

WHAT ILLINOIS EMPLOYERS NEED TO KNOW ABOUT CHANGES TO THE WORKPLACE TRANSPARENCY ACT

Amendments to the Illinois Workplace Transparency Act (“WTA”) were introduced by [HB 3638](#) and became effective on January 1, 2026. The amendments broaden the scope of protection for employees and impose additional restrictions on employers when drafting contract provisions in a variety of employment-related agreements, including severance, settlement and arbitration agreements. Going forward, Illinois employers will have less latitude to restrict employee speech and concerted activity as it relates to reporting or disclosing unlawful conduct in the workplace.

BROADER SCOPE OF PROTECTIONS AND RIGHTS FOR EMPLOYEES

The amendments expand the definition of “unlawful employment practice” to encompass any unlawful practice actionable under state or federal employment law. This means that wage claims, safety violations and other labor laws will receive the same protections already afforded to discrimination, harassment and retaliation under the WTA. The amendments also prohibit any agreement from restricting employees’ right to engage in concerted activity to address work-related issues.

Additionally, the amendments permit employees to not only testify in administrative, legislative and judicial proceedings, but also in arbitration proceedings and depositions taken in connection with any of these proceedings. Perhaps most notable from an employer risk perspective is the fact that employees will now be permitted to recover consequential damages in addition to attorney’s fees and costs, both when challenging the validity of contractual provisions and when defending against breach of confidentiality claims.

LIMITS ON CONFIDENTIALITY, FORUM SELECTION AND CHOICE OF LAW PROVISIONS

The amendments add new constraints on confidentiality clauses in settlement and termination agreements, as such provisions will be required to expire within five years of the underlying incident. Moreover, confidentiality clauses will have to be supported by separate, bargained-for consideration distinct from any consideration provided for a general release and waiver of claims, and employers are now restricted from unilaterally including a clause in a settlement or termination agreement that states that the promises of confidentiality are the preference of the employee.

The amendments further require the inclusion of disclaimer language acknowledging the employee’s right to: (i) “participate in a proceeding related to unlawful employment practices, including any litigation brought by any federal, State or local government agency or any other person who alleges that the employer has violated any State, federal, or local law, regulation, or rule;” and (ii) “engage in concerted activity to address work-related issues.”

The amendments also prohibit employment contracts from unilaterally shortening applicable statutes of limitations, applying non-Illinois law to Illinois-based employee claims or requiring a venue outside of Illinois to adjudicate an Illinois employee’s claim. Such provisions may only be included in employment contracts if they are truly mutual and meet specific conditions, including written form, knowing consideration and express acknowledgement of employees’ rights to report unlawful conduct and engage in concerted activity.

PRACTICAL TAKEAWAYS

To ensure compliance with the 2026 WTA amendments, Illinois employers should:

- Review and revise employment contract templates, including employment agreements, offer letters, severance agreements, settlement agreements, arbitration agreements and confidentiality and non-disclosure agreements.
- Review and revise, if needed, any human resources policies that limit employee rights to disclose unlawful workplace policies or participate in protected concerted activities.
- Consider whether severance and settlement negotiation practices need to be updated to reflect new restrictions on the use of waiver/release and confidential/non-disclosure provisions.
- Train human resources and management personnel involved in the negotiation and drafting of employment-related agreements.

If you have questions about the Illinois Workplace Transparency Act or related changes, please contact:

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