



ILLINOIS

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

Employment contracts in Illinois are presumed to be at will, meaning that an employer or employee may terminate the relationship at any time, without any reason or cause. However, this presumption can be rebutted by showing that the parties contracted otherwise. *Daymon v. Hardin County Gen. Hosp*, 569 N.E.2d 316, 317 (Ill. App. Ct. 1991). The employer cannot discriminate based on race, color, religion, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental handicap, military service, or unfavorable military discharge in hiring and firing decisions. 775 ILCS 5/2.

Anti-Discrimination

The Illinois Human Rights Act provides protection against discrimination for additional protected classes beyond those protected via Title VII including ancestry, marital status, protective order status, military status, citizenship status, work authorization status, and arrest and conviction records (in certain circumstances). 775 ILCS 5/1-102, 5/1-103, 5/2-102(A), 5/2-103(A), and 5/2-103.1. The Act was further amended in August 2024, to protect against discrimination based on reproductive health decisions. That language will take effect at the beginning of 2025 and is not yet reflected in the open-source links embedded here. Illinois HB 4867.

Non-Compete Agreements

The Illinois Freedom to Work Act prohibits non-compete agreements between an employer and employees earning \$75,000 or less per year. That threshold amount is scheduled to increase by \$5,000 in 2027, 2032, and 2037. 820 ILCS 90/10. For highly compensated employees, Illinois courts generally disfavor non-compete agreements as a restraint of trade. However, Illinois courts enforce certain non-compete agreements if they are reasonable and supported by adequate consideration. *Reliable Fire Equip. Co. v. Arredondo*, 2011 IL 111871, 16-17 (Ill. 2011).

Immigration Verification

The E-Verify Program is an internet-based program operated by the Department of Homeland Security (DHS) in collaboration with the Social Security Administration (SSA) that allows participating employers to verify the employment eligibility of newly hired employees electronically. The E-Verify Program is available to employers at no cost and is a voluntary program. This law applies to employers conducting business in the state of Illinois and covers any employee or applicant for employment alleging that their rights and protections under this Act have been denied.

An employer is prohibited from using the E-Verify Program to check the immigration status of current employees or to pre-screen prospective employees who have not been offered a position with the company. In addition, employers or any of their representatives cannot discharge or otherwise retaliate against an employee or prospective employee for filing a complaint with DHS or for remedies sought in favor of the employee or prospective employee.

The Illinois Right to Privacy in the Workplace Act was recently amended with an effective date of January 1, 2025.

Drug Testing

Illinois requires employers on state public works projects to maintain a drug-free workplace. 30 ILCS 580/3.

Illinois and Recreational Marijuana – Illinois HB 1438:

- Illinois legalized recreational marijuana effective January 1, 2020, for those ages 21 and older.
- Employers are not required to permit employee use of marijuana while at work, while performing job duties, or while on call.
- Employers can discipline or terminate an employee for violating the employer's workplace drug policy.
- The law requires certain changes to drug-free workplace policies and procedures:
 - Employers can have policies addressing drug testing, smoking marijuana, marijuana storage, etc., provided that the policy is applied in a nondiscriminatory manner;

- Employers are not required to accommodate employees being under the influence or the use of marijuana in the workplace; and
- Employers must have “good faith belief” that an employee is under the influence. This can be established using specific, articulable symptoms, but not strictly a drug test.
- Employers should use a positive drug test for marijuana in conjunction with specific signs and symptoms of impairment before taking action:
 - Employers cannot take action based on the use of lawful products (marijuana) outside of work hours.

Paid Leave

Effective January 1, 2024, the Paid Leave for All Workers Act requires employers to provide employees with up to five days (40 hours) of paid leave during a one-year period. Employees may use their paid leave for any reason. However, employers may require practicable notice for foreseeable leave, and may limit the minimum increment for the use of paid leave to as low as two hours per day. The paid leave will begin accruing immediately upon employment at the rate of one hour of paid leave for every 40 hours worked. The employee will become entitled to use paid leave after working for 90 days. Employers may refuse to roll over any unused paid leave to the next year period or payout unused paid leave upon termination. Employers providing paid sick leave under city or municipal requirements are exempt from this policy. If the employer already provides a sufficient amount of leave for any reason, they are not required to provide additional paid time off. 820 ILCS 192.

Jury Duty Leave

In Illinois, employers are required to provide employees with unpaid time off for reporting to jury selection or jury duty. This includes time off for employees working night shifts who are doing jury duty during the daytime. Employers may require that employees provide the employer with jury summons and reasonable notice to be given the leave. The employer can never punish the employee for missing work to attend jury duty. However, if missing work would cause the employer undue hardship, it may be considered as an acceptable jury duty excuse. 705 ILCS 310/10.1.

Voting Leave

Employers must allow employees to take paid voting leave for up to two hours if the employee’s working hours begin less than two hours after the opening of the polls and end less than two hours before the closing of the polls. Employers may specify the hours from which employees may be absent to vote but cannot penalize employees for lawfully choosing to take voting leave. Employers may deny an employee the right to take leave to vote if the employee did not apply for the leave before the day of the election. 10 ILCS 5/17-15.

School Visitation Leave

Illinois employers with 50 or more employees must provide employed parents and guardians (who are otherwise unable to meet with educators because of work conflicts) with up to eight hours of unpaid time off during the school year to attend necessary education or behavioral conferences at their children’s schools. This time can only be taken if the employee has exhausted all other accrued leave time, except sick leave or disability leave. 820 ILCS 147/40, 147/15.

Parental Leave

Illinois law does not require employers to offer parental leave. Unless the employer has its own parental leave or disability leave policy, the employee must rely on the federal Family and Medical Leave Act (FMLA) to take time off for a new child.

Employee Sick Leave – Permissible Uses

An Illinois employer must permit an employee to use personal sick leave benefits provided through an employment benefit plan or paid time off policy for the illness or injury of a family member on the same terms on which the employee may use the benefits for their own illness or injury.

An employer may limit the amount of sick leave that an employee may use for such purposes to an amount not less than the personal sick leave that would be earned or accrued during 6 months at the employee's then current rate of entitlement. 820 ILCS 191/10.

Family Bereavement Leave

Illinois employers with 50 or more employees must provide eligible employees with a maximum of two weeks (equivalent to ten workdays) of unpaid bereavement leave. Bereavement leave may be taken to make arrangements for, attend the funeral or alternative to a funeral, or grieve the death of a covered family member as well as to be absent from work due to a miscarriage, a diagnosis negatively impacting pregnancy or fertility, a failed adoption match, or other qualifying reason. 820 ILCS 154/5; 820 ILCS 154/10. Illinois also recently passed the "Child Extended Bereavement Leave Act," which requires employers with at least 50 employees to provide between six and 12 weeks of unpaid leave (depending on employer size) for employees who have lost a child due to suicide or homicide. The law became effective January 1, 2024. 820 ILCS 156/5, 156/10.

Smoking Laws

The Smoke Free Illinois Act prohibits smoking in virtually all public places and workplaces including offices, theaters, museums, libraries, educational institutions, schools, commercial establishments, enclosed shopping centers and retail stores, restaurants, bars, private clubs, and gaming facilities. 410 ILCS 82.

Break Time to Express Milk

In Illinois, an employer shall provide reasonable break time to an employee who needs to express breast milk for nursing an infant child each time the employee has the need to express milk for one year after the child's birth. The break time may run concurrently with any break time already provided to the employee. An employer may not reduce an employee's compensation for time used for the purpose of expressing milk or nursing a baby. An employer shall provide reasonable break time as needed by the employee unless doing so would create an undue hardship as defined by item (J) of Section 2-1- of the Illinois Human Rights Act. 820 ILCS 260/10, 775 ILCS 5/2-102.

Meal Breaks

Illinois requires that employees who work a shift of seven and one-half continuous hours receive a lunch break of at least 20 minutes, no later than five hours after the start of the work period. Employees who work more than seven and one-half continuous hours are entitled to an additional 20-minute meal period for every additional four and one-half continuous hours worked. This meal period does not include reasonable time spent using the restroom facilities. 820 ILCS 140/3.

Minimum Wage

Effective January 1, 2024, Illinois guarantees a minimum wage of \$14 per hour for workers 18 years of age and older. The Illinois minimum wage will increase to \$15 per hour by January 1, 2025. In occupations where gratuities are customarily paid to employees, an employer may pay no less than 60 percent of the minimum wage to their employees. Employers may apply for licenses to pay sub-minimum rates to learners and certain workers with physical and mental limitations. Overtime must be paid after 40 hours of work per week at time and one-half the regular rate. 820 ILCS 105/4, 105/4(a).

Mandatory Rest Days

The Illinois "One Day Rest in Seven" Act requires all employers to provide covered employees at least 24 consecutive hours of rest during each consecutive seven-day period in addition to the regular period of rest at the end of each workday. 820 ILCS 140/2(a).

Overtime

In Illinois, no employer shall employ any of their employees for a workweek of more than 40 hours unless such employee receives compensation for their employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which they are employed. Some exceptions apply. 820 ILCS 105/4a.

Wage and Recordkeeping

Illinois employers are required to maintain a variety of wage-and-hour records for at least five years. 820 ILCS 112/20. Effective in 2025, there will be additional recordkeeping requirements for employee benefits and pay scale. 820 ILCS 112/20. Other provisions of the Illinois code govern recordkeeping for employees who receive paid vacation, tipped employees, and employees paid subminimum wages, and for day and temporary labor service agencies. 820 ILCS 175/12, 105/8.

Final Payments

Illinois requires that final paychecks be paid on the next scheduled payday but does not have specific rules about how to send a final paycheck, so the final paycheck can be paid via direct deposit (if an employee previously authorized direct deposit for wages), or by check or payroll pay card, either in person or mailed. The final paycheck should contain the employee's regular wages from the most recent pay period, plus other types of compensation owed such as commissions, bonuses, and accrued sick and vacation pay. 820 ILCS 115/5.

Unemployment Insurance

Illinois unemployment insurance benefits provide temporary financial assistance to workers unemployed through no fault of their own who meet the state's eligibility requirements. To be eligible for this benefit program, the employee must be a resident of Illinois and meet all of the following:

- Be unemployed;
- Have worked in Illinois during the past 12 months (this period may be longer in some cases);
- Have earned a minimum amount of wages determined by Illinois guidelines; and
- Be actively seeking work each week they are collecting benefits.

Workers' Compensation

The Illinois workers' compensation law requires employers to purchase insurance that covers work-related injuries and occupational diseases regardless of fault; it can also bar an employee from filing a lawsuit against the employer. 820 ILCS 305/1.2. Employers with one or more employees are required to obtain and post notices of workers' compensation insurance (with limited exceptions) (820 ILCS 305/1). Some types of benefits include:

- **Medical care:** care reasonably required to cure or relieve the employee of the effects of the injury. (820 ILCS 305/8(a));
- **Temporary total disability:** compensate worker totally disabled from work for a temporary period of time. (820 ILCS 305/8(b));
- **Temporary partial disability:** benefits while the employee is recovering from injury but working light duty for less compensation. (820 ILCS 305/8(a));
- **Permanent partial disability:** compensate for permanent damage even if the employee returns to work. (820 ILCS 305/8.1b);
- **Permanent total disability:** compensate the employee rendered permanently unable to work. (820 ILCS 305/8(f) & (g)); and
- **Death benefits:** for surviving family members if the employee dies from work-related injury or disease. (820 ILCS 305/8(b) & (g)).

Child Labor

The Illinois Child Labor Law of 2024 regulates the employment of workers under the age of 16 and prohibits most work by children under the age of 14. The Illinois Department of Labor, through its Fair Labor Standards Division, administers and enforces the Child Labor Law. Minors who are authorized to work in Illinois are subject to restrictions on when they can work and how many hours they can work. The exact restrictions in effect depend on the age of the minor and are designed to ensure that work does not interfere with the minor's schooling. A new Child Labor Law was passed in Illinois in 2024, largely incorporating the provisions of 820 ILCS 205 and adding new provisions to take effect January 1, 2025. 820 ILCS 206.

Gun Laws

Employers may prohibit employees from bringing weapons on their property if they post a conspicuous sign to that effect in certain situations. Employers may not prevent employees with concealed carry licenses from storing those firearms or ammunition in a locked vehicle out of view in the employer's parking area. 430 ILCS 66/65.

Whistleblowing

Illinois law prohibits employment policies that prevent employees from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation. Employers are also prohibited from retaliating against an employee for disclosing information where the employee has reasonable cause to believe that the information discloses a violation of such an order. 740 ILCS 174/15. There is currently a proposed bill in the Illinois Legislature to expand the scope of this act. This legislation would also protect employees who disclose information that they believe in good faith poses a substantial and specific danger to employees, public health, or safety. Illinois HB 5561.

Artificial Intelligence Video Interview Act

Some employers use artificial intelligence technologies to conduct hiring interviews. Before an employer conducts an artificial intelligence interview, the employer must notify the applicant that artificial intelligence will be used to analyze the applicant's interview, provide the applicant with information explaining how the artificial intelligence interview works, and obtain consent from the applicant to be evaluated by the artificial intelligence program. Also, upon request from the applicant, employers must delete an applicant's interviews and instruct any other people who received copies of the applicant's video interviews to delete the videos within 30 days after receipt of the request. 820 ILCS 42/5, 42/15.

Employers who rely solely upon an artificial intelligence analysis of a video interview to determine whether an applicant will be selected for an in-person interview must collect and report demographic data about the applicants to the Department of Commerce and Economic Opportunity annually by December 31. 820 ILCS 42/20.

Pay Transparency

Effective January 1, 2025, Illinois law will require employers with more than 15 employees to disclose pay scales and benefits in job postings. 820 ILCS 112/20.