

Illinois Amends Workplace Transparency Act, Broadening Employee Protections, Effective January 1, 2026

[Brenna M. Woodley](#)

October 28, 2025

The Illinois Workplace Transparency Act (“IWTA” or “Act”) provides protections to employees and non-employee contractors and consultants who enter into employment agreements, settlement agreements and termination agreements with employers, and imposes limitations on employers entering into such agreements.

On August 15, 2025, Illinois Governor J.B. Pritzker signed House Bill 3638 into law, amending the IWTA. The amendment expands protections for employees and imposes additional limitations on employers. The changes are effective January 1, 2026, and apply to any employment agreement entered into, modified, or extended on or after that date, except for collective bargaining agreements.

The amended IWTA continues to use the definitions of “employee,” and “employer” from the Illinois Human Rights Act (“IHRA”), and to include “non-employee” contractors and consultants covered by the IHRA in the definition of employee. Therefore, the amended IWTA’s coverage extends to contractors and consultants performing services for the employer pursuant to a contract.

Employers with Illinois employees, consultants, or contractors should review their employment agreements, settlement agreements, and termination agreements, and make updates as necessary to ensure compliance with the amended IWTA before January 1, 2026, the effective date of the amended Act.

Expanded Definition of “Unlawful Employment Practice”

The amendment expands the definition of “unlawful employment practice.” The prior definition encompassed only acts of “unlawful discrimination, harassment or retaliation” as enforced by the Illinois Department of Human Rights or the Equal Employment Opportunity Commission. Under the amended Act, the definition of “unlawful employment practice” encompasses any unlawful practice under any state or federal law governing employment, including laws enforced by the Illinois Department of Labor, Illinois Labor Relations Board, U.S. Department of Labor, Occupational Safety and Health Administration, and National Labor Relations Board.

The expanded definition means that other provisions of the IWTA, including those prohibiting unilaterally imposed conditions restricting disclosure of unlawful employment practices now cover a broader range of allegations, including those related to workplace safety, wages, and labor activities.

New Protection for “Concerted Activity” to Address Work-Related Issues

The amended Act adds new protections for an employee’s “concerted activity” to address work-related issues. “Concerted activity” means “activities engaged in for the purpose of collective bargaining or other mutual aid or protection” as provided under the National Labor Relations Act, as it existed on January 19, 2025, and the Illinois Education Labor Relations Act, Illinois Public Labor Relations Act, and Labor Dispute Act.

In addition to barring certain agreements that prohibit, prevent, or otherwise restrict a current, prospective, or former employee from reporting allegations of unlawful conduct in the workplace, the amended Act also bars provisions that prohibit, prevent, or otherwise restrict such employees from “engaging in concerted activities to address work-related issues.”

Additional Limits on Employment Agreement Terms

Prohibited unilateral terms. The IWTA prohibits unilateral contract terms imposed as a condition of employment or continued employment with the purpose or effect of preventing an employee or prospective employee from making truthful statements or disclosures about alleged unlawful employment practices. The amended Act adds terms with the purpose or effect of preventing an employee or prospective employee from engaging in concerted activity to address work-related issues to prohibited unilateral terms.

The existing IWTA also prohibits unilateral terms which require the employee or prospective employee to waive or otherwise diminish any existing or future claim, right, or benefit related to an unlawful employment practice. The amended Act adds the following terms to the contract provisions which, if unilaterally imposed, are void:

- Shortening an applicable statute of limitations.
- Requiring the application of non-Illinois law to an Illinois employee’s claim.
- Requiring a venue outside of Illinois to adjudicate an Illinois employee’s claim.

Conditions on mutual terms. Under the IWTA, parties can reach mutual terms that would be void if imposed unilaterally, provided that certain conditions are satisfied. The amended Act expands on the conditions for mutuality. The expanded conditions include an acknowledgement of the employee or prospective employee’s right to (1) “engage in concerted activities to address work-related issues,” and (2) participate in a proceeding relating 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.” The latter provision broadens the original language to include private litigation and enforcement by any government agency (and is not limited to agencies that enforce discrimination laws).

New Requirements for Confidentiality Provisions in Settlement and Termination Agreements

Under the IWTA, employers may use confidentiality provisions in settlement agreements and termination agreements with current, prospective, and former employees, provided that certain conditions for the use of such provisions are satisfied. Under the amended Act, employers may

continue to use confidentiality provisions, but they are now subject to the following additional requirements to be valid:

- The “valid, bargained for consideration in exchange for the confidentiality” required by the Act must be “separate” from any consideration the employer is providing in exchange for the employee’s release of claims.
- While the Act still requires that “confidentiality is the documented preference” of the employee, the amendment specifies that an employer may not unilaterally include language in an agreement stating that confidentiality is the employee’s preference.
- Confidentiality provisions cannot apply to “concerted activities related to workplace conditions.”

Expanded Rights for Employees to Testify in Proceedings

The pre-amendment IWTA protects the rights of current, prospective, and former employees to testify in administrative, legislative, and judicial proceedings concerning alleged criminal conduct or unlawful employment practices, when required or requested to do so by court order, subpoena, or written request from the government. The amended Act adds arbitral proceedings to the list of proceedings in which employees have the right to provide testimony. It also clarifies that employees have the right to provide such testimony in depositions in connection with any of the covered proceedings.

Additional Damages Available

The amended IWTA expands available remedies. Current, prospective, and former employees may now receive an award of “consequential damages,” in addition to reasonable attorneys’ fees and costs for a successful challenge to the validity or enforceability of an agreement. In addition, consequential damages and attorneys’ fees and costs are now available to current, prospective, and former employees in defending an action for breach of a confidentiality agreement pursuant to the Act.

If you have questions or would like more information about the IWTA amendment and what it means for your agreements, please contact your usual counsel at Kelley Drye, or a member of our Labor and Employment team.