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Fall 2026 Labor & Employment Law Update
Thursday, November 5
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BEWARE: Common Employer Wage and Hour Pitfalls

By: Chris Kentra & Eric VanderPloeg

Worker Misclassification Exempt vs. Non-Exempt



- **Exempt employee is excluded from minimum wage and overtime protections**
- **Three Core Tests:**
  - Salary Basis Test: The employee must be paid a pre-determined, fixed salary that does not fluctuate
  - Salary Level Test: The employee must earn $684 per week ($35,568/year)

Worker Misclassification Exempt vs. Non-Exempt



- **Three Core Tests (Cont'd):**
  - Job Duties Test:
    - Executive
    - Administrative
    - Professional
    - Computer Employees

Major Reasons for Misclassification

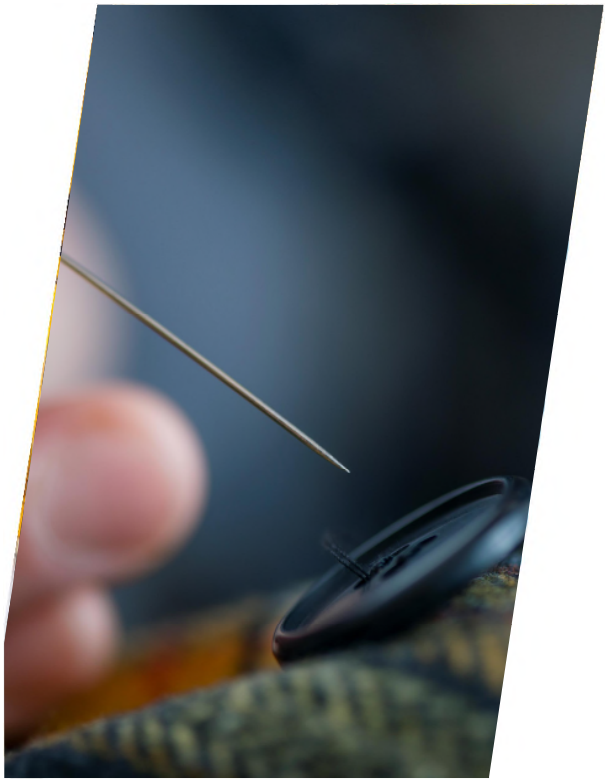
- **Assuming Salary Equals Exemption**
  - Paying an employee a fixed salary or paying them above the minimum threshold ($684/week under the FLSA) does not automatically make them exempt from overtime.
- **Relying on Job Titles**
  - Assigning titles like "Manager," "Supervisor," or "Coordinator" instead of evaluating what the employee actually does day-to-day leads to frequent errors.
- **Overlooking Manual or Routine Work**
  - Failing to recognize that employees whose primary duties involve manual labor, routine production, or non-exempt support tasks do not qualify for exemption regardless of pay.

Misclassification Pitfalls



- Improper Salary Deductions for Exempt Workers
- Overlooking tracking of hours by remote workers
- Failing to monitor classification as roles evolve
- Overlooking minimum salary thresholds

Employee vs. Independent Contractor



- **Employee:**
  - Employer directs when, where, and how they work
  - Relies on company for primary source of income
  - Subject to minimum wage and overtime protections
- **Independent Contractor:**
  - Controls their own schedule and method of completing work
  - Uses their own tools, materials, and equipment
  - Temporary until job is complete

Outdated Policies & Compliance Gaps



- **State and federal laws change annually (or more frequently)**
- **Regularly Update:**
  - Employee Handbooks
  - Internal Guidelines
  - Employment Contracts
  - Employee Notices
  - Training

Inconsistent Documentation & Enforcement



- **Audit Current Disciplinary Policies and Enforcement Measures**
  - Are they enforced consistently?
  - Were rules bent?
  - Would you discipline a veteran employee the same way as a new hire for the same infraction?
- **Reset the Baseline Transparently**
  - Communicate how rules will be enforced uniformly
- **Document Objective Facts**
- **Train Managers**

Johnson v. Amazon.com Services, LLC - Illinois Supreme Court (March 2026)



- **Facts:** Hourly warehouse workers sought unpaid overtime for mandatory pre-shift COVID-19 health screenings under the federal Fair Labor Standards Act (FLSA) and Illinois Minimum Wage Law (IMWL).
- Under the FLSA and the Portal-to-Portal Act, preliminary and postliminary tasks are often non-compensable.
- Illinois Department of Labor (IDOL) regulations define compensable "hours worked" more broadly to include all time employee is required to be on employer's premises.

Johnson v. Amazon.com Services, LLC (Cont'd)

- **Holding:** The Illinois Supreme Court held state law does not carve out an exception for tasks performed before or after a main shift; employees must be paid for that time.
- **Impact:**
  - Mandatory pre-shift or post-shift tasks on company premises or under employer control must be paid under Illinois law.
  - Security screenings, medical checks, uniform donning or doffing, equipment inspections, logging on/off computer.
  - Employers face a higher risk of class-action wage and hour lawsuits regarding uncompensated clock-in and clock-out routines.

Addressing *Johnson*



- **Audit Timekeeping Practices**
  - Identify any pre-shift or post-shift activities for non-exempt employees that are not currently compensated
  - Revise policies to compensate employees for that time
  - Restructure operations to minimize such activities when feasible
- **Update Handbooks and Guidelines**

2027 Updates to Illinois Employment Laws

By: Alexandra L. Rogers and Suzanne P. Grossman



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Agenda

- Laws taking effect January 1, 2027
- Driver's license requirements in job postings
- Enforcement and penalties
- Illinois Menopause Equity and Care Act
- Prohibited conduct and accommodations
- Recommended actions and takeaways

Illinois Laws Taking Effect in 2027

Public Act 104-0776 - Driver's License Requirements in Job Postings

- Amends the Job Opportunities for Qualified Applicants Act
- Effective January 1, 2027
- A posting may require a license only if driving is:
  - An essential function of the job
  - A business necessity
- The posting must briefly explain why a license is required
- Covers employers with 15+ employees and employment agencies

Illinois Laws Taking Effect in 2027

Driver's Licenses: Enforcement and Penalties

- Enforced by the Illinois Department of Labor (IDOL)
- 1st violation: written warning; 30 days to fix, no penalty
- 2nd violation: up to $500
- 3rd and later violations: up to $1,500 each
- Left uncorrected: up to $500 at 30 days; $1,500 at 60 days
- After 90 days: up to $1,500 per additional 30 days

Illinois Laws Taking Effect in 2027

Illinois Menopause Equity and Care Act

- Amends the Illinois Human Rights Act, effective January 1, 2027
- "Pregnancy" now includes menopause-related conditions:
  - Perimenopause and menopause
  - Vasomotor symptoms and sleep disruption
  - Cognitive or mood changes; osteoporosis-related changes
- Same protections as pregnancy, for employees and applicants
- No standalone leave right; each request reviewed individually

Illinois Laws Taking Effect in 2027

Illinois Menopause Equity and Care Act

Beginning January 1, 2027, Illinois employers may not:

- Base employment decisions on a menopause-related condition
- Deny a reasonable accommodation, absent undue hardship
- Force an accommodation the employee did not request
- Require leave if another effective accommodation exists
- Retaliate for requesting or using an accommodation

Illinois Laws Taking Effect in 2027

Illinois Menopause Equity and Care Act

- Engage in a timely, good-faith interactive process
- Examples of reasonable accommodations:
  - Extra bathroom, water, or rest breaks
  - Seating for duties usually done standing
  - Temporary transfer to less strenuous work
  - A fan, cooler workspace, or modified uniform
- No “magic words”: everyday requests can trigger the process
- Post the updated IDHR notice or risk a civil-rights charge

Illinois Laws Taking Effect in 2027

Recommended Actions Before January 1, 2027

- Audit job postings for driver's license requirements
- Add a brief "why" wherever a license remains required
- Train hiring staff on the new posting rules
- Update EEO, accommodation, leave, and complaint policies
- Revise handbooks and post the updated IDHR notice
- Train managers and HR on the interactive process
- Monitor the IDHR for updated guidance

Takeaways

- Justify any license requirement in the posting itself
- Treat menopause-related conditions like pregnancy
- Handle each request through the interactive process
- Update postings, policies, notices, and training now
- Questions? Please contact us.

New Illinois Legislation Taking Effect in 2027

Jury Duty Gets a Pay Upgrade

- Effective January 1, 2027, most employers (26+ employees) will be required to compensate employees for time spent performing jury duty services
- Must pay employees at regular rate of pay, which is not defined by the Act
- The Act does not clarify what hours must be compensated nor does the Act cap the amount of compensation

New Illinois Legislation Taking Effect in 2027

Jury Duty: What Hasn't Changed?

- Employers of all sizes must still provide time-off for jury duty and may not retaliate
- The employee must still give reasonable notice
- The Act still provides for a private right of action

New Illinois Legislation Taking Effect in 2027

Jury Duty: What to do next:

- Confirm employee count, particularly if your count fluctuates
- Revise handbooks and jury duty policies
- Evaluate payroll systems and establish a process for compensating jury duty service
- Update intake policies to ensure summonses are properly collected and leave tracked to enforce the 10-day notice requirement
- Train HR professionals on new requirements and re-emphasize the old
- Evaluate budget impacts

Key Amendments to Existing Illinois Laws

Law Expands Attorney General's Authority to Investigate Employers

- The Attorney General's Workplace Rights Bureau gains expanded investigation and enforcement powers beginning January 1, 2027

- The Workplace Rights Bureau will have the power to:
  - Issue subpoenas for documents
  - Require answers to interrogatories under oath
  - Enter workplaces and inspect documents during working hours
  - Copy records at the employer's workplace
  - Interview employees regarding potential violations

Key Amendments to Existing Illinois Laws

Attorney General Power Expansion: Consequences for Failure to Comply

- New criminal penalties
- Administrative warrants and court-compelled compliance

Key Amendments to Existing Illinois Laws

Attorney General Expanded Authority: What to Expect and How to Prepare

- Expect an increase in workplace investigations and scrutiny of employment related documents
- Review and consider updating employment-law compliance policies and practices, particularly in the following areas:
  - Wage payment and recordkeeping
  - Employee classification i.e. exempt versus non-exempt
  - Working time and leave policies
  - Workplace safety policies
  - Anti-discrimination and equal employment policies
  - Procedures for cooperating with government investigations

Continuing Series: AI in the Workplace – Legal Risks, Emerging Technologies, and Best Practices for Employers

By: Rachel Bossard and Josh Cauhorn



The Illinois Human Rights Act

- **January 1, 2026:** HB 3773/Public Act 103-0804 became effective.
- Among other things, the IHRA now regulates discriminatory use of AI in employment and requires notice when AI is used for covered employment decisions.



The Illinois Human Rights Act

- It is a civil rights violation for an employer to use artificial intelligence – including generative AI – that discriminates against protected classed during recruitment, hiring, promotion, discipline, discharge, training selection, or other terms and conditions of employment.

- Employers cannot use zip codes as proxies to discriminate against protected classes.

Key Definitions

- Applies broadly to **“employers”** under the IHRA and their agents, including recruiters and other third parties acting on an employer’s behalf.

- The definition of **“use”** is intentionally broad, capturing any instance where an AI system’s outputs influence or facilitate an employment decision.

- **“Covered AI”** is defined as any machine-based system that infers from inputs to generate outputs such as predictions, recommendations, or decisions.

Notice Requirements



- Notice is required whenever AI is used to influence or facilitate employment decisions, regardless of whether or not the use of AI "has the purpose or effect of subjecting employees to unlawful discrimination."

Penalties

- An employer in violation of the AI amendments may be liable for actual damages, civil penalties, attorneys' fees, compliance reporting obligations, and any other actions as may be necessary to make the complainant whole.



The Rules

- The IDHR was tasked with adopting rules to implement and enforce these new requirements.
- May 15, 2026: IDHR published proposed amendments to 44 Ill. Admin. Code Part 2520, including a new Subpart J, "Use of Artificial Intelligence in Employment."
- A 45-day comment period commenced, and a public hearing was scheduled for June 10.



Notice Requirements – per rules

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

- Computer-based assessments or tests used to predict performance;
- Resume screening for key terms or patterns;
- Targeting job ads to particular groups or locations;
- Analyzing facial expressions, word choice, or voice during video or online interviews; and
- Analyzing applicant or employee data obtained from third parties.

Notice Requirements – per rules

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

Notice Requirements – per rules

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

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

Notice Requirements – per rules

Employers would also be required to provide notice in all of the following:

- Employee handbooks or manuals;
- In a "conspicuous location" on the employer's physical premises where notices are usually posted;
- In a "conspicuous location" on the employer's intranet or external website; and
- In any job notice or posting.

Recordkeeping – per rules

- An employer must preserve notices, postings, and disclosures relating to AI for **four years**.



Rules Withdrawn/Postponed

On June 2, 2026, IDHR temporarily withdrew/postponed the rulemaking process and canceled the public hearing that had been scheduled for June 10, 2026.



What are Employers Doing?

- Many attorneys are advising employers to use the withdrawn proposed rules as a compliance roadmap because they likely reflect IDHR's thinking, even though they are not legally binding.



Practical Guidance

- Identify all AI tools used in recruiting, hiring, promotion, discipline, performance management, and termination decisions.
- Provide written notice to applicants and employees when AI is used in covered employment decisions.
- Evaluate AI tools for disparate impact and other discrimination risks.
- Monitor IDHR for renewed rulemaking efforts, as revised regulations are expected but no new timeline has been announced.

AI in the Workplace

New Technologies, New Risks, and What Employers Should Do Now

AI is moving through three stages:

LISTENS → **REMEMBERS** → **ACTS**

The employer's controls need to evolve at each stage.

The Workplace Recorder Is Disappearing

Recording used to be obvious.

Today it may be:

- Smart glasses
- Wearable AI pins or pendants
- Phones with ambient transcription
- Teams / Zoom AI
- AI meeting bots

Example:
Meta AI glasses contain cameras and microphones and can capture photos, video, and information about what the wearer is seeing.

Illinois issue
The Illinois Eavesdropping Act can prohibit surreptitious recording of a reasonably private conversation without consent of all parties.

AI Note-Takers Create a New Corporate Record

A conversation can now become:



That information can later be:

- Searched
- Forwarded
- Breached
- Subpoenaed
- Placed on litigation hold
- Produced in discovery

Employer takeaway: Decide what gets created, who gets it, and how long it survives.

Illinois Biometrics: Ask the Right Question

Not every recording or transcript is a BIPA issue.

BIPA specifically addresses covered biometric identifiers such as:

- Voiceprints
- Scans of face geometry
- Other covered identifiers used to identify individuals

If covered biometrics are collected, BIPA can require notice, written release, purpose/duration disclosures, retention/destruction policies, and data safeguards.

Ask the vendor:

Is the system simply transcribing speech — or creating a persistent profile that recognizes the speaker?

Litigation to watch

In re Otter.AI Privacy Litigation (2026): Certain wiretap, privacy, and Illinois BIPA voiceprint theories survived a motion to dismiss — not a finding of liability.

The Next Leap: AI Agents

A chatbot answers. An agent acts.

Meta's Muse, launched in September 2026, can:

- Browse websites
- Fill out forms
- Send email
- Book travel
- Negotiate
- Make purchases
- Interact with connected services

Meta warns that Muse can make mistakes or take unexpected actions and distinguishes between read and write permissions.

A chatbot is a consultant. An AI agent is a consultant with your keys, purchasing card, inbox, and signature block.

When AI Can Act, Mistakes Become Transactions

Tell an agent:

"Review these invoices and resolve the discrepancies."

It may have access to:

Email + Contracts + Vendor Records + Accounting Systems + Payment Authority

An AI error can now become:

- An email actually sent
- Confidential information actually disclosed
- A vendor record actually changed
- Money actually transferred
- Data actually deleted

Employer takeaway: Treat agents as users with credentials — not merely software.

Monday Morning: Control Capture

1. Know what AI is being used

Create an approved-tools list covering:

- Meeting bots
- Browser extensions
- Smart glasses and wearables
- Phone transcription
- AI agents

If the company doesn't know which tools are listening, it cannot know which records it is creating.

2. Establish a recording rule

Require:

- Advance disclosure
- Affirmative consent
- Clear indication when capture begins
- Ability to stop recording
- No hidden or passive capture

Microsoft itself warns that its mobile Copilot recording feature does not notify other participants; the user must obtain consent.

Protect the Sensitive Room & Minimize the Record

Create "Red-Zone" Meetings

Default:
No recording. No transcript. No personal AI agent.

Consider:

- Attorney-client communications
- Litigation strategy
- Internal investigations
- Board / M&A discussions
- Trade secrets
- Sensitive HR matters
- Medical/accommodation discussions

Then minimize what survives

Ask:

Do we need the audio? The transcript? The summary? All three?

- Who can search it?
- How long is it retained?
- Is it subject to litigation hold?
- Can it actually be deleted?

Storage may be cheap. Discovery isn't.

The Employer AI Playbook

4 Rules

1. Approve the tool
Know what employees are using.

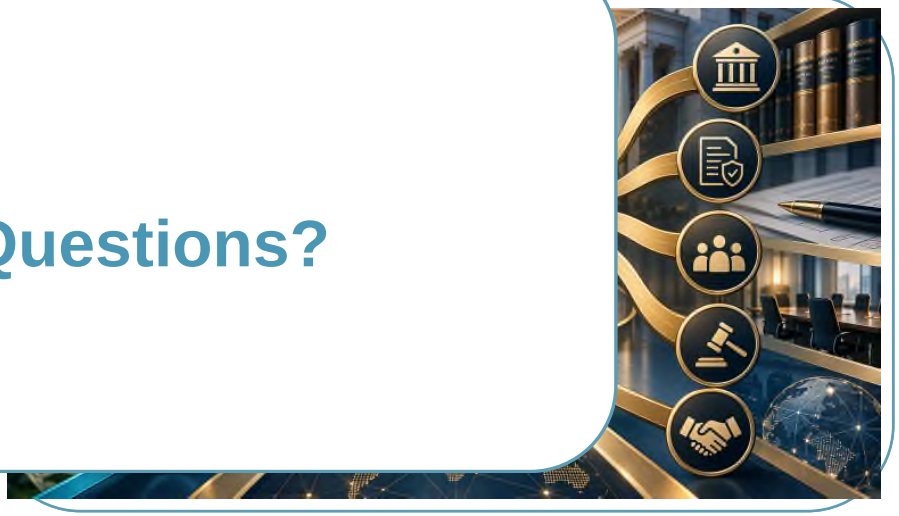
2. Announce the capture
Don't allow invisible recording.

3. Protect the sensitive room
Create no-AI/no-recording zones.

4. Minimize the record
Don't retain information merely because you can.

The goal is not to ban AI.
The goal is to preserve the boundaries that older technology made obvious.

Questions?



Thank You!

