

New Amendments to the Illinois Workplace Transparency Act Will Provide Greater Protection to Employees

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On August 15, 2025, Illinois Governor JB Pritzker signed House Bill 3638 into law, amending the Illinois Workplace Transparency Act (the “IWTA” or the “Act”) to provide enhanced protection for Illinois employees who enter into employment, termination or settlement agreements with their employers. The IWTA amendments take effect January 1, 2026, and employers are encouraged to promptly prepare for these changes.

What is the IWTA?

The IWTA prohibits employers from including language in certain employment-related agreements that may infringe on an employee’s ability to make truthful statements or disclosures regarding alleged unlawful discrimination, harassment or retaliation (collectively “unlawful employment practices”), unless several conditions are met.

What is included in the IWTA amendments?

1. Expanded protections for disclosing unlawful employment practices

Under the amended Act, the definition of “unlawful employment practices” will be expanded to include *any* unlawful practice arising under *any* state or federal law governing employment including, but not limited to, those enforced by the U.S. Department of Labor, the National Labor Relations Board, the Occupational Health and Safety Administration, and similar state agencies.

2. New protections for employee concerted activity

The amended IWTA will also bar certain agreements that prohibit, prevent or otherwise restrict employees, prospective employees or former employees from engaging in concerted activity to address work-related issues. Importantly, “concerted activity” means “activities engaged in for the purpose of collective bargaining or other mutual aid or protection” as provided by the National Labor Relations Act as it existed on January 19, 2025, *before* the Trump administration took office. It also protects employee activities under the Illinois Education Labor Relations Act, the Illinois Public Labor Relations Act and the Labor Dispute Act.

3. Additional limits and conditions on employment agreements

Under the amended IWTA, employers will be prohibited from including in an employment-related agreement a “unilateral” (non-negotiable) condition of employment or continued employment that prevents employees from making truthful statements or disclosures regarding alleged unlawful employment practices (as that term has been revised). In addition, employers will not be able to require unilateral conditions of employment or continued employment that (1) shorten the applicable statute of limitations; (2) apply non-Illinois law to an Illinois employee’s claims; or (3) require a venue outside of Illinois to adjudicate claims of Illinois employees if the condition denies the employee a substantive or procedural right or remedy related to unlawful employment practices.

The amended IWTA also expands the conditions that must be met before employees can agree to limit their truthful statements or disclosures or other rights under the Act as a “mutual” condition of employment or continued employment.

These expanded conditions require written acknowledgment of the employee's right to participate in certain legal proceedings related to unlawful employment practices and to engage in concerted activity to address work-related issues, among other items.

4. Additional limits on settlement and termination agreements

The IWTA currently allows settlement and termination agreements to contain provisions requiring the confidentiality and nondisclosure of unlawful employment practices, provided it is the documented preference of the employee, among other conditions. Under the amendments, the employer may not *unilaterally* include language in the agreement stating that such confidentiality is the employee's preference. Further, an employer will be required to provide bargained-for consideration for that promise of confidentiality that is separate and apart from the consideration the employer is providing in exchange for the waiver and release of claims included in the agreement.

5. Expanded rights for employees to testify in proceedings

Under the amendments, employees, prospective employees and former employees will be permitted not only to testify in administrative, legislative or judicial proceedings concerning alleged criminal conduct and unlawful employment practices, but also to participate in depositions in any such proceedings, or in arbitral proceedings, when required or requested to do so by court order, subpoena or other written government request.

6. Additional damages for prevailing employees

Any agreement or portion thereof that violates the IWTA is void against public policy and severable from an otherwise valid and enforceable contract. Additionally, under the amended IWTA, plaintiffs who successfully challenge a contract under the IWTA, or successfully defend an action brought against them, may now recover consequential damages in addition to reasonable attorneys' fees and costs.

What should employers do now?

It is critical that employers with Illinois employees review and update, as appropriate, their employment-related agreements—including employment, confidentiality, restrictive covenant and severance agreements—before the amended IWTA takes effect on January 1, 2026.

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