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Artificial Intelligence in Flux: A New Federal Executive Order and Illinois' 2026 AI Law

12/23/2025

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Practices: Employment, Labor & Benefits

Artificial Intelligence (AI) regulation is proliferating quickly on the state level. At the federal level, President Trump issued a new Executive Order (EO) regarding AI on December 11, 2025, signaling an effort to rein in state-by-state AI regulation and move toward a more unified national approach. The EO directs federal agencies to identify state AI laws that may interfere with federal AI policy, authorizes the Department of Justice to challenge those laws, and suggests that federal funding and regulatory authority could be used to discourage certain state-level requirements. Importantly, however, the EO does not automatically invalidate existing state AI laws. Instead, it sets the stage for potential litigation, federal rulemaking, and possible congressional action down the road.

At the same time, Illinois employers face a very real compliance deadline. Beginning January 1, 2026, Illinois' new AI law will apply to any employer with one or more employees in Illinois, as well as staffing agencies and joint apprenticeship or training committees, and will regulate the use of AI and automated tools in a broad range of employment decisions, including recruiting, hiring, promotion, discipline, termination, training selection, and decisions affecting the terms and conditions of employment. The law is aimed at promoting transparency and fairness by requiring employers to ensure that AI tools do not produce discriminatory outcomes and to provide notice when AI is used to influence covered employment decisions. Recently released draft rules from the Illinois Department of Human Rights (IDHR) add further clarity, explaining that notice would be required whenever AI is used to assist, screen, score, rank, or otherwise influence an employment decision, even if a human makes the final call, and identifying common tools such as resume screening software, candidate ranking systems, automated assessments, AI-assisted interview evaluations, and AI-driven recruiting or job advertising. The IDHR draft rules also make clear that Illinois employers remain responsible for compliance even when AI tools are utilized by third-party vendors.

Final IDHR rules will not be in effect by January 1, 2026, but the Illinois AI law will still be effective and enforceable as of that date, so Illinois employers should not wait to take action. Employers will be expected to comply with the law itself and demonstrate reasonable, good-faith compliance, even in the absence of final regulations. While the draft IDHR rules are not legally binding, they provide the clearest insight into the IDHR's anticipated enforcement expectations and can be used as a practical roadmap for compliance. At the same

time, employers should be mindful of ongoing federal developments, including the recent EO signaling potential federal preemption of state AI laws. Until and unless federal action actually alters state enforcement, employers are best served by a dual-track approach, taking concrete steps now to comply with Illinois law while continuing to monitor federal activity that could reshape AI obligations in the future. Employers that take proactive, documented steps now will be in a much stronger position than those who wait for final rules. Recommended steps for Illinois employers include:

1. Identifying and Understanding AI Use

- Take inventory of where AI or automated tools are used in HR and employment decisions, including tools embedded in applicant tracking systems and third-party vendor platforms.
- Work with vendors to understand how those tools function, what data they rely on, and how they are used in employment-related processes.
- Identify and document the purpose of each AI tool and the specific employment decisions it affects.

2. Providing Required Notice and Communication

- Provide notice when AI is used to assist or influence covered employment decisions, even if a human decision-maker retains final authority.
- Designate a point of contact for employee or applicant questions and accommodation requests related to AI use.

3. Documenting and Monitoring Compliance

- Retain copies of all notices provided and maintain documentation reflecting good-faith compliance efforts.
- Monitor ongoing Illinois rulemaking and federal developments and be prepared to adjust practices as guidance evolves.

If you have any questions about this legal update or need any assistance complying with Illinois' new AI law, please contact Naureen Amjad (namjad@masudafunai.com), James Jansen (jjansen@masudafunai.com), or any other member of Masuda Funai's Employment, Labor and Benefits Group.

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