 or more employees in the current or preceding calendar year and employment agencies, cannot inquire about or into, consider, or require the disclosure of, an applicant's criminal record or history until:

- the applicant has been deemed qualified for the position and notified that the applicant has been selected for an interview; or
- if there will not be an interview, until a conditional employment offer is made to the applicant.[56]

However, these requirements do not apply where:

- federal or state law requires an employer to exclude from employment applicants with certain criminal convictions;
- a standard fidelity or equivalent bond is required and an applicant's conviction of one or more specified criminal offenses would disqualify him/her from obtaining such a bond;[57] and
- the relevant position requires a license under the Illinois Emergency Medical Services (EMS) Systems Act.[58]

Employers may, but are not required to, notify applicants in writing about specific offenses that will disqualify them from employment in a particular position due to federal or state law or the employer's policy.[59]

---

[53] 775 ILL. COMP. STAT. 5/2-101(B)(1)(a).

[54] 775 ILL. COMP. STAT. 5/1-103(B-5).

[55] 820 ILL. COMP. STAT. 75/1 *et seq.*

[56] 820 ILL. COMP. STAT. 75/15(a).

[57] In these situations, an employer can include a question or inquire about whether the applicant has ever been convicted of any criminal offenses that would disqualify him/her from obtaining a standard fidelity or equivalent bond. 820 ILL. COMP. STAT. 75/15(b)(2).

[58] 820 ILL. COMP. STAT. 75/15(b).

[59] 820 ILL. COMP. STAT. 75/15(c).

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

Chicago Ban-the-Box Ordinance. In Chicago, it is an unlawful discriminatory activity to discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation, or other term or condition of employment because of the individual's criminal record or criminal history.[60] Covered employers are individuals, groups, or entities that either maintain a business facility within the geographic boundaries of the City of Chicago or that are subject to one or more of the city's business license requirements. The Chicago ordinance[61] mirrors the arrest-record restrictions under the Illinois Human Rights Act as described above. Chicago's ban-the-box ordinance expands the protection of the Illinois JOQAA to smaller employers in the Chicago area. Under the ordinance, employers that maintain a business facility within the geographic boundaries of the City of Chicago or that are subject to one or more of the City's business license requirements cannot inquire about or into, consider, or require disclosure of, an applicant's criminal record or history until:

- the applicant has been deemed qualified for the position and notified that they have been selected for an interview; or
- if there will not be an interview, until a conditional employment offer is made to the applicant.

Just as under the JOQAA, these requirements do not apply where:

- federal or state law requires an employer to exclude from employment applicants with certain criminal convictions;
- a standard fidelity or equivalent bond is required and an applicant's conviction of one or more specified criminal offenses would disqualify him/her from obtaining such a bond; and
- the relevant position requires a license under the Illinois EMS Systems Act.

Employers may, but are not required to, notify applicants in writing about specific offenses that will disqualify them from employment in a particular position due to federal or state law or the employer's policy.

Under this ordinance, all Chicago employers, whether they are subject to this ordinance or to the Illinois JOQAA, that make a decision not to hire based entirely or partially on an applicant's criminal record or history must inform the applicant of the basis at the time they are informed of the decision.

Cook County Ban-the-Box Ordinance. Like Chicago, Cook County treats the unlawful use of criminal history information as a discriminatory practice.[62] Under Cook County's ban-the-box ordinance,[63] all employers *not subject to the Illinois JOQAA* that have one or more employees and conduct business or have a principal place of business in Cook County may not inquire about, consider, or require disclosure of an employee's criminal record or criminal history until:

- the applicant has been deemed qualified for the position and notified that the applicant has been selected for an interview; or

[60] CHICAGO, ILL., MUN. CODE § 6-10-030.

[61] CHICAGO, ILL., MUN. CODE § 6-10-054.

[62] COOK CNTY, ILL., CODE § 42-35(h).

[63] COOK CNTY., ILL., CODE §§ 42-31, 42-35(h).

- if there will not be an interview, until a conditional employment offer is made to the applicant.

These requirements do not apply where:

- federal or state law requires an employer to exclude from employment applicants with certain criminal convictions;
- a satisfactory criminal background is an established *bona fide* occupational requirement of a particular position or for a particular group of employees;
- the job position is with municipal law enforcement or investigative agency which requires a criminal background investigation;
- a standard fidelity bond or an equivalent bond is required for the relevant position, and an applicant's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, in which case an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; or
- the position requires a license under the Illinois EMS Systems Act.

Employers may, but are not required to, notify applicants in writing about specific offenses that will disqualify them from employment in a particular position due to federal or state law or the employer's policy.

1.3(a)(iv) *State Guidelines on Employer's Use of Conviction Records*

An Illinois employer may use conviction records to evaluate prospective employees, but only after obtaining a signed release from the subject, and providing the subject with a copy of the report. An employer that requests the records must keep a copy of the signed release on file for two years.[64]

Unless otherwise authorized by law, it is a civil rights violation for any employer, employment agency, or labor organization to use a conviction record as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment (whether disqualification or adverse action), unless:

- there is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or
- the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.[65]

Conviction record means information indicating that a person has been convicted of a felony, misdemeanor or other criminal offense, placed on probation, fined, imprisoned, or paroled pursuant to any law enforcement or military authority.[66] *Substantial relationship* means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether

[64] 20 ILL. COMP. STAT. 2635/7(A)(1)-(2).

[65] 775 ILL. COMP. STAT. 5/2-103.1.

[66] 775 ILL. COMP. STAT. 5/1-103(G-5).

the circumstances leading to the conduct for which the person was convicted will recur in the employment position.[67]

In making the determination above, the employer must engage in an interactive assessment, beginning with considering the following factors:

- the length of time since the conviction;
- the number of convictions that appear on the conviction record;
- the nature and severity of the conviction and its relationship to the safety and security of others;
- the facts or circumstances surrounding the conviction;
- the age of the employee at the time of the conviction; and
- evidence of rehabilitation efforts.[68]

If, after considering the mitigating factors, the employer makes a preliminary decision that the employee's conviction record disqualifies the employee, the employer must notify the employee of this preliminary decision in writing and containing all of the following:

- notice of the disqualifying conviction or convictions that are the basis for the preliminary decision and the employer's reasoning for the disqualification;
- a copy of the conviction history report, if any; and
- an explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation must inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation.[69]

After receiving this notice, the employee has at least five business days to respond to the notification provided before the employer may make a final decision. The employer must consider the employee's response before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer must notify the employee in writing of the following:

- notice of the disqualifying conviction or convictions that are the basis for the final decision and the employer's reasoning for the disqualification;
- any existing procedure the employer has for the employee to challenge the decision or request reconsideration; and
- the right to file a charge with the Department of Human Rights.[70]

---

[67] 775 ILL. COMP. STAT. 5/2-103.1.

[68] 775 ILL. COMP. STAT. 5/2-103.1.

[69] 775 ILL. COMP. STAT. 5/2-103.1.

[70] 775 ILL. COMP. STAT. 5/2-103.1.

1.3(a)(v) *Local Guidelines on Employer's Use of Conviction Records*

Chicago Ban-the-Box Ordinance. As noted above, Chicago amended its ban-the-box ordinance in April 2023 to align its law with the Illinois Human Rights Act. The ordinance includes two additional exemptions to the conviction-record prohibition:

- federal or state law requires an employer to exclude from employment applicants with certain criminal convictions; or
- a standard fidelity or equivalent bond is required and an applicant's conviction of one or more specified criminal offenses would disqualify him/her from obtaining such a bond;[71]

With respect to the determination of substantial relationship and unreasonable risk to property or personal safety and welfare, the Chicago ordinance directs covered employers to consider the same factors and follow the same notification procedures as discussed above relating to the Illinois Human Rights Act.[72] Employees or applicants must be informed of their rights to file a complaint with the Chicago Commission on Human Relations.

In addition, as discussed in **1.3(a)(ii)**, the JOQAA, as well as the Cook County ban-the-box ordinance, places restrictions on preemployment criminal background screening practices.

1.3(a)(vi) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

In Illinois, expunged or sealed criminal records may not be considered by a private or public entity in employment matters.[73] Employers may not ask if an applicant has had records expunged or sealed, and employment applications must contain specific language stating that "the applicant is not obligated to disclose sealed or expunged records of conviction or arrest."[74] In addition, an employer may not inquire into or use expunged, sealed, or impounded criminal history record information, as well as arrest records as a basis for recruitment, hiring, promotion, renewal of employment, selection for training, or apprenticeship, discharge, discipline, tenure or terms, or privileges or conditions of employment, unless otherwise authorized by law.[75]

Juvenile Records. Expunged juvenile records may not be considered by any public or private entity in employment matters.[76] Juvenile delinquency records that are expunged are treated as if they never occurred.[77]

Moreover, as with sealed or expunged criminal records, applications for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of conviction or arrest. Employers may not ask if an applicant has had a juvenile record expunged.[78]

---

[71] These exemptions are modeled on the JOQAA, and like that statute, in these situations, an employer can include a question or inquire about whether the applicant has ever been convicted of any criminal offenses that would disqualify him/her from obtaining a standard fidelity or equivalent bond. CHICAGO, ILL., MUN. CODE § 6-10-054(b).

[72] CHICAGO, ILL., MUN. CODE §§ 6-10-054(c) and (d).

[73] 20 ILL. COMP. STAT. 2630/12(a).

[74] 20 ILL. COMP. STAT. 2630/12(a).

[75] 775 ILL. COMP. STAT. 5/2-103(A).

[76] 705 ILL. COMP. STAT. 405/5-923.

[77] 705 ILL. COMP. STAT. 405/5-923.

1.3(a)(vii) *State Enforcement, Remedies & Penalties*

The Illinois Department of State Police enforces the arrest and conviction provisions under the Illinois Human Rights Act, and the Illinois Department of Labor enforces the JOQAA.

Employers that violate the arrest and conviction record provisions may: (1) be ordered to stop violations and pay fees and costs; (2) face administrative sanctions; and (3) for knowing and intentional violations, be found guilty of a class A misdemeanor.[79]

Under the JOQAA, employers that violate the preemployment inquiry provisions will first receive a written warning. Thereafter, employers that do not comply are:

- fined up to $500 for failing to remedy a violation within 30 days of the warning or for committing a second violation;
- fined up to an additional amount of $1,500 for failing to remedy a first violation within 60 days of the warning, or for committing a third violation; and
- fined an additional amount of $1,500 for failing to remedy a first violation within 90 days of the warning, or for committing subsequent violations, which are fined at a rate of $1,500 for every 30 days of noncompliance thereafter.[80]

1.3(a)(viii) *Local Enforcement, Remedies & Penalties*

Chicago. Employers may also face additional fines and penalties under the Chicago ban-the-box ordinance; however, unlike under the JOQAA, these penalties may be issued without a warning for a first violation.[81]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[82] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[83] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer

---

[78] 705 ILL. COMP. STAT. 405/5-923.

[79] 20 ILL. COMP. STAT. 2635/15 to /18.

[80] 820 ILL. COMP. STAT. 75/20.

[81] CHICAGO, ILL., MUN. CODE § 2-160-120.

[82] 15 U.S.C. §§ 1681 *et seq*.

[83] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[84]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Under the Illinois Employee Credit Privacy Act (ECPA),[85] covered employers are prohibited from:

1. inquiring about an applicant's or employee's credit history;
2. failing or refusing to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report; and
3. ordering or obtaining an applicant's or employee's "credit report"[86] from a consumer reporting agency.[87]

Employer does not include:

- any bank or financial holding company, bank, savings bank, savings and loan association, credit union, trust company, or any subsidiary or affiliate of same that is authorized to do business under Illinois or federal law;
- any insurance or surety business authorized by the Illinois Insurance Code, and those who act on behalf of a company engaged in the insurance or surety business;
- any state law enforcement or investigative units, such as the executive inspector general, state police, and departments of corrections, juvenile justice, and natural resources;

---

[84] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

[85] 820 ILL. COMP. STAT. 70/1 *et seq*.

[86] *Credit report* means any written or oral communication of any information by a consumer reporting agency that bears on an individual's creditworthiness, credit standing, credit capacity or credit history. 820 ILL. COMP. STAT. 70/5.

[87] 820 ILL. COMP. STAT. 70/10(a).

- any state or local government agency that requires use of an employee or applicant credit history or credit report; and
- any entity defined as a "debt collector" by federal or state statute.[88]

An employer cannot require an applicant or employee to waive any right under the ECPA, and an agreement to waive such a right is invalid and unenforceable.[89]

Exceptions. Covered employers are not prohibited, however, from accessing or taking employment action if a satisfactory credit history is an established *bona fide* occupational requirement of a particular position or a particular group of employees.[90] *Credit history* means an individual's past borrowing and repaying behavior, including paying bills on time and managing debt and other financial obligations.[91]

A satisfactory credit history is not a *bona fide* occupational requirement unless at least one of the following circumstances is present:

- state or federal law requires bonding or other security covering an individual holding the position;
- the duties of the position include custody of or unsupervised access to cash or marketable assets valued at $2,500 or more;
- the duties of the position include signatory power over business assets of $100 or more per transaction;
- the position is a managerial position which involves setting the direction or control of the business;
- the position involves access to personal or confidential information, financial information, trade secrets, or state or national security information;
- the position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a credit history is a *bona fide* occupational requirement; or
- the employee's or applicant's credit history is otherwise required by or exempt under federal or state law.[92]

Moreover, the ECPA does not prohibit employers from conducting a thorough background investigation, which may include obtaining a report without credit history or an investigative report without information on credit history, or both, as permitted under the FCRA, if this is used for employment purposes only.[93]

Antiretaliation Provisions. An employer cannot retaliate or discriminate against an individual because the individual has or will: (1) file a complaint under the ECPA; (2) testify, assist, or participate in an

[88] 820 ILL. COMP. STAT. 70/5.

[89] 820 ILL. COMP. STAT. 70/20.

[90] 820 ILL. COMP. STAT. 70/5.

[91] 820 ILL. COMP. STAT. 70/5.

[92] 820 ILL. COMP. STAT. 70/10(b).

[93] 820 ILL. COMP. STAT. 70/30.

investigation, proceeding or action concerning of violation of the Act; or (3) oppose a violation of the Act.[94]

1.3(b)(iii) *Local Guidelines on Employer's Use of Credit Information & History*

Chicago. Chicago employers may not inquire about an employee's or applicant's credit history or obtain an employee's credit report from a consumer reporting agency.[95] Additionally, an employer may not fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual because of the individual's credit history or credit report.[96] Moreover, it is unlawful for Chicago employers to directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation, or other term or condition of employment because of the individual's credit history. There is an exception for *bona fide* occupational qualifications.[97] Exemptions to the prohibitions apply to certain employers, such as financial entities and debt collectors.

Employers may consider credit history when it is a *bona fide* occupational requirement, meaning one of the following circumstances is present: (1) state or federal law requires bonding or other security for the position; (2) the duties of the position include power custody of or unsupervised access to cash or marketable assets valued at $2500 or more; (3) job duties include signatory power over business assets of $100 or more per transaction; (4) the position is managerial and involves setting the direction or control of the business; (5) the position involves access to certain personal or confidential information, financial information, trade secrets, or state or national security information; (6) the position meets criteria in federal or state administrative rules regarding when credit history is a *bona fide* occupational requirement; or (7) the employee's or applicant's credit history is required by or exempt under other applicable law.[98]

Cook County. Cook County's Human Rights Ordinance, which applies to employers with a principal place of business in Cook County or doing business in Cook County, renders it illegal to inquire about an employee's credit history or obtain an employee's credit report from a consumer reporting agency. The definition of *employee* includes both employees and applicants for employment.[99] Additionally, an employer may not fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, classification, grading, discipline, selection for training and apprenticeship, compensation, or other terms, conditions, or privileges of employment because of the individual's credit history or credit report.[100] Exemptions to the prohibitions apply to certain employers, such as financial entities and debt collectors. Moreover, employers may consider credit history when it is a *bona fide* occupational requirement, meaning one of the following circumstances is present: (1) state or federal law requires bonding or other security for the position; (2) the duties of the position include power custody of or unsupervised access to cash or marketable assets valued at $2,500 or more; (3) job duties include signatory power over business assets of $100 or more per transaction; (4) the position is managerial and involves setting the direction or control of the business; (5) the position involves access to certain personal or confidential information, financial information, trade secrets, or

---

[94] 820 ILL. COMP. STAT. 70/15.

[95] CHICAGO, ILL., MUN. CODE § 2-160-053.

[96] CHICAGO, ILL., MUN. CODE § 2-160-053.

[97] CHICAGO, ILL., MUN. CODE § 2-160-030.

[98] CHICAGO, ILL., MUN. CODE § 2-160-053.

[99] COOK CNTY., ILL., CODE § 42-31.

[100] COOK CNTY., ILL., CODE §§ 42-31, 42-35(g).

state or national security information; (6) the position meets criteria in federal or state administrative rules regarding when credit history is a *bona fide* occupational requirement; or (7) the employee's or applicant's credit history is required by or exempt under other applicable law.[101]

1.3(b)(iv) *State and Local Enforcement, Remedies & Penalties*

Remedies under the ECPA include injunctive relief, damages, and costs and fees.[102]

Cook County. Employers that violate the Cook County Human Rights Ordinance will be civilly fined by the Commission on Human Rights. Remedies available to aggrieved parties include back and front pay, as well as damages, hiring, or reinstatement.[103]

Chicago. The Chicago Commission on Human Relations receives and investigates complaints under the ordinance. Employers that violate the credit provisions will be fined between $100 and $1000 for each offense. In addition, any City licensee who violates may be subject to license discipline.[104]

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

The Illinois Right to Privacy in the Workplace Act (the "Privacy Act")[105] prohibits an employer or prospective employer from requesting or requiring an employee or prospective employee to provide any password or other related account information to gain access to the employee's or prospective

---

[101] COOK CNTY., ILL., CODE §§ 42-31, 42-35(g).

[102] 820 ILL. COMP. STAT. 70/25.

[103] COOK CNTY., ILL., CODE § 42-34.

[104] CHICAGO, ILL., MUN. CODE §§ 2-160-090, 2-160-120.

[105] 820 ILL. COMP. STAT. 55/1 *et seq*.

employee's social networking account, or to demand access to an employee's or prospective employee's social networking account.[106] The Act does not apply to information that is in the public domain.[107]

Under the Privacy Act, an employer or prospective employer is prohibited specifically from:

- requesting, requiring, or coercing any employee or prospective employee to provide a username and password or other related account information to the employee's personal online account;
- demanding access in any manner to an employee's or prospective employee's personal online account;
- requesting, requiring, or coercing an employee or applicant to authenticate or access a personal online account in the presence of the employer;
- requiring or coercing an employee or applicant to invite the employer to join a group affiliated with any personal online account of the employee or applicant;
- requiring or coercing an employee or applicant to join an online account established by the employer or add the employer or an employment agency to the employee's or applicant's list of contacts that enable the contacts to access the employee or applicant's personal online account; or
- discharging, disciplining, discriminating against, retaliating against, or otherwise penalizing an employee, or failing or refusing to hire an applicant, as a result of their refusal to:
  - provide the employer with a username and/or password, or any other authentication means for accessing a personal online account;
  - authenticate or access a personal online account in the presence of the employer;
  - invite the employer to join a group affiliated with the applicant's or employee's personal online account; or
  - join an online account established by the employer.

Under the Privacy Act, *personal online account* is defined as an online account that is used by a person primarily for personal purposes and does not include an account created, maintained, used, or accessed by a person for a business purpose of the person's employer or prospective employer.[108]

Exceptions. Nothing in the Privacy Act prohibits an employer from screening employees or applicants prior to hire in order to comply with the requirements under Illinois insurance laws, federal law, or by a self-regulatory organization, provided that the password, account information, or access sought by the employer only relates to an online account that the employer supplies or pays for, or that an employee creates or maintains on behalf of or under the direction of an employer in connection with employment.[109]

---

[106] 820 ILL. COMP. STAT. 55/10(b)(1).

[107] 820 ILL. COMP. STAT. 55/10(b)(3)(A).

[108] 820 ILL. COMP. STAT. 55/10(b)(6)(B).

[109] 820 ILL. COMP. STAT. 55/10(b)(3)(B), 55/10(b)(5).

An employer may also request or require an employee or applicant to share specific content that has been reported to the employer, without requesting or requiring them to provide a username, password, or other means of authentication that provides access to an employee's or applicant's personal online account, in order to:

- ensure compliance with applicable laws or regulations;
- investigate an allegation, based on receipt of specific information, of the unauthorized transfer of an employer's proprietary or confidential information or financial data to an employee or applicant's personal account;
- investigate an allegation, based on receipt of specific information, of a violation of applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct;
- prohibit an employee from using a personal online account for business purposes; or
- prohibit an employee or applicant from accessing or operating a personal online account during business hours, while on business property, while using an electronic communication device supplied or paid for by the employer, or while using the employer's network or resources, to the extent permissible under applicable laws.[110]

The Privacy Act does not prohibit employers from promulgating policies and maintaining lawful policies governing the use of the employer's electronic equipment, including policies regarding internet use, social networking site use, and email use.[111] Employers may also monitor usage of the employer's electronic equipment and email without requesting or requiring an employee or applicant to provide a password or other related account information.[112] Employers, however, may not request or use any employee's or prospective employee's password or related information to gain access to their *personal* online account in order to monitor usage.[113]

Finally, an employer is not liable for inadvertently receiving the username, password, or any other information that would enable the employer to gain access to the employee's or potential employee's personal online account, unless the employer:

- uses that information, or enables a third party to use that information, to access the personal online account;
- does not make reasonable efforts to secure information that is likely to be inadvertently received and the employer is aware or should be aware that the information is likely to be inadvertently received; or
- does not delete the information as soon as reasonably practicable.[114]

[110] 820 ILL. COMP. STAT. 55/10(b)(3)(C).

[111] 820 ILL. COMP. STAT. 55/10 (b).

[112] 820 ILL. COMP. STAT. 55/10 (b)(2).

[113] 820 ILL. COMP. STAT. 55/10(b)(2).

[114] 820 ILL. COMP. STAT. 55/10(b)(4).

Antiretaliation Provisions. It is unlawful for an employer to retaliate against, discharge, discipline, discriminate against, or otherwise penalize an employee for filing or causing to be filed any complaint, whether orally or in writing, alleging the employer's violation of the Privacy Act.[115]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

The Illinois Department of Labor enforces the Privacy Act. The Department will investigate and attempt to resolve any complaints filed by employees and applicants, and may file suit in the circuit court to enforce the Act. Where efforts to resolve the employee's or applicant's claim have failed and the Department has not commenced a civil action, the employee or prospective employee may file an action in the circuit court.[116]

For any employee or applicant prevailing in an action, the court will award: actual damages and costs; $200 plus costs, attorneys' fees, and actual damages for a willful and knowing violation of the Privacy Act; and $500 plus costs, reasonable attorneys' fees, and actual damages for a willful and knowing violation of certain violations[117] under the Privacy Act.[118]

An employer or prospective employer that violates the Privacy Act is also guilty of a petty offense. Likewise, an employer or prospective employer that discharges or discriminates against any employee or applicant because that employee or applicant has made a complaint is guilty of a petty offense.[119]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[120] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a

---

[115] 820 ILL. COMP. STAT. 55/10(b)(1)(E)(v).

[116] 820 ILL. COMP. STAT. 55/15(a)-(c).

[117] For violations under 820 ILL. COMP. STAT. 55/12(c) and (c-1).

[118] 820 ILL. COMP. STAT. 55/15(d).

[119] 820 ILL. COMP. STAT. 55/15(e)-(f).

[120] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Illinois law contains provisions regulating the types of questions that may be asked during a polygraph examination. Under the Detection of Deception Examiners Act,[121] examiners are prohibited from inquiring into any of the following areas during preemployment or periodic employment examinations, unless the area is directly related to employment:

1. religious beliefs or affiliations;
2. beliefs or opinions regarding racial matters;
3. political beliefs or affiliations;
4. beliefs, affiliations, or lawful activities regarding union or labor organizations; or
5. sexual preferences or activity.[122]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[123] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[124] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

---

[121] 225 ILL. COMP. STAT. 430/0.01 *et seq*.

[122] 225 ILL. COMP. STAT. 430/14.1.

[123] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[124] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Illinois law contains no express provisions regulating preemployment drug or alcohol screening by private employers. However, under the Illinois Human Rights Act, it is permissible for a covered employer[125] to adopt or administer reasonable policies or procedures, including but not limited to drug testing of applicants and employees for illegal drug use. Employers are also permitted to make employment decisions based on those test results.[126]

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Salary History Inquiries*

The Illinois Equal Pay Act makes it unlawful for an employer or employment agency, or employee or agent thereof, to:

- screen job applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history of an applicant satisfy minimum or maximum criteria;
- request or require a wage or salary history as a condition of being considered for employment, as a condition of being interviewed, as a condition of continuing to be considered for an offer of employment, or as a condition of an offer of employment or an offer of compensation, or as a condition of employment.[127]

It is also unlawful for an employer to seek an applicant's wage or salary history, including benefits or other compensation, from any current or former employer. This prohibition does not apply if:

- the job applicant's wage or salary history is a matter of public record under the Freedom of Information Act, or any other equivalent state or federal law, or is contained in a document completed by the job applicant's current or former employer and then made available to the public by the employer, or submitted or posted by the employer to comply with state or federal law; or
- the job applicant is a current employee and is applying for a position with the same current employer.[128]

The Act does not prohibit employer or employment agency, or an employee or agent thereof, from:

- providing information about the wages, benefits, compensation, or salary offered in relation to a position; or
- engaging in discussions with an applicant for about the applicant's expectations with respect to wage or salary, benefits, and other compensation.[129] This includes unvested equity or

---

[125] *Employer* includes any person who employs one or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. 775 ILL. COMP. STAT. 5/2-101(B)(1)(a).

[126] 775 ILL. COMP. STAT. 5/2-104(C)(2)-(4). Specifically, the Act states: "Nothing in this Act shall be construed to *encourage, prohibit, or authorize* the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results." 775 ILL. COMP. STAT. 5/2-104(C)(4) (emphasis added).

[127] 820 ILL. COMP. STAT. 112/10(b-5).

[128] 820 ILL. COMP. STAT. 112/10(b-10).

deferred compensation that the applicant would forfeit or have canceled due to the applicant's resignation from their current employer.[130]

An employer is not in violation of the Act if a job applicant voluntarily and without prompting discloses their current or prior wage or salary history, including benefits or other compensation. However, the employer cannot then consider or rely on the voluntary disclosures as a factor in determining whether to offer a job applicant employment, in making an offer of compensation, or in determining future wages, salary, benefits, or other compensation.[131] If during any discussion regarding an applicant's expectations for compensation and benefits, the applicant voluntarily and without prompting discloses that the applicant would forfeit unvested equity or deferred compensation or have it canceled by virtue of the applicant's resignation from their current employer, the prospective employer may request that the applicant verify the aggregate amount of this compensation. The applicant may do so by submitting a letter or document stating the aggregate amount of the unvested equity or deferred compensation from, at the applicant's choice, one of the following: (1) the applicant's current employer; or (2) the business entity that administers the funds that constitute the unvested equity or deferred compensation.[132]

The Act requires all private employers with 100 or more employees in the state and that are required to file an Annual Employer Information Report EEO-1 with the Equal Employment Opportunity Commission to obtain an equal pay registration certificate from the Department of Labor.[133]

1.3(f)(ii) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot ask applicants, or use job applications that ask applicants, if they have ever filed claims for or received benefits under Illinois's Workers' Compensation Act or Workers' Occupational Diseases Act.[134]

1.3(f)(iii) *State Restrictions on Employers That Record Video Interviews and Use Artificial Intelligence Analysis of Applicant Submitted Videos*

The Artificial Intelligence Video Interview Act covers employers that ask applicants to record video interviews and use artificial intelligence analysis of the applicant-submitted videos.

Before asking applicants to submit video interviews for positions based in Illinois, these employers must do the following:

- notify each applicant before the interview that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position;
- provide each applicant with information before the interview explaining how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants; and

[129] 820 ILL. COMP. STAT. 112/10(b-15).

[130] 820 ILL. COMP. STAT. 112/10(b-15).

[131] 820 ILL. COMP. STAT. 112/10(b-20).

[132] 820 ILL. COMP. STAT. 112/10(b-15).

[133] 820 ILL. COMP. STAT. 112/11.

[134] 820 ILL. COMP. STAT. 55/10(a).

- obtain, before the interview, consent from the applicant to be evaluated by the artificial intelligence program as described in the information provided by the employer.

If an employer does not obtain an applicant's consent to use artificial intelligence, the employer may not use artificial intelligence analysis to evaluate that applicant.

An employer must keep videos of applicants confidential, except that they may be shared with a person whose expertise or technical knowledge is necessary in order to evaluate an applicant's fitness for a position. Moreover, if an applicant requests, an employer must delete an applicant's interviews and instruct any other persons who received copies of the applicant's video interviews to also delete the videos, including all electronically generated backup copies, within 30 days after the receipt of the request. Any person who received copies must comply with the employer's request to delete the interview.[135]

Additionally, if an employer relies exclusively on a video interview's artificial intelligence analysis to determine whether an applicant will be selected for an in-person interview, it must collect and report the race and ethnicity of applicants who were not selected for an in-person interview and the race and ethnicity of the applicants who were hired. The employer must report the data annually to the state Department of Commerce and Economic Opportunity.[136]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[137] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[138] if the employee purchases a qualified health plan through the exchange; and

[135] 820 ILL. COMP. STAT. 42/1 *et seq*.

[136] 820 ILL. COMP. STAT. 42/20.

[137] 26 U.S.C. § 36B.

[138] 42 U.S.C. § 18071.

Table 2. Federal Documents to Provide at Hire	
	• that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[139] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[140]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[141] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[142]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[143] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[144]

[139] 29 U.S.C. § 218b.

[140] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[141] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[142] 29 C.F.R. § 2590.606-1.

[143] 29 C.F.R. § 825.300(a).

[144] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

Table 2. Federal Documents to Provide at Hire	
	Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[145]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[146] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[147]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[148]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly

[145] 29 C.F.R. § 825.300(a).

[146] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[147] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[148] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

Table 2. Federal Documents to Provide at Hire	
	receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[149]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Health Insurance Coverage Disclosure	An employer that provides group health insurance coverage to its employees must provide all employees eligible for coverage a written list of covered benefits included with the insurance coverage: (1) upon hire; (2) annually thereafter; and (3) upon an employee's request. The written list must be in a format that easily compares the employer's covered benefits with the essential health insurance benefits required of individual health insurance coverage regulated by the state of Illinois. The Department of Insurance will provide the information outlining the state-regulated insurance coverage benefits, which employers may use to inform eligible employees of the benefits included or not included in their health insurance coverage. Employers must comply with the Act by providing the required disclosure information by email to its employees or providing the information on a website that an employee is able to access regularly.[150]
Benefits & Leave Documents: Illinois Secure Choice Savings Program	The Illinois Secure Choice Savings Program (Secure Choice) generally applies to businesses: (1) with at least 5 employees in every quarter of the previous calendar year; (2) in business for two or more years; and (3) that do not provide a qualified savings plan / employer-sponsored retirement plan. Such businesses are given the option to either offer a private market savings vehicle or automatically enroll their employees into the Secure Choice program. Participating employers must provide employees – generally and at the time of hiring – an information packet about the program. The packet includes a form for an employee to note a decision to opt out of the program, or to participate with an employee contribution level other than 3%. A "participating employer" is an employer or small employer that provides a payroll deposit retirement savings arrangement under the Act for its employees who are program enrollees.[151]

[149] 29 C.F.R. § 531.59.

[150] 820 ILL. COMP. STAT. 46/10.

[151] 820 ILL. COMP. STAT. 80/1 *et seq*. The information packet is available online at the Illinois Secure Choice website, https://saver.ilsecurechoice.com/home/savers/forms.html.

Table 3. State Documents to Provide at Hire	
Benefits & Leave Documents: Paid Leave for All Workers Act	**Designated 12 Month Period** Under the Paid Leave for Workers Act, covered employees will accrue one hour of paid leave for every 40 hours worked. Accrual begins on January 1, 2024 or at the start of employment, whichever is later. Employees cannot use accrued paid leave until they have completed 90 calendar days of employment, or March 31, 2024, whichever is later. Employees may accrue up to 40 hours in a 12-month period. A 12-month period may be any 12-month period designated by the employer in writing at the time of hire.[152] **Existing Paid Time Off Policy** If an employer chooses to credit the paid leave provided for under the Act to an existing paid leave policy provided by the employer, the policy must be communicated to the employee within 30 days after the start of employment or of the effective date of the policy. **Initial Notice of Frontloading** Employers must give written notice to an employee if an employer chooses to frontload paid leave instead of using the accrual method. The notice must inform the employee of how many paid leave hours that the employee is receiving on or before the first day of initial employment or on or before the first day of the initial 12-month period.[153]
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	Employees must furnish employers information that is required for the employer to make an accurate withholding for state income tax purposes.[154] Employees should use Illinois Revenue Form IL-W-4 (Employee's Illinois Withholding Allowance Certificate).[155]
Wage & Hour Documents	At the time of hiring, employers must notify employees of: • time and place of payment; and • pay rate (include a description of all "wages"). The term *wages* is defined as compensation owed an employee by an employer pursuant to an employment contract or agreement between the two parties, whether the amount is determined on a time, task, piece, or any other basis of calculation.[156] Whenever possible, notification must be in writing and acknowledged by

[152] 820 ILL. COMP. STAT. 192.

[153] 56 ILL. ADMIN. CODE §§ 200.110 - 200.540.

[154] 35 ILL. COMP. STAT. 5/702.

[155] *See* https://tax.illinois.gov/forms/withholding.html.

[156] 820 ILL. COMP. STAT. 115/10, 115/2 (definition of *wages*).

Table 3. State Documents to Provide at Hire	
	both parties**.** The employee's assent to the rate of pay must be reflected. Employers bear the burden of showing that it was not possible to provide written notification at the time of hire.[157]

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[158] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[159]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must

[157] 820 ILL. COMP. STAT. 115/10, 115/2 (definition of *wages*); ILL. ADMIN. CODE tit. 56, § 300.630.

[158] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[159] 42 U.S.C. § 653a.

notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[160] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Illinois's new hire reporting law.[161]

Who Must Be Reported. Illinois employers must submit new hire information to the Illinois New Hire Directory for employees newly hired, rehired, or recalled to work. Effective January 1, 2024, this includes independent contractors. All new employees who are required to fill out Internal Revenue Service (IRS) Form W-4 (wage withholding forms) must be reported; this includes employees rehired after a separation of 60 days or more. For purposes of new hire reporting, the term "newly hired employee" covers individuals under an independent contractor agreement.[162]

Report Timeframe. The new hire information must be submitted to the Illinois New Hire Directory no later than 20 days after the employee's date of hire or, in the case of an employer transmitting reports

[160] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[161] 820 ILL. COMP. STAT. 405/1801.1.

[162] 820 ILL. COMP. STAT. 405/1801.1, as amended by H.B. 3301 (Ill. 2023).

magnetically or electronically, by two monthly transmissions, if necessary, not less than 12 days nor more than 16 days apart.[163]

Information Required. The information required to be reported includes the employee's name, address, Social Security number, and date of hire, defined as the employee's first day of work for pay. The report must also include the employer's name, address, and federal tax identification number.[164]

Form & Submission of Report. Reports may be submitted by first-class mail, email, fax, online, magnetically, or electronically. The report must be made on a Form W-4 or an equivalent form.[165]

Location to Send Information.

Illinois Department of Employment Security
Illinois New Hire Directory
P.O. Box 19212
Springfield, IL
62794-9212
(800) 327 4473
(217) 557-1947 (fax)
https://ides.illinois.gov/employer-resources/taxes-reporting/new-hires.html

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for

[163] 820 ILL. COMP. STAT. 405/1801.1(B).

[164] 820 ILL. COMP. STAT. 405/1801.1(B).

[165] 820 ILL. COMP. STAT. 405/1801.1(B).

claims of trade secret misappropriation.[166] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

The Illinois Freedom to Work Act prohibits private-sector employers from entering into noncompete restrictions with employees earning $75,000 or less per year. The Act provides that a covenant not to compete entered into between an employer and such an employee is illegal and void.

This threshold is effective until January 1, 2027 and will increase by $5,000 every five years until 2037. Nonsolicitation agreements are void for employees earning $45,000 or less per year until January 1, 2027. This threshold increases by $2,500 every five years until 2037.[167]

Illinois courts have also developed a series of common-law principles concerning the enforceability of covenants not to compete. Illinois courts evaluate restrictive covenants under a "three dimensional rule of reason" in which a covenant is reasonable if it: (1) is no greater than is required to protect the legitimate business interest of the employer; (2) does not impose undue hardship on the employee; and (3) is not injurious to the public.[168]

Whether a legitimate business interest exists is judged with reference to the totality of the circumstances, including the nature of a business's relationship with its customers; an employee's acquisition of confidential information by virtue of their employment; and the reasonableness of any temporal or physical restrictions imposed upon the employee's ability to pursue their trade.[169] This analysis is "unstructured," and the Illinois Supreme Court has clarified that there is no particular test or universe of factors to be used in determining what constitutes a "legitimate business interest."[170]

Consideration of the reasonableness of any temporal or physical restrictions includes:

- **Temporal Restrictions.** In assessing the reasonableness of the temporal scope of restrictive covenants, courts consider factors such as the time it takes to acquire and maintain clients, the nature of the industry, and the volatility of the information at issue.[171]

---

[166] 18 U.S.C. §§ 1832 *et seq.*

[167] 820 ILL. COMP. STAT. 90/10.

[168] *Reliable Fire Equip. Co. v. Arredondo*, 965 N.E.2d 393, 396 (Ill. 2011).

[169] *Saddlers Row, L.L.C. v. Dainton*, 2012 WL 7989526 (Ill. App. Ct. 2012), *appeal denied by* 996 N.E.2d 23 (Ill. 2013); *Instant Tech., L.L.C. v. DeFazio*, 40 F. Supp. 3d 989, 1012 (N.D. Ill. 2012).

[170] *Reliable Fire Equip. Co.*, 965 N.E.2d at 400.

[171] *See, e.g.*, *Mohanty v. St. John Heart Clinic, S.C.*, 866 N.E.2d 85, 100 (Ill. 2006) (restrictive covenants barring former physicians for three and five years from practicing medicine within a two-mile radius of their former employer's offices were reasonable and enforceable); *Midwest Tel., Inc. v. Oloffson*, 699 N.E.2d 230, 235 (Ill. App. Ct. 1998) (finding one year temporal term reasonable related to the former employer's business development

- **Geographic Restrictions.** With respect to the geographic scope of a restrictive covenant, courts generally look to whether the restricted area is coextensive with the area in which the employer is doing business.[172] The Illinois Court of Appeals further stated: "The employee should only be excluded from the territory where he was able to establish a certain relationship with the former employer's customers."[173]

Further, the lack of a geographic restriction will not render a restrictive covenant unenforceable if the covenant contains a valid activity restriction, including nonsolicitation of certain customers and nondisclosure of certain information or documents.[174] However, where a noncompete includes all of an employer's clients, past and present, the absence of territory generally will be fatal.[175] Overall, "[a] noncompetition agreement which restricts a specific activity, such as soliciting particular clients, is subject to a lower degree of scrutiny than an agreement which prohibits the employee from engaging in any type of competition with the employer."[176]

Illinois courts will generally enforce noncompetes when the employer terminates the employment relationship, unless the court finds bad faith on the part of the employer.[177] However, the issue may be unsettled as at least one court has refused to enforce a noncompete where the employer terminated the relationship "without cause" even though there was no evidence of bad faith on the part of the employer.[178]

The Illinois Freedom to Work Act codifies the enforcement requirements for noncompete and nonsolicitation agreements. Noncompete and nonsolicitation agreements are void and unenforceable unless:

- the employer receives "adequate consideration," as defined as: (1) employment with the employer for at least two years after execution; or (2) consideration otherwise "adequate to support an agreement to not compete or to not solicit, which consideration can consist of a period of employment plus additional professional or financial benefits or merely professional or financial benefits adequate by themselves";
- the covenant is ancillary to a valid employment relationship;
- the covenant is not greater than what is required to protect the employer's legitimate business interest;
- the covenant does not place unwarranted hardship on the employee; and

needs); *McRand, Inc. v. Van Beelen*, 486 N.E.2d 1306, 1311 (Ill. App. Ct. 1985) (finding two year and one year time restrictions in nonsolicitation covenant reasonable in light of testimony that it took the employer one to three years to establish a major account).

[172] *Lawrence & Allen, Inc. v. Cambridge Human Res. Grp., Inc.*, 685 N.E.2d 434 (Ill. App. Ct. 1997).

[173] 685 N.E.2d at 441.

[174] *RTC Indus., Inc. v. Haddon*, 2007 WL 2743583 (N.D. Ill. Sept. 10, 2007).

[175] *See, e.g.*, *Lawrence & Allen, Inc.*, 685 N.E.2d 434.

[176] *Abbott-Interfast Corp. v. Harkabus*, 619 N.E.2d 1337, 1341 (Ill. App. Ct. 1993).

[177] *Rao v. Rao*, 718 F.2d 219 (7th Cir. 1983).

[178] *Bishop v. Lakeland Animal Hosp., P.C.*, 644 N.E.2d 33, 36 (Ill. App. Ct. 1994).

- the covenant is not detrimental to the public.[179]

Enforceability Following Employee Discharge. Under Illinois law, the enforceability of a noncompete agreement following employee discharge depends on the reason for the employee's termination.[180] The Seventh Circuit has held that a noncompete is not enforceable against an employee discharged without cause and in bad faith.[181] In *Rao*, the employee was employed under a term contract, renewable on an annual basis and terminable by either party with 90 days' notice. After four years of service, the employee would receive an option to purchase half of the corporation for a nominal sum. The Court found that the employer had terminated the employee just prior to him being able to invoke his right to purchase half of the company, despite satisfactory work performance; thus, in bad faith. This breach of the promise of fair dealing relieved the employee from abiding by the terms of his noncompete.[182] In its reasoning, however, the Seventh Circuit observed: "To be sure, there are cases where an employer dismisses an employee but the employee's inadequate performance, in fact, impelled the dismissal. In such a case a restrictive covenant may be as reasonably necessary as in the case where the employee voluntarily leaves his job."[183]

In *Bishop v. Lakeland Animal Hospital, P.C.*, the Illinois Appellate Court, citing *Rao v. Rao*, found that "good faith" is an implied term in every contract and that therefore, "implied promise of good faith inherent in every contract precludes the enforcement of a noncompetition clause when the employee is dismissed without cause."[184] The Appellate Court added: "A noncompetition clause would be enforceable if the employee terminates the employment relationship or cause exists for the employer to terminate the employment relationship. While not at issue in the case at bar, even if either of these two conditions existed, Illinois courts must still inquire (1) whether the time and territorial restrictions are reasonable; and (2) whether a protectable business interest exists on the part of the employer."[185] The state court later narrowed the *Bishop* holding in *American Pest Control, Inc. v. Rakers*, by finding it was limited to cases where a restrictive covenant was triggered by an employee's termination "for any cause" rather than "for any cause whatsoever." Thus, the Illinois Appellate Court held that parties could contract for an at will employee to still be subject to a restrictive covenant if terminated without cause.[186] It should be noted, though, that in the *Rakers* case, the employee resigned; he was not fired.

The Illinois Freedom to Work Act will render void and unenforceable a noncompete agreement for any employee whose job was terminated or furloughed due to circumstances "related to the COVID-19 pandemic, or under circumstances similar to COVID-19."[187]

---

[179] 820 ILL. COMP. STAT. 90/5, 90/15.

[180] *Abbott-Interfast Corp. v. Harkabus*, 619 N.E.2d 1337 (Ill. App. Ct. 1993) (noncompete enforceable where employee voluntarily terminated his employment).

[181] *Rao*, 718 F.2d at 224.

[182] *Rao*, 718 F.2d at 223.

[183] *Rao*, 718 F.2d at 224.

[184] 644 N.E.2d 33, 36 (Ill. App. Ct. 1994).

[185] 644 N.E.2d at 36.

[186] 2012 WL 7050434 (Ill. App. Ct. Apr. 9, 2012).

[187] 820 ILL. COMP. STAT. 90/10.

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

For restrictive covenants executed prior to January 1, 2022, before evaluating the reasonableness of a restrictive covenant, a court must determine whether: (1) the covenant is ancillary to a valid contract; and (2) the covenant is supported by adequate consideration.[188] Continued employment for a "substantial period" will constitute sufficient consideration.[189] As determined by Illinois courts, when executing covenants with new hires and existing employees alike, employers should provide consideration beyond mere employment itself. If another form of consideration is not provided, should an employee leave the employer within two years of hire, the covenant may be unenforceable because of lack of adequate consideration.[190]

Effective January 1, 2022, the Illinois Freedom to Work Act largely codifies Illinois case law on consideration and clarifies that *adequate consideration* is defined as: (1) employment with the employer for at least two years after execution; or (2) consideration otherwise "adequate to support an agreement to not compete or to not solicit, which consideration can consist of a period of employment plus additional professional or financial benefits or merely professional or financial benefits adequate by themselves".[191]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Courts interpreting contracts governed by Illinois law will modify or blue pencil. For example, "it has long been recognized by the courts of Illinois that if the area covered by a restrictive covenants is found to be unreasonable as to area, it may be limited to an area which is reasonable in order to protect the interests of the employer and accomplish the purpose of the covenant."[192] Courts are more willing to

---

[188] *Brown & Brown, Inc. v. Mudron*, 887 N.E.2d 437, 440 (Ill. App. Ct. 2008).

[189] *Melena v. Anheuser-Busch*, 847 N.E.2d 99 (Ill. 2006); *Lawrence & Allen, Inc. v. Cambridge Human Res. Grp., Inc.*, 685 N.E.2d 434 (Ill. App. Ct. 1997).

[190] *Fifield*, 996 N.E.2d at 943.

[191] 820 ILL. COMP. STAT. 90/5.

[192] *Gillespie v. Carbondale & Marion Eye Ctrs., Ltd.*, 622 N.E.2d 1267, 1270 (Ill App. Ct. 1993).

modify and enforce a restrictive covenant where the covenant itself provides that it is severable.[193] However, a severability clause will not be applied and an unreasonable covenant will not be modified where the unreasonable provisions are identified by the agreement as "essential."[194] In addition, where a restraint is patently unfair because of overbreadth, courts will refuse to modify even in the presence of a severability clause.[195]

Courts have discretion to reform or sever provisions of a covenant not to compete or a covenant not to solicit, rather than hold such covenant unenforceable. Courts may consider the following factors:

- the fairness of the restraints as originally written;
- whether the original restriction reflects a good-faith effort to protect a legitimate business interest of the employer;
- the extent of the reformation; and
- whether the parties included a clause authorizing such modification in their agreement.[196]

2.3(b)(iv) *State Trade Secret Law*

Illinois adopted the Uniform Trade Secrets Act (UTSA) in 1988 with some modifications. The UTSA serves to protect trade secrets from employee misappropriation.

Definition of a Trade Secret. The Illinois Trade Secrets Act defines a trade secret as:

> [I]nformation, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:
> (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and
> (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.[197]

In determining whether the business information is a protectable trade secret, Illinois courts have considered the following factors:

1. the extent to which the information is known outside of the plaintiff's business;
2. the extent to which it is known by employees and others involved in the plaintiff's business;
3. the extent of measures taken by the plaintiff to guard the secrecy of the information;
4. the value of the information to the plaintiff and to the plaintiff's competitors;
5. the amount of effort or money expended by the plaintiff in developing the information; and

---

[193] *Abbott-Interfast v. Harkabus*, 619 N.E.2d 1337 (Ill. App. Ct. 1993).

[194] 619 N.E.2d at 1344.

[195] *Hay Grp., Inc. v. Bassick*, 2005 WL 2420415, at *4 (N.D. Ill. 2005).

[196] 820 ILL. COMP. STAT. 90/35.

[197] 765 ILL. COMP. STAT. 1065/2(d).

6. the ease or difficulty with which the information could be properly acquired or duplicated by others.[198]

One key factor to secrecy is the ease with which information can be readily duplicated without involving considerable time, effort, or expense.[199] Of the six factors, the most important is whether and how an employer acts to keep the information secret.[200]

In Illinois, an owner of a trade secret must make "efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality."[201] It is not enough that an employer simply not give another party permission to use the information; the Illinois Trade Secrets Act requires "affirmative measures" to prevent others from using the information.[202] The determination of whether or not actions taken to protect secrecy meet the Act's reasonableness standard is fact specific and is typically a question for the jury or finder of fact.[203] The secrecy requirement, however, does not require absolute secrecy. "A trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design, and operation of which, in unique combination, affords a competitive advantage and is a protectable secret."[204]

Misappropriation of a Trade Secret. The existence of a trade secret alone does not prohibit its use by another, provided the information is acquired in a legitimate manner. Despite the fact that a trade secret and duty not to disclose may exist, no liability arises unless the trade secret has been misappropriated. Under the Illinois Trade Secrets Act, "[m]isappropriation can be shown one of three ways—by improper acquisition, unauthorized disclosure, or unauthorized use."[205] To prove misappropriation under Illinois law, a plaintiff must establish the following:

- acquisition of a person's trade secret by another person who knows or has reason to know that the trade secret was acquired by improper means; or
- disclosure or use of a person's trade secret without express or implied consent by another person who:
  - used improper means to acquire knowledge of the trade secret; or

---

198 *Delta Med. Sys., Inc. v. Mid-America Med. Sys., Inc.*, 772 N.E.2d 768, 780-81 (Ill. App. Ct. 2002).

199 *Stampede Tool Warehouse, Inc. v. May*, 651 N.E.2d 209, 216 (Ill. App. Ct. 1995) (customer list that is developed through the laborious method of prospecting is not readily duplicable and therefore a trade secret). *But see Learning Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 729 (7th Cir. 2003) (applying state law; lack of expense and effort does not preclude existence of trade secret).

200 *Learning Curve Toys*, 342 F.3d at 725; *Southwest Whey, Inc. v. Nutrition 101, Inc.*, 117 F. Supp. 2d 770, 776 (C.D. Ill. 2000); *Jackson v. Hammer*, 653 N.E.2d 809, 816 (Ill. App. Ct. 1995).

201 765 ILL. COMP. STAT. 1065/2(d); *see also System Dev. Servs. Inc. v. Haarmann*, 907 N.E.2d 63, 78 (Ill. App. Ct. 2009) (stressing that the "information must be sufficiently secret in the first place, regardless of the security measures taken by [the employer]").

202 *Learning Curve Toys*, 342 F.3d at 725; *Nordstrom Consulting, Inc. v. M & S Technologies, Inc.*, 2008 WL 623660 at *14-15 (N.D. Ill. March 4, 2008) (explaining that measures that are insufficient under some circumstances may be sufficient under other circumstances).

203 *Mangren Research & Dev. Corp. v. National Chem. Co.*, 87 F.3d 937, 943 (7th Cir. 1996); *Thermodyne Food Serv. Prods., Inc. v. McDonald's Corp.*, 940 F. Supp. 1300, 1307 (N.D. Ill. 1996).

204 *3M v. Pribyl*, 259 F.3d 587, 595-96 (7th Cir. 2001).

205 *Liebert Corp. v. Mazur*, 827 N.E.2d 909, 925 (Ill. App. Ct. 2005) (citing 765 ILL. COMP. STAT. 1065/2(b)).

- at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was:
  - derived from or through a person who utilized improper means to acquire it; or
  - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
  - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
- before a material change in position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[206]

As a general rule, an employee may take general knowledge or information the employee has developed during employment, but may not take any confidential information, including trade secrets.[207] An employer need not prove actual theft or conversion of physical documents constituting trade secrets to demonstrate misappropriation. A trade secret can be misappropriated by physical copying or by memorization.[208]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Illinois law limits the types of inventions an employer can claim ownership. The Illinois Employee Patent Act prohibits an employer from claiming ownership rights to an invention in which no equipment, supplies, facilities, or employer trade secret information was used and which was developed entirely on the employee's own time unless: (1) the invention relates to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or (2) the invention results from any work performed by the employee to the employer.[209] Any employment agreement provision which purports to apply to such invention is against the public policy of Illinois and unenforceable. The employer bears the burden of proof to establish the invention is its property.[210]

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

---

[206] 765 ILL. COMP. STAT. 1065/2(b).

[207] *Learning Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 723 (7th Cir. 2003); *Stampede Tool Warehouse, Inc. v. May*, 651 N.E.2d 209, 216-17 (Ill. App. Ct. 1995).

[208] *Stampede Tool Warehouse*, 651 N.E.2d at 217.

[209] 765 ILL. COMP. STAT. 1060/2.

[210] 765 ILL. COMP. STAT. 1060/2.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[211]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[212]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[213]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[214]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[215]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[216]
Occupational Safety and	Employers must post a notice or notices informing employees of the Fed-

[211] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[212] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[213] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[214] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[215] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[216] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

Table 5. Federal Posting & Notice Requirements	
Health Act ("the Fed-OSH Act")	OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[217]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[218]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[219] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[220]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[221]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[222]
E-Verify Participation &	The Department of Homeland Security requires certain government

[217] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[218] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[219] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[220] 41 C.F.R. §§ 60-300.44, 60-741.44.

[221] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[222] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

Table 5. Federal Posting & Notice Requirements	
Right to Work Posters	contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[223]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[224]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[225]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[226]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[227] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this

[223] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[224] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[225] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[226] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[227] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
	information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[228]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[229]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[230]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements.[231] While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Artificial Intelligence	**Effective January 1, 2026**, an employer is required to provide notice if it is using AI for actions related to any of the following purposes: recruitment,

[228] 29 C.F.R. § 13.5.

[229] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[230] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[231] *Available at* https://www.illinois.gov/idol/Employers/Pages/posters.aspx.

Table 6. State Posting & Notice Requirements	
	hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.[232]
Child Labor Law	Employers that employ minors under age 16 must conspicuously post a printed abstract of the child labor law and its restrictions, including, among other things, the hours for beginning and ending work and for meal breaks.[233]
Day and Temporary Labor Service Act Poster	If employer is a Day and Temporary Labor Service Agency, it must post notice in the public access area easily accessible to all employees of their rights under the law. The notice must be in English or any other language generally understood in the locale of the day and temporary labor service agency.[234]
Fair Employment Practices: Pregnancy Rights Notice	All employers must post the "Pregnancy and Your Rights in the Workplace" notice where notices to employees are customarily posted.[235] An employer may satisfy this posting requirement by including the same information on an applicant's or employee's rights regarding pregnancy that are included on the poster in its employee handbook.[236]
Fair Employment Practices: Discrimination and Sexual Harassment	All employers must post the Sexual Harassment and Discrimination poster where notices to employees are customarily posted.[237]
Fair Employment Practices: Hotel and Casino Employee Safety Act	Hotel and casino employers must provide a current copy of the employer's anti-sexual harassment policy in English and Spanish and post in English and Spanish in conspicuous places in areas of the hotel or casino, such as supply rooms or employee lunch rooms, where employees can reasonably be expected to see it. Employers must also make reasonable efforts to provide employees with a copy in any language

[232] 775 ILL. COMP. STAT. 5/2-102.

[233] 820 ILL. COMP. STAT. 205/5. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

[234] 820 ILL. COMP. STAT. 175/45(d); ILL. ADMIN. CODE tit. 56, § 260.490. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/dtlsa/24_DayAndTemporaryLabor_English_NewLogo.pdf.

[235] 775 ILL. COMP. STAT. 5/2-102(k). This poster is available at https://dhr.illinois.gov/publications.html.

[236] ILL. ADMIN. CODE tit. 56 § 2535.300.

[237] 775 ILL. COMP. STAT. 5/2-102(k). This poster is available at https://www2.illinois.gov/dhr/Publications/Pages/default.aspx.

Table 6. State Posting & Notice Requirements	
	other than English and Spanish that, in the employer's sole discretion, is spoken by a predominant portion of its employees.[238]
Human Trafficking Notice	Certain businesses must post a notice concerning human trafficking near public entrances or in other conspicuous locations in clear view of the public and employees, where such notices are customarily posted. This requirement applies to businesses where the sale of liquor is the principal business carried on and primary to the sale of food, adult entertainment facilities, airports, passenger train or light rail stations, bus stations, truck stops, emergency rooms, urgent care centers, farm labor contractors, and privately-operated job recruitment centers. The notice must be posted in English, Spanish, and one other language that is the most widely spoken in the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act.[239]
Leave: Illinois Service Member Employment and Reemployment Rights Act	Employers must give notice of the rights, benefits, and obligations of service member employees, which may be met by posting notice of the Act in the place where the employer customarily places notice to employees.[240]
Paid Leave for All Workers Act	Employers must post the notice, published by the Illinois Department of Labor (IDOL), in a conspicuous place on the employer's premises and include a copy of the notice in a written document, or written employee manual or policy. If the employer's workforce includes a significant portion of non-English speakers, the employer will be required to post a notice in that other language or languages. The IDOL has published the notice of rights in English, Polish, Spanish, Hindi, and Arabic.[241] In addition to physically posting the notice, employers who regularly communicate with employees via electronic means must provide the notice through the employer's regular electronic communication method. **Existing Paid Time Off Policy** If an employer chooses to credit the paid leave provided for under the Act to an existing paid leave policy provided by the employer, the policy must be communicated to the employee within 30 days after the start of employment or of the effective date of the policy. **Initial Notice of Frontloading** Employers must give written notice to an employee if an employer chooses to frontload paid leave instead of using the accrual method. The notice must inform the employee of how many paid leave hours that the

[238] 820 ILL. COMP. STAT. 325/5-10.

[239] 775 ILL. COMP. STAT. 50/5, 50/10. This poster is available at http://www.dhs.state.il.us/page.aspx?item=82023.

[240] 330 ILL. COMP. STAT. 61/5-20.

[241] 820 ILL. COMP. STAT. 192/20.. The posters are available at https://labor.illinois.gov/employers/posters.html.

Table 6. State Posting & Notice Requirements	
	employee is receiving on or before the first day of initial employment or on or before the first day of the initial 12-month period. **Changes to Employer Policies** When employers change their paid leave policy, the employer must notify the employee of the updated policy as soon as practical. If the changes relate to a switch from frontloading to accrual, there must be at least 30 days' notice prior to the end of the 12-month period. If the employer changes the amount of frontloaded leave that will be provided, employers must provide a written notice communicating to the employee how many paid leave hours that the employee is receiving on or before the initial 12-month period.[242]
Unemployment Insurance Benefits Poster	Employers must post notices about unemployment benefits in conspicuous places in all establishments. Notices must be easily accessible for examination by the worker.[243]
Victims' Economic Security and Safety Act Poster	Employers with 1 or more employees must post notice informing employees about their rights under this law. This notice is included in the "Your Rights Under Illinois Employment Laws" poster.[244]
Wages, Hours & Payroll: Equal Pay Act Poster	Employers must conspicuously post a notice to employees with a summary of the equal pay act. This notice is included in the "Your Rights Under Illinois Employment Laws" poster.[245]
Wages, Hours & Payroll: Meals and Rest Periods—One Day Rest in Seven Act	Employers must post conspicuous notice concerning meal and rest periods. This notice is included in the "Your Rights Under Illinois Employment Laws" poster. Prior to the first day of a calendar workweek, employers must also post a work schedule in a conspicuous place that lists the names of employees required to work on Sunday and that designates the day of rest for each of those employees.[246]

[242] ILL. ADMIN. CODE tit. 56 §§200.110 - 200.540.

[243] ILL. ADMIN. CODE tit. 56, 2720.100. This poster is available at https://ides.illinois.gov/content/dam/soi/en/web/ides/ides_forms_and_publications/notice.pdf.

[244] 820 ILL. COMP. STAT. 180/10, 180/40. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

[245] 820 ILL. COMP. STAT. 112/40. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

[246] 820 ILL. COMP. STAT. 140/4. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

Table 6. State Posting & Notice Requirements	
	Additionally, employers, with certain exceptions, must post a notice of rights summarizing the act and providing information on how to file a complaint. The notice must be posted in one or more conspicuous places where notices are customarily posted. For remote workers, employers must provide the notice by email. Alternatively, employers may make the notice of rights available on a website that the employer regularly uses to communicate work-related information that all employees are able to regularly access freely and without interference.[247]
Wages, Hours & Payroll: Minimum Wage Law	Employers must provide conspicuous notice concerning the minimum wage requirements. This notice is included in the "Your Rights Under Illinois Employment Laws" poster. In addition, copies of the notice and underlying statute and regulations should be kept on hand for ready reference.[248]
Wages, Hours & Payroll: Wage Payment Notice	Employers must post notice, in an easily accessible position, notice indicating the regular paydays and place and time for payment. This notice is included in the "Your Rights Under Illinois Employment Laws" poster.[249]
Worker Freedom of Speech Act	Within 30 days of the effective date on January 1, 2025, employers must post and keep posted a notice of employee rights under this Act where employee notices are customarily placed.[250]
Workers' Compensation Notice	Employer must post notice in each workplace informing employees of their rights under the workers' compensation law.[251]
Workplace Safety: Emergency Care for Choking	This notice is required for "food service establishments" and encouraged for any employer whose employees eat on premises. *Food service establishment* is defined as any fixed or mobile establishment serving food to the public for consumption on the premises. The term does not include establishments operated on a temporary basis by charitable or nonprofit organizations.[252]
Workplace Safety:	Smoking is generally prohibited in public places, places of employment,

[247] 820 ILL. COMP. STAT. 140/8.5; S.B. 3146 (Ill. 2022).

[248] 820 ILL. COMP. STAT. 105/9; ILL. ADMIN. CODE tit. 56, § 210.740(b). This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

[249] 820 ILL. COMP. STAT. 115/10. This poster is available at https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/your-rights/24_YourRights_English_NewLogo.pdf.

[250] S.B. 3649.

[251] 820 ILL. COMP. STAT. 305/6. This poster is available at https://www2.illinois.gov/sites/iwcc/Documents/icpnFORM.pdf.

[252] ILL. ADMIN. CODE tit. 77, §§ 520.20, 520.50. This poster is available at https://dph.illinois.gov/content/dam/soi/en/web/idph/files/publications/choking-poster-9-13-2013-040516.pdf.

Table 6. State Posting & Notice Requirements	
No Smoking Signs	governmental vehicles, and within 15 feet of building entrances. "No Smoking" signs must be posted conspicuously in workplaces and at all entrances. Ashtrays also must be removed from areas where smoking is prohibited.[253]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[254]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings,	At least 1 year from the date of the personnel action to which any records relate.

[253] 410 ILL. COMP. STAT. 82/15, 82/20(a). This poster is available at http://www.smoke-free.illinois.gov/sf_signs.htm.

[254] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

Table 7. Federal Record-Keeping Requirements		
	promotions, training programs, or opportunities to work overtime.[255]	
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[256]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[257]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[258]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[259]	Most recent form must be retained for 1 year.
Employee	*Records pertaining to a polygraph test must be maintained*	At least 3 years

[255] 29 C.F.R. § 1627.3(b).

[256] 29 C.F.R. § 1627.3(b).

[257] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[258] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[259] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Polygraph Protection Act (EPPA)	*for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[260]	following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[261]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[262]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and	At least 2 years.

[260] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[261] 29 U.S.C. § 1027.

[262] 29 C.F.R. § 1620.32(a).

Table 7. Federal Record-Keeping Requirements		
	• other matters which describe any pay differentials between the sexes.[263]	
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[264] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	3 years from the last day of entry.

[263] 29 C.F.R. § 1620.32(b).

[264] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[265]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees, and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[266]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing,	At least 3 years from the last effective date.

[265] 29 C.F.R. § 516.28.

[266] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
	written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[267]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[268]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the	At least 3 years.

[267] 29 C.F.R. § 516.5.

[268] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
	disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[269]	

[269] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[270]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[271]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:*	Required to be maintained for "so long as the

[270] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[271] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
	• regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[272]	contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[273]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[274]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

[272] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[273] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[274] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
	deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[275]	
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[276]	At least 30 years.

[275] 26 C.F.R. § 31.6001-4.

[276] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[277]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[278]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[279]	5 years following the end of the calendar year that the record covers.

[277] 29 C.F.R. § 1910.1020(d).

[278] 29 C.F.R. § 1910.1020(d).

[279] 29 C.F.R. §§ 1904.33, 1904.44.

Table 7. Federal Record-Keeping Requirements		
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[280]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used,	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.

[280] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
	the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[281]	
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[282]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[283]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number;	During the course of the covered contract

[281] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[282] 41 C.F.R. §§ 60-1.12, 60-741.80.

[283] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
	• employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[284]	as well as after the end of the contract.
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid.	At least 3 years after the work.

[284] 29 C.F.R. § 13.25.

Table 7. Federal Record-Keeping Requirements		
	Contractors employing apprentices or trainees under approved programs must maintain written evidence of: • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[285]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[286]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[287]	At least 3 years from the last date of entry.

[285] 29 C.F.R. § 5.5.

[286] 29 C.F.R. § 4.6.

[287] 41 C.F.R. § 50-201.501.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements

Records	Notes	Retention Requirement
Day and Temporary Labor Services Act	Whenever a day and temporary labor service agency sends one or more persons to work as day and temporary laborers, the agency must keep the following records relating to that transaction: • the name, address, and telephone number of each third-party client, including each worksite, to which day or temporary laborers were sent by the agency and the date of the transaction; • for each day or temporary laborer: the name and address, the specific location sent to work, the type of work performed, the number of hours worked, the hourly rate of pay and the date sent. The third-party client is required to remit all information required under this subsection to the day and temporary labor service agency no later than seven days following the last day of the work week worked by the day or temporary laborer; • the name and title of the individual or individuals at each third-party client's place of business responsible for the transaction; • any specific qualifications or attributes of a day or temporary laborer requested by each third-party client; • copies of all contracts, if any, with the third-party client and copies of all invoices for the third-party client; • copies of all employment notices provided; • deductions to be made from each day or temporary laborer's compensation made by either the third-party client or by the day and temporary labor service agency for the day or temporary laborer's transportation, food, equipment, withheld income tax, withheld social security payments and every other deduction; • verification of the actual cost of any equipment or meal charged to a day or temporary laborer; • the race and gender of each day or temporary laborer sent by the day and temporary labor service agency, as provided by the day or temporary laborer and any additional information required by rules issued by the Department; • the temporary services agency must also document efforts to inform third party clients of efforts to urge	For a period of 3 years from their creation.

Table 8. State Record-Keeping Requirements		
	mitigation of known hazards in the workplace; and • provide training to the day or temporary laborer for general awareness safety training for recognized industry hazards the worker may encounter at the third-party client's worksite, and the date and content of the training must be maintained by the temporary services agency (for an unspecified period).[288] In addition to the above, third-party clients must: • document and inform the temporary services agency about anticipated job hazards; and • document and maintain records of the site-specific training and provide confirmation that the training occurred to the day and temporary services agency within three business days of providing the training.[289]	
Fair Employment Practices: Application Materials	*Employers covered by the Illinois Human Rights Act must preserve and maintain records, including applications and exam. To the extent they exist, the following records must be kept:* • applications, resumes, and similar documents submitted by or on behalf of applicants; • all interview forms, aptitude, or qualifying examinations; • personal history or background examination reports; • medical history and physical examination reports; and • other documents pertaining to each applicant.[290]	1 year from the date of application.
Fair Employment Practices: Job Duties	*Employers covered by the Illinois Human Rights Act must preserve and maintain records, including records of job duties. To the extent they exist, the following records must be kept:* • job descriptions; • production standards; and • any other records of required job duties, qualifications, and performance criteria.[291]	1 year from the date the document ceases to be effective.
Fair Employment Practices: Personnel Files	*Employers covered by the Illinois Human Rights Act must preserve and maintain records, including personnel records. To the extent they exist, the following records must be kept:* • performance evaluations; • attendance/tardiness records;	1 year from date of employee's termination or separation.

[288] 820 ILL. COMP. STAT. 175/12.

[289] 820 ILL. COMP. STAT. 175/85.

[290] ILL. ADMIN. CODE tit. 56, § 2520.110(a)(1).

[291] ILL. ADMIN. CODE tit. 56, § 2520.110(a)(3).

Table 8. State Record-Keeping Requirements		
	• reprimands and disciplinary records; and • suspension, layoff, termination, or resignation records.[292]	
Fair Employment Practices: Records Related to Charges	If a charge of discrimination has been served, employers must continue to preserve all records (*i.e.*, application, job duties, and personnel materials) and other evidence pertaining to the charge.[293]	Until the matter is finally adjudicated.
Fair Employment Practices: Equal Pay Act	*Employers must make and preserve records indicating:* • name, address, occupation, and wages paid to each employee and any other forms of compensation provided by the employer; • payroll records and records of other forms of compensation; and • dates of hire, promotion, and pay increases and dates any other forms of compensation was provided • pay scale and benefits for each position; • job posting for each position, and • any other information the Director may deem necessary and appropriate for enforcement. *Employers must also maintain any records made in the regular course of business related to:* • personnel records; • employee qualifications for hire, promotion, transfer, discharge, or other disciplinary action; • wage rates; • skills testing certifications; • job descriptions and evaluations; • merit systems and seniority systems; • written job offers; • individual employment contracts and collective bargaining agreements; and • descriptions of practices or other matters that may explain the basis for wage differentials of employees of the opposite sex or the basis for payment of wages to any employee who is African American at a rate less than the rate paid to employees who are not African-American by the same employer that may be pertinent to a determination whether the differential or lower wage payment is based on a factor other than race.[294]	Not less than 5 years. However, records that are related to an ongoing investigation or enforcement action under the Equal Pay Act must be maintained until their destruction is authorized by the state or by court order.

[292] ILL. ADMIN. CODE tit. 56, § 2520.110(a)(2).

[293] ILL. ADMIN. CODE tit. 56, § 2520.110(d).

[294] 820 ILL. COMP. STAT. 112/20; ILL. ADMIN. CODE tit. 56, § 320.140.

Table 8. State Record-Keeping Requirements		
Harassment Training	An employer of one or more employees is required to keep a record of all sexual harassment prevention trainings provided annually under the requirements of the Illinois Human Rights Act. The record may be a certificate of completion, a signed employee acknowledgement, or a course sign-in sheet.[295]	Retention requirement is not specified.
E-Verify	*Upon voluntary enrollment in an Employment Eligibility Verification System, an employer must maintain the signed original of the attestation form prescribed by the IDOL, attesting that the employer:* • received the Basic Pilot or E-Verify training materials from the Department of Homeland Security (DHS), and that all employees who will administer the program have completed the Basic Pilot or E-Verify Computer Based Tutorial (CBT); and • posted (1) the notice from DHS indicating that the employer is enrolled in the program; and (2) the antidiscrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice, in a prominent place that is clearly visible to both prospective and current employees. CBT certificates of completion also must be retained and be made available for inspection or copying by the IDOL at any reasonable time.[296]	None specified.
Freelance Worker Protection Act	Each employer must retain copies of freelance worker contracts and make them available to the Illinois Department of Labor upon request.[297]	At least 2 years.
Health Insurance: Health Insurance Coverage Disclosure Act	Employers who provide health insurance coverage to employees through policies written outside Illinois must disclose a written list of covered benefits included with the coverage to employees: (1) at hire; (2) annually thereafter; and (3) upon employee's request.[298]	1 year.
Income Taxes	*Employers must keep records indicating, for each employee:* • name, address, and federal employer identification number of the employer; • name, address, and Social Security number of the employee;	3 years from the due date of the return or date of return was filed, whichever is

[295] 775 ILL. COMP. STAT. 5/2-109; 2-110; ILLINOIS DEPARTMENT OF HUMAN RIGHTS.

[296] 820 ILL. COMP. STAT. 55/12.

[297] HB 1122 (not yet codified).

[298] 820 ILL. COMP. STAT. 46/10.

Table 8. State Record-Keeping Requirements		
	• total amount of compensation paid in Illinois; • total amount deducted and withheld as tax; and • a copy of the prepared W-2 form.[299] Additional records of tax liabilities may be required by the state agency.[300]	later.
Minor Employment	*Employers of one or more minors must maintain, on the premises where the work is being performed, the following:* • records that include the name, date of birth, and place of residence of every minor who works for the employer; • notice of intention to employ the minor; and • minor's employment certificate.[301]	3 years
One Day Rest in Seven Act	Employers must keep a time book showing the names and addresses of all employees and the hours worked by each of them on each day.[302]	2 years.
Paid Leave for All Workers Act	*Each employer must make and preserve records documenting:* • name and address • hours worked each day in each workweek; • paid leave earned or accrued in each workweek; • paid leave taken or used in each workweek; • remaining paid leave balance in each workweek and upon employee's separation or termination from employment; and • request by employee to use paid leave that the employer denied. Employers must make all records related to the Act available to the employee or for inspection by the Department of Labor upon request.[303]	For a period of not less than 3 years and during any pending administrative claim.
Unemployment Compensation	*Each employer must keep true and accurate records of services performed, including, for each pay period:* • beginning and ending dates of the period; and • total amount of wages for employment paid in the period.	5 years after they are made. However, if a determination and assessment

[299] ILL. ADMIN. CODE tit. 86, §§100.7200, 100.7300.

[300] 35 ILL. COMP. STAT. 5/501.

[301] SB 3646 (not yet codified).

[302] 35 ILL. COMP. STAT 140/5.

[303] S.B. 308 (Ill. 2023).

Table 8. State Record-Keeping Requirements		
	Records for each worker must include: • name, Social Security number, and address; • place of employment (city or county where the individual performed work); • dates services were performed; • wages for each pay period and date such wages were paid, showing separately money wages, reasonable cash value of noncash remuneration, tips, special payments (*e.g.*, bonuses, gifts, etc.); • wage rate and customary working hours; • date of hire, rehire or return to work; and • date of separation.[304]	of contributions, interest and penalties is made, or an action for the collection is brought, records pertaining to the period(s) covered by such determination or action must be preserved until the determination and assessment or action has become final, or has been cancelled or withdrawn.
Expense Reimbursement	*Employers must maintain the following expense reimbursement related records including:* • all reimbursement policies; • employee reimbursement requests; • documentation showing denial or approval or reimbursement; and • documentation showing reimbursement was executed.[305]	3 years.
Victims Economic Security & Safety Act	*Employers must maintain records that contain:* • name, address, and occupation of each employee; • rate or basis of pay; • terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; • total compensation paid each pay period; • copies of employee requests for leave with attachments; • copies of notices given to employees regarding the law; • documents describing employee benefits or policies regarding taking paid and unpaid leaves; • records of paid time off each year, and dates leave was	At least 3 years.

[304] 820 ILL. COMP. STAT. 405/1800; ILL. ADMIN. CODE tit. 56, § 2760.115.

[305] ILL. ADMIN. CODE tit. 56, , §§300.540; 300.1190.

Table 8. State Record-Keeping Requirements		
	taken or paid; • personnel records; and • records of disputes regarding designation of leave. *Employers must also maintain any records made in the regular course of business related to:* • employee qualifications for promotion, transfer, discharge, or other disciplinary action; • wage rates; • skills testing certifications; • job evaluations; • job descriptions; • merit systems and seniority systems; • individual employment contracts and collective bargaining agreements; • description of practices or matters that describe the basis for any type of paid or unpaid time off; and • personnel records.[306]	
Wages, Hours & Payroll: Vacation	*If an employer provides paid vacation, it must maintain accurate records of:* • number of vacation days earned each year; and • dates the vacation days were taken and paid.[307]	Not less than 3 years.
Wages, Hours & Payroll	*Employers must maintain the following records, regardless of an individual's status as an exempt administrative, executive, or professional employee:* • name, address, sex, Social Security number, and occupation of each employee; • birth date of each employee 18 or younger; • rate of pay; • amount paid each period to each employee; • time of day and day of week when employee's workweek begins; • hours worked each day and hours worked in each workweek; • basis on which wages are paid; • type of payment (hourly rate, salary commission, etc.), straight time and overtime pay and total wages paid each period; • straight time and overtime pay and total wages paid each pay period;	Not less than 3 years. Although the law only requires that records be kept for not less than 3years, the Wage Payment and Collection Act (WPCA) has a 10-year statute of limitations. To best defend against potential WPCA claims,

[306] ILL. ADMIN. CODE tit. 56, § 280.140.

[307] ILL. ADMIN. CODE tit. 56, §§ 300.520, 300.630.

Table 8. State Record-Keeping Requirements		
	• all additions to and deductions made from wages and an explanation of same; • dates of payment of each pay periods; • copies of all notices required to be provided to an employee at the time of hiring; and • designation of any workers paid at a learning rate along with the learner's occupation; • time records of each minor employee regardless of whether the employee has been terminated; and • wages paid each payday. *For tipped employees, employers must, in addition to the general recordkeeping requirements, keep the following information and data with respect to each such employee:* • An identifying symbol, letter or number on the payroll record indicating such employee is a person whose wage is determined in part by gratuities. • The report received from the employee setting forth gratuities received during each workday. Such reports submitted by the employee must be signed and include the employee's Social Security Number. • The amount by which the wage of each such employee has been deemed to be increased by gratuities as determined by the employer (not in excess of 40% of the applicable statutory minimum wage). The amount per hour which the employer takes as a gratuity credit must be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding pay period. • Hours worked each workday in any occupation in which the employee does not receive gratuities and the total daily or weekly straight time payment made by the employer for such hours. • Hours worked each workday in an occupation in which the employee received tips or gratuities, and total daily or weekly straight time earnings for such hours.[308]	employers may wish to consider retaining wage and hour records for 10 years.
Employee Pay Stubs	Employers must maintain a copy of an employee's pay stub for a period of not less than three years regardless of whether the employee's employment ends within this period and whether the pay stub is furnished electronically or in paper form.[309]	Not less than 3 years.

[308] 820 ILL. COMP. STAT. 105/8, 115/10, & 140/5; ILL. ADMIN. CODE tit. 56, §§ 210.700, 210.720, 300.630.

[309] 820 ILL. COMP. STAT.115/10.

Table 8. State Record-Keeping Requirements		
Worker's Compensation	Employers must maintain accurate records of work-related deaths, injuries, and illnesses—other than minor injuries requiring only first aid and which do not involve medical treatment, loss of consciousness, restriction of work, or transfer to another job.[310]	None specified.
Workplace Safety: Injuries & Illnesses	*Employers must maintain in each workplace:* • log of injuries and illnesses; • supplementary Record of Injuries and Illnesses; and • an annual summary of the entries. These documents must contain the same information as their federal counterparts. Indeed, use of the federal form is deemed to be in compliance with state law.[311]	At least 5 years following the end of the year for which the records were produced.
Workplace Safety: Toxic Substances	Employers must maintain material safety data sheets (MSDS) for any toxic substances in the workplace and make them available to employees upon request.[312]	10 years after the substance is no longer used, produced, or stored.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

In Illinois, personnel documents subject to inspection include documents which are, have been, or are intended to be used in determining an employee's qualifications for:

- employment;
- promotion;
- transfer;
- additional compensation; and
- discharge or other disciplinary action.

Personnel files include documents in the possession of a person, corporation, partnership, or other association having a contractual agreement with the employer to keep or supply a personnel record.[313] **Effective January 1, 2025**, the above list contains benefits, employment-related contracts or agreements that the employer maintains are legally binding on the employee; employee handbooks that the

[310] 820 ILL. COMP. STAT. 305/6, 310/6.

[311] 820 ILL. COMP. STAT. 255/9; ILL. ADMIN. CODE tit. 56, §§ 350.250, 350.300 & 350.380.

[312] 820 ILL. COMP. STAT. 255/9.

[313] 820 ILL. COMP. STAT. 40/2.

employer made available to the employee or that the employee acknowledged receiving; and written employer policies or procedures that the employer contents the employee was subject to and that concern qualifications for employment, promotion, compensation, benefits, discharge or other disciplinary action.

Requests for Access to Personnel Files. Employees, including employees subject to recall after layoff or a leave of absence with a right to return to work or former employees terminated in the preceding year, may request to inspect their personnel file.

An employer may require that the request be in writing on a form supplied by the employer. The employer must grant at least two inspection requests per calendar year, at reasonable intervals unless otherwise provided in a collective bargaining agreement. A request must be honored within seven working days; alternatively, an employer has an additional seven days to comply if the employer can show they cannot meet the deadline.[314] **Effective January 1, 2025**, the request need not be on a form supplied by the employer. The employer, upon an employee's written request (including any electronic communications, such as email or text messages), must grant at least two inspection requests per calendar year to inspect, copy, and receive copies of record, at reasonable intervals unless otherwise provided in a collective bargaining agreement. The request must be made to a person responsible for maintaining the employer's personnel records.

Effective January 1, 2025, the request must identify what records the employee requests, or if the employee is requesting all of the records allowed under the law, specify if the employee wishes to inspect, copy, or receive copies of the records, specify whether records be provided as hard copies or in an electronic format, specify whether the inspection/copying/receiving copies will be performed by the employee's representative (includes family members, lawyers, union stewards or other union officials, or translators); and if the records include medical information or records, include a signed waiver to release medical information and records to that specific representative.

The right to inspect personnel record does not apply to:

- letters of reference for that employee;
- any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document;
- materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, relate to, or affect more than one employee, unless such materials are to be used in determining the employee's qualifications;
- an employer that does not maintain any personnel records;
- information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy;

Effective January 1, 2025, an employer's trade secrets, client lists, sales projections, and financial data;

- records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding; and

[314] 820 ILL. COMP. STAT. 40/2, 40/3.

- investigatory or security records maintained to investigate criminal conduct of other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business, unless and until the employer takes adverse personnel action based on information in such records.[315]

An employer with five or more employees must permit an employee to inspect personnel documents.

The inspection must take place at a location reasonably near the place of employment and during regular business hours; however, the employer may allow the inspection to take place at a location more convenient to the employee. Upon an employee's written request, the employer must mail or email a copy of the requested records to the employee. The employer may charge the employee only the cost of duplicating the record.

An employee who is involved in a current grievance against the employer, may designate in writing a representative to inspect their personnel file.[316]

Disputes Over Personnel Files. If an employee disagrees with any of the information in the employee's personnel record, the employee and employer may agree to remove or correct any information. If they cannot agree, the employee may submit a written statement explaining their position. The statement must remain in the personnel file so long as the disputed information remains and be included in any disclosure to a third party.[317]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on Illinois law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Illinois law contains no applicable employment law provisions regulating drug and alcohol testing of employees. As noted in **1.3(e)(ii)**, however, under the Illinois Human Rights Act, it is permissible for a covered employer to adopt or administer reasonable policies or procedures, including but not limited to

[315] 820 ILL. COMP. STAT. 40/10.

[316] 820 ILL. COMP. STAT. 40/2, 40/3.

[317] 820 ILL. COMP. STAT. 40/6.

drug testing of applicants and employees for illegal drug use. Employers are also permitted to make employment decisions based on those test results.[318]

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[319]

3.2(c)(ii) *State Guidelines on Marijuana*

Illinois has both medical and recreational marijuana laws.

Recreational Marijuana. Under the recreational marijuana law, an employer cannot refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products (products that are legal under state law) off the premises of the employer during nonworking and noncall hours. However, exceptions exist for an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public; and for use of lawful products which impairs an employee's ability to perform the employee's assigned duties.[320] A person is not considered an unlawful user or addicted to narcotics solely as a result of possession or use of cannabis or cannabis paraphernalia in accordance with the law.[321] An employee is deemed on-call when the employee is scheduled with at least 24 hours' notice by the employer to be on standby or otherwise responsible for performing tasks related to employment either at the employer's premises or other previously designated location by the employer or supervisor to perform a work-related task.[322]

Under the recreational marijuana law, an employer can adopt reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.[323] An employer is not required to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.[324] An employer can discipline an employee or terminate an employee for violating an employer's employment policies or workplace drug policy.[325] An employer may consider an employee to

---

[318] 775 ILL. COMP. STAT. 5/2-104(C)(2)-(4). Specifically, the Act states: "Nothing in this Act shall be construed to *encourage, prohibit, or authorize* the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results." 775 ILL. COMP. STAT. 5/2-104(C)(4) (emphasis added).

[319] 21 U.S.C. §§ 811-12, 841 *et seq*.

[320] 820 ILL. COMP. STAT. 55/5(a)-(b).

[321] 410 ILL. COMP. STAT. 705/1-7.

[322] 820 ILL. COMP. STAT. 55/5(a)-(b).

[323] 410 ILL. COMP. STAT. 705/10-50(a).

[324] 410 ILL. COMP. STAT. 705/10-50(b); *see also* 410 ILL. COMP. STAT. 705/10-50(h) (defining *workplace* to mean the employer's premises, including any building, real property, and parking area under the control of the employer or area used by an employee while in performance of the employee's job duties, and vehicles, whether leased, rented, or owned. *Workplace* may be further defined by the employer's written employment policy, provided that the policy is consistent with the law.).

[325] 410 ILL. COMP. STAT. 705/10-50(c).

be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including:

- symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery;
- disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property;
- disruption of a production or manufacturing process; or
- carelessness that results in any injury to the employee or others.[326]

If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.[327]

The law provides that a cause of action does not exist for any person against an employer for:

- actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test;
- actions based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies;
- actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or
- injury, loss, or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired.[328]

The recreational marijuana law does not enhance or diminish protections afforded by any other law, including but not limited to the Compassionate Use of Medical Cannabis Program Act or the Opioid Alternative Pilot Program.[329] Also, it does not interfere with any federal, state, or local restrictions on employment including, but not limited to, the United States Department of Transportation regulation, or impact an employer's ability to comply with federal or state law or cause it to lose a federal or state

[326] 410 ILL. COMP. STAT. 705/10-50(d).

[327] 410 ILL. COMP. STAT. 705/10-50(d).

[328] 410 ILL. COMP. STAT. 705/10-50(e).

[329] 410 ILL. COMP. STAT. 705/10-50(f).

contract or funding.[330] For additional protections related to the recreational marijuana law, see **3.11(a)(iv)**.

Medical Marijuana. Under the medical marijuana law, Illinois provides antidiscrimination provisions for licensed medical marijuana users. Unless failing to do so would put an employer in violation of federal law or would cause it to lose a monetary or licensing-related benefit under federal law or rules, an employer cannot penalize a person solely for the person's status as a registered qualifying patient or a registered designated caregiver.[331] However, a private business can restrict or prohibit the medical use of cannabis on its property.[332] Further, this law allows employers to adopt reasonable regulations concerning the consumption, storage, or time-keeping requirements for qualifying patients related to the use of medical cannabis.[333]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in the individual's gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[334]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[335]

---

[330] 410 ILL. COMP. STAT. 705/10-50(g). *See also* 410 ILL. COMP. STAT. 705/10-35 (an individual or business entity is not required to violate federal law).

[331] 410 ILL. COMP. STAT. 130/40.

[332] 410 ILL. COMP. STAT. 130/30, 130/40.

[333] 410 ILL. COMP. STAT. 130/50.

[334] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

3.2(d)(ii) *State Data Security Breach Guidelines*

Illinois law requires any data collector that owns or licenses personal information concerning an Illinois resident to notify the resident there has been a security breach following discovery or notification of the breach.[336] *Personal information* is defined as an individual's first initial and last name in combination with any one of more of the following:

- Social Security number;
- driver's license number or state identification card number;
- account number or credit or debit card number in combination with any required security code or password that would permit access to the account;
- medical information;
- health insurance information;
- unique biometric data generated from measurements or technical analysis of human body characteristics; or
- username or email address in combination with a password or security question and answer that would permit access to an online account.[337]

Coverage & Exceptions. The data security breach law covers any person, referred to by Illinois statute as a *data collector*, which includes government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic information.[338]

Content & Form of Notice. Notice must be provided at no charge to the affected individual, and may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 500,000; or
  - the covered entity does not have sufficient contact information.[339]

Substitute notice must consist of the following:

- email notice when the covered entity has an email address for the subject persons;

---

[335] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[336] 815 ILL. COMP. STAT. 530/1 *et seq.*

[337] 815 ILL. COMP. STAT. 530/5.

[338] 815 ILL. COMP. STAT. 530/5.

[339] 815 ILL. COMP. STAT. 530/10.

- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media or to prominent local media if the breach affects residents in one geographic area.[340]

Substitute notice for username and email breaches may be provided in electronic or other form directing the resident to promptly change their username or password and security question.

A data collector (who is not an exempt financial institution) owning or licensing personal information concerning an Illinois resident must provide notice that includes:

- the toll-free numbers and addresses for consumer reporting agencies;
- the Federal Trade Commission's toll-free number, address, and website; and
- a statement that the individual can obtain information from these sources about fraud alerts and security freezes.

A data collector's notification must also include:

- informing the owner or licensee of the breach, including giving notice of the date or approximate date of the breach and the nature of the breach, and
- informing the owner or licensee of any steps the data collector has taken or plans to take relating to the breach.

The notification cannot include information concerning the number of Illinois residents affected by the breach.[341] Waivers of rights under the law are void.

Timing of Notice. Notice must be given as soon as possible in the most expedient time possible and without unreasonable delay. However, notification may be delayed if:

- A law enforcement agency determines that notification will impede a criminal investigation.
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity, security, and confidentiality of the data system.[342]

Other Notification Requirements. If more than 500 residents are affected by the breach, the state attorney general must also be notified. The notice to the state attorney general must include:

- a description of the nature of the breach or unauthorized acquisition or use;
- the number of Illinois residents affected by the incident at the time of notification; and
- any steps the business has taken or plans to take relating to the incident.

This notification must be made in the most expedient time possible and without unreasonable delay, but no later than when the business provides notice to the affected consumers. If the date of the breach

[340] 815 ILL. COMP. STAT. 530/10.

[341] 815 ILL. COMP. STAT. 530/10.

[342] 815 ILL. COMP. STAT. 530/5.

is unknown at the time the business provides notice to the state attorney general, the business must update the notification with the date of the breach as soon as possible. Entities that are subject to HIPAA regulations are exempt from this requirement.

Upon receiving notification, the state attorney may publish the name of the business that suffered the breach, the types of personal information compromised in the breach, and the approximate dates of the breach.[343]

3.2(e) *Additional State Privacy Protections*

3.2(e)(i) *State Guidelines on Biometric Privacy*

The Illinois Biometric Information Privacy Act (BIPA), enacted in 2008, requires that private entities obtain employees' consent prior to scanning their "biometric identifiers" or collecting "biometric information."[344] A *biometric identifier* is defined as a scan of an individual's fingerprint, retina, or iris, or a scan of an individual's hand or face geometry. *Biometric information* is defined as "any information, regardless of how it is captures, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual."[345] Therefore, a biometric timeclock that does not store an image of a biometric identifier, such as a fingerprint, to create a unique identifier tied to an individual employee based on that image, will fall within the scope of BIPA. Two Illinois federal court opinions from 2017 further illustrate BIPA's broad scope.[346] The cases held that BIPA can apply to technology that scans photographs of faces because the resulting measures of facial geometry constitute "biometric identifiers" as defined by BIPA.

Under BIPA, before an employer can collect, capture, or obtain an employee's biometric identifier or biometric information (jointly, "biometric data"), it must first provide employees with a written notice that informs them: (1) their biometric data is being collected and stored; (2) the employer's purpose for collecting, storing, and using employees' biometric data; and (3) the length of time that employees' biometric data will be retained. The employer must also obtain employees' written consent to the collection and use of their biometric data.[347]

In addition to this notification requirement, BIPA requires that employers:

- make available a written policy available to all employees that: (1) establishes a retention schedule for the biometric data and provides for secure destruction of the biometric data at the earlier of termination of employment or within three years of the employee's last interaction with the employer; and (2) explains how employees' biometric data will be destroyed; and
- establish safeguards for the biometric data that are at least as stringent as those established for the organization's other confidential and sensitive information.[348]

---

[343] 815 ILL. COMP. STAT. 530/10.

[344] 740 ILL. COMP. STAT. 14/1 *et seq.*

[345] 740 ILL. COMP. STAT. 14/10.

[346] *See Rivera v. Google Inc.*, 238 F. Supp. 3d 1088, 1100 (N.D. Ill. 2017); *Monroy v. Shutterfly, Inc.*, 2017 WL 4099846 (N.D. Ill. Sept. 15, 2017).

[347] 740 ILL. COMP. STAT. 14/15(b).

[348] 740 ILL. COMP. STAT. 14/15(a), (e).

Enforcement, Remedies & Penalties. BIPA creates a private right of action and a successful employee may recover liquidated damages of up to $5,000 for each violation, as well as attorneys' fees and costs.[349] It remains unsettled whether employees must at least show a material risk of harm in order to maintain a claim under BIPA. There is a split on this issue in federal court. The Second Circuit Court of Appeals and a federal district court in Illinois have held that an employee cannot maintain a BIPA claim by merely alleging a failure to comply with the law's notice and consent requirements. Instead, employees must allege a material risk of harm.[350] However, an Illinois federal judge recently held that an individual who, in addition to not being given notice and providing consent, "credibly allege[d] an invasion of his privacy" through the collection of his biometric information, had alleged enough harm to maintain a BIPA class action.[351]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[352] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[353]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[354]

---

[349] 740 ILL. COMP. STAT. 14/20.

[350] *See Santana v. Take-Two Interactive Software, Inc.*, 717 F. App'x 12 (2d Cir. 2017) (affirming district court's dismissal of BIPA claim for lack of standing); *McCollough v. Smarte Carte, Inc.*, 2016 WL 4077108 (N.D. Ill. Aug. 1, 2016).

[351] *Monroy*, 2017 WL 4099846, at *8 n.5.

[352] 29 U.S.C. § 218(a).

[353] 29 U.S.C. § 206.

[354] 29 U.S.C. §§ 203, 206.

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[355]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[356] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

The minimum wage in Illinois is $14.00 per hour for most nonexempt employees of employers with four or more employees.[357] Future increases are scheduled (see Table 9).

3.3(b)(ii) *Tipped Employees*

Tipped employees may be paid differently. An employer may consider tips as part of their wages. An employer may apply a tip credit of up to 40% of the minimum wage per hour, which dictates the amount of the minimum cash wage. If tipped employees do not receive at least the minimum wage when direct wages and tips are combined, an employer must pay the employee the difference. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[358]

Table 9. Future Minimum Wages

Date	Minimum Wage	Minimum Cash Wage	Maximum Tip Credit
January 1, 2024	$14.00	$8.40	$5.60
January 1, 2025	$15.00	$9.00	$6.00

For tipped employees, employers must, in addition to the general record-keeping requirements, keep the following information and data with respect to each such employee:

- an identifying symbol, letter, or number on the payroll record indicating such employee is a person whose wage is determined in part by gratuities;
- the report received from the employee setting forth gratuities received during each workday, signed by the employee, and including the employee's Social Security number;
- the amount by which the wage of each such employee has been deemed to be increased by gratuities as determined by the employer (not in excess of 40% of the applicable statutory minimum wage);

[355] 29 U.S.C. § 3(m)(2)(B).

[356] 29 U.S.C. § 207.

[357] 820 ILL. COMP. STAT. 105/2, 105/4.

[358] 820 ILL. COMP. STAT. 105/2, 105/4.

- the amount per hour which the employer takes as a gratuity credit, which must be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding pay period;
- hours worked each workday in any occupation in which the employee does not receive gratuities and the total daily or weekly straight time payment made by the employer for such hours; and
- hours worked each workday in an occupation in which the employee received tips or gratuities, and total daily or weekly straight time earnings for such hours.[359]

Gratuities to employees are their property that employers cannot keep.[360] Employers must pay employee gratuities owed within 13 days after the end of the pay period in which they were earned. Employers can withhold from gratuities paid by credit card a proportionate amount of any credit card processing fees they must pay in connection with the transaction if the amount withheld does not exceed the proportion of the amount of the tip to the amount of the overall bill, regardless of whether the overall bill was paid using a credit card. The new tip property and payment statute does not prohibit tip pooling permitted by law and/or affect an employer's entitlement to a lawful tip credit.

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

The Illinois minimum wage law permits employment of learners at a subminimum wage. This subminimum wage applies to employees under 18 years of age and employees who are within the first 90 consecutive calendar days of employment. The subminimum wage cannot be lower than $.50 per hour under the minimum wage in effect.[361] The minimum wage also can be decreased with the authorization of the Director of the Illinois Department of Labor for individuals whose earning capacity is impaired by age, physical or mental deficiency or injury, unless those employees are held to the same production standards as nonimpaired employees.[362]

The minimum wage law also excludes several classes of employees from the minimum wage requirement and allows a special license for a decreased minimum wage for certain impaired employees. The excluded classes include:[363]

- students at accredited Illinois colleges or universities covered under the FLSA;
- employees working for employers with fewer than four full-time workers exclusive of the employers' immediate family members;
- outside salespeople;
- employees of religious corporations or organizations;
- certain aquacultural and agricultural employees; and
- employees of motor carriers where the U.S. Department of Transportation has the authority to establish maximum standards of quality and hours of service.[364]

---

[359] ILL. ADMIN. CODE tit. 56, § 210.720.

[360] 820 ILL. COMP. STAT. 105/4.

[361] 820 ILL. COMP. STAT. 105/4(a)(2).

[362] 820 ILL. COMP. STAT. 105/5.

[363] 820 ILL. COMP. STAT. 105/3.

3.3(b)(iv) *Local Minimum Wage Ordinances*

Some municipalities in Illinois have set their own local minimum wage rates. Employers doing business in these jurisdictions must be aware of their overlapping compliance obligations with respect to the state and local minimum wage laws. Table 10 tracks the local minimum wage ordinances in Chicago and Cook County.

Table 10. Local Minimum Wage Ordinances

Jurisdiction	Hourly Minimum Wage Rate	Additional Requirements
Chicago	Previously, a two-tier system applied, with one rate applicable to employers with 21 or more employees (the "large" employer rate applies to domestic workers), and another rate for employers with four to 20 employees. As of July 1, 2024, however one $16.20 per hour rate applies to all covered employers. For covered tipped employees, the maximum tip credit is 32% of the minimum wage, but the percentage will gradually decrease over time, on July 1 of future years –24% (2025); 16% (2026); 8% (2027) – until employers can no longer apply a tip credit on or after July 1, 2028. Currently the minimum cash wage is $11.02 and the maximum tip credit is $5.18. Employers may pay a lower minimum wage rate to certain minors. [365]	• first paycheck notice; • written notice (tipped employees); • workplace poster; and • records retention (generally & for tipped employees)
Cook County	$14.05 per hour due to changes to the state minimum wage rate. Annual increases, on July 1, based on changes to the consumer price index. Additionally, due to state rate changes, the local minimum wage will increase to $15.00 on January 1, 2025. Covered tipped employees must be paid the greater of the federal, state, or local minimum cash wage. Currently the minimum cash wage is $8.40 per hour, and the maximum tip credit is	• first paycheck notice; • annual notice of rate and rights; • workplace poster; and • records retention (generally & tipped employees).

[364] 820 ILL. COMP. STAT. 105/3.

[365] CHICAGO, ILL., MUN. CODE §§ 6-105-010 *et seq*.

Table 10. Local Minimum Wage Ordinances		
	$5.65 per hour due to changes to the state rates.[366] Due to state rate changes on January 1, 2025, both rates will change to $9.00 and $6.00, respectively.	

Additionally, Chicago's minimum wage ordinance also prohibits wage theft. Employers that fail to pay employees either the required minimum wages or wages in accordance with a wage agreement commit wage theft. This includes the non-payment of wages required for work performed and paid time off, as well as contractually required benefits. The ordinance has notice, posting, and recordkeeping requirements.[367]

3.3(c) *State Guidelines on Overtime Obligations*

Similar to the federal overtime requirements, Illinois law provides that employers with four or more employees must pay nonexempt employees one-and-a-half times their regular rate for all hours worked over 40 in a week.[368] Moreover, the state labor department may refer to FLSA regulations and interpretations of the FLSA by the Administrator of the U.S. Department of Labor's Wage and Hour Division when interpreting Illinois overtime provisions.[369]

3.3(d) *State Guidelines on Overtime Exemptions*

The following employees in Illinois are exempt from overtime pay:

- executive, administrative, professional, and commissioned employees as defined by the FLSA and certain other white collar employees, as discussed in further detail below;
- salesmen and mechanics involved in selling or servicing cars, trucks, or farm implements at dealerships;
- agricultural labor;
- certain employees involved in radio/television in a city with a population under 100,000;
- employees who exchange hours pursuant to a workplace exchange agreement; and
- employees of certain educational or residential childcare institutions.[370]

The Illinois labor department may refer to FLSA regulations and interpretations of the FLSA by the Administrator of the U.S. Department of Labor's Wage and Hour Division when interpreting Illinois overtime provisions.[371]

---

[366] COOK CNTY., ILL., CODE §§ 42-8 *et seq*. However, several municipalities in Cook County have opted out of the Cook County minimum wage and paid sick leave ordinances.

[367] CHICAGO, ILL., MUN. CODE §§ 6-105-050 *et seq.*

[368] 820 ILL. COMP. STAT. 105/4a; ILL. ADMIN. CODE tit. 56, § 210.440.

[369] ILL. ADMIN. CODE tit. 56, § 210.120.

[370] 820 ILL. COMP. STAT. 105/4a.

[371] 820 ILL. COMP. STAT. 105/3; ILL. ADMIN. CODE tit. 56, § 210.120.

3.3(d)(i) *Executive Exemption*

Overtime provisions do not apply to an individual employed in a *bona fide* executive capacity, as defined or covered by the FLSA as it existed on March 30, 2003[372] and paid a salary that meets the current FLSA requirements.

An employee is covered by the executive exemption if these requirements are all met:

- the employee is paid on a salary basis at least $455 per week, excluding board, lodging, or other facilities; and
- the employee's primary duty consists of management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees.[373]

3.3(d)(ii) *Administrative Exemption*

Overtime provisions do not apply to an individual employed in a *bona fide* administrative capacity, as defined or covered by the FLSA as it existed on March 30, 2003[374] and paid a salary that meets the current FLSA requirements.

An employee is covered by the administrative exemption if these requirements are all met:

- the employee is paid on a salary basis at least $455 per week, excluding board, lodging, or other facilities;
- the employee's primary duty consists of performing the following work, which includes work requiring the exercise of discretion and independent judgment:
  - office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers; or
  - performing functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training.[375]

3.3(d)(iii) *Professional Exemption*

Overtime provisions do not apply to an individual employed in a *bona fide* professional capacity, as defined or covered by the FLSA as it existed on March 30, 2003[376] and paid a salary that meets the current FLSA requirements.

An employee is covered by the professional exemption if these requirements are all met:

- the employee is paid on a salary basis at least $455 per week, excluding board, lodging, or other facilities; and either

---

[372] Illinois refers to the former statutory sections: 29 C.F.R. §§ 541, 541.2, 541.3, and 541.303.

[373] 820 ILL. COMP. STAT. 105/4a; ILL. ADMIN. CODE tit. 56, § 210.120.

[374] Illinois refers to the former statutory sections: 29 C.F.R. §§ 541, 541.2, 541.3, and 541.303.

[375] 820 ILL. COMP. STAT. 105/4a; ILL. ADMIN. CODE tit. 56, § 210.120.

[376] Illinois refers to the former statutory sections: 29 C.F.R. §§ 541, 541.2, 541.3, and 541.303.

- the employee's primary duty consists of performing work requiring invention, imagination, or talent in a recognized field of artistic endeavor; or
- the employee's primary duty consists of performing the following work, which includes work requiring the consistent exercise of discretion and judgment:
  - work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes); or
  - teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge. The individual must be employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which the individual is employed; or
  - work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, which includes work requiring the consistent exercise of discretion and judgment. The individual must be employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in former section 541.303 of title 29 of the Code of Federal Regulations.[377]

3.3(d)(iv) *Computer Professional Exemption*

The computer professional exemption mostly tracks the current federal requirements. However, there is not an hourly computer employee exemption. Instead, an employee must be paid on a salary basis at least $455 per week, excluding board, lodging, or other facilities.[378] The federal salary requirements that the Illinois statute references (29 C.F.R. § 541.600(a)-(b)), do not include the hourly computer pay provisions, which are found in subsection (d). Additionally, the ability for a computer employee to qualify as an exempt executive or administrative employee is based on the employee meeting the Illinois—and not the current federal—tests for those exemptions.

3.3(d)(v) *Commissioned Sales Exemption*

Illinois expressly adopts and follows the FLSA with respect to the commissioned sales exemptions.[379]

3.3(d)(vi) *Outside Sales Exemption*

In Illinois, the term *employee* does not include "an individual permitted to work . . . as an outside salesman for purposes of the minimum wage law."[380] Moreover, the term outside salesman is defined as "an employee regularly engaged in making sales or obtaining orders or contracts for services where a major portion of such duties are performed away from his employer's place of business."[381]

---

[377] 820 ILL. COMP. STAT. 105/4a; ILL. ADMIN. CODE tit. 56, § 210.120.

[378] 820 ILL. COMP. STAT. 105/4a; ILL. ADMIN. CODE tit. 56, § 210.120.

[379] 820 ILL. COMP. STAT. 105/4a.

[380] 820 ILL. COMP. STAT. 105/3(d)(4).

[381] 820 ILL. COMP. STAT. 105/3(g).

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[382] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[383]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[384] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[385] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[386] Exemptions apply for smaller employers and air carriers.[387]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[388] Lactation is considered a related medical condition.[389]

---

[382] 29 C.F.R. § 785.19.

[383] 29 C.F.R. § 785.18.

[384] 29 U.S.C. § 218d.

[385] 29 U.S.C. § 218d(b)(2).

[386] 29 U.S.C. § 218d(a).

[387] 29 U.S.C. § 218d(c), (d).

[388] 42 U.S.C. § 2000gg–1.

Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[390] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. Every Illinois employer must provide employees who work seven and a half continuous hours at least a 20-minute meal period, beginning no later than five hours after work starts. An employee who works more than seven and a half continuous hours is entitled to an additional 20-minute meal period for every additional four and a half continuous hours worked. A meal period does not include reasonable time spent using restroom facilities.[391]

Although Illinois law provides that a 20-minute meal period may be unpaid, FLSA-covered employers should note that under the FLSA, a break period between five and 20 minutes is considered hours worked and must be paid.

Special requirements apply to hotel room attendants who work in counties with a population of more than three million (*i.e.*, Cook County).[392]

The meal period requirements apply to exempt employees. Neither the general meal period statute nor the accompanying regulation defines *employee*, and there is no general definition statute or regulation that applies to the meal period provisions. Accordingly, in the absence of an express definition, coupled with the fact the legislature specifically exempted other types of workers from the meal period statute's requirements, the law should be interpreted as applying to exempt employees.[393]

Exceptions. The general meal period requirements do not apply to the following employees:

- Employees for whom meal periods are established through the collective bargaining process.
- Employees who monitor individuals with developmental disabilities or mental illness, or both, and who, in the course of those duties, must be on call during an entire eight-hour work period. However, these employees must be allowed to eat a meal during the eight-hour work period while continuing to monitor individuals.
- Individuals who are employed by a private company and licensed under the Emergency Medical Services (EMS) Systems Act, are required to be on call during an entire 8-hour work period, and are not local government employees. However, these employees must be allowed to eat a meal during the eight-hour work period while on call.[394]

---

389 29 C.F.R. § 1636.3.

390 29 C.F.R. § 1636.3.

391 820 ILL. COMP. STAT. 140/3, 140/3.1; ILL ADMIN. CODE tit. 56, § 220.800.

392 820 ILL. COMP. STAT. 140/3.1.

393 *See* 820 ILL. COMP. STAT. 140/3; *see also* ILL. ADMIN. CODE tit. 56, § 220.800.

394 820 ILL. COMP. STAT. 140/3.

Rest Periods. Illinois has no generally applicable rest period requirements for adult employees. However, special requirements apply to hotel room attendants who work in counties with a population of more than three million.[395]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

Minors under 16 years of age cannot be permitted to work for more than five hours continuously without an interval of at least 30 minutes for a meal period. No period of less than 30 minutes is deemed to interrupt a continuous period of work.[396] A violation of the meal period law will be charged for each minor during each work period of five or more continuous hours during which the minor did not receive an uninterrupted 30-minute meal period.[397]

State law does not include any rest period requirements for minors.

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

The Illinois Director of Labor enforces the meal and rest break provisions.[398] An employer that violates any of these provisions is guilty of a civil offense and may be fined for each offense a sum of up to $250 per offense for employers with fewer than 25 employees, and up to $500 per offense, for employers with 25 or more employees.[399]

3.4(b)(iv) *Lactation Accommodation Under State Law*

In Illinois, an individual may breast feed in any public or private location where the individual is authorized to be.[400]

The Illinois Nursing Mothers in the Workplace Act provides that employers must provide reasonable break time each day to an employee who needs to express breast milk for their infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. However, an employer is not required to provide break time if to do so would impose an undue hardship on the employer's operations. Employers must also make reasonable efforts to provide a room or other location in close proximity to the work area (other than a toilet stall) where an employee can express their milk in private. Further, the employer must provide break time each time the employee needs to express milk for one year after the child's birth.[401]

Lactation breaks must be paid. An employer may not reduce an employee's compensation for time used for the purpose of expressing milk or nursing a baby.[402]

In addition, the Illinois Human Rights Act requires employers to make reasonable accommodations for any medical or common condition related to pregnancy or childbirth, unless it would impose an undue

---

[395] 820 ILL. COMP. STAT. 140/3.1.

[396] 820 ILL. COMP. STAT. 205/4.

[397] ILL. ADMIN. CODE tit. 56, § 250.810.

[398] 820 ILL. COMP. STAT. 140/6.

[399] 820 ILL. COMP. STAT. 140/7, as amended by S.B. 3146 (Ill. 2022).

[400] 740 ILL. COMP. STAT. 137/10.

[401] 820 ILL. COMP. STAT. 260/10, 260/15.

[402] 820 ILL. COMP. STAT. 260/10, 260/15.

hardship on the ordinary operations of the employer's business. One example of a reasonable accommodation includes providing a private nonbathroom space for expressing breast milk and breast feeding. However, accommodations of a personal nature (*e.g.*, providing a breast pump) are not required.[403] For more information on the reasonable accommodations provisions, see **3.9(c)(ii)**.

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[404] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[405]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see **LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS**.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

In Illinois, an employee's workweek must be a fixed, recurring period of 168 hours (*i.e.*, seven consecutive 24-hour periods).[406] The beginning period of the workweek need not coincide with the beginning of the calendar week, but, once fixed, it must remain consistent regardless of a particular employee's schedule of hours. However, the employer may change the beginning period for the workweek, as long as the change is not intended to evade the overtime provisions of the FLSA.[407]

An employee is also entitled to at least 24 hours of consecutive rest in every calendar week, as discussed more fully in **3.8(b)(ii)**.

Illinois defines *hours worked* as all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time the employee is required or permitted to work for the employer.[408] There are a number of issues considered when determining

[403] ILL. ADMIN. CODE tit. 56, § 2535.100.

[404] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[405] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. 27, 36 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[406] ILL. ADMIN. CODE tit. 56, § 210.400(a).

[407] ILL. ADMIN. CODE tit. 56, § 210.400(b).

[408] ILL. ADMIN. CODE tit. 56, § 210.110.

whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Illinois law addresses the compensability of on-call time and travel time.

Reporting time. The state Day and Temporary Labor Services Act states that a day or temporary laborer who is contracted by a day and temporary labor service agency to work at a third-party client's worksite must be paid a minimum of four hours of pay at the agreed-upon rate if the worker does not actually work for the third-party client. However, if the day and temporary labor service agency contracts the worker to work at another location during the same shift, the worker must be paid for a minimum of two hours by the day and temporary labor service agency.[409]

On-Call Time. All time an employee spends on-call away from the employer's premises predominantly for the employer's benefit is compensable.[410]

Travel Time. Illinois adopts federal law for determining whether travel time is compensable. Additionally, time spent by employees in ride-sharing arrangements does not trigger employer obligations under the Illinois Minimum Wage Law.[411]

3.5(c) *Local Predictive Scheduling Ordinances*

Both Chicago and Evanston have enacted predictive scheduling ordinances.

Chicago

The Chicago Fair Workweek Ordinance requires employers covered by the Ordinance to provide advanced notice of work schedules to their covered employees, and to pay additional wages if posted schedules are changed within a certain time period. The Ordinance also requires employers to offer additional hours to existing employees before hiring new employees.

Covered Employers and Employees. *Covered employees* are employees (as opposed to contractors), or temporary workers if the workers are on assignment with an employer for 420 hours in an 18-month period, who (a) perform the majority of their work within the City of Chicago; (b) perform the majority of their work in a "covered industry"; and (c) earn less than $59,161.50 a year (effective July 1, 2024, $61,149.35), for salaried employees, or less than $30.80 an hour (effective July 1, 2024, $31.85), for hourly employees. The minimum compensation requirement is scheduled to increase annually based on the increase in the Consumer Price Index. An "employer" is defined as an entity that employs 100 or more employees (or 250 or more employees if a nonprofit corporation), 50 of whom are covered employees, and is primarily engaged in a covered industry.

Covered industries are: building services, healthcare, hotels, manufacturing, restaurants, retail, and warehouse services, as those terms are defined in the Ordinance. Notably, *restaurants* means businesses licensed to sell food in Chicago that have at least 30 locations and 250 employees globally, and also excludes business with no more than three locations in Chicago owned by a single employer and operating under a sole franchise.

---

[409] 820 ILL. COMP. STAT. 175/30(g).

[410] ILL. ADMIN. CODE tit. 56, § 210.110.

[411] ILL. ADMIN. CODE tit. 56, §§ 210.110, 210.120; 820 ILL. COMP. STAT. 105/2.1.

Significantly, the Ordinance provides that the Ordinance's requirements may be "waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms."

Advance Notice of Schedule. The Ordinance requires the following:

- Pre-hire, an employer must provide the applicant with a good-faith estimate, in writing, of the covered employee's projected days and hours of work for the first 90 days of employment, including the average number of hours per week, whether the employee can expect to work on-call shifts, and a subset of the days and times/shifts the employee can expect to work or will not be scheduled to work.
- If a covered employee requests a modification to the projected work schedule, an employer may choose to deny the request, but such denial must be provided to the covered employee in writing within three days of the request.
- An employer must post a notice of rights under the Ordinance in a visible area of the workplace and provide each new covered employee written notification of the employee's rights upon hire.
- An employer must provide covered employees with written notice of work hours no later than 14 days before the first day of any new schedule by posting the schedule in a conspicuous place at the workplace, or using the usual methods of communication (or both), and, by electronic means upon request.
- An employer may change a posted schedule up to the deadline (14 days in advance of the first day of the new schedule) without penalty.
- Covered employees who self-schedule or who work for a venue that regularly hosts ticketed events are not covered by these advance notice provisions.

Schedule Changes. The Ordinance also requires:

- An employer must permit covered employees to decline previously unscheduled hours if they have not received the advance notice outlined above.
- If a covered employee's schedule changed within the 14 days, the employer must provide the employee with one additional hour of pay for each changed shift as "predictability pay." This includes when the schedule change adds extra hours, changes the date or time of the scheduled work with no loss of hours, or cancels or subtracts hours from an on-call shift with less than 24 hours' notice.
- If a covered employees' hours were cancelled or reduced with less than 24 hours' notice, a covered employee is entitled to pay in the amount of one-half times the covered employee's regular rate of pay for hours that are not worked as a result of the change.
- Extra pay is not required in all instances of a schedule change within the 14-day window. For example, schedule changes required by failure of public utilities, acts of nature, or war, or agreed to or requested by the covered employee, will not trigger the requirement for extra compensation. Likewise, manufacturing employers that have a large order cancelled or delayed, healthcare employers dealing with an unexpected increase in the need for healthcare providers, and venues with canceled banquets or ticketed events, may also be exempted from the additional compensation requirements.

Other Provisions. The Ordinance provides:

- An employer must offer existing covered employees more hours or shifts prior to hiring additional staff. An employer does not need to offer such hours to covered employees if the employee is not qualified to perform the work or if doing so would require the employee to be paid at a premium (*e.g.*, overtime) rate. Employers should not discriminate in how they distribute extra hours, and should endeavor to first offer the hour to part-time employees or existing temporary or seasonal workers.
- Covered employees can decline to work scheduled hours occurring less than 10 hours following the end of a shift. If covered employees agree to work a shift beginning less than 10 hours after the end of a shift, they will be paid at a rate of 1.25 times their regular rate for the entire shift.
- Employers must maintain, for up to three years, records of each employee's name, hours worked, pay rate, and other documentation necessary to demonstrate compliance with all aspects of the ordinance. Such documentation may include written agreements to modify schedules, written schedules, offers of hours of work to existing staff and responses to such offers. Employers must provide covered employees a copy of their records relating to this Ordinance upon reasonable request.
- Employers are prohibited from retaliating against an employee for exercising any right under the Ordinance, including reporting or testifying about any violation, or requesting changes to their working arrangement.

Enforcement Provisions. Employers determined to have engaged in retaliation will be subject to a fine of $1,000. Employers that fail to comply with the Ordinance's other requirements are subject to fines of $300-$500 for each "offense." Each day a covered employee's rights are affected counts as a separate offense.

Covered employees also have a private right of action for violation of the ordinance. Before proceeding to court, however, a covered employee must first file a charge with the Department of Business Affairs and Consumer Protection. A charge must be filed within two years of the alleged violation. The Department will conduct an investigation, including seeking information from the employer. Once the Department has closed an investigation, the covered employee may file a lawsuit. Prevailing employees can recover compensation for damages sustained (which is not limited to payment of the predictability pay), as well as costs, attorneys' fees, and expert witness fees.[412]

Evanston (Effective September 1, 2023, enforcement begins January 1, 2024)

Covered Employers and Employees. The ordinance applies to employers with more than 15 employees in the hospitality (hotels and lodgings), food service and restaurants, retail, warehouse services, building services, and manufacturing industries. Covered employers also include franchisees with fewer than 100 employees but which are associated with a franchisor or a franchise network with franchisees with more than 30 locations globally.

Any employees that qualify for minimum wage under Illinois law and perform at least two hours of work in a workweek in Evanston are covered by the ordinance.

[412] CHICAGO, ILL., MUN. CODE §§ 1-25-010 *et seq.*.

Good Faith Estimates of Work Schedules and Employee Requested Changes. Employers must provide workers with a written good-faith estimate of their work schedule prior to or on commencement of employment. The good-faith estimate must identify the projected days and hours of work for the first 90 days of employment, including the average number of weekly work hours, whether they should expect to work any on-call shifts, and a subset of days and times or shifts the employee can expect to work or not work.

Upon receiving the required good-faith estimate, an employee may request the employer to modify the projected days and hours in the estimate. The employer must consider any such requests, and in its sole discretion may accept or reject the request. Regardless of the outcome, the employer must provide the employee written notice of the determination within three days of the request.

Employees also have the right to request a modified work schedule, including but not limited to additional shifts or hours, changes in days of work or start and end times, permission to exchange shifts with other employees, limitations on availability, or a reduction in change of work duties.

Advance Notice of Schedules and Compensation for Schedule Changes. Beyond the required good-faith estimate, employers must also provide employees with written notice of their actual work schedules at least 14 days before the first day of any new work schedule. The employer must also post the advance notice within the unit/department either in a conspicuous place in the workplace that is readily accessible and visible to all covered employees, or using the usual methods of communication, or both. These written work schedules must include the shifts and on-call status of all employees at that worksite. Additionally, upon an employee's written request, an employer must transmit the schedule via electronic means.

An employer can still change employee schedules after posting, but only up until the 14-day deadline. Any employer-initiated changes after that deadline is subject to additional notice and compensation requirements. Where changes are made less than 14 days before the modified shift but more than 24 hours before such shift, the employer must provide the employee with one hour of predictability pay. Where an employee's hours are canceled or reduced with less than 24 hours before the modified shift, the employer must provide predictability pay for the lesser of either four hours or the number of hours reduced. Any other schedule changes made less than 24 hours before the shift require one hour of predictability pay. Any predictability pay required under the ordinance is in addition to the employee's regular pay for the shifts worked.

Exceptions to Predictability Pay Requirements. The ordinance eliminates the obligation to provide predictability pay for any of the following situations:

- an employee initiates the requested change, confirmed in writing;
- a mutually agreed-to schedule change between employees, or a coverage agreement between employees;
- an employee's hours are reduced due to the employee's violation or law or the employer's policies;
- the employer's operations are compromised pursuant to law or circumstances beyond their control (threats, public utility failures, acts of nature, war, etc.); or
- when an employee self-schedules.

However, whenever an employee has their schedule changed as a result of the above situations, the employer is required to provide an additional $2.00 per hour of hazard pay for the entire duration that the employee is required to work in the above situations.

Employee Rights with Respect to Additional Hours and Rest Between Shifts. An employer may not hire new employees (including contractors and temporary employees) unless they have first offered the additional work hours/shifts to current part-time employees. These open shifts or hours need only be offered to employees the employer reasonably determines to be qualified to perform the available work. Employers must offer additional hours to part-time employees until an employee has 35 hours in a workweek. Part-time employees may, but are not required, to accept such offers of additional work.

For additional work with an expected duration of more than two weeks, the part-time employee has 72 hours to accept the additional hours, after which the employer may hire new employees to cover the open hours. When additional work has an expected duration of less than two weeks, the part-time employee has 24 hours to accept the hours before the employer may hire new employees. A part-time employee wishing to accept additional hours must do so in writing.

Also, an employee has the right to decline work hours that occur within 11 hours of that employee's last shift. However, when an employee who agrees in writing to work hours with less than 11 hours between shifts, the employer must compensate the employee at one-and-a-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of the previous shift.

Recordkeeping. Covered employers are obligated to maintain records for at least three years to demonstrate compliance with the ordinance.

Violations and Remedies. The ordinance explicitly prohibits employers from retaliating against employees for exercising their rights under the ordinance. It also makes it unlawful for an employer to engage in certain practices to avoid application of the ordinance, such as changing a regular rate of pay, interfere with scheduled workdays or hours, or hire, rehire, terminate or suspect employees.

The City can enforce the ordinance and adopt rules related thereto. The ordinance imposes penalties for employer violations, including a fine between $300 and $500 for each initial offense. Each employee whose rights are affected constitutes a separate offense to which a separate fine applies. Each day that a violation occurs also constitutes a separate offense warranting a separate fine. The fine will increase by $50 for each subsequent offense.

Finally, the ordinance creates a private civil cause of action for employees whose rights were violated. Any such claims must be filed within two years of the alleged conduct constituting the violation.[413]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed

[413] EVANSTON, ILL., MUN. CODE §§ 3-34-2 *et seq.*

pursuant to approved school-supervised and school-administered work experience and career exploration programs.[414] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[415] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

The Illinois Child Labor Law[416] regulates the employment of minors, which the state defines as all individuals under the age of 16. An employer becomes subject to the Child Labor Law by: (1) the presence of a minor on the employer's premises performing work; (2) the inclusion of a minor on the employer's payroll; or (3) a minor receiving or having a reasonable expectation of receiving compensation from the employer. Such compensation need not be monetary.[417]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Table 11 outlines the restrictions on the type of work in which a minor may engage.

Table 11. Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 16	In Illinois, minors under age 16 generally cannot work: • in connection with a theater, concert hall, or place of amusement, mercantile institution, store, office, hotel, laundry, manufacturing establishment, mill, cannery, factory, or workshop, restaurant, lunchroom, beauty parlor, barber shop, bakery, coal, brick, or lumber yard, or any construction project; • in, about, or in any public messenger or delivery service, bowling alley, pool room, billiard room, skating rink, exhibition park or place of amusement; • in, about, or in a garage; • as a bell-boy in a hotel or rooming house; • in the oiling, cleaning, or wiping of machinery or shafting; • in or about a mine or quarry; • in stone cutting or polishing; • in or about any hazardous factory work; • in or about any plant manufacturing explosives or articles containing explosive components; • in or about plants manufacturing iron or steel; • in the operation of machinery used in the cold rolling of heavy metal stock; • in or about saw, lath, or cooperage mills;

[414] 29 C.F.R. §§ 570.36, 570.50.

[415] 29 C.F.R. § 570.6.

[416] 820 ILL. COMP. STAT. 205/1 *et seq*.

[417] ILL. ADMIN. CODE tit. 56, § 250.200.

Table 11. Restrictions on Type of Employment by Age	
	• in the operation of various power-driven machinery; • in the operation of freight elevators or hoisting machines and cranes; • in spray painting and occupations involving exposure to lead or its compounds or poisonous dyes or chemicals; • in any place or establishment in which intoxicating alcoholic liquors are served for consumption on the premises, or in which said liquors are manufactured or bottled, with exceptions; • in oil refineries, gasoline blending plants, or pumping stations on oil transmission lanes; • in the operation of laundry, dry cleaning, or dyeing machinery; • in occupations involving exposure to radioactive substances; • in or about any filling or service station; • in construction work, including demolition and repair; • in roofing; • in excavation; • in logging; • in public and private utilities and related services; • in slaughtering, meat packing, poultry processing, and fish and seafood processing; • in operations that involve an elevated surface, with or without use of equipment, including but not limited to ladders and scaffolding; • in security positions or occupations that require carrying a firearm or weapon; • in occupations that handle or store human blood, human blood products, human body fluids, or human body tissues; • at outdoor or drive-in movie theaters (however, the indoor portion is not considered hazardous); or • in or about airfields.[418] In Illinois, minors under age 16 *may* engage in the following types of occupations: • indoor movie theaters; • occupations requiring the use of an automatic or power-driven dishwasher, provided the dishwasher is enclosed on all sides, self-sealing, can be fastened completely shut, and has no moving parts which are exposed or otherwise hazardous; • use of power-driven machinery used to dispense frozen custards, soft ice cream, milk shake machines, and other soda fountain machinery without sharp edges or blades or other hazardous open, moving parts; or • work in county or local fairs, park districts, and permanently constructed entertainment centers (carnival, midway, and mechanical rides are prohibited).[419]
Ages 12-13	Minors aged 12 and 13 are permitted to officiate youth activities for nonprofit

[418] 820 ILL. COMP. STAT. 205/1, 205/7; ILL. ADMIN. CODE tit. 56, §§ 250.210, 250.220.

[419] ILL. ADMIN. CODE tit. 56, §§ 250.210, 250.225, 250.230 & 250.240.

Table 11. Restrictions on Type of Employment by Age	
	youth clubs, park districts, or municipal parks and recreation departments.[420]

Restrictions on Selling or Serving Alcohol. In Illinois, minors under age 16 cannot work in establishments serving alcoholic beverages.[421] Employment in establishments selling packaged liquors is not prohibited to a minor under age 16 provided: (1) no liquor is actually manufactured or bottled on the premises; and (2) no containers are opened or alcoholic beverages sold or served for consumption on the premises.[422] Alcoholic beverages served or sold for consumption on the premises means only the building in which the sale and/or consumption occurs. Other buildings therein, such as in the case of a shopping mall or similar structure, are not prohibited.[423]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

The Illinois Child Labor Law only applies to minors under the age of 16, so minors who are 16-17 years of age are subject to the same time and hour requirements and restrictions as adults.[424]

When school is in session, minors under age 16 cannot work:

- more than three hours a day;
- more than eight total hours a day (includes school and work hours); and
- between 7:00 P.M. and 7:00 A.M.[425]

However, a minor under 16 may work both Saturday and Sunday for not more than eight hours each day if: (1) the minor does not work more than six consecutive days in one week; and (2) the number of hours worked in any week does not exceed 24.[426]

When school is not in session, minors under age 16 cannot work:

- more than eight hours in any one day;
- more than 48 hours and six consecutive days in any one week; and
- between 9:00 P.M. and 7:00 A.M. (June 1 through Labor Day).[427]

Special rules apply to minors older than age 14 who are employed in a recreational or educational activity by a park district, not for profit youth club, or municipal parks or recreation department while school is in session; and to minors under 16 years of age that are performers and models.[428]

---

[420] 820 ILL. COMP. STAT. 205/2.5.

[421] ILL. ADMIN. CODE tit.56, § 250.255.

[422] ILL. ADMIN. CODE tit. 56, § 250.245.

[423] ILL. ADMIN. CODE tit. 56, § 250.250.

[424] *See* 820 ILL. COMP. STAT. 205/1 *et seq*.

[425] 820 ILL. COMP. STAT. 205/3.

[426] 820 ILL. COMP. STAT. 205/3.

[427] 820 ILL. COMP. STAT. 205/3.

[428] 820 ILL. COMP. STAT. 205/3, 205/8.1.

In addition, subject to additional requirements, minors age 12 and 13 that are officiating youth activities for nonprofit youth clubs, park districts, or municipal parks and recreation departments may work a maximum of three hours per day on school days, and four hours per day on nonschool days. They cannot work more than 10 hours in a week. Moreover, they cannot work later than 9:00 P.M.[429]

3.6(b)(iii) *State Child Labor Exceptions*

The Illinois child labor laws do not apply to certain categories of employment of minors:

- minors 14 or 15 years of age who are participating in federally-funded work experience career education programs under the direction of the State Board of Education;
- farm workers who are members of the farmer's own family who live with the farmer at their principal place of residence;[430]
- minors engaged in certain agricultural pursuits;
- minors engaged in the sale and distribution of magazines and newspapers when school is not in session;
- employment outside school hours in and around a home at work usual to the home of the employer, so long as that work is not in connection with or a part of the business, trade, or profession of the employer;
- caddying at a golf course; or
- minors of 14 or 15 years of age participating in an occupational, vocational, or educational summer program funded by the Job Training Partnership Act.[431]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

All minors who are covered by the Illinois Child Labor Law must obtain employment certificates to obtain employment.[432] In Illinois, employment certificates are signed by the City or County Superintendent of Schools or their duly-authorized agents. However, if a minor from another state applies for an Illinois employment certificate, the state labor department must work with the City or Regional Superintendent of Schools to issue the certificate.

To obtain a work permit, the following must be submitted:

- a statement of intention to employ signed by the prospective employer;
- evidence of the minor's age;
- a state labor department-approved form signed by the minor's principal; and
- a statement of physical fitness signed by a public health or school physician.[433]

---

[429] 820 ILL. COMP. STAT. 205/2.5.

[430] 820 ILL. COMP. STAT. 205/1.

[431] 820 ILL. COMP. STAT. 205/2.

[432] 820 ILL. COMP. STAT. 205/9.

[433] 820 ILL. COMP. STAT. 205/10, 205/12, 205/13.

Employers must procure and keep on file at the place of employment an employment certificate issued to minors under age 16.

Special rules apply for work permits issued to performers and models.[434]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

An employer found to be in violation of the Illinois Child Labor Law is subject to a civil penalty of up to $5,000 for each violation, to be imposed by the Illinois Department of Labor.[435] An employer found to have committed a willful violation is subject to a Class A misdemeanor, with each day that a violation continues and each minor employed in violation constituting a separate offense.[436]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[437]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[438]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[439]

---

[434] 820 ILL. COMP. STAT. 205/8 to 205/13; ILL. ADMIN. CODE tit. 56, § 250.260; *see also* 820 ILL. COMP. STAT. 205/3.

[435] 820 ILL. COMP. STAT. 205/17, 205/17.3.

[436] 820 ILL. COMP. STAT. 205/19.

[437] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[438] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[439] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[440] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[441]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[442] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[443]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[444]

---

[440] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[441] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[442] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[443] 12 C.F.R. § 1005.18.

[444] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[445]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[446] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[447] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[448] tools and equipment,[449] and business transportation and travel.[450] Additionally, if an employee is reimbursed for expenses normally incurred by an employee

---

[445] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[446] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[447] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[448] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[449] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[450] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[451]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[452]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[453]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[454]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[455]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[456] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[457]

---

[451] 29 C.F.R. § 778.217.

[452] 29 C.F.R. § 531.38.

[453] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[454] 29 C.F.R. § 531.40.

[455] 29 C.F.R. § 531.40.

[456] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[457] 29 C.F.R. § 825.213.

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[458]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[459] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[460]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[461]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[462]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[463]

---

[458] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[459] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[460] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[461] 29 C.F.R. § 531.36.

[462] 29 C.F.R. § 531.37.

[463] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. Wages may be paid by cash, check, voluntary direct deposit in a financial institution designated by the employee, or by payroll card. Paychecks must be "redeemable upon demand and without discount at a bank or other financial institution readily available to the employee."[464] A *location readily available* means a location within reasonable proximity to an employee's home or place of work that can be easily accessed.[465]

An employer cannot offer employees only the choice between two voluntary methods of payment. Because payment by either payroll card or direct deposit must be voluntary, an employer offering either or both of these payment methods must also provide an additional choice of payment by cash or check. When an employer elects to pay employees in cash, the employer must obtain signed receipts from the employee indicating date of payment and amount received.[466]

Direct Deposit. Mandatory direct deposit is not permitted in Illinois. An employer cannot require an employee to enroll in a direct deposit arrangement or make payment of wages or final compensation by direct deposit unless the employee voluntarily accepts this form of payment and voluntarily designates a bank or a financial institution. It is not voluntary in fact if the employee is given to understand, or led to believe, that it is a condition for hire or maintenance of their present working conditions, or if continuance of their employment would be adversely affected by nonacceptance. Per the state labor department, an employer must pay each of its employees' wages in a form that the employee may readily convert into cash (without the need of a personal bank account), unless an employee volunteers to be paid by direct deposit in an account at a bank or financial institution of the employee's choice.[467]

Payroll Debit Card. In Illinois, an employer may pay wages using a payroll debit card if it meets certain requirements for maintaining a payroll debit card program.[468] *Payroll card* is defined as "a card provided to an employee by an employer or other payroll card issuer as a means of accessing the employee's payroll card account."[469]

The employer cannot make receiving wages by payroll card a condition of employment or a condition to receive any benefit or other form of pay for any employee. Further, the employer cannot start paying wages by electronic fund transfer to a payroll card account unless:

- the employer provides the employee a clear and conspicuous written disclosure notifying the employee that payment by payroll card is voluntary, lists the other method(s) of payment offered (*e.g.*, cash, check, direct deposit), and explains the payroll card account's terms and conditions, including:

---

[464] 820 ILL. COMP. STAT. 115/4.

[465] ILL. ADMIN. CODE tit. 56, § 300.450.

[466] 820 ILL. COMP. STAT. 115/4; ILL. ADMIN. CODE tit. 56, § 300.600.

[467] 820 ILL. COMP. STAT. 115/4; ILL. ADMIN. CODE tit. 56, § 300.600; *see also* Illinois Dep't of Labor, *Wage Payment and Collection Act Frequently Asked Questions*, *available at* https://labor.illinois.gov/faqs/form-of-payment.html.

[468] 820 ILL. COMP. STAT. 115/14.5.

[469] 820 ILL. COMP. STAT. 115/2.

  - an itemized list of all fees that may be deducted from the employee's payroll card account by the employer or payroll card issuer;
  - a notice that third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer; and
  - an explanation of how the employee may obtain, at no cost, the employee's r net wages and account balance, as well as paper or electronic transaction histories;
- the employer also offers the employee another method(s) of payment; and
- the employer obtains the employee's voluntary written or electronic consent to receive wages by payroll card.[470]

The employer's payroll card program must provide the employee with:

- at least one method of withdrawing the employee's full net wages from the payroll card once per pay period, but not less than twice per month, at no cost to the employee, at a location readily available to the employee;
- at the employee's request, one transaction history, which the employee may request to receive in paper or electronic form, each month that includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account at no cost to the employee; and
- unlimited telephone access to obtain the payroll card account balance at any time without incurring a fee.[471]

An employer cannot use a payroll card program that charges fees for point of sale transactions, the application, initiation, loading of wages by the employer, or participation in the payroll card program. Fees for account inactivity can be assessed after one year of inactivity. The payroll card program must offer the employee a declined transaction, at no cost to the employee, twice per month. Commercially reasonable fees, limited to cover the costs to process declined transactions, can be assessed on subsequent declined transactions within that particular month. The payroll card account cannot be linked to any form of credit including, but not limited to, overdraft fees or overdraft service fees, a loan against future pay, or a cash advance on future pay or work not yet performed. A payroll card program offered by an employer must provide the employee with protections from unauthorized use of the card in accordance with state and federal law concerning electronic fund transfers.[472]

An employee paid wages by payroll card may request to be paid wages by another offered method. Following the request, an employer must, within two pay periods, begin paying the employee by the requested method.

An employer's obligations under the payroll card statute stop 60 days after the employer-employee relationship has ended and final wages have been paid in full. Within 30 days of the employment

[470] 820 ILL. COMP. STAT. 115/14.5(2).

[471] 820 ILL. COMP. STAT. 115/14.5(3).

[472] 820 ILL. COMP. STAT. 115/14.5(7).

relationship ending, an employer must notify the employee that the account's terms and conditions may change if the employee chooses to continue a relationship with the payroll card issuer.[473]

3.7(b)(ii) *Frequency of Payment Under State Law*

Generally. An employer in Illinois is required to pay all wages earned at least semi-monthly, except that commissions may be paid once a month. Wages of executive, administrative, and professional employees, as defined by the FLSA, may also be paid once a month.

Wages earned during a semi-monthly or biweekly pay period must be paid no later than 13 days after the end of the pay period in which the wages were earned. Wages earned during a weekly pay period must be paid no later than seven days after the end of the pay period in which the wages were earned. An employer must pay all wages paid on a daily basis insofar as possible on the same day the employee earns the wages, but not later than 24 hours after the day the employee earns the wages. Wages of executive, administrative, and professional employees may be paid on or before 21 days after the period during which the wages were earned.

An employee who is absent at the time of payment must be paid upon demand any time within five days after the time fixed for payment. After the five-day period, payment must be made upon five days' demand.[474]

Semi-Monthly. An employer may pay its employees on a semi-monthly basis, but not more than 13 days following the close of the pay period.[475]

Monthly. Wages of executive, administrative, and professional employees, as defined by the FLSA, may be paid once a month within 21 calendar days after the period during which they are earned. Commissions also may be paid once a month.[476]

3.7(b)(iii) *Final Payment Under State Law*

Under Illinois law, employers must pay separated employees, if possible, at the time they are separated, or, if not possible, no later than the employee's next regularly scheduled payday. An employee is entitled to receive their final compensation by check in the mail, if the employee makes such a request in writing.[477]

Generally, *final compensation* includes all wages, salaries, earned commissions, earned bonuses, monetary equivalent of earned vacation and holidays and any other compensation owed to the employee under any employment contract or agreement.[478] Claims for "earned bonus[es] arise[] when an employee performs the requirements for a bonus set forth in a contract or agreement between the parties."[479] However, the regulations also provide that:

---

[473] 820 ILL. COMP. STAT. 115/14.5(8), (9).

[474] 820 ILL. COMP. STAT. 115/3, 115/4.

[475] 820 ILL. COMP. STAT. 115/3, 115/4.

[476] 820 ILL. COMP. STAT. 115/3, 115/4.

[477] 820 ILL. COMP. STAT. 115/5.

[478] 820 ILL. COMP. STAT. 115/2.

[479] ILL. ADMIN. CODE tit. 56, § 300.500(a).

> [A] former employee shall be entitled to a proportionate share of a bonus earned by length of service, regardless of any provision in the contract or agreement conditioning payment of the bonus upon employment on a particular date, when the employment relationship was terminated by mutual consent of the parties or by an act of the employer through no fault of the former employee.[480]

Illinois courts have interpreted the definition of *earned bonus* to mean that, even if an employment agreement expressly requires being on the company payroll on the date that the bonus is to be announced or distributed, it is not a valid condition precedent to becoming eligible for some portion of a bonus that is not based on the employee's or company's performance.[481] An employer may not withhold final compensation pending the return of employer-owned property without the former employee's freely-given prior, written consent.[482]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

At the time of hire, an employer must notify new employees of the rate of pay and of the time and place of payment. Whenever possible, such notification must be in writing and acknowledged by both parties.[483] Employers must also provide each employee a written, itemized statement of earnings and deductions made from wages for each pay period. The wage statement may be provided electronically. This wage statement must include:

- hours worked;
- rate of pay;
- overtime pay and hours worked;
- gross wages earned;
- deductions made from the employee's wages; and
- the total amount of wages and deductions year to date.[484]

Day and Temporary Labor Services Act

At the time of payment of wages, a day and temporary labor service agency must provide each day and temporary laborer with a detailed itemized statement, on the day or temporary laborer's pay stub or on a form approved by the Department, the following:

- the name, address and telephone number of each third-party client at which the laborer worked;
- the number of hours worked by the laborer at each third-party client during the pay period. If the laborer is assigned to work at the same site for multiple days in the same work week, the agency may record a summary of the hours worked at that worksite so long as the first and last day of that work week are identified as well;

---

480 ILL. ADMIN. CODE tit. 56, § 300.500(b).

481 *Birkholz v. Corptax, L.L.C.*, 2011 WL 10088322, at *3 (Ill. App. Ct. Nov. 8, 2011); *Camillo* v. *Wal-Mart Stores*, *Inc*., 582 N.E.2d 729, 734-35 (Ill. App. Ct. 1991).

482 ILL. ADMIN. CODE tit. 56, § 300.830.

483 820 ILL. COMP. STAT. 115/10; ILL. ADMIN. CODE tit. 56, § 300.630(d).

484 820 ILL. COMP. STAT. 115/10; 115/2; ILL. ADMIN. CODE tit. 56, § 300.600.

- the rate of payment for each hour worked including any premium rate or bonus;
- the total pay period earnings;
- all deductions made from the laborer's compensation made either by the third-party client or the day and temporary labor services agency and the purpose for which the deductions were made, including for the laborer's transportation, food, equipment, withheld income tax, withheld social security payments, and every other deduction; and
- any additional information required by rules issued by the Department.

A day and temporary labor service agency must provide each worker an annual earnings summary within a reasonable time after the preceding calendar year, but no later than February 1.

In addition, for each laborer who is contracted to work a single day, the third-party client must at the end of the work day, provide such day or temporary laborer with a Work Verification Form approved by the Department containing the date, the laborer's name, the work location, and the hours worked on that day.[485]

3.7(b)(v) *Wage Transparency*

Under the Illinois Equal Pay Act, discussed further in **3.11(b)(ii)**, it is unlawful for an employer to discharge or in any other manner discriminate against an employee for inquiring about, disclosing, comparing, or otherwise discussing the their wages or the wages of any other employee. It is also unlawful for an employer to require an employee to sign a contract or waiver that would prohibit the employee from disclosing or discussing information about the employee's wages, salary, benefits, or other compensation. An employer may, however, prohibit a human resources employee, a supervisor, or any other employee whose job responsibilities require or allow access to other employees' wage or salary information from disclosing that information without prior written consent from the employee whose information is sought or requested.[486]

An employer that violates any provision of the equal pay statute is subject to a civil penalty for each employee affected as follows:

- an employer with fewer than four employees faces for a first offense a fine not to exceed $500; for a second offense, a fine not to exceed $2,500; and for third or subsequent offense, a fine not to exceed $5,000; and
- an employer with four or more employees faces for a first offense a fine not to exceed $2,500; for a second offense, a fine not to exceed $3,000; and for a third or subsequent offense, a fine not to exceed $5,000.[487]

Further, an employer that violates the wage transparency provision is subject to a civil penalty not to exceed $5,000 for each violation for each employee affected.[488]

[485] 820 ILL. COMP. STAT. 175/30.

[486] 820 ILL. COMP. STAT. 112/10(b).

[487] 820 ILL. COMP. STAT. 112/30.

[488] 820 ILL. COMP. STAT. 112/30.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Changing Regular Paydays. Employers must notify employees of any change to the time and place of payment before a change occurs.[489]

Changing Pay Rate. Employers must also notify employees of any pay rate change before a change occurs.[490] *Rate of pay* includes a description of all wages or final compensation.[491] Employers cannot change an agreement regarding the payment of wages and compensation without first notifying the employee before the change's effective date.[492] Employers must place the arrangement in writing at the time of the change and present the change to the employee unless it is impossible to do so. When immediately doing so is not possible because of extraordinary circumstances, this inability must be immediately rectified.[493]

An employer cannot retroactively adversely affect the wages an employee earned, nor can an employer rely on an employee's continued employment as affirmation the employee consented to an adverse modification of the pay rate when the employee was not notified in writing of the modification before its effective date. However, when an employee continues to work after being notified of a change in writing, the employee is presumed to have assented to the change, absent evidence to the contrary.[494]

3.7(b)(vii) *Paying for Expenses Under State Law*

In Illinois, *compensation* means remuneration or compensation an employee receives in return for services rendered to an employer, and includes expense reimbursements.[495] To determine if an expense is for the primary benefit of the employer, the analysis will focus on the extent to which the expense benefits the employer, its business, and business model. The relevant factors are:

- whether employee has any expectation of reimbursement;
- whether the expense is required or necessary to perform the employee's job duties;
- whether the employer receives a value that it would otherwise need to pay for;
- how long the employer is receiving the benefit; and
- whether the expense is required of the job.

If an employer denies an employee's request for an expense that should have been reimbursable under the above determination, the employee can file a claim with the state if the employer if the employer informs the employee that they are not entitled to seek reimbursement or fails to respond to the employee's request for reimbursement. If the employee cannot recover these reimbursable expenses during employment, they will be included in final compensation owed to the employee at the end of

---

[489] 820 ILL. COMP. STAT. 115/10; ILL. ADMIN. CODE tit. 56, § 300.630(d) ("An employer shall not change an agreement regarding the payment of wages and compensation without first notifying the employee prior to the effective date of the change.").

[490] 820 ILL. COMP. STAT. 115/10.

[491] ILL. ADMIN. CODE tit. 56, § 300.630(e).

[492] ILL. ADMIN. CODE tit. 56, § 300.630(d).

[493] ILL. ADMIN. CODE tit. 56, § 300.630(d).

[494] ILL. ADMIN. CODE tit. 56, § 300.630(d).

[495] ILL. ADMIN. CODE tit. 56, § 300.450.

employment..[496] Illinois law prohibits an employer from deducting the cost of uniforms, required training, and other work-related expenses from an employee's wages without the employee's written authorization, as discussed in **3.7(b)(viii)**.

Illinois employers must reimburse an employee for all necessary expenditures or losses incurred by the employee if the expense is within the employee's scope of employment and directly related to services performed for the employer. A *necessary expenditure* includes reasonable expenditures or losses required of the employee during the discharge of employment duties that inure to the primary benefit of the employer. In order to receive reimbursement, an employee must submit the expense with supporting documentation to the employer within 30 calendar days after the expense was incurred. However, an employer may provide additional time under its own written reimbursement policies. If there is no supporting documentation, the employee must submit a signed statement regarding any receipts.[497]

3.7(b)(viii) *Wage Deductions Under State Law*

Requirements for Deductions. Illinois employers are prohibited from deducting from the wages or final compensation of an employee, unless the deduction:

- is required by law;
- is for the benefit of the employee;
- is in response to a valid wage assignment or wage deduction order;
- is made with express written consent of the employee, which is freely given at the time that the deduction is made; or
- is to pay overdue debts to certain municipal organizations.[498]

Any written agreement permitting or authorizing deductions from wages or final compensation must be given freely at the time the deduction is made. For cash advances, the agreement can be made either at the time of the deduction or at the time of the advance itself. When a deduction is continued over a defined duration of time and the written agreement provides for that defined duration of time, provides for the same amount of deduction each pay period, the agreement is considered given freely at the time the deduction is made. No agreements for a defined duration will last longer than six months.[499]

Permissible Deductions. An employer may make deductions for:

- sums the employer paid to a third party per an employee's voluntary assignment of wages, if the employer does not directly or indirectly benefit;
- the principal of a loan or wage advance, even if it cuts into the minimum wage or overtime owed; and
- amounts required to be deducted pursuant to an order of garnishment.[500]

---

[496] ILL. ADMIN. CODE tit. 56, § 300.540.

[497] 820 ILL. COMP. STAT. 115/9.5.

[498] 820 ILL. COMP. STAT. 115/9; ILL. ADMIN. CODE tit. 56, § 300.720.

[499] ILL. ADMIN. CODE tit. 56, § 300.720.

[500] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, ch.30, § 30c10.

In the case of a wage advance requested by an employee, an agreement for the deduction may be obtained at the time the advance is given or at the time of deduction.[501] Such an agreement must be signed by the employer and the employee and it must provide for the amount of the advance, the repayment schedule and the method of repayment. No such agreement may provide for a deduction of more than 15% of an employee's gross wages, per paycheck.[502]

An employer may also make deductions for the following only if the employee has expressly authorized in writing:

- equipment required by the employer or by law, cash, or inventory shortages;
- shortages due to the employee's failure to follow proper credit card, check cashing, or accounts receivable procedures;
- purchasing and/or cleaning of a uniform required by the employer;
- training or educational courses required by the employer; or
- financial loss to the employer due to damage of property by the employee.[503]

Prohibited Deductions. Under no circumstances can an employer deduct disputed amount from an employee's bank account.[504] Employers also cannot require employees to pay for medical examinations or the cost of furnishing records of such examinations that are required as a condition of employment.[505]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Child Support. The Illinois Income Withholding for Support Act authorizes the withholding of income pursuant to court order for the payment of child support.[506] The withholding may not exceed established federal limits.[507] Further, the withholding must be the amount ordered by the court for support in addition to 20% of that amount for payment of arrearages.[508] Employers that violate the provisions of the statute are subject to monetary penalties imposed by the court.[509]

A support recipient that fails to receive payment must give written notice of the nonreceipt of payment to the employer by certified mail with return receipt, and within 14 days of receipt, the employer must provide a reason for the nonpayment and supply the payment with 9% interest or be subject to a $100-a-day penalty up to $10,000 for failure to withhold or make the payment.[510]

---

[501] ILL. ADMIN. CODE tit. 56, § 300.720.

[502] ILL. ADMIN. CODE tit. 56, §§ 300.750, 300.800.

[503] ILL. ADMIN. CODE tit. 56, §§ 300.730, 300.740, 300.780, 300.820, 300.840, and 300.850.

[504] ILL. ADMIN. CODE tit. 56, § 300.910.

[505] 820 ILL. COMP. STAT. 235/1.

[506] 750 ILL. COMP. STAT. 28/1 *et seq*.

[507] 750 ILL. COMP. STAT. 28/35(c).

[508] 750 ILL. COMP. STAT. 28/20(a).

[509] 750 ILL. COMP. STAT. 28/35(a), 28/50.

[510] 750 ILL. COMP. STAT. 28/35(a), 28/50.

Income subject to withholding under this statute includes: commissions; compensation received as an independent contractor; workers' compensation payments; disability; annuities; pensions and retirement benefits; insurance proceeds; vacation pay; bonuses; and profit-sharing payments.[511] Income that may not be withheld under this statute includes amounts required by law to be otherwise withheld (*i.e.*, federal and state income tax withholdings, Social Security insurance, public assistance payments, and any amounts exempted by the federal Consumer Credit Protection Act).[512]

Garnishment for Consumer Debt. Illinois also authorizes the garnishment of wages to satisfy a judgment obtained by a creditor against an employee.[513] The amount that may be garnished may not exceed the lesser of either: (1) 15% of gross amount paid to the employee for that week; or (2) the amount by which disposable earnings for a week exceeds 45 times the greater of the federal minimum hourly wage or the Illinois minimum wage in effect at the time that the amounts are payable.[514] Employers may not discharge or suspend an employee because the employee's wages have been garnished for indebtedness.[515]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Wage Disputes Generally. The Illinois Wage Payment & Collections Act authorizes the Illinois Department of Labor to establish an administrative procedure for investigating claims and for issuing binding and final decisions (subject to the state's Administrative Review Law) which could prove an avenue for employees wishing to avoid the courts.[516] Pursuant to the statutory authorization, administrative procedures have been established.[517]

Under these procedures, employees may file complaints with the state Department of Labor, which will notify the employer about the existence of the claim.[518] The employer has 20 days from the date of notice to pay any undisputed amounts and to submit a response explaining any dispute to the claim.[519]

If the employer does not respond to a claim, the unanswered allegations will be deemed admitted to be true as of the 21st day following the notice of claim.[520]

The Wage Payment & Collections Act also allows employees a private right of action. An aggrieved employee may file suit for nonpayment of wages on their own behalf or bring a class action suit. Employees may file suit in circuit court, without exhausting administrative remedies, on behalf of themselves and "other employees similarly situated."[521]

---

511 750 ILL. COMP. STAT. 28/15(d).

512 750 ILL. COMP. STAT. 28/15(d).

513 735 ILL. COMP. STAT. 5/12-801 *et seq.*

514 735 ILL. COMP. STAT. 5/12-803.

515 735 ILL. COMP. STAT. 5/12-818.

516 820 ILL. COMP. STAT. 115/11.

517 ILL. ADMIN. CODE tit. 56, §§ 300.1028-300.1210.

518 ILL. ADMIN. CODE tit. 56, § 300.940.

519 ILL. ADMIN. CODE tit. 56, § 300.940.

520 ILL. ADMIN. CODE tit. 56, § 300.941.

521 820 ILL. COMP. STAT. 115/11.

Disputed Wage Deductions. In the event an employer takes a deduction from an employee's wages and the employee wishes to contest the deduction, Illinois law provides a mechanism for the wage dispute. Note that an employee's acceptance of a disputed paycheck will not be considered evidence the employee agreed to the disputed deduction.[522]

The employee may submit the dispute to the Illinois Department of Labor. Notice of disputed deductions must be typewritten or clearly handwritten and must include:

- the employee's name and last known address;
- the amount being withheld;
- the reason for the deduction;
- the date on which payment would have been made; and
- the name, business address, and telephone number of the employer and any officer or agent of the employer who will present the employer's position to the Department during its investigation of the deduction; and
- any supporting documentation.[523]

The notice must be prominently marked "NOTICE OF DISPUTED DEDUCTION" on both the letter and the envelope and must be mailed or delivered to the Department's Chicago office on or before the day the money is due to the employee. The Department then notifies the employee of the proposed deduction and provides an opportunity to contest the deduction. If the employee does not respond within 10 days after receiving notice, the deduction must be allowed and the Department will take no further action. The Department, at its discretion, may accept late responses.

The Department may permit a deduction when an employer established by clear and convincing evidence that:

- the employee owes the employer an amount equal to or greater than that sought to be deducted; and
- it would be inequitable to require the employer to pay the employee before the employee satisfies their obligation to the employer.[524]

Remedies & Penalties. Any employee not timely paid wages, final compensation, or wage supplements by their employer as required is entitled to recover the amount of any such underpayments and damages of 5% of the amount of any such underpayments for each month the underpayments were unpaid after they were due.[525] Employers that willfully refuse to pay or falsely deny the amount or validity of the wages, or falsely deny that wages are due, with the intent to secure for the employer or other individual the amount of underpayment are guilty of either a Class B misdemeanor for $5,000 or

[522] ILL. ADMIN. CODE tit. 56, § 300.920.

[523] ILL. ADMIN. CODE tit. 56, § 300.930.

[524] ILL. ADMIN. CODE tit. 56, § 300.930.

[525] 820 ILL. COMP. STAT. 115/14.

less, or a Class A misdemeanor for $5,000 or more. Each day during which a violation is determined to continue is a separate offense.[526]

An employer that commits a subsequent violation within two years of a prior criminal conviction under the same section is guilty, upon conviction, of a Class 4 felony.[527] Further, an employer that fails to pay wages within 15 days of being ordered to do so by the Illinois Department of Labor or within 35 days of an administrative or court order, and has not sought timely review, must pay a penalty of 1% of the wages owed for each calendar day that payment is delayed. The employer is also liable to the Department for 20% of the unpaid wages.[528]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[529] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[530] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[531]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Note that effective January 1, 2024, Illinois employers will be required to provide 40 hours of paid leave per year to employees under the Paid Leave for All Workers Act. For more information, see 3.9(b)(ii).

Vacation Pay as a Matter of Contract or Policy. There is no requirement under Illinois law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. Therefore, employers should draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. Oral promises,

---

[526] 820 ILL. COMP. STAT. 115/14(a-5).

[527] 820 ILL. COMP. STAT. 115/14(a-5).

[528] 820 ILL. COMP. STAT. 115/14(b).

[529] 29 U.S.C. § 1002.

[530] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[531] 490 U.S. 107, 119 (1989).

handbooks, memoranda, and uniform patterns of practice may create a duty to pay the monetary equivalent of earned vacation.[532]

The Illinois Department of Labor has issued regulations on vacation pay as earned under an employment contract or an employer's internal policy.[533] Whenever an employment contract or an employment policy provides for paid vacation earned by length of service, vacation time is earned *pro rata* as the employee renders service to the employer.[534] The Department recognizes policies under which vacation is earned and accrues at an accelerating rate during the year. The policy is acceptable when the acceleration period and the changes in accrual rates are reasonable, and the policy is uniformly applied.[535] In Illinois, it is likely that an employer can cap vacation accrual.[536]

An employer's vacation policy may include a provision under which no vacation is earned during a limited period when employment begins.[537] However, the employer must demonstrate the policy is not a subterfuge to avoid paying vacation actually earned by length of service and, in fact, no vacation is implicitly earned or accrued during that period.[538]The regulations also permit an employer's policy to create a bank of general paid time off under which the employer does not make separate arrangements for vacation and sick leave. Under the policy, employees may earn a certain amount of paid time off that they can use for any purpose, including vacation and sick leave. Because employees have an absolute right to take this time off (unlike traditional sick leave in which using sick leave is contingent upon illness), the Illinois Department of Labor will treat paid time off as earned vacation days.[539]

Use-it-or-Lose-it Policies. In Illinois, a "use-it-or-lose-it" policy can be adopted if notice of the policy is provided and the employee is given a reasonable opportunity to take vacation. An employment contract or an employer's policy may require an employee to take vacation by a certain date or lose the vacation, provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of the contract or policy provision.[540]

Forfeiture of Accrued Vacation When Employment Ends. Illinois courts consistently hold that departing employees are entitled to receive a *pro rata* share of vacation pay under the Wage Payment & Collections Act, even where there exists a clear company policy that provides otherwise. More

---

[532] ILL. ADMIN. CODE tit. 56, § 300.520(b).

[533] ILL. ADMIN. CODE tit. 56, § 300.520.

[534] ILL. ADMIN. CODE tit. 56, § 300.520(a); *see also People ex rel. Ill. Dep't of Labor v. General Electric*, 806 N.E.2d 1143 (Ill. App. Ct. 2004); *Golden Bear Family Rests., Inc. v. Murray*, 494 N.E.2d 581 (Ill. App. Ct. 1986).

[535] ILL. ADMIN. CODE tit. 56, § 300.520; *Arrez v. Kelly Servs., Inc.*, 522F. Supp. 2d 997 (N.D. Ill. 2007); *People ex rel. Ill. Dep't of Labor*, 806 N.E.2d 1143; *Prettyman v. Commonwealth Edison Co.*, 653 N.E.2d 65 (Ill. App. Ct. 1995); *Mueller Co. v. Department of Labor*, 543 N.E.2d 518 (Ill. App. Ct. 1989).

[536] *See Witkowski v. St. Anne's Hosp., Inc*., 447N.E.2d 1016 (Ill. App. Ct. 1983) (payout at termination limited to cap on vacation accrual, even though employee argued she had accumulated vacation time beyond the policy's stated cap).

[537] ILL. ADMIN. CODE tit. 56, § 300.520(f); *see also Ortiz v. Manpower, Inc*., 2012 WL 12903661 (C.D. Ill. Apr. 10, 2012); *Rosales v. Placers, Ltd*., 2011 WL 833359 (N.D. Ill. Mar. 4, 2011); *Williams v. TGI Fridays, Inc.*, 2018 WL 1035871 (N.D. Ill. Feb. 23, 2018) (Limiting eligibility to employees working 1,300 hours in prior year); *McCaster v. Darden Rests., Inc.*, 845 F.3d 794 (7th Cir. 2017) (Limiting eligibility to full-time employees).

[538] ILL. ADMIN. CODE tit. 56, § 300.520(f).

[539] ILL. ADMIN. CODE tit. 56, § 300.520(f).

[540] ILL. ADMIN. CODE tit. 56, § 300.520.

specifically, Illinois courts have stated that an employer violates the law where its policy does not allow employees to earn vacation pay on a *pro rata* basis but rather sets conditions for payment, such as active employment on a specific date, thereby subjecting vacation pay to forfeiture.[541] Thus, an employer violates the statute when it either fails to pay its former employees for their earned but unused vacation time or adopts a policy that provides that an employee loses earned but unused vacation time upon separation.[542] By applying its own statutory interpretation to the term "earned vacation," the Illinois courts have effectively nullified the language of a company's vacation policy providing otherwise, and have implied an obligation to pay vacation on a *pro rata* basis upon an employee's termination.

Advances of Vacation. If an employer permits an employee to take a vacation that has not yet been earned, and the employee resigns or is terminated, the employer may not deduct the unearned vacation pay from the employee's wages or final compensation without a written agreement as set forth in the Illinois Department of Labor's regulations on wage deductions.[543]

Record Keeping. Any employer that provides paid vacation to its employees must maintain true and accurate records of the number of vacation days earned for each year and the dates on which vacation days were taken and paid. Records must be kept for at least three years.[544]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Employees must be allowed at least 24 consecutive hours of rest in every consecutive seven-day period. However, this does *not* apply to:

- part-time employees who do not work more than 20 hours a week;
- employees needed in case of breakdown of machinery or equipment or other emergency requiring the immediate services of experienced and competent labor to prevent injury or damage;
- employees employed in agriculture or coal mining;
- employees engaged in canning and processing of perishable agricultural products on a part-time or seasonable basis;

---

[541] *Camillo v. Wal-Mart Stores, Inc.*, 582 N.E.2d 729, 734-35 (Ill. App. Ct. 1991); *Mueller Co. v. Department of Labor*, 543 N.E.2d 518, 521 (Ill. App. Ct. 1989); *Golden Bear Family Rests., Inc. v. Murray*, 494 N.E.2d 581, 588-89 (Ill. App. Ct. 1986).

[542] *See, e.g.*, *Herron v. Magna Grp.*, 650 N.E.2d 675 (Ill. App. Ct. 1995) (employee transferred to a worksite in a different state; court held forfeiture was impermissible where employer's policy did not require employment within Illinois at the time of separation).

[543] ILL. ADMIN. CODE tit. 56, § 300.760.

[544] ILL. ADMIN. CODE tit. 56, §§ 300.520, 300.630.

- watchmen or security guards;
- executive, administrative, professional, and outside salespeople, as defined by the FLSA, and supervisors as defined by the federal National Labor Relations Act (NLRA);
- certain crew members of an uninspected towing vessel operating in navigable waters in or along the State of Illinois; and
- employees for whose hours, days of work, and rest periods are established through collective bargaining.

Before operating on a Sunday, an employer must post a schedule of employees required or allowed to work on Sunday and designate a day of rest for each. Illinois law does not require that overtime compensation be paid for hours worked on Sundays, holidays, or regular days of rest, unless hours worked exceed 40 per week.

The state labor department may grant permits authorizing employment on a day of rest.[545]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[546] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[547] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[548] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

---

[545] 820 ILL. COMP. STAT. 140/2, 140/4, 140/8; ILL. ADMIN. CODE tit. 56, § 210.440.

[546] 29 U.S.C. § 1144.

[547] 29 U.S.C. § 1161.

[548] 29 U.S.C. § 1167(3).

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

A civil union is a legal relationship granted to unmarried adult partners by the State of Illinois. In Illinois, parties to a civil union are entitled to the same obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.[549] The law applies to both same-sex and opposite-sex couples. The term "party to a civil union" is to be included in any definition used in state law where the following terms are stated: "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote a "spousal relationship." A civil union, domestic partnership, or a substantially similar legal relationship other than common-law marriage, legally entered into in another jurisdiction, will be recognized in Illinois as a civil union.[550]

With respect to employment benefits, insurance policies, and health maintenance organization (HMO) contracts issued in Illinois must offer coverage to civil union couples and their families that are identical to the coverage offered to married couples and their families. Insurers must administer both existing and newly-issued policies so that parties to a civil union are provided identical benefits, protections, and financial security as those provided to parties to a marriage. Further, civil union partners are considered eligible beneficiaries for insurance continuation coverage under the state's mini-COBRA statute in the event the employee's employment terminates.[551]

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[552]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[553]
- to take medical leave when the employee is unable to work because of a serious health condition;[554]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and

---

[549] 750 ILL. COMP. STAT. 75/1 *et seq*.

[550] 750 ILL. COMP. STAT. 75/1, 5/201.

[551] 215 ILL. COMP. STAT. 5/367e (insurance companies); 215 ILL. COMP. STAT. 125/4-9.2 (HMOs).

[552] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120 & 826.121.

[553] 29 C.F.R. §§ 825.102, 825.112 & 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[554] 29 C.F.R. §§ 825.112, 825.113.

- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[555] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[556] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Illinois law does not address family and medical leave for private-sector employees.

3.9(a)(iii) *State Guidelines on Kin Care Leave*

Illinois's Employee Sick Leave Act (ESLA) offers a form of "kin care" leave for private-sector employees. The ESLA does not apply to an employer or employee as defined in the federal Railroad Unemployment Insurance Act, the Federal Employers' Liability Act, or other comparable federal law.[557]

Purpose & Length of Leave. The ESLA permits an employee to use their employer-provided personal sick leave benefits to care for a family member. Leave may be used for absences due to an illness, injury, medical appointment, or personal care of the employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, for reasonable periods of time as the employee's attendance may be necessary, on the same terms under which the employee is able to use sick leave benefits for the employee's own illness or injury.[558] Personal care means activities that ensure a covered family member's basic medical, hygiene, nutritional, or safety needs are met, including providing transportation to medical appointments for a covered family member who is unable to do so for themselves. An employer may limit an employee's use of personal sick leave for kin care purposes to an amount not less than the personal sick leave that would be accrued during six months at the employee's then current rate of entitlement. Employers that base personal sick leave benefits on an employee's years of service instead of annual or monthly accrual may limit the amount of sick leave to be used to care for a family member to half of the employee's maximum annual grant.[559]

Employer Obligations. An employer is prohibited from denying an employee the right to use personal sick leave benefits in accordance with the Act, or discharging, threatening to discharge, demoting, suspending, or in any manner discriminating against an employee for:

- using personal sick leave benefits;
- attempting to exercise the right to use personal sick leave benefits;
- filing a complaint with the Illinois Department of Labor or otherwise alleging a violation of the Act;

---

[555] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[556] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[557] 820 ILL. COMP. STAT. 191/21.

[558] 820 ILL. COMP. STAT. 191/10.

[559] 820 ILL. COMP. STAT. 191/10.

- cooperating in an investigation or prosecution of an alleged violation of the Act; or
- opposing any policy or practice or act that is prohibited under the Act.[560]

An employer that provides personal sick leave benefits or has a paid time off policy that would otherwise provide kin care benefits is not required to modify such policy, nor does the Act prevent an employer from providing more generous kin care benefits than those provided under the Act. In addition, the Act does not extend the maximum period of leave to which an employee is entitled under the federal FMLA, regardless of whether the employee receives sick leave compensation during FMLA leave.[561]

Employee Rights & Obligations. Use of personal sick leave benefits for kin care is pursuant to the same terms under which the employee is able to use sick leave benefits for the employee's own illness or injury. Thus, an employee seeking to use sick leave benefits for kin care must follow the employer's policies and procedures in place for use of sick leave benefits in order to request time off for kin care.[562] An employer may request written verification of the employee's absence from a health care professional if such verification is required under the employer's employment benefit plan or paid time off policy.[563]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[564] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Effective January 1, 2024 Illinois has a mandatory paid time off law.[565] Cook County and Chicago have local laws.[566]

The Paid Leave for All Workers Act requires private employers to provide covered employers paid time off that they can use for any reason, and, by extension, for any other individual. The state law, however, does not apply with respect to employees for whom the employer is already providing paid sick and safe leave under local ordinances in Chicago and Cook County.

---

[560] 820 ILL. COMP. STAT. 191/20.

[561] 820 ILL. COMP. STAT. 191/15.

[562] 820 ILL. COMP. STAT. 191/10.

[563] 820 ILL. COMP. STAT. 191/10.

[564] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[565] 820 ILL. COMP. STAT. 192/1 *et seq*.

[566] COOK CNTY., ILL., CODE §§ 42-1 *et seq.*, CHICAGO, ILL., MUN. CODE §§ 6-105-010 *et seq.*

Covered Employees. The law applies to all private sector employees in Illinois, including domestic workers, unless an exception applies. Currently the law does not cover the following individuals at private companies:

- independent contractors who are not domestic workers;
- employees under the federal Railroad Unemployment Insurance Act;
- employees under the federal Railway Labor Act;
- students enrolled in and regularly attending classes in a college or university that is also the student's employer, and who are employed on a temporary basis at less than full time at the college or university; and
- short-term employees who are employed by an institution of higher education for less than two consecutive calendar quarters during a calendar year and who do not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year.

Additionally, the law does not apply to employees covered by a collective bargaining agreement (CBA) if the CBA:

- explicitly waives the law's requirements in clear and unambiguous terms; or
- covers construction industry employees; or
- covers employees of company that provides national and international delivery, pickup, and transportation of parcels, documents, and freight.

Moreover, the law does not affect the validity or change the terms of bona fide CBA in effect on January 1, 2024 – meaning the law does not apply until after the CBA expires – but, after that date, to have the law not apply a CBA must explicitly waive the law's requirements in clear and unambiguous terms.

Accrual & Carry-Over. An employer who provides any type of paid leave under a policy in effect before January 1, 2024 that satisfies the minimum amount of leave the law requires need not modify that policy – meaning it can continue its practice in lieu of certain statutory requirements – if it offers an employee the option, at the employee's discretion, to take paid leave for any reason.

Otherwise, when employment begins or on January 1, 2024 – whichever is later, employees must accrue at least one hour of paid leave for every 40 hours they work. The law assumes certain overtime-time exempt employees work 40 hours per week for accrual purposes; however, if their regular workweek involves fewer than 40 hours, they accrue leave based on their regular workweek. Employees can accrue up to 40 hours in a year unless an employer allows them to accrue more than 40 hours of leave. At the end of a year, unused paid leave carries over into the next year, but employers can limit carryover to 40 hours of unused, accrued leave. However, employers that provide the minimum number of hours of paid leave at the beginning of each year need not carryover unused frontloaded paid leave. Something unique to this law is that it potentially allows employers to pro-rate the 40-hours-per-year amount that employees can accrue or get frontloaded.

Using Leave. Employees can use leave – for any reason – 90 days after employment begins or 90 days after January 1, 2024, whichever is later, *i.e.*, employers can implement a 90-day waiting period before

employees can use leave.[567] The law provides that employees can use up to 40 hours of paid leave during a year, or a *pro rata* amount. If an employee's scheduled workday is two or more hours, the law allows them to determine how much leave they need to use, subject to an employer setting a reasonable minimum increment that does not exceed two hours per day. However, if an employee needs to use leave more than once during the same day, the two-hour period is overall rather than per use. The minimum increment of use for employees whose scheduled workday involves fewer than two hours is the length of the shift. As noted above, however, there might be exceptions available for employers using a qualifying paid leave in effect before January 1, 2024. Under the law, when employees use leave, employers must maintain coverage for the employee and any family member under any group health plan at no less than the level and conditions of coverage that would have been provided if the employee had not taken leave.

Another unique aspect of the Illinois law is that it allows employer to deny a leave, or create "blackout" dates. To deny a leave request, all the following conditions must be met: (1) the employer's policy for considering leave requests under the law, including any basis for denial, is disclosed to the employee, in writing; (2) the employer's paid leave policy establishes certain limited circumstances in which paid leave may be denied in order to meet the employer's operational needs for the requested time period; and (3) as a matter of fact, the employer's policy is consistently applied to similarly situated employees and does not effectively deny an employee adequate opportunity to use all paid leave time they are entitled to over a 12-month period.

Requesting, Verifying & Documenting Leave. If leave use is foreseeable, an employer's reasonable paid leave policy notification requirements may require the employee to provide seven calendar days' notice before the date leave will begin. If unforeseeable, the employer's policy may require an employee to provide notice as soon as is practicable after the employee becomes aware of the need for leave. Employees can submit verbal or written requests for leave. Under the law, employers cannot require employees to provide documentation or certification as proof or in support of their need for leave.

Payment for Leave. The law requires payment for leave used at an employee's hourly rate. Employees for whom commissions or tips have customarily and usually constituted and have been recognized as part of their pay must be paid at least the full applicable minimum wage or their agreed-up base rate, whichever is greater.

Unused Leave When Employment Ends. Whether employees must be paid for unused leave when employment ends depends on how their employer offers the paid leave benefit. If an employer offers a standalone benefit – either because it is the only form of paid leave the employer offers or because the employer offers multiple forms of leave but maintains a separate, compliant bank of statutory paid leave – then the law does not require that statutory paid leave be paid out when employment ends. However, if an employer incorporates statutory paid leave into its existing paid leave policy – for example, it offered, and continues to offer, two weeks of PTO each year, of which employees can use some of the PTO for statutory paid leave purposes – then any unused PTO must be paid out when employment ends unless a payout exception exists under the Illinois Wage Payment and Collection Act.

Notice, Posting & Recordkeeping. At the time of hire, employers must designate, in writing, the year it uses for purposes of complying with the law; changes to the year can occur with advance written notice.

[567] Illinois Department of Labor, Paid Leave for All Workers Act FAQ, *available at* https://labor.illinois.gov/faqs/paidleavefaq.html.

Additionally, employers must notify employees that the employee is still responsible for paying the employee's share of the cost of the health care coverage, if any, when using leave. Also, if an employer incorporates statutory paid leave into a PTO or vacation bank, that fact must be communicated to an employee within 30 days of employment beginning or the effective date of the policy, and it must give written notice of changes to its vacation time, paid time off, or other paid leave policies that affect an employee's right to final compensation for such leave.

For employers that frontload paid leave each year, they must provide notice of frontloaded hours on or before an employee's first day of employment – which the state labor department says can be accomplished via their paid leave policy[568] –and before they change the policy. Moreover, if an employer changes the year it uses for frontloading purposes, written notice 30 days before the years ends must be given, along with information concerning the number of hours worked during the year, and leave hours frontloaded and used.

When employment begins or 90 days following January 1, 2024 – whichever is later – employers must conspicuously post the state-created notice and include it in a written document, or written employee manual or policy if the employer has one. If the employer's workforce has a significant portion of workers who are not literate in English, the employer must notify the state labor department, which must prepare a notice in the appropriate language. Employees may also request that the department provide a notice in languages other than English, which the employer must post.

Generally, the law requires employers who impose terms and conditions on paid leave use to have a written, compliant policy that they must provide before, or when, employment begins or by March 31, 2024, whichever is later. Moreover, they must provide notice of changes to the policy as soon as is practical. More specifically, employers must provide employees written notice of paid leave policy notification requirements in the same manner as the above notice and posting requirements. An employer that requires notice for unforeseeable absences must provide a written policy that contains procedures for employees to provide notice. Additionally, as noted above, to deny a leave request due to operational needs, an employer must disclose that written policy.

For a period of not less than three years – and during any pending administrative claim – for each employee employers must make and preserve records documenting an employee's name and address, hours worked each day in each workweek, paid leave accrued and taken in each workweek, denied leave requests, and the employee's remaining paid leave balance in each workweek and when employment ends.

Prohibitions. Under the law, an agreement by an employee to waive their rights under the law is void as against public policy. Additionally, as a condition of providing paid leave, employers cannot require employees to search for or find a replacement worker to cover the hours during which they take leave. Also, employers cannot interfere with, deny, or change an employee's work days or hours to avoid providing leave time to an employee, and they cannot consider paid leave use as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy. Moreover, prohibited adverse action includes penalizing or disciplining an employee under an attendance point system or equivalent attendance scoring or tracking system when they use statutory paid leave. Finally, employers cannot threaten to, or actually, take adverse action

[568] Email response, Lydia Colunga-Merchant, Illinois Department of Labor, Leave Rights Division Manager (May 15, 2024).

against employees who attempt to, or actually, exercise their rights under the law, oppose policies they believe to be unlawful or support others when they exercise their rights under the law.

Enforcement. The Illinois Department of Labor (IDOL) will interpret and enforce the law. Within three years after an alleged violation, employees can file a charge with IDOL, and, if successful, recover various penalties and damages, depending on the type of violation.

3.9(b)(iii) *Local Guidelines on Paid Sick Leave*

Cook County & Chicago

Previously, the Cook County and Chicago ordinances were very similar to each other in what they required, though there were coverage differences. However, effective July 1, 2024, Chicago's paid sick leave ordinance is repealed and replaced with an ordinance that requires both paid leave (*i.e.*, PTO) and paid sick leave. Similarly, effective December 31, 2023, Cook County's paid sick leave ordinance was repealed and replaced with an ordinance that requires paid leave (*i.e.*, PTO).

As of July 1, 2024, Chicago's Paid Leave and Paid Sick Leave Ordinance (PLPSLO) applies to all private employers. Additionally, under the ordinance a "covered" employee is an employee who in any particular two-week period physically performs at least two hours of work in Chicago for an employer. However, the PLPSLO does not apply to independent contractors, employees as defined in the federal Railroad Unemployment Insurance Act, and to any employee covered by a bona fide collective bargaining agreement (CBA) who works in the construction industry. Additionally, for non-construction-industry CBA-covered employees, the law's requirements may be waived in a bona fide collective bargaining agreement if the waiver is set forth explicitly in such agreement in clear and unambiguous terms. Note, however, that the ordinance does not affect CBAs in force on July 1, 2024.

Under the PLPSLO, employers with a policy that provides paid leave or paid sick leave in an amount and a manner that meets or exceeds the law's requirements need not provide additional paid leave or paid sick leave. Otherwise, on July 1, 2024 or the first day of employment – whichever is later, employees begin to accrue both paid leave and paid sick leave. For each type of leave, employees must accrue one hour of leave for every 35 hours worked. For overtime-exempt employees, for accrual purposes employers can assume the employee works 40 hours per week, but can use their normal workweek if that involves fewer hours. For both types of leave the PLPSLO allows an annual 40-hour accrual cap. At the end of the year, however, the ordinance applies different carryover caps; for paid leave the cap is 16 hours, whereas for paid sick leave the cap is 80 hours. In frequently asked questions ("FAQs"), Chicago's Department of Business Affairs & Consumer Protection ("BACP") says employers may cap overall accrual – which includes carried over leave – to 56 hours for paid leave and 120 hours for paid sick leave. Alternatively, on the first day of every year employers may frontload 40 hours of each type of leave, or frontload only one type of leave and use a different method of compliance for the other. Note, however, that only unused frontloaded paid leave does not carry over, whereas unused frontloaded paid sick leave must carry over. Another alternative to carry over that employers may explore, per BACP FAQs, is offering an employee the option to voluntarily cash out unused paid leave that otherwise would carry over into the next year. If an employee opts for a cash out, BACP says that the voluntary agreement should be in writing.

The PLPSLO sets different waiting periods for when employees can use leave. For paid leave, employees can use the benefit on the 90th calendar day following the start of employment. For paid sick leave, or when employers comply with both types of leave via a single bank of leave, however, employees can use the benefit on the 30th calendar day following the start of employment. Employees can use paid leave

for any purposes, whereas there are limits on the reasons an employee can use paid sick leave for personal reasons or to care for or assist a family member that mirror uses under the current Paid Sick Leave Ordinance: illness, injury, or receipt of professional care (including preventive care, diagnosis, or treatment, for medical, mental, or behavioral issues, including substance use disorders); when the individual is a victim of domestic violence, a sex offense, or trafficking; employee's place of business is closed by order of a public official due to a public health emergency; to care for a family member whose school, class, or place of care has been closed; employee obeys an order issued by the mayor, governor, city public health department, or a treating healthcare provider, to stay at home to minimize the transmission of a communicable disease, remain at home while experiencing symptoms or sick with a communicable disease, or obey a quarantine or isolation order; and when a family member is ordered to quarantine. Although the law is silent on who counts as a "family member" for paid sick and safe leave purposes – for paid leave purposes employees can use leave for any reason – frequently asked questions (FAQs)[569] indicate that it would include an employee's child, grandchild, grandparent, parent (including a spouse's or domestic partner's), sibling, spouse or domestic partner. Additionally, a "family member" includes any other individual related by blood or whose close associate with the employee is the equivalent of a family relationship.

Unless federal, state, or local law requires otherwise, employees get to choose whether they will use leave before using any other leave they receive from their employer or under the law. When employees use leave, however, an employer must maintain coverage for the employee and any family member under any group health plan at no less than the level and conditions of coverage that would have been provided if they had not taken leave. Moreover, an employer must provide notice that employee is still responsible for paying their share of the cost of the health care coverage, if any.

The law does not set an annual use cap for either paid leave or paid sick leave. It does, however, establish the minimum increment of leave employees must use for absences. Employees determine how much leave they need to use, but an employer may set a reasonable minimum increment requirement not to exceed four hours per day for paid leave and two hours per day for paid sick leave. In its FAQs, BACP clarifies that employers may set a minimum increment for both an "initial" and "subsequent" period if the absence will exceed the "initial" minimum increment, *i.e.*, the up to four hours of paid leave, or up to two hours of paid sick leave. For example, an employer could require employees to use leave in 30-minute increments for parts of the absence that exceed the four- or two-hour "initial" minimum increment.

The PLPSLO also establishes different standards for requesting leave, not only for paid leave and paid sick leave, but also if an employer complies with the law via "unlimited" paid time off. For requesting paid leave, the ordinance allows employers to establish reasonable policies, such as requiring up to seven days' notice before using leave, and developing specific rules for interns. For requesting paid sick leave or "unlimited' paid time off, employers can require up to seven days' notice for foreseeable absences, and notice as soon as practicable on the day of leave for unforeseeable absences. Moreover, for both paid sick leave and "unlimited" paid time off absences, employers can require employees to give notice by phone, email, or other means. For paid sick leave, however, an employer must waive notice requirements for employees who are unconscious or otherwise medically incapacitated.

[569] *Available at* https://www.chicago.gov/content/dam/city/depts/bacp/OSL/FAQ%20Paid%20Leave%20and%20Paid%20Sick%20and%20Safe%20Leave_v2.pdf.

The PLPSLO allows employers to establish a policy that requires employees to obtain reasonable preapproval before using leave to maintain continuity of operations. To deny leave for this reason, an employer must consider: (1) whether granting leave during a particular time period would significantly impact business operations; (2) whether the employer provides a need or service critical to the health, safety, or welfare of Chicagoans; (3) whether similarly situated employees are treated the same for purposes of reviewing, approving, and denying leave; and (4) whether the employee has meaningful access to use all entitled-to leave during the year.

Under the PLPSLO there are also different standards for documentation. For paid leave, employers cannot certification or documentation as proof or in support of leave. However, per FAQs, BACP allows employers to require employees to confirm in writing that they used paid sick leave for a covered reason. Additionally, for paid sick leave, employers can require documentation when an employee is absent for more than three consecutive work days. Examples of reasonable documentation include documentation signed by health care provider for "sick" time absences, and various documents to support a "safe" time absence, such as a police report, court documents, or signed statements from an attorney, a clergy member, a victim services advocate, or from the employee. Notably, for "safe" time absences, the employee chooses which document to submit. Additionally, for paid sick leave, employers cannot delay leave beginning because they have not received documentation.

The ordinance establishes identical standards when it comes to paying employees when they use leave. Employers must pay employees at the same rate, and with the same benefits – including health care benefits – that they regularly earn, which cannot be less than their base rate of the federal, state, or local minimum wage, whichever is higher. If employers claim a tip credit for tipped employees, the employee must be paid the highest of the federal, state, or local minimum wage. For employees who earn commissions, whether they are paid a base rate plus commissions or only commissions, employers must compensate them for paid leave at their base hourly wage or the applicable minimum wage, whichever is greater. Finally, for employees who are non-exempt from overtime requirements, to calculate the rate of pay employers must divide the employee's total wages by total hours worked in the full pay period of the prior 90 days of employment; for this calculation employers can exclude overtime pay, premium pay, gratuities, and commissions. Note, however, that in corresponding rules and FAQs, BACP states that the 90-day lookback calculation applies only to employees whose pay was reduced in the previous 90-day period. For all covered employees, payment for leave they use must occur by the payday for the next regular payroll period after leave was taken, and employers cannot delay payment because they have not yet received documentation from the employee.

The PLPSLO contains numerous protections for employees. Generally the law prohibits interfering with employees' leave rights, retaliating against them generally or to avoid having to comply with the law, requiring employees to find a replacement worker to cover their shift when they use leave, along with having the employee's waive their leave rights outside of a collective bargaining agreement. Additionally, the law restrains employers' ability to have an absence control policy that counts leave employees use under the law in a way that could trigger discipline, termination, demotion, suspension, or other adverse action.

Under the ordinance there are many notice obligations. For example, with their first paycheck, and annually with a paycheck issued within 30 days of July 1, employers must provide a notice advising employees of their right to leave under the law. Alternatively, however, an employer may provide this notice before employment begins or as part of the onboarding process. If an employer frontloads leave, it must give written notice that it is frontloading, and the availability of frontloaded hours, at the

beginning of the benefit year. Additionally, when employees are paid, they must receive notice about leave accrued and used (reduced), along with their leave balance. Employers can supply this information via a paystub or another reasons system, such as an online system employees can access. Employers with a Chicago location must conspicuously post a notice advising covered employees about their leave rights. For mandatory notices – aside from paystubs – the ordinance requires an employer to provide them in English or another language if a significant portion of works are not literate in English. Additionally, a unique notice requirement is that if employees have not received a work assignment for 60 days, employers must notify them in writing that the employee can request payout of their unused leave. Under the rules, if an employer wants to change its benefit year, it must give written notice at least 14 days before the end of the benefit year informing employees that the benefit year is changing or ending, give written notice of the changes that are being made, and ensure that changing the benefit year period does not reduce the number of paid leave and paid sick leave hours an employee is entitled to in a benefit year.

Pursuant to the PLPSLO, employers must provide written notice of their policy, including time off notification requirements along with an explanation of the rate of accrual for both types of leave. The policy must be provided when employment begins and within 5 calendar days before a change to the policy. 14 days' notice is required if employers change their policy in a way that affects an employee's right to unused leave when employment ends, which itself has many moving parts.

For employers with 50 or fewer covered employees, there is no requirement to pay out unused paid leave or paid sick leave. For employers with between 50 and 100 covered employees, there is also no need to cash out unused paid sick leave though they must pay out up to 16 hours of paid leave until July 1, 2025, and up to 40 hours of paid leave on or after July 1, 2025. For other employers, there, again, is no need to cash-out unused paid sick leave, but payout of up to 40 hours of paid leave may be necessary unless a CBA provides otherwise. Notably, the cash-out requirement kicks in not only when employment ends but also if an employee transfers outside of Chicago and no longer meets the definition of a "covered" employees. Even employers who comply with the law via an "unlimited" paid time off policy could have cash-out obligations unless either the employee used more than 40 hours of paid time off in the 12-month period before employment ends or a CBA provides otherwise. To determine business size for cash-out purposes, employers must count the average number of covered employees who worked for compensation during the previous 12 months for all weeks in which at least one covered employee worked; for a new employer, it is the average of covered employees during the previous 90 days. Employers should be conscious, however, concerning how the local paid leave ordinance interacts with state wage payment laws on end-of-employment payout obligations of paid time off benefits.

For at least five years or for the duration of any pending claim, civil action, or investigation – whichever is longer – employers must keep of a record of each covered employee's name, addresses, and telephone number, occupations and job titles and whether they are tipped, non-tipped or perform duties that involve both, date of hire, dates of eligibility to use leave, hours worked each day and workweek, pay rate, wage agreement, how employees are paid (hourly, salary, etc.) along with straight- and overtime pay and total wages paid each pay period, number of leave hours earned for each year, dates on which and number of hours of leave hours were taken, dates on which leave hours were paid, and records necessary to demonstrate compliance with the law. Additionally, upon an employee's request, employers must provide a copy of their records.

Employees can either pursue administrative charges via Chicago's Department of Business Affairs & Consumer Protection or file a private lawsuit, where they can recover damages, interest, costs and

reasonable attorneys' fees. Paid sick leave lawsuits will be an option immediately when the law takes effect, but for paid leave violations a private right of action is unavailable until July 1, 2025. Moreover, employee may only file suit after an alleged violation and the payday for the next regular payroll period or 16 days after the alleged violation occurred passes, whichever is shorter period; this provision expires on July 1, 2026, however. For employees filing an administrative charge, the statute of limitations is within three years of a violation, which may be extended to three years from when the employer reasonably should have discovered the violation if an employer conceals the violation or misleads the employee concerning their rights or the employer's responsibilities under the ordinance.

As of December 31, 2023, the Cook County Paid Leave Ordinance requires private employers to provide covered employers paid time off that they can use for any reason, and, by extension, for any other individual.[570]

The law applies to all private sector employees in Illinois, including domestic workers, unless an exception applies. Currently the law does not cover the following individuals:

- independent contractors who are not domestic workers;
- employees under the federal Railroad Unemployment Insurance Act;
- students enrolled in and regularly attending classes in a college or university that is also the student's employer, and who are employed on a temporary basis at less than full time at the college or university;
- short-term employees who are employed by an institution of higher education for less than two consecutive calendar quarters during a calendar year and who do not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year;
- unpaid volunteers; and
- employees for whom federal or state law preempts them from being covered under the ordinance.

Additionally, the law does not apply to employees covered by a collective bargaining agreement (CBA) if the CBA: explicitly waives the law's requirements in clear and unambiguous terms; or covers construction industry employees. Moreover, the law does not affect the validity or change the terms of bona fide CBA in effect on January 1, 2024; after that date, however, a CBA must explicitly waive the law's requirements in clear and unambiguous terms.

An employer who provides any type of paid leave policy that satisfies the minimum amount of leave the law requires need not modify that policy if it offers an employee the option, at the employee's discretion, to take paid leave for any reason. Otherwise, when employment begins or on December 31, 2023 – whichever is later, employees must accrue at least one hour of paid leave for every 40 hours they work; leave accrues in whole-hour units rather than in fractions. The law assumes certain overtime-time exempt employees work 40 hours per week for accrual purposes; however, if their regular workweek involves fewer than 40 hours, they accrue leave based on their regular workweek. Employees can accrue

[570] COOK COUNTY, IL CODE §§ 42-1 *et seq*.; COOK COUNTY, IL INTERPRETATIVE AND PROCEDURAL RULES GOVERNING THE COOK COUNTY PAID LEAVE ORDINANCE; Cook County Commission on Human Rights, Frequently Asked Questions, *available at* https://www.cookcountyil.gov/service/paid-leave-ordinance-and-regulations.

up to a minimum of 40 hours unless an employer provides more than 40 hours of leave. At the end of a year, unused paid leave carries over into the next year, though corresponding regulations allow employers to limit carryover to 40 hours. However, employers that provide the minimum number of hours of paid leave via frontloading need not carryover unused paid leave.

When discussing both accrual caps and frontloading, the law references pro-rating leave for employees, without providing specific information about how that will work. In corresponding regulations, if an employee's annual hours are known, an employer can frontload an amount of leave that equals what the employee would accrue for working that number of hours, up to the annual cap. If, however, the number of hours is unknown, an employer can estimate the employee's annual hours, subject to trueing up the amount should the employer underestimate annual hours the employee will work.

Employees can use leave – for any reason – 90 days after employment begins or 90 days after December 31, 2023, whichever is later. The law provides that employees can use up to a minimum of 40 hours of paid leave during a year, or a pro rata amount; again, however, the law does not provide specific information about how that will work. If an employee's scheduled workday is two or more hours, the law allows them to determine how much leave they need to use, subject to an employer setting a reasonable minimum increment that does not exceed two hours per day; a two-hour minimum is also the default that the county will apply if an employer's written policy does not establish a minimum increment. The minimum increment of use for employees whose scheduled workday involves fewer than two hours is the length of the shift. If the number of hours the employee has available is less than the permitted minimum increment, corresponding regulations state that an employee must accumulate additional leave before they can use leave. Under the law, when employees use leave, employers must maintain coverage for the employee and any family member under any group health plan at no less than the level and conditions of coverage that would have been provided if the employee had not taken leave.

If leave use is foreseeable, an employer's reasonable paid leave policy notification requirements may require the employee to provide seven calendar days' notice before the date leave will begin. If unforeseeable, the employer's policy may require an employee to provide notice as soon as is practicable after the employee becomes aware of the need for leave. Employees can submit verbal or written requests for leave if an employer does not have a written policy establishing how employees must provide notice. For unforeseeable absences where an employee provided verbal or electronic notice, an employer's policy can require that, upon returning from leave, the employee memorialize their notice in writing. Under the law, employers cannot require employees to provide documentation or certification as proof or in support of their need for leave.

The law requires payment for leave used at an employee's hourly rate. Employees for whom commissions or tips have customarily and usually constituted and have been recognized as part of their pay must be paid at least the full applicable minimum wage. For pieceworkers, whether paid a base wage plus piecework or piecework only, the hourly rate of pay is calculated by adding together total earnings from all sources for the most recent workweek in which no paid leave was taken and dividing that sum by the number of hours spent performing the work during such workweek.

Under the ordinance and corresponding regulations, how employers must treat unused leave when employment ends will depend on whether the only paid leave they provide is statutory paid leave pursuant to the ordinance – in which case Cook County says payout need not occur – or whether statutory paid leave is combined with an existing vacation or paid time off bank, in which case payout

must occur. When examining end-of-employment payout obligations for paid leave, however, employers should be mindful of state wage payment law on the subject. Assuming leave need not be paid out when employment ends, the law provides that any unused leave must be reinstated if an employee is rehired within 12 months of separation, and the employee can use that leave when employment recommences.

When employment begins or when the law applies, whichever is later, employers must provide written notice advising the employee of their right to paid leave under the law. Additionally, at least once per calendar year employers must provide employees a notice of rights, which must include, at a minimum: a description of the benefit; coverage; accrual rate; permissible uses; prohibited employer practices; and contact information for the Cook County Commission on Human Rights along with an explanation of how employees who believe that their employer has violated the law can make a complaint. This annual notice may accompany an employee's paycheck or paycheck deposit notification.

At the time of hire, employers must designate, in writing, the year it uses for purposes of complying with the law; changes to the year can occur with advance written notice given at least 30 calendar days before the year ends. Employers that frontload paid leave must provide written notice to employees with the number of hours the employee will receive on or before their start of employment or the first day of the year used for compliance purposes. Should an employer decide to switch from frontloading to an accrual-based system for complying with the ordinance, they must provide written documentation of the number of hours worked in a year and the rate of anticipated accrual.

Additionally, employers must notify employees that the employee is still responsible for paying the employee's share of the cost of the health care coverage, if any, when using leave. Also, if an employer charges or credits statutory paid leave to a PTO or vacation bank, it must give written notice of changes to its vacation time, paid time off, or other paid leave policies that affect an employee's right to final compensation for such leave.

When employment begins or 90 days following December 31, 2023 – whichever is later – employers must conspicuously post the state-created notice, or a notice that contains the same information, and include it in a written document, or written employee manual or policy if the employer has one. If the employer's workforce has a significant portion of workers who are not literate in English, the employer must notify the county agency, which must prepare a notice in the appropriate language. Employees may also request that the agency provide a notice in languages other than English, which the employer must post. A separate posting requirement requires employers to post in a conspicuous place at each facility where any employee works that is located in Cook County a notice advising the employee of their rights to paid leave under the law. However, employers that do not maintain a business facility in Cook County are exempt from this requirement.

If an employer imposes terms and conditions on paid leave use, it must adopt a reasonable, written policy that includes the law's protections and is consistent with the law. Employers must provide a copy of written policies outlining the method used – accrual or frontloading – and which method applies to various groups of employees. The policy must be made available in English and in any additional language commonly spoken by the employer's workforce. It may be a part of an existing employer manual, existing employer handbook, or a separate document. Employers who regularly communicate with employees electronically must provide notice of the policy via their regular electronic communication method. Employers must provide the policy before or when employees begin

employment or within 90 days after the law's effective date. For any changes to a policy, written notice must be provided as soon as practicable, but in no case longer than five days before changes occur.

Employers can deny leave use if their policy for considering requests, including any basis for denial, is disclosed to employees in writing, though additional requirements to deny a leave request exist.

Employers must provide employees written notice of paid leave policy notification requirements in the same manner as the above notice and posting requirements. An employer that requires notice for unforeseeable absences must provide a written policy that contains procedures for employees to provide notice.

For a period of not less than three years – and during any pending administrative claim – for each employee employers must make and preserve records documenting hours worked, paid leave accrued and taken, and the employee's remaining paid leave balance.

Under the law, an agreement by an employee to waive their rights under the law is void as against public policy. Additionally, as a condition of providing paid leave, employers cannot require employees to search for or find a replacement worker to cover the hours during which they take leave. Employers violate the ordinance when they switch an employee's schedule to avoid paying the employee after they provide notice that they are using or will use paid leave. Also, employers cannot interfere with, deny, or change an employee's work days or hours to avoid providing leave time to an employee, and they cannot consider paid leave use as a negative factor in any employment action that involves evaluating, promoting, disciplining, or counting paid leave under a no-fault attendance policy. Employers are seen as violating they ordinance if they pay, or offer to pay, an employee to *not* take paid leave. Finally, employers cannot threaten to, or actually, take adverse action against employees who attempt to, or actually, exercise their rights under the law, oppose policies they believe to be unlawful or support others when they exercise their rights under the law.

The Cook County Commission on Human Rights will interpret and enforce the law. Within three years after an alleged violation – longer if an employer conceals a violation – employees can file a charge with the Commission, and, if successful, recover various penalties and damages, depending on the type of violation. Employees may obtain similar relief via a private lawsuit, which they must file within three years from the date of the last event constituting the alleged violation.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[571] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement,

[571] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[572] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[573] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

The Illinois Human Rights Act requires employers of one or more employees that offer leaves for other temporary disabilities must consider temporary disability resulting from pregnancy, miscarriage, abortion, childbirth, and recovery to be a justification for a leave of absence. The terms and conditions of pregnancy-related disability leaves may not be more restrictive, and need not be more generous, than those applied to disability leaves for other purposes. Policies and practices involving matters such as the commencement and duration of leave, and the accrual of seniority and other benefits and privileges, must be applied to disability due to or related to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

---

[572] 29 C.F.R. § 825.202.

[573] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

Nondisability leaves for the purpose of childrearing must be granted to both male and female employees on the same terms and conditions applied to other nondisability leaves.[574]

As described in **3.11(c)(ii)**, the Illinois Human Rights Act also requires reasonable accommodation of a pregnant job applicant or employee. However, because much of the statutory language deals with reasonable accommodations pertaining to a leave of absence or time off, the requirements are discussed here. Specifically, employers with one or more employees must provide reasonable accommodations to a pregnant job applicant or employee upon her request for such accommodations.

With respect to leave, an employer cannot compel or require a pregnant employee to take leave she has not requested without first satisfying the employer's obligation to make reasonable accommodations for the employee's pregnancy condition, including, but not limited to, exploring whether a reasonable accommodation other than a forced leave can be provided to the employee. The employer must engage in the interactive process to determine the effective reasonable accommodation.

An employer must grant a job applicant's or employee's request for time off as an accommodation unless the employer can demonstrate that there is another effective accommodation that would enable the employee to continue working. In addition, an employer is not required to provide any accommodation that would cause an undue hardship to its operations. However, the fact that an employer provides or would be required to provide a similar accommodation to similarly situated, nonpregnant employees creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.[575]

If the need for leave is foreseeable, the applicant or employee must provide the employer with prior notice of the expected need for time off or leave in a manner that is reasonable and practicable, unless the employer does not or would not require prior notice for other classes of employees taking time off or leave.

The employer may request that the pregnant employee provide documentation from her health care provider supporting the need for the requested reasonable accommodation(s), so long as the employer has a policy of requesting documentation from nonpregnant employees for conditions related to disability, the request is job-related and consistent with business necessity, and the information sought is unknown or not readily apparent to the employer.

An employee who takes leave as an accommodation must be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other applicable service credits as of the date the employee went on leave, unless the employer can demonstrate that doing so would impose an undue hardship. An employer is not required to provide any paid time off benefits such as vacation pay, sick time, or similar benefits that would otherwise accrue if the employee was not on leave, unless the employer allows for accrual of such benefits for other classes of employees under similar circumstances.[576]

---

[574] 775 ILL. COMP. STAT. 5/2-101, 5/2-102(I); ILL. ADMIN. CODE tit. 56, § 5210.110.

[575] 775 ILL. COMP. STAT. 5/2-102(J); ILL. ADMIN. CODE tit. 56, §§ 2535.10, 2535.140(a) & 2535.220(c).

[576] 775 ILL. COMP. STAT. 5/2-102(J); ILL. ADMIN. CODE tit. 56 § 2535.140(f).

As noted in 0, employers must conspicuously post a notice or include information on an applicant's or employee's rights regarding pregnancy in their employee handbooks.[577]

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Illinois law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

The Illinois School Visitation Act[578] requires an employer of 50 or more employees to grant an eligible employee up to eight hours of unpaid leave during any school year to attend school conferences, behavioral meetings, or academic meetings related to the employee's child if the conference or meeting cannot be scheduled during nonschool hours. An employee cannot use more than four hours of time off for this purpose on any given day.

An employee is eligible for leave if the employee has worked at least six consecutive months for the employer and worked, on average, at least half-time during those months. An employee cannot take leave under this statute unless:

- the employee has exhausted all accrued vacation leave and other leave that may be granted to the employee, except for sick leave and disability leave; and
- the employee has submitted a written request for leave at least seven days in advance, though in emergency situations, no more than 24 hours' notice may be required.

An employer is not required to grant this leave if doing so would result in more than five percent of the work force taking school leave at the same time.

The employee must consult with the employer to schedule the leave so as not to disrupt unduly the employer's operations. An employee may choose to make up the time missed if a reasonable opportunity exists to do so in a manner that would not require the payment of overtime. The employee must submit verification from the school within two working days of the visit.

An employer cannot terminate an employee for an absence from work if the absence is due solely to the employee's attendance at a school conference, behavioral meeting, or academic meeting.

---

[577] ILL. ADMIN. CODE tit. 56 § 2535.300.

[578] 820 ILL. COMP. STAT. §§ 147/1, *et seq*.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Employers with 51 or more employees must allow eligible employees time off with pay to donate blood.[579] An employee is eligible if the employee has been employed by the employer for six months or more, and has obtained the employer's approval to take the time off. An employee may use up to one hour, or more if authorized by the employer or a collective bargaining agreement, to donate blood every 56 days in accordance with appropriate medical standards established by the American Red Cross or other nationally recognized standards. An employee may not be required to use vacation or sick leave during the time off to donate blood.

When requesting time off, the employee must submit documentation of the appointment to donate blood. The employer may request that, after the appointment, the employee provide a written statement from the blood bank confirming that the employee kept the appointment.

Effective January 1, 2024, this leave is also available for organ donation. the law provides that, upon request, a participating employee may be entitled to leave with pay to donate blood or an organ. An employee may use up to 10 days of leave in any 12-month period to serve as an organ donor. The law defines *organ* to mean any biological tissue of the human body that may be donated by a living donor, including, but not limited to, the kidney, liver, lung, pancreas, intestine, bone, and skin or any subpart thereof.[580]

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Political Primaries. In Illinois, employees entitled to vote in a primary election who receive their employer's consent are eligible for time off to vote.[581] Employees must be given two hours of leave to vote. An employer may specify when the leave can be taken. The law does not specify whether voting time must be paid. The law also does not specify whether employees must give the employer notice to take time off to vote, but the employee must obtain consent from the employer to vote.

General / Special Elections or Election with State Propositions. Eligible voters (18 years old and citizens of the United States) entitled to vote in general elections, special elections, and elections with state propositions must be provided two hours of leave to vote if their working hours begin less than two hours after the polls open or before the polls close.[582] An employee must apply for leave to vote before election day. An employer may specify when the leave may be taken. The time off for voting must be

[579] 820 ILL. COMP. STAT. 149/1; ILL. ADMIN. CODE tit. 77, §§ 985.400, 985.500.

[580] 820 ILL. COMP. STAT. 149/1 – 149/10, as amended by H.B. 3516 (Ill. 2023).

[581] 10 ILL. COMP. STAT. 5/7-42.

[582] 10 ILL. COMP. STAT. 5/17-15.

paid; an employee's compensation cannot be reduced, and employers cannot penalize employees, for taking leave.

Leave to Serve as Election Judge. Any person appointed as an election judge may, after giving their employer at least 20 days written notice, be absent from their place of work for the purpose of serving as an election judge.[583] An employer may not penalize an employee for such absence other than a deduction from salary for the time the employee was absent. This requirement does not apply to an employer with fewer than 25 employees. An employer with greater than 25 employees is not required to allow more than 10% of its employees be absent on the same election day.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Illinois law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[584] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[585] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. In Illinois, an employer must allow an employee who is summoned for jury duty time off from work to serve on the jury regardless of what shift the employee works.[586] An employer may not require a night-shift worker to work while the employee is serving on a jury during the day.

---

583 10 ILL. COMP. STAT. 5/13-2.5.

584 28 U.S.C. § 1875.

585 *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

586 705 ILL. COMP. STAT. 305/4.1, 310/10.1.

An employer is not required to compensate employees for time taken off to serve on a jury. Employees serving on a jury must be treated as though they are on furlough or a leave of absence, and must be entitled to participate in insurance and other benefits in accordance with established rules and practices relating to employees on furlough or leave of absence. Upon completion of jury service, an employee must be reinstated to the employee's former position without loss of seniority.

The employee must give their employer reasonable notice of required jury service. The reasonable notice requirement is satisfied when the employee delivers to the employer a copy of the summons within 10 days of the date of issuance of the summons to the employee.

An employer may not discharge, threaten to discharge, intimidate, or coerce any employee as a result of jury service or attendance in court in connection with such service.

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Victims of Domestic Abuse, Sexual Assault & Related Crimes. Under the Victims Economic Safety and Security Act (VESSA), an employee may take time off from work to address domestic, sexual, or gender violence, or victims of violent crime to:

- seek medical attention for, or recover from, physical or psychological injuries caused by domestic, sexual, or gender violence to the employee or a family or household member;
- obtain services from a victim services organization for the employee or a family or household member;
- obtain psychological or other counseling for the employee or a family or household member;
- participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or a family or household member from future domestic or sexual violence, or gender violence or ensure economic security;
- seek legal assistance or remedies to ensure the health and safety of the employee or a family or household member, including preparing for or participating in any civil or criminal legal proceedings, or military proceedings pursuant to the Uniform Code of Military Justice, related to or derived from domestic, sexual, or gender violence;
- **effective January 1, 2024**, attend the funeral, or alternative to a funeral or wake, of a family or household member who is killed in a crime of violence;
- **effective January 1, 2024**, make arrangements necessitated by the death of a family or household member who is killed in a crime of violence; or

- **effective January 1, 2024**, grieve the death of a family or household member who is killed in a crime of violence.[587]

An employee working for an employer that employs at least 50 employees is entitled to a total of 12 workweeks of leave during any 12-month period. An employee working for an employer that employs at least 15, but not more than 49, employees is entitled to a total of eight workweeks of leave during any 12-month period. An employee working for an employer that employs at least one, but not more than 14, employees is entitled to a total of four workweeks of leave during any 12-month period.[588] **Effective January 1, 2024**, an employee who has a family or household member who is killed in a crime of violence is entitled to use a cumulative total of not more than two workweeks (10 work days) of unpaid leave. Such leave must be completed within 60 days after the date on which the employee receives notice of the death of the victim.[589]

There is no requirement that the leave be compensated. Nevertheless, an employee who is entitled to take paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) by law, a collective bargaining agreement, or an employment benefits program, may elect to substitute such leave for an equivalent period of VESSA. However, employers may not require the use of such leave.[590]

Covered employers must post a notice summarizing the VESSA requirements.[591] The employer may also require the employee to provide certification that the employee or a family or household member is a victim of domestic, sexual, or gender violence and that the leave is for a purpose enumerated in VESSA. An employee may satisfy the certification requirements by providing the employer a sworn statement of the employee, and permissible documentation, as provided by the statute, but only if the employee has possession of such document. An employee must choose which document to submit, and the employer must not request or require more than one document to be submitted during the same 12-month period leave is requested or taken if the reason for leave is related to the same incident or perpetrator of violence.[592]

Upon return from VESSA leave, an employee is entitled to be returned to the position held when the leave began, or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.[593] Additionally, an employer may not fail or refuse to hire, discharge, or harass any individual, otherwise discriminate (including failure to make accommodations for the known limitations resulting from circumstances relating to the individual or a family or household member being a victim of domestic, sexual, or gender violence, unless accommodation would pose an undue hardship) with respect to compensation, terms, conditions, or privileges of employment of the individual, or retaliate against an individual because:

- the individual is or is perceived to be a victim of domestic violence, sexual violence, gender violence, or a victim of violent crime;

[587] 820 ILL. COMP. STAT. 180/20.

[588] 820 ILL. COMP. STAT. 180/10, 180/20.

[589] 820 ILL. COMP. STAT. 180/20.

[590] 820 ILL. COMP. STAT. 180/25.

[591] 820 ILL. COMP. STAT. 180/40.

[592] 820 ILL. COMP. STAT. 180/20.

[593] 820 ILL. COMP. STAT. 180/20.

- the individual attended, participated in, prepared for, or requested leave to attend, participate in, or prepare for a criminal or civil court proceeding relating to an incident of domestic, sexual, or gender violence of which the individual or a family or household member of the individual was a victim;
- the individual requested an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, or modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, or implementation of a safety procedure in response to actual or threatened domestic, sexual, or gender violence (regardless of whether the request was granted); or
- the workplace is disrupted or threatened by the action of a person whom the individual claims has committed or threatened to commit domestic, sexual, or gender violence against the individual or the individual's family or household member.[594]

3.9(j)(iii) *Local Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Chicago's paid sick leave ordinance permits eligible employees to use paid time off if the employee or a covered family member is a victim of domestic violence or a sex offense.[595] **Effective July 1, 2024**, Chicago's paid sick leave ordinance will be repealed and replaced by a paid leave and paid sick leave ordinance that provides 40 hours of paid leave and 40 hours of paid sick leave. Paid leave may be used for any reason.[596] Paid sick leave may be used by an employee if the employee or an employee's covered relation is a victim of domestic violence, a sex offense, or trafficking.[597]

Cook County's paid sick leave ordinance permits eligible employees to use paid time off if the employee or a covered family member is a victim of domestic violence, sexual violence, or stalking.[598] **Effective December 31, 2023**, the paid sick leave ordinance will be replaced by Cook County's paid leave ordinance that may be used for any reason.[599]

Refer to 3.9(b) for full details.

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an

[594] 820 ILL. COMP. STAT. 180/30.

[595] CHICAGO, ILL., MUN. CODE § 1-24-045(c)(2)(C).

[596] CHICAGO, ILL., MUN. CODE § 6-130-030(h).

[597] CHICAGO, ILL., MUN. CODE § 6-130-030(i)(1)(C).

[598] COOK COUNTY, ILL. CODE § 42-3(c)(2)(c).

[599] COOK COUNTY, ILL. CODE § 42-3(b)(1).

obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[600]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[601] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.602 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Illinois Service Member Employment and Reemployment Rights Act. The Illinois Service Member Employment and Reemployment Rights Act (ISERRA) incorporates the antidiscrimination and leave of absence protections contained in sections 4304, 4312, 4313, 4316, 4317, and 4318 of the federal USERRA. In addition, the ISERRA supplements the USERRA's protections as follows.

[600] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[601] 29 C.F.R. § 825.126(a).

[602] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

An employer may not impose conditions for military leave, such as work shift replacement, not otherwise imposed under ISERRA or other applicable law. However, an employer is not prevented from providing scheduling options to employees in lieu of paid military leave.[603]

Further, a service member employee is not required to accommodate their employer's needs as to the timing, frequency, or duration of military leave. However, employers are permitted to bring concerns over the timing, frequency, or duration of military leave to the attention of the appropriate military authority. Accommodation of these requests are subject to military law and discretion.[604]

Military leave means a furlough or leave of absence while performing active service. It cannot be substituted for accrued vacation, annual, or similar leave with pay except at the sole discretion of the service member employee. It is not a benefit of employment that an employee must request, but a legal requirement upon receiving notice of pending military service.[605]

Military service means:

- service in the Armed Forces of the United States, the National Guard of any state or territory regardless of status, and the State Guard as defined in the Illinois State Guard Act. Military service, whether active or reserve, includes service under the authority of U.S.C. Titles 10, 14, or 32 or state active duty;
- service in a federally recognized auxiliary of the United States Armed Forces when performing official duties in support of military or civilian authorities as a result of an emergency; and
- a period for which an employee is absent from a position of employment for the purpose of medical or dental treatment for a condition, illness, or injury sustained or aggravated during a period of active service in which treatment is paid by the United States Department of Defense Military Health System.[606]

Active service means all forms of active and inactive duty regardless of voluntariness including, but not limited to, annual training, active duty for training, initial active duty training, overseas training duty, full-time National Guard duty, active duty other than training, state active duty, mobilizations, and muster duty. Active service, unless provided otherwise, includes active service without pay. *State active duty* means full-time state-funded military duty under the command and control of the Governor and subject to the Military Code of Illinois.[607]

With respect to notification of the need to take leave, a service member employee is not required to get permission from their employer for military leave. The employee is only required to give the employer advance notice of pending service. This advance notice entitles a service member employee to military

[603] 330 ILL. COMP. STAT. 61/5-5.

[604] 330 ILL. COMP. STAT. 61/5-5.

[605] 330 ILL. COMP. STAT. 61/5-5(2).

[606] 330 ILL. COMP. STAT. 61/1-10.

[607] 330 ILL. COMP. STAT. 61/1-10.

leave. Military necessity as an exception to advance notice of pending military leave for state active duty will be determined by appropriate state military authority and is not subject to judicial review.[608]

For military service absences due to: (1) performance of official duties in support of military or civilian authorities as a result of an emergency; or (2) receiving medical or dental treatment for a condition, illness, or injury sustained or aggravated during a period of active service, an employer may require an employee to provide notice and certification from the appropriate military authority on official letterhead.[609]

A service member employee who is absent on military leave must, for the period of military leave, be credited with the average of the efficiency or performance ratings or evaluations received for the three years immediately prior to using leave. Additionally, the rating cannot be less than the rating that the employee received for the rated period immediately prior to the employee's absence on military leave. The period of military duty must be counted in computing seniority and time-in-service requirements for promotion eligibility or any other benefit of employment. This requirement does not apply to probationary periods.[610]

For purposes of state active duty, a disqualifying discharge or separation will be the state equivalent under the Military Code of Illinois for purposes of ineligibility of reemployment under the federal USERRA as determined by appropriate state military authority. A retroactive upgrade of a disqualifying discharge or release will restore reemployment rights, provided the service member employee otherwise meets the ISERRA's eligibility criteria.[611]

Each employer must provide service member employees entitled to ISERRA rights and benefits a notice of the rights, benefits, and obligations of service member employees under the ISERRA. An employer may comply with the notice requirement by posting the notice where the employer customarily places notices for employees.[612]

Family Military Leave Act. Employees (including independent contractors) who have worked for the same employer for at least 12 months, or for at least 1,250 hours in the last year, are entitled to take unpaid, job-protected leave to visit with a spouse, parent, child, or grandparent who has been called into military service for a period lasting longer than 30 days.[613]

Employers with between 15 and 50 employees must provide up to 15 days of leave; employers with more than 50 employees must provide up to 30 days of leave to an employee during the time federal or state deployment orders are in effect. The number of days of leave provided because a spouse or child is called to military service can be reduced by the number of days of leave provided the employee under the federal FMLA due to a qualifying exigency arising out of the fact the spouse or child is on covered

608 330 ILL. COMP. STAT. 61/5-5(2).

609 330 ILL. COMP. STAT. 61/5-5(2).

610 330 ILL. COMP. STAT. 61/5-5(3).

611 330 ILL. COMP. STAT. 61/5-5(5).

612 330 ILL. COMP. STAT. 61/5-20.

613 820 ILL. COMP. STAT. 151/5.

active duty (or has been notified of an impending call or order to covered active duty) in the armed forces.[614]

An employee may not take family military leave unless the employee has exhausted all accrued vacation, personal leave, compensatory leave, and any other leave that may be granted, except sick and disability leave.[615]

The employee must give at least 14 days' notice of the intended date on which the family military leave will commence if leave is for five or more consecutive workdays. When the employee is able, the employee must consult with the employer to schedule the leave so as to not unduly disrupt the employer's operations. Employees taking military family leave for fewer than five consecutive days must give the employer advanced notice as practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.[616]

During leave, employers must continue any benefits at the employee's expense.[617] The employee must not lose any employee benefit accrued before the date on which leave commenced. Employees returning from family military leave must be restored to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment.[618]

An employer must not interfere with, restrain, or deny the exercise of any right provided under the state Family Military Leave Act. Further, an employer must not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right or opposes any practice made unlawful by the Act.[619]

Civil Air Patrol Leave Act. An employee who is a member of the civilian auxiliary of the U.S. Air Force may request unpaid leave to perform a civil air patrol mission. An employer with between 15 and 50 employees must provide up to 15 days of leave, and an employer that employs 50 or more employees must provide up to 30 days of leave. The employee requesting leave must have been employed with the same employer for at least 12 months and have at least 1,250 hours of service during the 12 months immediately preceding the leave.[620]

The employee must give at least 14 days' notice of the intended date on which the military leave will commence if leave is for five or more consecutive workdays. When the employee is able, the employee must consult with the employer to schedule the leave so as to not unduly disrupt the employer's operations. Employees taking military leave for fewer than five consecutive days must give the employer advance notice as practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the civil air patrol leave requested.[621]

---

[614] 820 ILL. COMP. STAT. 151/10.

[615] 820 ILL. COMP. STAT. 151/20(D).

[616] 820 ILL. COMP. STAT. 151/10(A)-(C).

[617] 820 ILL. COMP. STAT. 151/15(b).

[618] 820 ILL. COMP. STAT. 151/15(a).

[619] 820 ILL. COMP. STAT. 151/25(A)-(C).

[620] 820 ILL. COMP. STAT. 148/10.

[621] 820 ILL. COMP. STAT. 148/10.

During leave, employer must continue any benefits at the employee's expense. The employee must not lose any employee benefits accrued before the date on which leave commenced.[622]

Upon return from leave, the employee is entitled to be restored to the position held by the employee when the leave commenced, or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This requirement will not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the Act.[623]

An employer is prohibited from interfering with, restraining, or denying the exercise or the attempt to exercise any right provided under the Act. An employer must not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right or opposes any unlawful practice under the Act.[624]

Other Military-Related Protections: Spousal Unemployment. In Illinois, a spouse will be eligible for benefits if the individual left employment to accompany a spouse who has been reassigned from one military assignment to another.[625]

3.9(I) *Other Leaves*

3.9(I)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(I)(ii) *State Guidelines on Other Leaves*

Child Bereavement Leave. An eligible employee may take up to two weeks (10 workdays) of bereavement leave to:

- attend the funeral (or alternative service or ceremony) of a child;
- make arrangements necessitated by the child's death;
- grieve the child's death;
- a miscarriage;
- an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure (*e.g.*, artificial insemination or embryo transfer);
- a failed adoption match or an adoption that is not finalized because it is contested by another party;
- a diagnosis that negatively impacts pregnancy or fertility; or
- a stillbirth.[626]

---

[622] 820 ILL. COMP. STAT. 148/15.

[623] 820 ILL. COMP. STAT. 148/15.

[624] 820 ILL. COMP. STAT. 148/25.

[625] 820 ILL. COMP. STAT. 405/601.

[626] 820 ILL. COMP. STAT. 154/10, as amended by S.B. 3120 (Ill. 2022).

"Employee" and "employer" have the same meaning as under the federal Family and Medical Leave Act. Thus, employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year are subject to the law. Eligible employees are those with 12 months of service, who worked at least 1,250 hours during the 12-month period prior to the leave, and who work at a location where at least 50 employees are employed by the employer within 75 miles.[627]

The employee must provide at least 48 hours of advance notice of the need to take leave, unless doing so would be unreasonable and impracticable. The leave must be completed within 60 days after the date on which the employee receives notice of the child's death. The employer may require reasonable documentation of the need for leave, including a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency.[628]

Leave is unpaid. However, the employee may elect to substitute any accrued paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment, pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program for an equivalent period of bereavement leave.[629]

It is an unlawful employment practice for an employer to take adverse action against an employee for exercising or attempting to exercise the employee's rights under this law.[630]

Child Extended Bereavement Act. **Effective January 1, 2024**, Illinois expands the availability of bereavement leave to allow employees to take bereavement leave under additional circumstances. Employees who experience the loss of their child by suicide or homicide are entitled to take unpaid leave from work to grieve the loss of that child, which includes an employee's biological, adopted, foster, or stepchild, legal ward, or a child of a person standing in loco parentis. All full-time employees who have worked for their employer for at least two weeks are eligible for bereavement leave under the Child Extended Bereavement Act.[631]

All employers with at least 50 full-time employees in Illinois are covered. However, the length of the leave entitled differs based on whether the employer is considered a "large" or "small" employer. A "large" employer employs 250 or more full-time employees in Illinois, while a "small" employer employs at least 50 but fewer than 250 full-time employees in Illinois.[632] Eligible employees of large employers are entitled to use up to 12 weeks of unpaid leave following the loss of their child by suicide or homicide, while eligible employees of small employers are entitled to use up to six weeks of unpaid leave following the loss of their child.[633]

Employees may take this leave in a single continuous period or intermittently in increments of at least four hours. Further, this leave may be taken within one year after the employee notifies their employer

[627] 820 ILL. COMP. STAT. 154/5.

[628] 820 ILL. COMP. STAT. 154/10.

[629] 820 ILL. COMP. STAT. 154/15.

[630] 820 ILL. COMP. STAT. 154/20.

[631] 820 ILL. COMP. STAT. 156/5.

[632] 820 ILL. COMP. STAT. 156/5.

[633] 820 ILL. COMP. STAT. 156/10(a)-(b).

of the loss.[634] Employers may require that employees provide reasonable advance notice of the intention to take leave, unless such notice would be unreasonable or impracticable. An employer may require reasonable documentation to verify that the employee is using leave for a permissible reason, and acceptable documentation includes a death certificate, published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. An employer may require that the documentation include a cause of death.[635]

An employee who is entitled to take accrued paid or unpaid leave (including family, medical, sick, annual, personal, or similar leave) from employment, pursuant to federal, state, or local law, a collective bargaining agreement, or an employment benefits program or plan may elect to substitute any period of such leave for an equivalent period of this bereavement leave.[636]

Employees who take leave under the Child Extended Bereavement Act are entitled to be restored to the position they held when the leave commenced or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Further, employees taking this leave cannot lose any employment benefit accrued prior to the date on which leave commenced. However, such employees are not entitled to the accrual of any seniority or employment benefits during the period of leave.[637] It is an unlawful employment practice for an employer to take any adverse action against an employee for exercising or attempting to exercise rights under this law, for opposing practices the employee believes are in violation of this law, or for supporting the exercise of rights by another under this law.[638]

Volunteer Emergency Responders. An employer may not discharge an employee who is a volunteer emergency worker and is late or absent from work while responding to an emergency call. The leave may be unpaid. Volunteer emergency workers include volunteer fire fighters, emergency medical technicians, ambulance drivers and attendants, first responders, volunteers under the Illinois Emergency Management Agency Act, and auxiliary public safety officials. Employers may request a written statement certifying that the employee responded to an emergency. Employees must make a reasonable effort to notify their employer of an emergency call.[639]

An employer cannot discipline an employee who is a volunteer emergency worker if the employee, in the scope of acting as a volunteer emergency worker, responds to an emergency phone call or text message during work hours that requests the employee's volunteer emergency services. However, this does not apply to a person employed by a public or private vehicle service provider while in the course of performing services under the Emergency Medical Services Systems Act. The law does not diminish or supersede an employer's written workplace policy, a collective bargaining agreement, administrative guidelines, or other applicable written rules the employer administers. In addition, existing written policies governing the use of cell phones in the workplace will prevail and control.[640]

---

[634] 820 ILL. COMP. STAT. 156/10(c).

[635] 820 ILL. COMP. STAT. 156/10(d)-(e).

[636] 820 ILL. COMP. STAT. 156/15.

[637] 820 ILL. COMP. STAT. 156/20.

[638] 820 ILL. COMP. STAT. 156/25.

[639] 50 ILL. COMP. STAT. 748/3 *et seq*.

[640] 50 ILL. COMP. STAT. 748/5.

Illinois also offers Civil Air Patrol Leave that follows the military leave laws and is therefore discussed in **3.9(k)(ii)**.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[641] Employers are also required to comply with all applicable occupational safety and health standards.[642] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see **LITTLER ON WORKPLACE SAFETY**.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[643] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Illinois does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act.

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

In Illinois, a person may not operate a motor vehicle on a roadway while using an electronic communication device. The law also prohibits drivers from using electronic communication devices to watch or stream videos, participate in any video conferencing application, including, but not limited to, Zoom, Microsoft Teams, or WebEx, or access any social media site, including, but not limited to, Facebook, Snapchat, Instagram, or Twitter. However, a driver may use an electronic communication device if it is in hands-free or voice-operated mode.[644] This provision applies to employees driving for

---

641 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

642 29 U.S.C. § 654(a)(2).

643 29 U.S.C. § 667(c)(2).

644 625 ILL. COMP. STAT. 5/6-526, 5/12-610.2.

work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, this restriction.

Electronic communication device means an electronic device, including but not limited to a hand-held wireless telephone, hand-held personal digital assistant, tablet, or a portable or mobile computer, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. In Illinois, the owner of private property may prohibit the carrying of concealed firearms on the property under their control.[645]

Firearms in Company Parking Lots. A concealed weapons license holder must be allowed to carry a concealed firearm on or about their person within a vehicle into a parking area and may store a firearm or ammunition concealed in a "case" within a locked vehicle or locked container out of plain view within the vehicle in the parking area.[646] A concealed weapons license holder may carry a concealed firearm in the immediate area surrounding their vehicle within a prohibited parking lot area only for the limited purpose of storing or retrieving a firearm within the vehicle's trunk, provided the licensee ensures the concealed firearm is unloaded prior to exiting the vehicle. *Case* includes a glove compartment or console that completely encloses the concealed firearm or ammunition, the trunk of the vehicle, or a firearm carrying box, shipping box, or other container.

Signage Requirements. Signs stating that the carrying of firearms is prohibited must be conspicuously posted at the entrance of a building, premises, or real property.[647] Signs are to be of a uniform design as established by the Illinois Department of State Police and must be four inches by six inches in size. The background is white, with no text, other than the reference to "430. ILL. COMP. STAT. 66/65," and no other marking within the one-inch area surrounding the graphic design. The graphic design is a handgun in black ink surrounded by a red circle with a diagonal slash across the handgun. The circle must be four inches in diameter. The black rectangle surrounding the image must measure four inches tall by six inches wide.

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

---

[645] 430 ILL. COMP. STAT. 66/65(a-10).

[646] 430 ILL. COMP. STAT. 66/65(b).

[647] 430 ILL. COMP. STAT. 66/65(d); ILL. ADMIN. CODE tit. 20, § 1231 Appendix A.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in places of employment and 15 feet from any window, ventilation intake, or entrance to a workplace.[648] "No smoking" signs or the international no smoking symbols must be posted at places of employment. Signs should include the phone number and website to report complaints. Also, ashtrays must be removed where smoking is prohibited. The prohibition of smoking includes "electronic cigarettes." *Electronic cigarettes* are defined as "any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product." The definition includes any such product, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor.

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under this law.

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Illinois law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

An employer may seek a workplace protection restraining order in Illinois to prohibit further violence or threats of violence by the respondent if:

- an employee has suffered unlawful violence and the respondent has made a credible threat of violence to be carried out at the employee's workplace; and
- an employee believes that the respondent has made a credible threat of violence to be carried out at the employee's workplace; or
- an unlawful violence of violence has been carried out at the workplace.[649]

In cases in which an employer is seeking a workplace protection restraining order involving an employee who is a victim of unlawful violence by a family or household member, or is an employee who is a victim of unlawful violence,[650] an employer must:

---

[648] 410 ILL. COMP. STAT. 82/1 *et seq*.

[649] 820 ILL. COMP. STAT. 275/15.

- prior to the filing of the petition, notify the employee in writing of the employer's intent to seek a workplace protection restraining order; and
- conduct a direct verbal consultation in conversation with the employee prior to seeking a workplace protection restraining order to determine whether any safety or well-being concerns exist in relation to the employer's pursuit of the order or whether seeking the order may interfere with the employee's own legal actions.

If, after verbal consultation in conversation with the employee, the employee does not give the employer full and voluntary consent to seek a workplace protection restraining order, the employer cannot file for that order until a four-day waiting period has elapsed following the date of the direct consultation. However, the four-day waiting period does not apply if there is an immediate threat of imminent physical harm to the work site and the petitioner is seeking an emergency order.[651]

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[652] (2) the Americans with Disabilities Act (ADA);[653] (3) the Age Discrimination in Employment Act (ADEA);[654] (4) the Equal Pay Act;[655] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[656] (6) the Civil Rights Acts of 1866 and 1871;[657] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[658]

---

650 *See* CRIMINAL CODE OF 2012, art. 11, or §§ 12-7.3, 12-7.4, and 12-7.5.

651 820 ILL. COMP. STAT. 275/21.

652 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

653 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

654 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

655 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

656 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

657 42 U.S.C. §§ 1981, 1983.

658 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[659] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[660]

3.11(a)(ii) *State FEP Protections*

The Illinois Constitution provides a basic framework for employment and discrimination law in Illinois: "All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer . . ."[661] This provision, unlike the U.S. Constitution, applies to private employers as well as public-sector employers. Although the Illinois Constitution provides a direct cause of action for discrimination, Illinois courts have held that where the Illinois Human Rights Act applies, it provides the exclusive remedy under state law. Therefore, the Human Rights Act is the primary FEP law in Illinois. Additionally, the statute's definition of unlawful discrimination includes discrimination based on actual or perceived characteristics listed below.[662]

Primary FEP Protections.

- race (including traits associated with race, including, but not limited to, hair texture, and protective hairstyles such as braids, locks, and twists);
- color;
- religion (the Illinois Human Rights Act was amended to include a provision that makes it unlawful for an employer to impose conditions that would require an employee to violate or forgo a sincerely held religious practice. Religious practices protected by the statute include "the wearing of any attire, clothing, or facial hair" as required by the individual's religion. Employers must make *bona fide* efforts to accommodate employee religious practices and observances and must do so unless they can demonstrate undue hardship to the business.);
- sex;
- national origin;
- ancestry;
- age (40+; 18-39 training and apprenticeship programs);
- order of protection status;
- marital status (married, single, separated, divorced, widowed);

---

[659] The EEOC's website is available at http://www.eeoc.gov/.

[660] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[661] ILL. CONST. art. I, § 17.

[662] 775 ILL. COMP. STAT. 5/1-103.

- physical or mental disability (includes "perception as"; The definition of disability includes "a determinable physical or mental characteristic, the history of such a characteristic, or the perception of such a characteristic, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic is unrelated to the person's ability to perform the duties of a particular job.);
- military status;
- sexual orientation (actual or perceived; includes gender identity);
- unfavorable discharge from military service;
- citizenship;
- pregnancy, childbirth, or related medical conditions (retaliation for requesting accommodation by an employee or applicant is also prohibited);
- language (an employer may not impose a restriction that has the effect of prohibiting a language—phrase *employee's native language* does not apply to slang, jargon, profanity, vulgarity—from being spoken by an employee in communications unrelated to employee's duties);
- arrest or criminal history record;[663]
- work authorization status;[664]
- **effective January 1, 2025:** reproductive decision making;[665]
- **effective January 1, 2025:** family responsibilities (defined as actual or perceived provision of care to a family member).[666]
- The Illinois Human Rights Act generally applies to all employers located or operating in Illinois that employ 15 or more persons in the state during at least 20 weeks in a calendar year or within 20 weeks of the alleged violation., An employer includes any person employing one or more employees.[667] This requirement will be met if the total number of employees (whether or not they are the same employees) amounted to 15 in any 20 weeks (consecutive or nonconsecutive) in a single calendar year. Notably, however, claims of retaliation, sexual harassment, and disability discrimination require only *one* or more employees. The law also prohibits harassment, including sexual harassment, of nonemployees in the workplace.[668]

Illinois extends nondiscrimination protections to freelance workers under the Freelance Worker Protection Act. Employers are prohibited from engaging in any discriminatory, retaliatory or harassing behavior towards contracted freelance employees. Prohibited behavior includes threatening,

[663] 775 ILL. COMP. STAT. 5/1-102, 5/1-103, 5/2-102, 5/2-103 & 5/2-104. 775 ILL. COMP. STAT. 5/6-102 (violation of Military Leave of Absence Act is a civil rights violation); *see also* ILL. ADMIN. CODE tit. 56, §§ 2500.10 *et seq.*, 5210.10 *et seq.*, 5220.100 *et seq.* (unfavorable military discharge).

[664] 775 ILL. COMP. STAT. 5/2-101 – 5/2-102.

[665] 775 ILL. COMP. STAT. 5/2-101 – 5/2-102.

[666] 775 ILL. COMP. STAT. 5/2-101 – 5/2-102.

[667] 775 ILL. COMP. STAT. 5/2-101(B).

[668] 775 ILL. COMP. STAT. 5/2-101(B)(1)(b).

intimidating, harassing, deterring, denying work opportunities to, or otherwise penalizing freelance workers who exercise their rights under the Act.[669]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

Employees may invoke the remedial provisions of the Illinois Human Rights Act by filing a charge of discrimination with the Illinois Department of Human Rights. A charge may be brought by the Department itself, or by an "aggrieved party." An *aggrieved party* is "one who is alleged or proved to have been injured by a civil rights violation or believes he/she will be injured by a civil rights violation . . ."[670] A charge must be filed within 300 days of the alleged discriminatory practice. (**Effective January I, 2025**), this the charge must be filed within 2 years of the alleged discriminatory practice.[671] With regard to harassment claims, such a claim may be brought so long as *any part* of the activity giving rise to the hostile work environment occurred within the 180-day period and is "related to" the activity occurring outside the period.[672]

Once the charge is filed, the Department serves the employer and begins a full investigation. Initially, the Department may require the employer to file a response to the complainant's allegations within 60 days, or the employer may elect to file such a response. As a matter of practice, the Department will not grant extensions to the due date for filing a response. A respondent may, but is not required to, submit a position statement, which is confidential during the pendency of the charge in the Department. At the conclusion of its investigation, the Department essentially determines if there is "substantial evidence" of a violation. *Substantial evidence* is evidence that a "reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance."[673] If the Director determines there is no substantial evidence, the charge must be dismissed by the Director and the Director must give the complainant notice of the complainant's right to seek review of the dismissal before the Commission or commence a civil action in the appropriate circuit court.[674]

If the complainant chooses to have the Commission review the dismissal order, the complainant must file a request for review with the Commission within 90 days after receipt of the Director's notice. If the complainant chooses to file a request for review with the Commission, the complainant is barred from later commencing a civil action in a circuit court. If the complainant does choose to commence a civil action in a circuit court, the complainant must do so within 90 days after receipt of the Director's notice.[675]

If the Director determines that there is substantial evidence, the Director must notify the complainant and respondent of that determination. The Director must also notify the parties that the complainant has the right to either: (1) commence a civil action in the appropriate circuit court; or (2) request that

---

669 HB 1122 (not yet codified).

670 775 ILL. COMP. STAT. 5/1-103(B).

671 775 ILL. COMP. STAT. 5/7A-102.

672 *Jenkins v. Lustig*, 820 N.E.2d 1181 (Ill. App. Ct. 2004).

673 775 ILL. COMP. STAT. 5/7A-102(D).

674 775 ILL. COMP. STAT. 5/7A-102(D).

675 775 ILL. COMP. STAT. 5/7A-102(D).

the Department file a complaint with the Commission on the complainant's behalf. Any such complaint must be filed within 90 days after receipt of the Director's notice.[676]

If the complainant chooses to have the Department file a complaint with the Commission on the complainant's behalf, the complainant must, within 30 days after receipt of the Director's notice, request in writing that the Department file the complaint. If the complainant fails to timely request that the Department file the complaint, the complainant may only commence a civil action in the appropriate circuit court.[677]

When there is a finding of substantial evidence, the Department may designate a Department employee who is an attorney licensed to practice in Illinois to endeavor to eliminate the effect of the alleged civil rights violation and to prevent its repetition by means of conference and conciliation.[678]

If the Department does not issue its report determining whether there is substantial evidence within 365 days after the charge is filed (or any longer period agreed to in writing by all the parties), the complainant has 90 days to either file their own complaint with the Commission or commence a civil action in circuit court. However, a complainant who files a complaint with the Commission may not later commence a civil action in circuit court.[679]

The Illinois Human Rights Act authorizes "actual damages" for injury or loss suffered by the complainant, including noneconomic damages such as emotional distress and pain and suffering. In most cases, however, it is presumed that recovery for pecuniary losses fully compensates an aggrieved party. Unlike Title VII, the Human Rights Act does not limit economic damages and does not permit punitive damages. A prevailing complainant also may recover costs and reasonable attorneys' fees under the Act.[680] Civil penalties may be imposed also.[681]

3.11(a)(iv) *Additional Discrimination Protections*

Associations & Activities. An employer must not gather or keep a record of an employee's associations, political activities, publications, communications, or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information.

This prohibition does not apply to activities or associations with individuals or groups involved in the physical, sexual, or other exploitation or a minor, or activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or the duties of other employees or activities, regardless of when and where occurring, which constitute criminal conduct or may reasonably be expected to harm the employer's property, operations, or business, or could by the employee's action cause the employer financial liability. A record which is kept

[676] 775 ILL. COMP. STAT. 5/7A-102(D).

[677] 775 ILL. COMP. STAT. 5/7A-102(D).

[678] 775 ILL. COMP. STAT. 5/7A-102(E).

[679] 775 ILL. COMP. STAT. 5/7A-102(D).

[680] 775 ILL. COMP. STAT. 5/8A-104.

[681] 775 ILL. COMP. STAT. 5/10-104.

by the employer as permitted under this statute is considered to be part of the employee's personnel record.[682]

Captive Audience. Effective January 1, 2025, an employer may not discharge, discipline, threaten, or take adverse employment action against an employee:

- when the employee declines to attend or participate in an employer-sponsored meeting that communicates the employer's opinion on religious or political matters;
- when the employee declines to receive or listen to a communication of the employer's opinion on religious or political matters;
- as a way of inducing an employee to attend or participate in such meetings or receive such communication; or
- when the employee makes a good faith report of a violation of the law.[683]

Credit History. The Illinois Employee Credit Privacy Act (ECPA)[684] provides that an employer must not "[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report."[685] Nor can an employer "[i]nquire about an applicant's or employee's credit history" or "[o]rder or obtain an applicant's or employee's credit report from a consumer reporting agency."[686] There is an exception to these prohibitions in a few limited circumstances that allow the employer to establish that a satisfactory credit history is a *bona fide* occupational requirement. To further prevent discrimination based on credit history, the ECPA also provides a private right of action for discrimination[687] and contains an antiretaliation provision.[688] See **1.3(b)(ii)** for additional information on the Illinois ECPA.

Genetic Information. Under the Illinois Genetic Information Privacy Act (IGIPA),[689] information obtained from genetic testing is privileged and confidential and may be released only to the individual tested or with the individual's written consent. The IGIPA also prohibits employers, employment agencies, labor organizations, and licensing agencies from seeking or using genetic information: (1) as a condition of employment, preemployment application, labor organization membership, or licensure; (2) to affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure of any person; or (3) to limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee. The IGIPA further forbids retaliation against any person alleging a violation of the IGIPA or participating in any matter in a proceeding under the IGIPA.[690]

---

[682] 820 ILL. COMP. STAT. 40/9.

[683] S.B. 3649 (Ill. 2024).

[684] Employee Credit Privacy Act [ECPA], 820 ILL. COMP. STAT. 70/1 *et seq*.

[685] 820 ILL. COMP. STAT. 70/10(a).

[686] 820 ILL. COMP. STAT. 70/10(a).

[687] 820 ILL. COMP. STAT. 70/25.

[688] 820 ILL. COMP. STAT. 70/15.

[689] 410 ILL. COMP. STAT. 513.

[690] 410 ILL. COMP. STAT. 513/25.

Further, an employer may not penalize employees that do not disclose their genetic information or choose not to participate in a program that requires disclosure of their genetic information.[691]

Any person aggrieved by a violation of the IGIPA has a right of action in a state circuit court or as a supplemental claim in a federal district court against an offending party.[692] For each negligent violation, a prevailing party may recover liquidated damages of $2,500 or actual damages, whichever is greater, and for each intentional or reckless violation, liquidated damages of $15,000 or actual damages, whichever is greater. The prevailing party may also recover reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, in addition to such other relief, including an injunction, as the state or federal court may deem appropriate.[693]

Homeless Status. The Bill of Rights for the Homeless Act prohibits discrimination based on homelessness in Illinois. The Homeless Act provides that "[n]o person's rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless."[694] Further, a homeless individual has the right to not face discrimination while maintaining employment because the individual lacks a permanent mailing address or because the individual's permanent mailing address belongs to a shelter or social services provider. The Act provides a homeless individual the right to not have their homeless shelter or service-provider-related records and information provided to private entities without appropriate legal authority.[695]

Lawful Products. Under the Illinois Right to Privacy in the Workplace Act (the "Privacy Act"),[696] it is unlawful for an employer to refuse to hire, to discharge, or to otherwise disadvantage any individual with respect to compensation, terms, conditions, or privileges of employment, because the individual uses lawful products off the employer's premises during nonworking hours. *Lawful products* includes, but is not limited to, all tobacco products, all alcoholic beverages, all food products, all over-the-counter drugs, and any drugs lawfully prescribed by the employee's own physician. Any use or over-consumption of lawful products that directly impairs the employee's performance at the workplace is not protected under the Act. This law does not prohibit an employer from offering, imposing, or having in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based upon the employee's use of lawful products, provided:

- the differential premium rates reflect a differential cost to the employer, and
- the employer provides employees with a statement delineating the differential rates used by insurance carriers.[697]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in the jurisdictions listed in Table 12 are subject to local fair employment practices ordinances.

---

[691] 410 ILL. COMP. STAT. 513/25.

[692] 410 ILL. COMP. STAT. 513/40(a).

[693] 410 ILL. COMP. STAT. 513/40.

[694] 775 ILL. COMP. STAT. 45/10.

[695] 775 ILL. COMP. STAT. 45/10.

[696] 820 ILL. COMP. STAT. 55/1 *et seq*.

[697] 820 ILL. COMP. STAT. 55/5; ILL. ADMIN. CODE tit. 56, §§ 360.100 *et seq*.

Table 12. Local Fair Employment Practices Ordinances	
Locality	**Notes**
Aurora	Protected classifications include: race; color; religion; creed; national origin or ancestry; age (chronological age of at least 40 years old); gender; marital status; sexual orientation; citizenship status; military status and unfavorable discharge from military service; physical or mental disability; order of protection status; and sexual harassment. The antidiscrimination protections apply to any person within the City of Aurora, including but not limited to, owners, managers, supervisors, or others who serve a supervisory function, who hires or employs any employee who will partially or wholly perform services in the City of Aurora.[698] An aggrieved individual may file a written complaint with the Aurora Human Relations Commission if the alleged violation occurred within the City of Aurora, within 180 days from the date of the alleged occurrence of the alleged violation.[699]
Chicago	Any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that provides employment for one or more employees in the current or preceding calendar year, and any agent of such, must extend antidiscrimination protections on the basis of: race; color; sex (and sexual harassment); gender identity; age (chronological age of not less than 40 years); religion; disability; national origin; ancestry; sexual orientation; marital status; parental status; military status; credit history; criminal record or criminal history, worker or applicant's (or family member's) decisions regarding reproductive health care or gender-affirming care; and source of income.[700] A party alleging a violation of the ordinance may file a complaint with the Chicago Commission on Human Relations within 180 days of the alleged discriminatory conduct.[701]
Cook County	Employers with one or more employees, or seeking to employ one or employees, which have a principal place of business within Cook County or that do business in Cook County, are subject to the following antidiscrimination protections: race; color; sex (and sexual harassment); age; religion; disability; national origin; ancestry; sexual orientation; marital status; parental status; military discharge status; source of income; gender identity; housing status; criminal record or criminal history; and credit history.[702] An aggrieved individual may file a written complaint with

[698] AURORA, ILL., CODE OF ORDINANCES §§ 22-23, 22-24, and 22-25 (exemptions).

[699] AURORA, ILL., CODE OF ORDINANCES § 22-26.

[700] CHICAGO, ILL., MUN. CODE §§ 6-10-020, 6-10-030 (exceptions, including for use of unfavorable military status in certain circumstances, *bona fide* occupational qualifications, and veterans' preferences where required by law), 6-10-040, and 6-10-080 (religious organization exemption).

[701] CHICAGO, ILL., MUN. CODE §§ 2-120-510, 6-10-090.

[702] COOK CNTY., ILL., CODE OF ORDINANCES §§ 42-31, 42-35 (exceptions, including *bona fide* occupational qualifications; religious; veterans' preferences required by law; and unfavorable military discharge in certain circumstances).

Table 12. Local Fair Employment Practices Ordinances	
	the Cook County Commission on Human Rights within 180 days after the date that a violation of these provisions is alleged to have been committed.[703]
Elgin	Protected jurisdictions include: race; color; religion; sex; national origin; age (at least 40 years old); ancestry; order of protection status; familial status; marital status; physical or mental disability; military status; sexual orientation; and unfavorable discharge from military service. The antidiscrimination protections apply to employers that employ five or more persons within the city of Elgin during 20 or more calendar weeks within any calendar year.[704] Any person allegedly aggrieved in any manner by a violation may file a written complaint with the City of Elgin Commission on Human Relations within one 180 days after the alleged violation occurred.[705]
Joliet	Any person within the City of Joliet who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the City of Joliet is subject to the following antidiscrimination protections: race; color; creed; religion; ancestry; sex; national origin; age; and sensory, mental, or physical handicap.[706] Any person aggrieved by an alleged violation may file a complaint with the Joliet Community Relations Commission within 120 days after the alleged discriminatory practice.[707]
Peoria	Employers that employ at least one, but not more than 14 employees, within Peoria during 20 or more calendar weeks within the calendar year of or preceding the alleged violation, must extend antidiscrimination protections on the basis of: race; color; religion; national origin; ancestry; age (chronological age of at least 40 years old); sex (including sexual harassment); marital status; handicap; unfavorable discharge from military service; and sexual orientation. Note the definition of *employer* also includes: (1) any person employing one or more employees when a complainant alleges a civil rights violation due to unlawful discrimination based upon his physical or mental handicap unrelated to ability; and (2) a

[703] COOK CNTY., ILL., CODE OF ORDINANCES § 42-34.

[704] ELGIN, ILL., CITY CODE §§ 3.12.060, 3.12.070 (exceptions, including *bona fide* occupational qualifications).

[705] ELGIN, ILL., CITY CODE § 3.12.075.

[706] JOLIET, ILL., CODE OF ORDINANCES §§ 9.1/2-45 (any religious corporation, association, or society with respect to the hiring or employment of individuals of a particular religion, when religion will be a *bona fide* occupational qualification for employment, provided such selection is not based on race, color, sex, religion, national origin, age, or sensory, mental or physical handicap, is excluded from coverage by the ordinance), 9.1/2-46, 9.1/2-47 (religious organization exemption), and 9.1/2-48 (employers' nondiscriminatory selective rights unimpaired, includes *bona fide* occupational qualification exception).

[707] JOLIET, ILL., CODE OF ORDINANCES § 9.1/2-5.

Table 12. Local Fair Employment Practices Ordinances	
	joint apprenticeship or training committee without regard to the number of employees.[708] Any person aggrieved by an alleged violation may file a written charge with the City of Peoria Equal Opportunity Office within 180 days after the act of discrimination has occurred. In addition, the city equal opportunity office may, on its own initiative, file a charge against any employer whenever it has already made a determination that it is probable that discriminatory practices have been or are being engaged in and the original complainant is unable or unwilling to pursue the charge.[709]
Springfield	Protected jurisdictions include: race; color; religion; sex (including sexual harassment); national origin; ancestry; age (chronological age of at least 40 years old); marital status; sexual orientation; and, disability unrelated to ability. The antidiscrimination protections apply to employers that employ five or more persons within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. Employer also includes: (1) any person employing one or more employees when a complainant alleges civil rights violation due to sexual harassment unlawful discrimination based upon the person's disability unrelated to ability; and (2) a joint apprenticeship or training committee without regard to the number of employees.[710] Any individual who believes that they have been aggrieved by a violation of the provisions may file a charge with the Springfield Office of Community Relations.[711]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[712] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

---

[708] PEORIA, ILL., CODE OF ORDINANCES §§ 17-116 (certain religious corporations, associations, educational institutions, societies, or nonprofit nursing institutions are excluded from coverage by the ordinance with respect to the employment of individuals of a particular religion), 17-118, and 17-122 (exceptions, including for certain religious organizations and activities).

[709] PEORIA, ILL., CODE OF ORDINANCES §§ 17-32, 17-119.

[710] SPRINGFIELD, ILL., CODE OF ORDINANCES §§ 93.01 (certain religious corporations, associations, educational institutions, societies, or nonprofit nursing institutions are excluded from coverage by the ordinance with respect to the employment of individuals of a particular religion), 93.09 (exceptions, including *bona fide* occupational qualification).

[711] SPRINGFIELD, ILL., CODE OF ORDINANCES § 93.06.

[712] 29 U.S.C. § 206(d)(1).

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[713]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

The Illinois Equal Pay Act requires all employers to pay the same wages to members of both sexes who work in the same county of the state of Illinois and perform "the same or substantially similar work" on jobs that require "substantially similar skill, effort, and responsibility, and which are performed under similar working conditions."[714] The Act also prohibits an employer from discriminating between employees by paying wages to an African-American employee at a lower wage rate than that paid to non-African-American employees for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.[715]

The law permits a wage differential where the payment is made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on any other factor than sex or some other prohibited factor under the Illinois Human Rights Act. meaning a factor that:

- is not based on or derived from a differential in compensation based on sex or another protected characteristic;
- is job-related with respect to the position and consistent with a business necessity; and
- accounts for the differential.[716]

In 2023, the state amended the Equal Pay Act[717] to include pay transparency requirements. Beginning in 2025, an employer with 15 or more employees must include the pay scale and benefits for a position in any specific job posting. The inclusion of a hyperlink to a publicly viewable webpage that includes the pay scale and benefits satisfies the requirements for inclusion of the pay scale and benefits. *Pay scale and benefits* means the wage or salary, or the wage or salary range, and a general description of the benefits and other compensation, including but not limited to bonuses, stock options, or other incentives the employer reasonably expects in good faith to offer for the position, set by reference to any applicable pay scale, the previously determined range for the position, the actual range of others currently holding equivalent positions, or the budgeted amount for the position, as applicable.[718]

---

[713] 42 U.S.C. § 2000e-5.

[714] 820 ILL. COMP. STAT. 112/10(a).

[715] 820 ILL. COMP. STAT. 112/10.

[716] 820 ILL. COMP. STAT. 112/10(a).

[717] ILL. H.B. 3129 (2023).

[718] 820 ILL. COMP. STAT. 112/10(b-25).

Third-party job posting platforms also bear responsibility for the Act's pay transparency requirements. If an employer engages a third party to announce, post, publish, or otherwise make known a job posting, the employer must provide the pay scale and benefits, or a hyperlink to the pay scale and benefits, to the third party and the third party must include the pay scale and benefits, or the hyperlink, in the job posting. The third party is liable for failure to include the pay scale and benefits in the job posting, unless the third party can show that the employer did not provide the necessary information regarding pay scale and benefits.[719]

In addition to the job posting requirements for outside recruitment, an employer must also announce, post, or otherwise make known all internal opportunities for promotion to all current employees no later than 14 calendar days after the employer makes an external job posting for the position. An employer is not required to make a job posting. Posting a relevant and up-to-date general benefits description in an easily accessible, central, and public location on an employer's website and referring to this posting in the job posting will satisfy the pay scale and benefits posting requirement.

The pay scale and benefits disclosure requirement only applies to positions that:

- will be physically performed, at least in part, in Illinois; or
- will be physically performed outside of Illinois, but the employee reports to a supervisor, office, or other work site in Illinois.[720]

An employer or employment agency is not prohibited from asking an applicant about his or her wage or salary expectations for the position for which the applicant is applying.

An employer or employment agency must disclose to an applicant for employment the pay scale and benefits to be offered for the position prior to any offer or discussion of compensation and at the applicant's request, if a public or internal posting for the job, promotion, transfer, or other employment opportunity has not been made available to the applicant.[721]

An employer subject to the Illinois Equal Pay Act must create and maintain records that document the name, address, and occupation of each employee, the wages paid to each employee, the pay scale and benefits for each position, and the job posting for each position.[722]

As noted in **3.7(b)(v)**, the Act also prohibits employers from barring employees from disclosing their wages or inquiring about other employees' wages, and as discussed in **1.3(f)(i)**, employers are prohibited from inquiring into a job applicant's wage or salary history.

An employee alleging a violation of the Act may file an administrative complaint with the Illinois Department of Labor within one year of the alleged violation. Either the employee or the Illinois Department of Labor can bring court action against an employer. Employers found to be in violation of the law will be required to repay any underpayments to the employee, pay legal costs, and receive a civil penalty for each violation. Compensatory and punitive damages are also available for certain employer

[719] 820 ILL. COMP. STAT. 112/10(b-25).

[720] 820 ILL. COMP. STAT. 112/10(b-25).

[721] 820 ILL. COMP. STAT. 112/10(b-25).

[722] 820 ILL. COMP. STAT. 112/20.

conduct. Civil penalties are up to $5,000 for each violation and for each employee affected.[723] Officers of a corporation or agents of an employer that willfully and knowingly permit the employer to evade a final judgment or final award under the Illinois EPA are themselves deemed employers.[724]

Reporting Employee Compensation Data

Under the Illinois Equal Pay Act, employers with 100 or more employees in the state must obtain an equal pay registration certificate from the Illinois Department of Labor. To receive the certificate, employers must compile a list of employees broken down by race, ethnicity, and gender and report the total wages paid to each employee during the previous calendar year. Additionally, employers must include a compliance statement and "the county in which the employee works, the date the employee started working for the business, [and] any other information the Department deems necessary to determine if pay equity exists among employees."[725]

Businesses with multiple locations or facilities in the state submit a single application regarding all operations in Illinois. Employers must obtain an equal pay registration certificate by March 24, 2024. New businesses must obtain a certificate within three years of commencing business in Illinois. Employers must recertify every two years.[726]

Within 45 calendar days of receipt of application, the Illinois Department of Labor will issue an equal pay registration certificate. The certificate may be suspended or revoked if the business fails to make a good-faith effort to comply with state and federal equal pay laws, fails to make a good-faith effort to comply with the Equal Pay Act's requirements, or has multiple violations of equal pay laws or requirements. Prior to suspension or revocation of an employer's certificate, the Illinois Department of Labor must first seek conciliation with the employer regarding the wages and benefits due to the employees.[727]

Employers that violate the law may be subject to a fine of up to $10,000 per employee affected.[728]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

---

[723] 820 ILL. COMP. STAT. 112/30.

[724] 820 ILL. COMP. STAT. 112/27.

[725] 820 ILL. COMP. STAT. 112/11(c).

[726] 820 ILL. COMP. STAT. 112/11(b).

[727] 820 ILL. COMP. STAT. 112/11(d), (e).

[728] 820 ILL. COMP. STAT. 112/30(d). For more information about the reporting requirements, see Barry A. Hartstein, et al., *Illinois Equal Pay Certification: A Practical Guide for Employer Compliance*, LITTLER INSIGHT (Feb. 16, 2023), *available at* https://www.littler.com/publication-press/publication/illinois-equal-pay-certification-practical-guide-employer-compliance.

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[729]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[730]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[731] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[732] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that

[729] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[730] 29 C.F.R. § 1636.3.

[731] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[732] 29 C.F.R. § 1636.3.

rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[733]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[734]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[735]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

[733] 29 C.F.R. § 1636.4.

[734] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[735] 29 C.F.R. § 1636.3.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Illinois employers with one or more employees must provide reasonable accommodations to a pregnant job applicant or employee upon her request for such accommodations. The employer must engage in a timely, good faith, and meaningful exchange with the employee to determine effective reasonable accommodations. *Reasonable accommodations* means reasonable modifications or adjustments to the job application process or work environment. Accommodations include more frequent breaks; private nonbathroom space for expressing breast milk; seating; assistance with manual labor; light duty; temporary transfer to a less strenuous or hazardous position; the provision of an accessible worksite; acquisition or modification of equipment; job restructuring; a modified work schedule; reassignment to a vacant position; time off to recover from conditions related to childbirth; and leave necessitated by pregnancy, childbirth, or medical or common conditions resulting from pregnancy or childbirth.

For additional information on the requirement to provide reasonable accommodation with respect to pregnancy leave or time off, see **3.9(c)(ii)**.

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[736] Multiple decisions of the U.S. Supreme Court[737] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[738] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

The Illinois Human Rights Act mandates sexual harassment prevention training for all employees of private employers. All private employers must adopt and use the model sexual harassment prevention training program created by the Illinois Department of Human Rights or establish their own sexual harassment prevention training program that equals or exceeds the minimum standards established for the Department's program, which require that the training program include:

- an explanation of sexual harassment consistent with the Human Rights Act;
- examples of conduct that constitutes unlawful sexual harassment;

---

[736] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[737] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[738] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

- a summary of relevant federal and state statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and
- a summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment.[739]

The sexual harassment prevention training must be provided at least once a year to all employees. For the purposes of satisfying the training requirements, the Department's model sexual harassment prevention training program may be used to supplement any existing program an employer is utilizing or develops.[740] Failure to provide the required training may result in the imposition of civil penalties, if the employer does not correct the deficiency within 30 days of receiving an order to show case from the Department.[741]

Additional training requirements apply to restaurant and bar employers.[742] Such employers must also implement and distribute a written harassment prevention policy.[743] In addition, hotel and casino employers must also implement a distribute a written harassment prevention policy, and are required to provide panic buttons to isolated workers.[744]

Illinois also has a law in place mandating certain harassment prevention requirements for government contractors. Every public contractor and every eligible bidder must have written sexual harassment policies that include, at a minimum, the following information: (1) the illegality of sexual harassment; (2) the definition of sexual harassment under state law; (3) a description of sexual harassment, utilizing examples; (4) the vendor's internal complaint process including penalties; (5) the legal recourse, investigative, and complaint process available through the Illinois Department of Human Rights and the Illinois Human Rights Commission; (6) directions on how to contact the Department and Commission; and (7) protection against retaliation. A copy of the policies must be provided to the Department upon request.[745]

3.11(d)(iii) *Local Guidelines on Antiharassment Training*

The City of Chicago has also implemented harassment training requirements for private sector employers. Employers of one or more employees must require all employees to participate in a minimum of one hour of sexual harassment prevention training annually, as well as one hour of bystander training annually. Any employee who supervises or manages other employees must participate in a minimum of two hours of sexual harassment prevention training annually. An employer may use the model sexual harassment prevention training program prepared by the state of Illinois. An employer may also choose to establish its own training program that equals or exceeds the state program's minimum standards.[746]

---

[739] 775 ILL. COMP. STAT. 5/2-109.

[740] 775 ILL. COMP. STAT. 5/2-109.

[741] 775 ILL. COMP. STAT. 5/8-109.1.

[742] 775 ILL. COMP. STAT. 5/2-110.

[743] 775 ILL. COMP. STAT. 5/2-110.

[744] 820 ILL. COMP. STAT. 325/5-10.

[745] 775 ILL. COMP. STAT. 5/2-105.

[746] CHICAGO, ILL. MUN. CODE § 6-10-040.

In addition to the annual training, Chicago employers must maintain a written policy document that prohibits sexual harassment. The policy must include the following information at a minimum:

- a statement that sexual harassment is illegal in the city of Chicago;
- the definition of sexual harassment as set forth in the Chicago Human Rights Ordinance;
- a requirement that all employees must participate in annual sexual harassment prevention training;
- examples of prohibited conduct that constitutes sexual harassment;
- details on how to report and redress an incident of harassment, including:
  - how an individual can report an allegation of sexual harassment, including, as appropriate, instructions on how to make a confidential report to a manager, employer's corporate headquarters, or human resources department, or other internal reporting mechanism; and
  - legal services, including governmental services, available to employees who may be victims of sexual harassment; and
- a statement that retaliation for reporting sexual harassment is illegal.

The employer must provide the written policy to each new employee within the first calendar week of that employee's employment. The policy must be provided in an employee's primary language.[747]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

The Illinois Whistleblower Act[748] provides a civil cause of action for employees who are subject to discipline, discrimination, or retaliation for whistleblowing (*i.e.*, going to a government or law enforcement agency with information that the employee had "reasonable cause" (**effective January 1, 2025**, "good faith belief") to believe was a violation of state or federal law).[749] **Effective January 1, 2025**, the Act also prohibits retaliatory actions against an employee who threatens to disclose the employer's activity, policy, or practice. The Act prohibits employers from adopting any rule, regulation, or policy

[747] CHICAGO, ILL. MUN. CODE § 6-10-040.

[748] 740 ILL. COMP. STAT. 174/1 *et seq.*

[749] 740 ILL. COMP. STAT. 174/10, 15, as amended by H.B. 5561 (Ill. 2024).

preventing an employee from whistleblowing. The Act also prohibits employers from punishing employees who refuse to participate in activities that would result in a violation of a state or federal law, rule, or regulation.[750]

Prior to the Act's adoption, Illinois courts had recognized a civil cause of action for damages when an employee was discharged for reporting criminal conduct. The Illinois Whistleblower Act is much broader, however, covering all violations of state or federal law, rather than just criminal conduct, and all disciplinary actions, rather than just discharges.[751] Though internal complaints do not generally suffice under the Act, depending on the particular circumstances, such conduct has been construed by one court as an employee's only avenue of "refusing to participate" in illegal activity so as to potentially bring any adverse action under the Act's purview.[752]

An employee who is disciplined for whistleblowing activities protected by the Act may bring a civil lawsuit in state court against the employer for permanent or preliminary injunctive relief, reinstatement, back pay, liquidated damages, compensatory damages, litigation costs, expert witness fees, and reasonable attorneys' fees, and the court can award a civil penalty of $10,000 payable to the employee.[753] However, the employee may not seek punitive or exemplary damages.[754] In addition, an employer's violation of the Act can be a Class A misdemeanor.[755]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[756] and the Railway Labor Act (RLA)[757] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

---

[750] 740 ILL. COMP. STAT. 174/20, as amended by H.B. 5561 (Ill. 2024).

[751] 740 ILL. COMP. STAT. 174/5.

[752] *See Balensiefen v. Princeton Nat'l Bancorp, Inc.*, 2011 WL 2516699 (C.D. Ill. June 23, 2011).

[753] 740 ILL. COMP. STAT. 174/30.

[754] *Averett v. Chicago Patrolmen's Fed. Credit Union*, 2007 WL 952034, at *4 (N.D. Ill. Mar. 27, 2007) (finding that because the statute only provided recovery "to make the employee whole," the legislature intended to exclude punitive damages).

[755] 740 ILL. COMP. STAT. 174/25.

[756] 29 U.S.C. §§ 151 to 169.

[757] 45 U.S.C. §§ 151 *et seq*.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Right to Collective Bargaining Constitutional Amendment. An amendment to the Illinois Constitution protects collective bargaining by prohibiting the state from passing any law that restricts or interferes with the ability of workers to join together and collectively bargain over wages, hours, and terms and conditions of employment.[758] This includes any law that prohibits or restricts the right of private sector employers and employees, through a representative of their own choosing, to enter into and administer union security agreements.[759]

Prohibition Against Yellow-Dog Contracts. Illinois statutorily prohibits employers and employees from entering into contracts in which an employee agrees either to not become or remain a member of any labor organization or to withdraw from employment, should the employee become or remain a member of any labor organization.[760]

Illinois Labor Dispute Act. The Illinois Labor Dispute Act permits individuals who are engaged in picketing to use public rights-of-way to apprise the public of the existence of a labor dispute, to erect temporary signs discussing the labor dispute, to park vehicles on public rights-of-way, and to erect tents and other temporary shelters for the health, welfare, personal safety, and well-being of picketers.[761]

The Act also provides that picketers must maintain a reasonable walkway for use by pedestrians. Picketers are prohibited from blocking access to fire hydrants; from using signage, tents, and shelters that obscure traffic signals or interfere with drivers' views of traffic; from parking more than 10 vehicles on the public right-of-way; and from interfering with the accessibility of water mains, sewers, and other utilities used for construction, maintenance, and emergency repair work.[762]

Illinois Strikebreakers' Act & Day and Temporary Labor Services Act. Under the Illinois Strikebreakers' Act, employers are prevented from contracting with day and temporary labor service firms in an effort to replace workers during a lockout or strike.[763] However, the Seventh Circuit Court of Appeals held that the NLRA preempts the Act.[764]

Similar to the Strikebreakers' Act, under the Day and Temporary Labor Services Act, no day or temporary labor service agency may send any day or temporary labor to replace employees who cease work

[758] ILL. CONST. art. I, § 25.

[759] ILL. CONST. art. I, § 25.

[760] 820 ILL. COMP. STAT. 15/1.

[761] 820 ILL. COMP. STAT. 5/1.4(a).

[762] 820 ILL. COMP. STAT. 5/1.4(a)(3), 5/1.4(d).

[763] 820 ILL. COMP. STAT. 30/0.01 *et seq.*

[764] *520 S. Mich. Ave. Assocs. Ltd. v. Devine*, 433 F.3d 961 (7th Cir. 2006).

because of a strike, lockout, or other labor problem. Additionally, Day and Temporary laborers must be provided with notice if they are sent to a worksite where a labor dispute exists.[765]

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[766] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[767] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

The Illinois Worker Adjustment and Retraining Notification (Ill-WARN) Act requires Illinois employers with 75 or more full-time employees to give workers and state and local government officials 60 days' advance notice of an employment loss, mass layoff, or plant closing.[768] *Employment loss* means an employment termination, other than a discharge for cause, voluntary departure, or retirement; a layoff exceeding six months; or a reduction in hours of work of more than 50% during each month of any six-month period. *Mass layoff* means a reduction in force that is not the result of a plant closing and results in an employment loss at the single site of employment during any 30-day period for: (1) at least 33% of the employees (excluding any "part-time employees"[769]) and at least 25 employees (excluding any part-time employees); or (2) at least 250 employees (excluding any part-time employees). *Plant closing* means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.[770]

The notice must include the elements required by the federal WARN Act. An employer that fails to give the required notice is liable to each employee entitled to such notice for: back pay and the value of the

---

[765] 820 ILL. COMP. STAT. 175/1 *et seq*.

[766] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[767] 20 C.F.R. §§ 639.4, 639.6.

[768] 820 ILL. COMP. STAT. 65/1 *et seq.*

[769] *Part-time employee* means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than six of the 12 months preceding the date on which notice is required. 820 ILL. COMP. STAT. 65/5(e).

[770] 820 ILL. COMP. STAT. 65/5.

cost of any benefits to which the employee would have been entitled had the employment not been lost (including the cost of medical expenses that would have been covered under an employee benefit plan). Liability is calculated for the period of the violation, up to a maximum of 60 days, or half the number of days that the employee was employed by the employer, whichever period is smaller.[771]

An employer that receives state or local economic development incentives for doing business in the state, and that is obligated by federal WARN to give WARN notice, must provide notice to the Governor of Illinois, the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Mayor of each municipality where the employer has locations in Illinois.[772]

There are also civil penalties of up to $500 each day that the employer fails to give notice. No penalty will be assessed if the employer pays to all applicable employees the amount for which the employer is liable within three weeks from the date it orders the mass layoff, relocation, or employment loss.[773]

4.1(c) *State Mass Layoff Notification Requirements*

Illinois does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 13 lists the documents that must be provided when employment ends under federal law.

Table 13. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[774] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement

[771] 820 ILL. COMP. STAT. 65/35.

[772] 820 ILL. COMP. STAT. 65/10; 30 Ill. COMP. STAT. 760/15.

[773] 820 ILL. COMP. STAT. 65/40.

[774] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 13. Federal Documents to Provide at End of Employment	
	plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[775]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 14 lists the documents that must be provided when employment ends under state law.

Table 14. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	Within 10 days after the employee's or member's termination or reduction in hours below the minimum required by the group plan, written notice of continuation must be presented to the employee or member by the employer. If the employee or member is unavailable, written notice must be or mailed by the employer to the last known address of the employee or member within 10 days after the employee's or member's termination or reduction in hours below the minimum required by the group plan. The employer must also send a copy of the notice to the insurer.[776]
Unemployment Notice	**Generally.** Employers must provide individuals separated from employment for an expected duration of seven days or more (which would include employees who are fired, or who quit or resign) the form, *What Every Worker Should Know About Unemployment Insurance*. The form must be provided at the time of separation or, if delivery is impracticable, it must be mailed within five days after the date of the separation to the worker's last known address. The form is available online in English, Spanish, and Polish.[777] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again inform the individual, immediately, as to the jurisdiction under whose unemployment compensation law services have been covered. If, at the time of separation, the individual is not located in the elected jurisdiction, an employer must notify the employee as to the procedure for filing interstate benefit claims. In addition to the above notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[778]

[775] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[776] 215 ILL. COMP. STAT. 5/367e(4).

[777] ILL. ADMIN. CODE tit. 56, § 2720.100; Illinois Dep't of Emp't Sec., *Forms and Publications for Individuals*, *available at* https://ides.illinois.gov/resources/forms-publications/claimant-forms-publications.html.

[778] ILL. ADMIN. CODE tit. 56, § 2714.315.

Table 14. State Documents to Provide at End of Employment	
Wages, Hours & Payroll: Payroll Card	Special notice is required for employers that use payroll cards to pay wages. Within 30 days of the employment relationship ending, an employer must notify the separated employee that the payroll account's terms and conditions may change, if the employee chooses to continue a relationship with the payroll card issuer.[779]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Illinois has enacted statutory protections for employers that provide references regarding current or former employees. Pursuant to this statute, when an employer or an authorized employee or agent of the employer, upon inquiry by a prospective employer, provides truthful written or verbal information that it believes in good faith is truthful, about a current or former employee's job performance, the employer is presumed to be acting in good faith and is immune from civil liability for the disclosure of such information.[780]

[779] 820 ILL. COMP. STAT. 115/14.5.

[780] 745 ILL. COMP. STAT. 46/10.