

2026 ILLINOIS LAWS: A LEGAL UPDATE FOR RESTAURANT OWNERS & OPERATORS

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AGENDA

- Year in Review
- DEI & Federal Enforcement Initiatives
- Remote Work Update
- Meal Break Retaliation
- Wage Payment Penalties
- ISERRA Amendments
- Funeral Honor Leave
- Public Labor Relations Act
- Police Background Checks
- Day & Temporary Laborers
- Human Rights Act Amendments (AI & Penalties)
- Organ Donor Leave
- NICU Leave
- Lactation Break Pay
- Workplace Transparency Act Amendments
- Right to Privacy in the Workplace
- IL OSHA

THIS YEAR IN REVIEW

- FLSA (overtime exemptions not changed)
- Minimum Wage: \$15/hour
 - ❖ \$9/hour with tip credit (40%)
 - ❖ \$13/hour up to 17 years old
- IEPA (Job posting pay transparency)
- Wage Payment & Collection Act (pay stubs)
- Personnel Records Review Act
- Right to Privacy in the Workplace Amended (E-Verify rules)
- IHRA (family responsibilities, reproductive health, etc.)
- Whistleblower Act (good faith)
- Child Labor Law of 2024
- Captive Audience Ban
- Digital Voice & Likeness Prot. Act
- Right of Publicity Act (AI)

DIVERSITY, EQUITY, & INCLUSION

➤ Executive Orders on DEI:

- ❖ “blatant race-based and sex-based discrimination, including quotas”;
- ❖ “purposefully hid[ing] the nature of such discrimination through deceiving language”;
- ❖ giving preferential treatment based on “identity” instead of merit;
- ❖ “prioritizing how people were born instead of what they [are] capable of doing”;
- ❖ stigmatizing, demeaning, or excluding individuals from employment-related opportunities because of their race or sex

➤ EEOC: DEI programs may be unlawful employment decisions if they are based in whole or in part on race, sex, or other protected traits.

DIVERSITY, EQUITY, & INCLUSION

- Merit-based employment decisions
- No hiring or promotion quotas or preferential hiring or promotion
- No preferential internships
- Avoid recruiting only from certain schools
- No performance goals tied to sex, race
- No training negatively targeting protected groups
- No preferences for internal networking, training, leadership develop. programs, mentorship, client contact, assignments
- No preferential treatment based on client preferences
- Accommodate religious objections
- Open affinity groups to all
- Clarify policy language & statements

REMOTE WORK UPDATES

➤ *Smithson v. Austin (7th Cir)*

- ❖ Remote work was not reasonable for a teacher.
- ❖ Performing modified job duties remotely during pandemic does not mean employee can perform job duties remotely going forward.
- ❖ But cautioned that in-person job requirements are to be assessed case-by-case.

➤ *Freeman v. City of Cheyenne (10th Cir.)*

- ❖ Remote work was not reasonable for a human resources director.
- ❖ Key factor: Needed onsite 40 hours per week to address HR matters.

REMOTE WORK UPDATES

- *Galette v. Avenue 365 Lending Services (3d Cir.)*
 - ❖ Remote work was not reasonable for a title insurance specialist.
 - ❖ Key factor: job duties involved printing, scanning & disbursing checks, handling confidential files, & overnighting checks.
- *Laguerre v. National Grid USA (2nd Cir.)*
 - ❖ Remote work was reasonable for a telephone customer service representative.
 - ❖ Key factor: Incoming phone calls could be routed to home.

REMOTE WORK UPDATES

➤ *Mobley v. St. Luke's Health (8th Cir.)*

- ❖ Intermittent remote work was reasonable for patient access supervisor.
- ❖ When employee had worked remotely, he was able to perform his job duties and received positive performance evaluations.

MEAL BREAK RETALIATION (3/21/25)

- Amends the Illinois One Day Rest in Seven Act.
- Private employers are prohibited from retaliating against employees who assert their rights under the ODRISA.
 - ❖ At least 24 hours of rest within every consecutive 7-day period.
 - ❖ At least 20-minute meal break for a 7.5 hour or more continuous shift, starting no later than 5 hours after shift starts.
 - ❖ Another 20-minute break for every additional 4.5 hours worked.

EQUAL PAY CERTIFICATES (6/30/25)

- Amendment to Illinois Equal Pay Act:
- Applies to private employers with 100 or more employees in the state of Illinois – not just those filing EEO-1 reports.
- Average compensation comparisons between male and female and minority and non-minority now based on “job category” as defined in Illinois Equal Pay Act and not the EEO-1 report.
- Executive/senior-level officials and managers; first/mid-level officials and managers; professionals; technicians; sales workers; administrative support workers; craft workers; operatives; laborers and helpers; and service workers.

WAGE PAYMENT VIOLATION PENALTIES (8/1/25)

- Can still recover underpayment plus 5% per month.
- Increased penalties when IDOL determines wages due:
 - ❖ \$500 penalty if wages up to \$3,000
 - ❖ \$750 if wages = \$3,000 to \$10,000
 - ❖ \$1,250 if wages = \$10,000+
- If not paid in 15 days, 20% penalty plus 1% interest/day accrues
- IDOL may act directly or seek review w/o a circuit court petition

MERCADO V. S&C ELECTRIC (ILSC)

- Plaintiffs alleged that S&C underpaid plaintiffs for overtime hours worked because it incorrectly excluded certain performance-based bonuses from their regular rate of pay.
- S&C later made adjusted payments to the plaintiffs that, according to S&C, mooted the plaintiffs' claim for statutory damages under the IMWL.
- Illinois Supreme Court holds that performance bonuses must be included as part of regular rate of pay & employers do not avoid liability and damages by subsequently correcting underpayment of wages

ILLINOIS DAY & TEMP. LABOR SERVICES ACT

(6/5/2025)

- Recent amendments to the IDTLSA, which went into effect on August 9, 2024, include:
 - Wage parity
 - Registration
 - Notice requirements
 - Safety requirements
 - Transportation restrictions
 - Joint wage liability

ILLINOIS DAY & TEMP. LABOR SERVICES ACT

(6/5/2025)

- In June 2025, IDOL announced proposed regulations, all of which have become law except the definition of “clerical” below:
- “Clerical” work is outside the scope of the Act’s coverage and mandates.
- “Clerical” is defined as: “administrative work in an office or office-like setting and may include a combination of answering telephones, bookkeeping, typing or word processing, office machine operations, processing e-mail and other correspondence, and filing.”
- The rules would broadly define “Interested Party” as an “organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements” and permit the filing of a civil action only after the Interested Party satisfies administrative complaint requirements.
- The creation of up to a \$18,000 penalty for first time violations and \$7,500 penalty for subsequent violations, applicable per day, per worker.

ILLINOIS DAY & TEMP. LABOR SERVICES ACT

(6/5/2025)

- Tripled registration fees (now \$3,000).
- Two methods to calculate “Equal Pay for Equal Work”:
 - ❖ Pay based on the third party client’s compensation for employees.
 - ❖ Pay based on Bureau of Labor Statistics data.
- Agencies must give labor dispute notices in a worker’s primary language, with right to refuse assignments if there has been a strike, lockout, or other work stoppage due to a labor dispute.
- Third party clients need to provide safety training and keep records.
- Provides further guidance on the grounds for suspending, revoking, or denying registration.

PAID LEAVE MILITARY FUNERALS (8/1/25)

- **Current:** May use unpaid leave when family member called to 30+ days' service:
 - ❖ 15 days for employers with 15-50 employees
 - ❖ 30 days of employers with 51 or more employees
 - ❖ Employee must be employed for 12 months and work 1,250 hours in prior 12 months
- **New:** 8 hours' paid leave/month for honor guard detail for a veteran's funeral.
 - ❖ Employers with 51 or more employees
 - ❖ Capped at forty (40) hours per year
- **Practical tip:** Update Employee Handbook

STALKING PROTECTIVE ORDERS (8/1/25)

- Amends Illinois Stalking No Contact Order Act
- “Stalking” - harassment causing emotional distress without reasonable purpose
- Definition excludes “labor compliance activity” and picketing
- Conduct **presumed** to cause “emotional distress”:
 - ❖ Creating a disturbance at someone’s school or workplace
 - ❖ Repeatedly contacting their workplace, school, or home
 - ❖ Surveilling someone at work, school, or home or following someone in public
- **Practical tip:** Easier to obtain individual protective orders

ISERRA AMENDMENTS (8/15/25)

➤ Military Technicians:

- ❖ “Active Service” excludes absences to work as a military tech (AKA federal dual-status tech)
- ❖ Employees may use paid leave for absences that’d be covered by working as a military tech

➤ Concurrent Comp:

- ❖ **Current:** 30 days’ full pay for annual comp per year for annual training
- ❖ **New:** Applies to orders in lieu of annual training
- ❖ 30-day cap on concurrent comp

ISERRA AMENDMENTS (8/15/25)

- **Differential Compensation**
 - ❖ **Current:** Employees get differential compensation during active service
 - ❖ **New:**
 - ❖ Capped at 3 consecutive years.
 - ❖ Not required for travel, rest, or unpaid military service
 - ❖ Workdays are the actual shifts; shifts longer than 24 hours are 2 workdays.
- **Vacation, annual, or similar paid leave** may be used before active service begins

WORKPLACE HEALTH AND SAFETY (8/15/25)

- Illinois OSHA Amended
- New Illinois OSHA laws for private sector
 - ❖ Prevents state agencies from weakening worker protections below federal standards that existed on April 28, 2025.
 - ❖ Requires the Illinois Department of Labor to adopt state standards that are at least as strong as federal laws in areas such as wage and hour and occupational safety.
 - ❖ Practical impact: If a federal standard is weakened relating to occupational health or safety standards, the state must step in to maintain the previous level of protection.

PUBLIC UNIONS (8/15/25)

- Illinois Public Labor Relations Act Amended
- Prior to August 15, 2025, interest arbitration was available for first contracts for public employers with bargaining units of 35 or fewer
- New/Current: interest arbitration is now available for all first contracts (regardless of number of bargaining unit members)
- Practical impact: Although public employers do not have risk of a strike for first contracts, if there are unresolved issues, an arbitrator will decide; impacting public employer bargaining strategy

RIGHT TO PRIVACY IN THE WORKPLACE (10/30/2025)

- A number of amendments have been implemented to the Right to Privacy in the Workplace Act.
- Repeals certain provisions concerning E-Verify.
- Amends the following:
 - ❖ Employers cannot take adverse action against an employee who has discrepancies between SSN and identifying documents, based solely on the receipt of the discrepancy notice from an entity NOT responsible for immigration law.
 - ❖ Adds information about IDOL's investigatory powers.
 - ❖ Allows “interested parties” to bring causes of action against employers.
 - ❖ Allows judicial review of imposed penalties.

DISCRIMINATION BY AI (1/1/26)

- IHRA amended to address Artificial Intelligence
- Civil rights violations:
 - ❖ Using AI that discriminates based on protected classes, or
 - ❖ Uses ZIP codes as a proxy for protected classes
- Applies to recruitment, hiring, promotion, discharge, discipline, and other employment terms
- Practical tip: Employers must notify employees that AI is being used for specified purposes

ELIMINATION OF FACT-FINDING CONFERENCES (JANUARY 1, 2026)

- Amends the Illinois Human Rights Act and the Illinois Department of Human Rights’ (“IDHR”) procedures for investigating and making determinations about Complaints of Discrimination.
- Previously, fact-finding conferences were a required as matter of course for the IDHR’s investigation process.
- Under this amendment, they are no longer required, but now, either the IDHR may request to conduct a fact-finding conference at its discretion, or the parties may request a fact-finding conference.
- With this, position statements matter even more!

HUMAN RIGHTS ACT PENALTIES (1/1/26)

IDHR needn't hold fact-finding conferences	IHRC may issue civil penalties:
IDHR has discretion	\$16,000 for first-time violators
IDHR or parties can request conference	\$42,500 if one violation in 5 years
Importance of Position Statements	\$70,000 if 2+ violations in 7 years

ORGAN DONATION LEAVE (1/1/26)

- Employee Blood and Organ Donation Leave Act amended
- Current: “participating” employees may take paid leave to donate blood and/or organ(s):
 - ❖ 1 hour every 56 days to donate blood
 - ❖ 10 days/year to donate organs
 - ❖ “Participating” employees employed full-time for 6+ months
- New: Part-time employees may take paid leave to donate organs
- Practical tip: Update Employee Handbook

LACTATION BREAKS (1/1/26)

- **Nursing Mothers in the Workplace Act amended**
- **Current:** Reasonable breaks to express breast milk for one year
 - ❖ Concurrent with existing breaks
 - ❖ Can't require PTO
 - ❖ “Undue burden” exception
- **New:** Employees paid regular compensation for breaks
- **Practical tip:** Continue or update policy and practice

RECORDING VIOLENCE (1/1/26)

- Amends Illinois Victims' Economic Security and Safety Act
- Employers can't penalize for recording domestic, sexual, or gender violence, or any violent crime
- Employees must have access to recordings
- **Practical tip:** Let employees use your equipment to stop violence

WORKPLACE TRANSPARENCY (1/1/26)

- No agreements may restrict an employee, prospective employee, or former employee from:
 - ❖ engaging in protected concerted activities to address work-related issues (new)
 - ❖ reporting crimes or unlawful employment practices, including any federal or state employment law (amended).
- No mutual employment agreements may prohibit concerted activity or participation in lawsuits filed by the government or other individuals (i.e., class actions).

WORKPLACE TRANSPARENCY (1/1/26)

- Settlement or severance agreements with confidentiality clauses re unlawful employment practices:
 - ❖ Can't apply to future activities (new) or waive future claims (current).
 - ❖ Confidentiality is mutually beneficial and actual (new) documented preference
 - ❖ Consideration for (a) confidentiality separate from (b) release of claims (new).
 - ❖ 21 days to consider, 7 days to revoke (may waive revocation period) (current).
- Consequential damages (new), attorney's fees (current).

POLICE BACKGROUND CHECKS (1/1/26)

- Law enforcement agencies cannot make job offers to police officers without:
 - ❖ Applicants signing releases directing all prior employers to provide all: employment records; background investigations; physical and psychological fitness for duty exams; performance evaluations; criminal, civil, or administrative investigation records; convictions; findings of guilt; guilty pleas; or pleas of nolo contendere.
 - ❖ Receiving and reviewing materials from all prior employers.
- Amendments include specific language for release, with indemnification language.
- Must keep documents confidential.

POLICE BACKGROUND CHECKS (1/1/26)

- Law enforcement agency or any prior employer:
 - ❖ Must respond within 14 days;
 - ❖ Can ask for a 14-day extension;
 - ❖ Cannot withhold any documentation;
 - ❖ Must certify not withholding any documentation AND not aware of any credible, verifiable, relevant, and material information reflecting negatively on fitness for duty as an officer.
- No non-disclosure, separation, settlement agreement, or collective bargaining agreement may prevent production of records or information.
- May be sued for non-compliance, including attorney's fees and costs.

NICU LEAVE (6/1/26)

- Family Neonatal Intensive Care Leave Act
- Employees may take unpaid leave while child in NICU
 - ❖ 10 days for employers with 16-50 employees.
 - ❖ 20 days for employers with 51 or more employees.
- In addition to FMLA
- Continuous or intermittent
- **Practical tip:** Consider adopting policy

CHICAGO HEAT ILLNESS PREVENTION IN OUTDOOR PLACES OF EMPLOYMENT ORDINANCE (JANUARY 1, 2027)

- This ordinance has not yet passed. It has advanced out of the City Council's Workforce Development Committee, but has not been called for a full vote.
- The ordinance would apply to “employers with workers performing work in an outdoor environment where the outdoor heat index exceeds 80 degrees Fahrenheit.”
- Employers would be obligated to, among other things:
 - ❖ provide access to shade and water;
 - ❖ mandatory “cool-down” periods;
 - ❖ emergency medical service providers;
 - ❖ conduct training for outdoor workers regarding heat risks, as well as maintain a heat prevention plan and data on heat-related illnesses; and
 - ❖ assign trained observers to monitor for heat illness.
- Provides for a waiver in a collective bargaining agreement.
- Up to \$1,000 violation per day.

https://www.chicago.gov/content/dam/city/depts/COFA/AldermanicRequestReports/2025/COFA_Aldermanic%20Request_Heat%20Ordinance%20Implementation%20Analysis.pdf

WORKPLACE POSTERS

- Workers' Compensation
 - ❖ <https://iwcc.illinois.gov/content/dam/soi/en/web/iwcc/documents/icpnform.pdf>
- Veteran Services
 - ❖ <https://veterans.illinois.gov/content/dam/soi/en/web/veterans/services-benefits/documents/veteransbenefitsandservices.pdf>
- Pay Transparency
 - ❖ <https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/pay-transparency/Pay%20Transparency%20Updates%20to%20the%20Illinois%20Equal%20Pay%20Act%20of%202003.pdf>
- Right to Privacy / E-Verify
 - ❖ https://labor.illinois.gov/content/dam/soi/en/web/idol/employers/posters/e-verify/Right%20to%20Privacy%20in%20the%20Workplace_English.pdf
- Other Federal & State Posters
 - ❖ <https://labor.illinois.gov/employers/posters.html>



**THANK YOU!
ANY QUESTIONS?**



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