Insights: Alerts

Illinois Enacts Civil Rights Safeguard Act: Codifies Disparate Impact Theory for Employment Discrimination Claims

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With a spate of other new employment laws, Illinois Governor JB Pritzker signed SB 3777, the Civil Rights Safeguard Act, on July 31, 2026, which amended the Illinois Human Rights Act. The Act takes effect on **January 1, 2027**. It provides another example of Illinois expanding state-law protections in an area where federal enforcement has become less certain. In particular, the new law expressly authorizes discrimination claims under an **effects-based, or disparate impact, theory** under the Illinois Human Rights Act. Under that theory, a plaintiff may challenge a facially neutral policy or practice that disproportionately harms individuals in a protected category, even absent proof of discriminatory intent.

As amended, the Illinois Human Rights Act prohibits employers, employment agencies, and labor organizations from using seemingly neutral "**criteria or methods**" in covered employment actions if those criteria or methods have the effect of subjecting individuals to discrimination.

Illinois employers should use the lead time before the Act's effective date to review hiring, screening, and other employment-related decision criteria. The new law adds an express effects-based prohibition to the Illinois Human Rights Act and will likely increase state scrutiny of employment practices that may disproportionately burden protected groups.

Why This Matters?

The Act adds new Section 2-103.5 to the Illinois Human Rights Act. Under that section, it is a civil rights violation for an employer, employment agency, or labor organization to use criteria or methods in acts covered by Section 2-102 if those criteria or methods have the effect of subjecting individuals to discrimination on the basis of unlawful discrimination, citizenship status, family responsibilities, work authorization status, arrest record, or conviction record.

This is significant because the statute does not stop at intentional discrimination. It targets facially neutral policies, practices, and decision tools that allegedly produce discriminatory results.

Key Takeaways for Employers

- Codifies state law prohibition on using “criteria or methods” that have a discriminatory effect.
- Defines “criteria or methods” broadly to include practices, policies, and groups of practices or policies that may have the effect of subjecting individuals to discrimination prohibited under the Act.
- Reaches not only traditional unlawful discrimination categories, but also citizenship status, family responsibilities, work authorization status, arrest record, and conviction record.
- Requires employers to establish that a challenged practice is job-related and consistent with business necessity.
- Expands liability where a complainant demonstrates that the business necessity could be served by another employment practice with a **less discriminatory effect**.

What the New Employment Provision Does?

The new law focuses on “criteria or methods” used in employment actions covered by Section 2-102. The statutory definition is broad enough to encompass formal policies, informal practices, and combinations of practices that shape employment outcomes.

As a practical matter, employers should expect scrutiny of seemingly neutral decision-making policies and tools such as:

- Hiring and applicant screening criteria
- Background check and criminal-history protocols
- Credential and qualification filters
- Attendance and scheduling requirements
- Work authorization procedures
- Automated or algorithmic employment decision tools.

These practices may fall within the law's broad reference to employment “criteria or methods.”

The Codified Legal Standard

Section 2-103.5 codifies a burden-shifting framework:

> **First**, an employer may need to demonstrate that the challenged criteria or methods are job related for the position in question and consistent with business necessity.
> **Second**, even if that showing is made, a complainant may still prevail by showing that the same business necessity could be served by another employment practice with a less discriminatory effect.

This framework means employers should be prepared not only to explain why a criterion exists, but also why it is appropriately tailored to the position at issue and whether a less discriminatory alternative is reasonably

available.

Practical Implications for Employers

Illinois employers should not assume a policy is defensible merely because it is facially neutral and applied uniformly. The new law is expressly concerned with whether a criterion or method has the **effect** of subjecting individuals to discrimination.

Recommended Next Steps Before the Effective Date

- Inventory employment decision criteria used across recruiting, hiring, promotion, scheduling, discipline, and separation.
- Review background screening practices in light of the statute's express treatment of arrest record and conviction record.
- Assess whether key criteria are truly job related for the specific position and supported by business necessity.
- Evaluate whether less discriminatory alternatives exist for current screening and selection tools.
- Review automated and AI-enabled employment tools to understand what inputs they use and whether those inputs may create adverse effects.
- Update documentation and training so HR, recruiting, legal, and business leaders understand the new standard before January 1, 2027.

Bottom Line

The Civil Rights Safeguard Act codifies the disparate impact theory -- effects-based employment standard under the Illinois Human Rights Act. Once effective on **January 1, 2027**, the law will increase scrutiny of employer policies, practices, and decision tools that may disproportionately burden protected individuals or other covered categories identified in Section 2-103.5. Employers should use the time now to review their employment criteria, confirm business necessity, and consider whether less discriminatory alternatives are available.

If you have questions about the Civil Rights Safeguard Act, its new disparate-impact standard, or steps to review and update your Illinois employment policies and practices before the January 1, 2027, effective date, please contact Kilpatrick's Labor and Employment Team.

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