



**Entrepreneur
& Family**
BUSINESS COUNCIL

Employment Law

Compliance Issues

By: Rachel E. Bossard





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Presenter Intro

Rachel Bossard is a Partner at Burke, Warren, MacKay & Serritella, P.C and a strategic partner of EFBC since 2015. Rachel chairs the Firm's Labor and Employment practice group. She represents employers in all aspects of the law including client counseling, training, litigation, and benefits. She has vast trial experience in both state and federal courts and has litigated and mediated hundreds of employment law matters filed with various governmental agencies. Rachel has argued before the Seventh Circuit Court of Appeals on multiple occasions regarding issues such as discrimination, retaliation, and failure to accommodate.



Hiring and Recruitment

Job postings must comply with Pay Transparency Law.

- Amendment to the Illinois Equal Pay Act went into effect on January 1, 2025, and requires an employer to include pay scale and benefit information in job postings.
- Applies to employers with at least 15 employees, whether the employees are inside or outside of Illinois or full-time or part-time.
- When making an external job posting, the employer also must within 14 days announce, post, or otherwise make known to all its current employees all opportunities for promotion.



Hiring and Recruitment

Ensure offer letters comply with Illinois Wage Payment and Collection Act.

- Must notify employees, at the time of hiring, of the rate of pay and of the time and place of payment
- Specify if the employee is exempt or nonexempt
- Contingent upon satisfactory completion of background check, drug testing
- Include disclaimer language that the employee is at-will



Hiring and Recruitment

Ensure job descriptions are thorough and accurate.

- Start with one that can be updated, as necessary
- Agreement between the employer and the employee regarding the job expectations
- Critical for performance evaluations, work restrictions, requests for accommodation
- Include percentages of duties
- Other duties as assigned
- Acknowledged by employee
- Placed in personnel file



Hiring and Recruitment

Comply with the Fair Credit Reporting Act and Illinois Ban the Box laws when conducting background checks.

- Illinois law prohibits discrimination on the basis of an arrest.
- Employers cannot ask about criminal history until after an applicant has been deemed qualified for the job, has been selected for an interview, or a conditional offer has been made.
- Obtain consent form.
- Pre-Adverse and Adverse Determination letters/Summary of Rights.
- In order to disqualify, must be able to show that it is job-related and consistent with business necessity.

Hiring and Recruitment

- Verify applicant's eligibility to work in the U.S.
- Obtain complete I-9 forms with copies of documents within 3 days
- Perform routine audits of I-9 forms to ensure work authorizations have not expired



Wage and Hour Issues



Proper classification of employee versus independent contractors:

- **Opportunity for profit or loss:** Whether the worker has the potential to make a profit or loss based on their managerial skill.
- **Investments by the worker:** The extent of the worker's investment in their own equipment or tools.
- **Degree of permanence:** The length of the work relationship.
- **Nature and degree of control:** The extent to which the employer controls the work's methods, schedule, and compensation.
- **Integral part of the business:** Whether the work performed is a core part of the potential employer's business.
- **Skill and initiative:** The level of skill and initiative required to perform the duties.

Wage and Hour Issues

Proper classification of employee as exempt or non-exempt:

- Executive
- Administrative
- Professional
- Highly Compensated Employee
- Creative Professional
- Computer Employee
- Outside Sales Employee

Exemption Comparison Table: Executive, Administrative, Professional

Executive Exemption	Administrative Exemption	Professional Exemption
Paid a salary of at least \$684/week	Paid a salary of at least \$684/week	Paid a salary of at least \$684/week
Primary duty is managing the company or a department/subdivision	Primary duty is office or non-manual work directly related to management, business operations or customers	Primary duty requires advanced, intellectual knowledge in a field of science or learning
Regularly supervises at least 2 full-time employees (or equivalent)	Regularly exercises discretion and independent judgment on matters of significance	Consistently exercises discretion and judgment
Has authority to hire or fire (or to recommend doing so)		The advanced knowledge must be gained through specialized, prolonged formal education

Wage and Hour Issues

Highly Compensated Employees

- Performing office or non-manual work
- Paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis)
- Customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Exemption Comparison Table: Other Exemptions

Creative Professional	Computer Employee	Outside Sales Employee
Paid a salary of at least \$684/week	Paid a salary of at least \$684/week or hourly compensation of at least \$27.63/hour	(N/A - No specific amount required)
Primary duty is work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.	Employed as a computer system analyst, computer programmer, software engineer, or other similarly skilled worked in the computer field performing specific duties	Primary duty is making sales or obtaining orders or contracts for services or the use of facilities
		Must be customarily and regularly engaged away from the employer's place of business

Wage and Hour Issues

Minimum wage and overtime obligations:

- **Illinois**
 - Minimum wage: \$15.00 per hour
 - Overtime: \$22.50 per hour (over 40 in a workweek)
- **Chicago**
 - Minimum wage: \$16.60 per hour
 - Overtime: \$24.90 per hour (over 40 in a workweek)



Wage and Hour Issues

Provide legally required break times.

- The One Day Rest in Seven Act requires most employers to provide at least a 20-minute meal break no later than five hours after the start of a shift for employees working 7.5 hours or more.
- An additional 20-minute meal break is required for shifts of 12 hours or longer.
- Also requires at least 24 hours of rest every seven consecutive days.



Wage and Hour Issues

Maintain accurate timekeeping records.

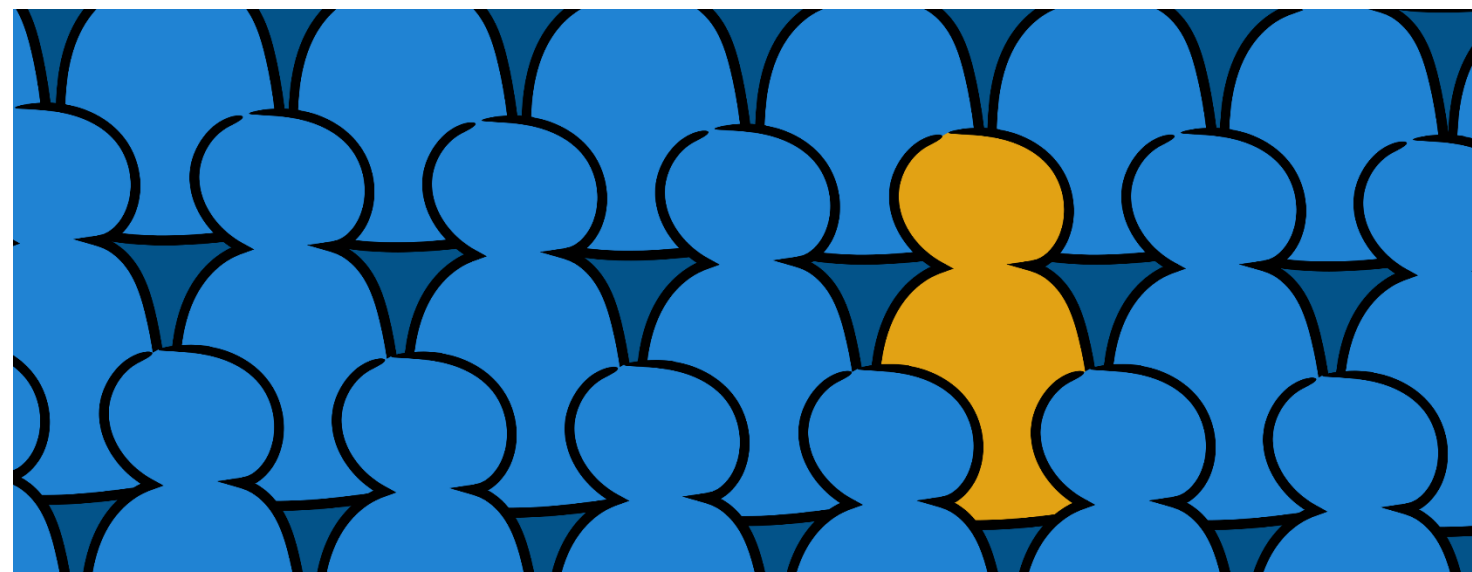
- For all non-exempt employees, including hours worked, pay rates, and earnings
 - Retain for two years for wage computation records
 - Retain for three years for payroll records
- Failure to keep proper records can result in liability if an employee claims to be underpaid.



Discrimination and Harassment

Understand obligations under Title VII, ADA, ADEA, Illinois Human Rights Act.

- Federal laws prohibit discrimination and harassment on the basis race, religion, sex (including sexual orientation, gender identity and pregnancy), age, national origin, disability (mental or physical) or genetic information
- Illinois law also includes arrest record, martial status. Military status, citizenship and immigration status, and familial status



Discrimination and Harassment

Implement and enforce policies prohibiting discrimination and harassment.

- Must have an EEO policy
- An anti-harassment policy.
- Illinois and Chicago have requirements of what must be contained in the policy



Discrimination and Harassment

Provide training on these policies, particularly anti-harassment.

- All Illinois employees are required to have one hour of harassment prevention training annually.
- City of Chicago employees are required to have bystander training.
- Chicago supervisors must undergo additional supervisor training.



Discrimination and Harassment

Provide reasonable accommodations to applicants and employees with disabilities and those who are pregnant.

- Must have a process to assess requests for accommodations and engage in the interactive process.



Image from: FDA.gov

Discrimination and Harassment

Promptly investigate and address any complaints.

- Do not unilaterally decide that a complaint does not have merit.
- Document your efforts to investigate.
- Determine and communicate your findings.
- Address conduct that violates your policies.
- Follow up.



Employee Benefits

Illinois Paid Leave for All Workers Act

- Effective January 1, 2024, most Illinois must employers to provide up to 40 hours of paid leave annually to all employees
- Accrue one hour for every 40 hours worked
- Employees can use for any reason
- Cannot require employees to provide documentation or find a replacement worker.
- Employers must have a written policy
- Can deny leave requests due to operational necessity, but cannot have discriminatory blackout dates.

**PAID
LEAVE
for ALL**

Employee Benefits

Chicago Paid Sick and Safe Leave Ordinance

- Effective July 1, 2024
- Any employee who works at least 80 hours within any 120-day period is eligible for paid leave and paid sick leave.
- Employees begin to accrue on the first calendar day after they begin their employment.
- For every 35 hours worked, employees accrue one hour of paid leave and one hour of paid sick leave.



Employee Benefits

Family Medical Leave Act (FMLA)

- Employers with 50 or more employees within a 75-mile radius
- Includes both full-time and part-time employees
- Eligible employees are those who have worked for the employer for at least 12 months, have worked at least 1,250 hours in the 12 months prior to the leave request
- Up to 12 weeks of unpaid time off for serious health condition.
- Use the DOL forms



Employee Benefits

Affordable Care Act (ACA)

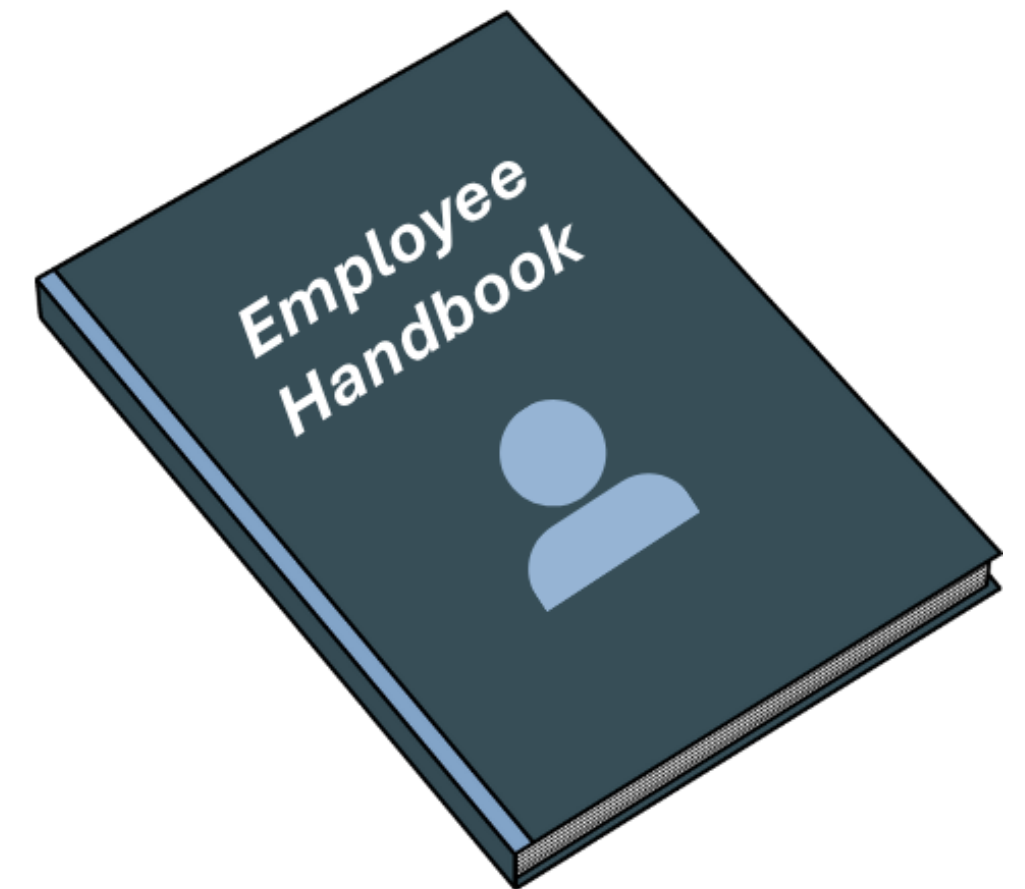
- Employers with 50 or more full-time or full-time equivalent employees must offer affordable health coverage or face potential IRS penalties.



Employee Handbooks

Must have at least a minimum number of critical policies

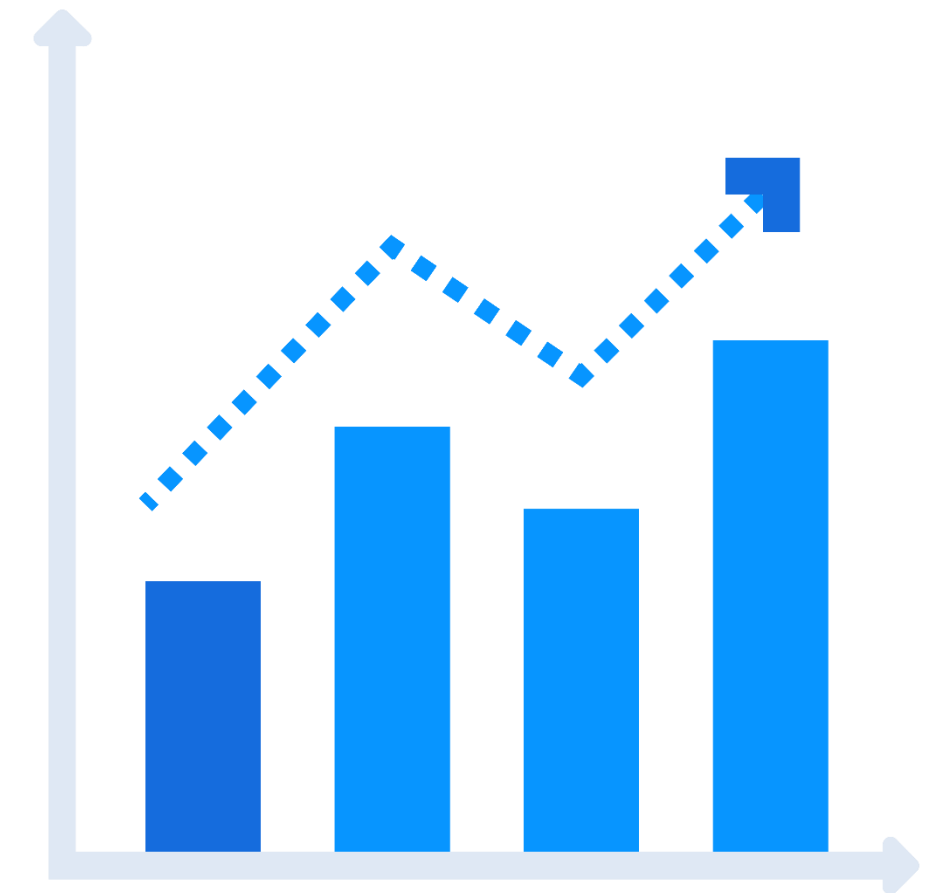
- Clearly communicate expectations
- Give examples, but not exhaustive
- Include flexible language
- No rigid progressive discipline policies
- Reviewed by counsel
- Updated regularly



Performance Evaluations

Critical feedback and evidence of performance

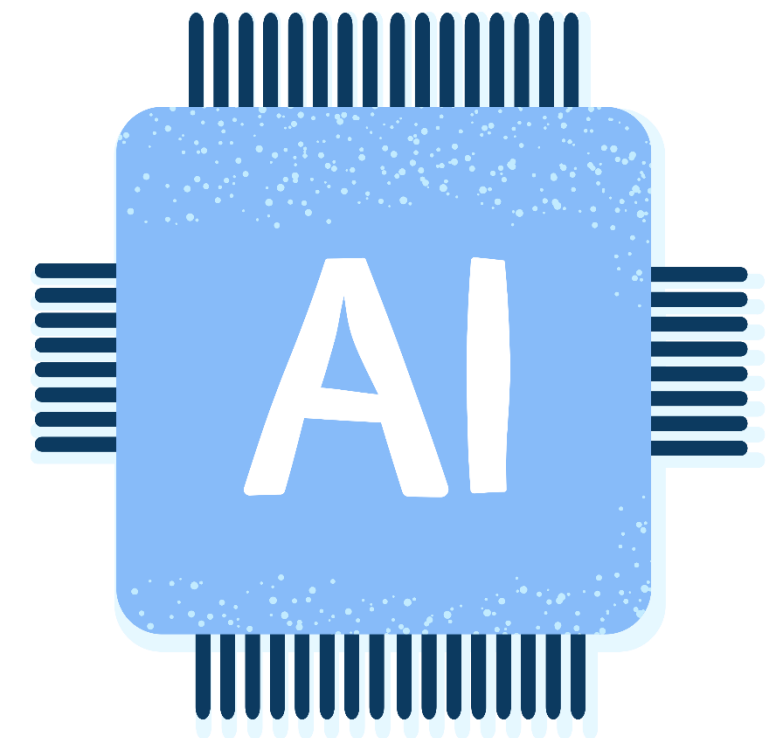
- Routinely performed
- Honest and objective
- Document employee shortcomings
- Acknowledged by employee



Artificial Intelligence

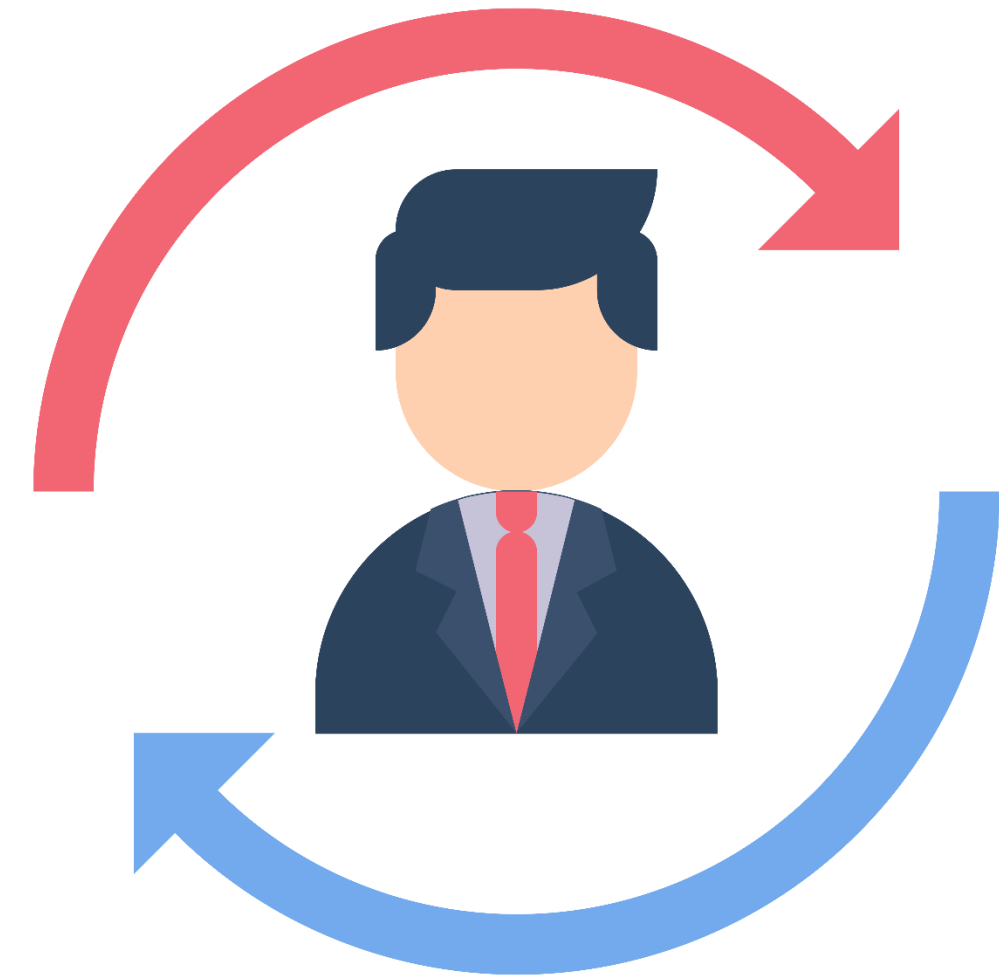
Illinois law as of January 1, 2026, it is unlawful:

- For an employer to use AI that has the effect of subjecting employees to discrimination on the basis of protected classes or to use zip codes as a proxy for protected classes
- For an employer to fail to provide notice to an employee that the employer is using artificial intelligence for the purposes described above.



Discipline and Discharge

- At-will Employment
 - Employment Agreements
 - Collective Bargaining Agreements
 - Employee Handbook Policies
 - Document, document, document
 - Follow procedures for proper notice, final pay, PTO



Employee Records

- Maintain accurate and confidential employee records.
- Be prepared to comply with the Illinois Personnel Record Review Act.
- Maintain employee medical records confidentially and separate from personnel file.



Workplace Safety

- Maintain adequate workers' compensation insurance
- Timely report incidents
- Be aware of any OSHA regulations that apply
- Require appropriate safety equipment
- Conduct regular safety trainings





Questions?

Thank You!

Presenter Contact Info



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