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# Illinois Proposes Rules on AI in Employment State Law

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On May 15, the Illinois Department of Human Rights (IDHR) issued a Notice of Proposed Amendments (the Proposed Rules) concerning the Illinois law governing artificial intelligence in employment, Public Act 103-804 (the Act), beginning the formal public comment process.

The Act, which took effect in January, defines AI as "a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments." 775 Ill. Comp. Stat. Ann. § 5/2-101(N). The Act makes it a civil rights violation for employers to use AI in "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment" (which the Proposed Rules refer to as "covered employment decisions") if the use of AI "has the effect of subjecting employees to discrimination on the basis of protected classes" or if the AI uses ZIP codes as a proxy for discrimination. *Id.* § 5/2-102(L)(1). The Act also makes it a civil rights violation for employers to use AI in covered employment decisions without notifying affected employees of such use, even if the use of AI does not have a discriminatory effect. *Id.* § 5/2-102(L)(2).

Pursuant to the Act, the IDHR is responsible for adopting rules that govern "the circumstances and conditions that require notice, the time period for providing notice, and the means for providing notice." *Id.* § 5/2-102. The Proposed Rules do exactly that.

**Circumstances and conditions**. Pursuant to the Proposed Rules, notice to employees that the employer is using AI is generally required whenever an employer uses AI "to influence or facilitate a covered employment decision." Ill. Admin. Code tit. 56, § 2520.910(b)(1). The Proposed Rules provide examples of when notice is required, including for predictive assessments, targeted recruitment, screening resumes, video analysis, data analysis, measuring productivity or assigning work. *Id.* § 2520.910(b)(3). Notice is generally not required when an employer uses AI for "other business operations purposes," even employment-related business operations purposes, so long as the AI is not used to influence or facilitate a covered employment decision, such as when it is "merely incidental" to such a decision. *Id.* § 2520.910(b)(4)(A). For example, an employer could use AI to design a job posting or for promotional purposes without providing notice, so long as the AI is not involved in deciding whom to recruit or hire for the position. *Id.* § 2520.910(b)(4)(A). The Proposed Rules further clarify that notice is not required where an employer uses automated computer systems that do not qualify as AI within the meaning of the Act, nor where an employer only uses the non-AI functionality of a computer system with distinguishable AI features or functionality. *Id.* §§ 2520.910(b)(4)(B)–(C).

Previously, CIPA claims like those outlined above would revolve around pixel tracking. Compared to AI, pixel tracking data has limited utility, especially compared to the expansive possible applications of AI data in training or other contexts. In light of this new CIPA application by courts in an AI context, the growing use of AI in all industries and all data being possibly useful for AI training or other AI purposes, the crucial considerations become what data is going to whom and for what purpose. Once that is determined, informing and obtaining the consent of all parties is recommended.

**Timing**. Employers using AI to influence or facilitate covered employment decisions must notify current employees and their bargaining representatives on an annual basis and within 30 days of "adoption of a new or substantially updated product, system, or process using AI for covered employment decisions." *Id.* § 2520.910(c)(1). Such employers must notify prospective employees as part of the job notice or posting. *Id.* § 2520.910(c)(2).

**Means**. Employers using AI in covered employment decisions must notify current and prospective employees by each of the following means, as applicable: (1) publishing the notice in the employee handbook, manual or policy; (2) physically posting the notice in the workplace; (3) digitally posting the notice on the company intranet or external website; and (4) including the notice in a job notice or posting. *Id.* § 2520.910(d).

**Content**. The Proposed Rules state that the notice must include information about the AI used; how the AI is used in covered employment decisions and for what purpose; "the categories of personal information or employee data collected or processed by the system"; the types of job positions the AI is used for; a point of contact to whom questions about the use of AI can be directed; and the right to, and manner by which employees can, request reasonable accommodations. *Id.* § 2520.910(e). The notice must be in plain language and a readable format, available in the languages commonly spoken by the employer's workforce and reasonably accessible to employees with disabilities. *Id.* § 2520.910(f).

The public will have 45 days to review and submit comments on the Proposed Rules. A public hearing is scheduled for June 10, and written comments are due by June 29. Thereafter, the IDHR will review all written comments and consider whether to adopt, amend or reject the Proposed Rules.

Paul Hastings is closely monitoring developments. If you have any questions, please reach out to any member of our team.

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