

2024 LEGISLATIVE ROUNDUP FOR HIGHER EDUCATION

This publication summarizes key changes in the law that are relevant to higher education institutions, with an emphasis on new and enhanced protections for employees in the workplace. As always, please contact your Robbins Schwartz attorney with questions about how these new laws may affect your organization.

LABOR & EMPLOYMENT

Public Act 103-727: Amendment to Personnel Record Review Act (eff. 1/1/2025)

This legislation amends the *Personnel Record Review Act* to clarify that employees have the right to inspect, copy, and receive copies of:

- Personnel documents
- Any employment-related contracts or agreements binding on the employee
- Any employee handbooks made available to the employee (or that they acknowledged receiving)
- Any written policies or procedures “that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.”

If the records are already accessible by the employee, the employer may instead provide the employee with instructions on how to access that information. This amendment also provides requirements for details that employees’ written requests to inspect records must include.

Employers have 7 working days to comply, with an extension of 7 calendar days if the deadline cannot be met. Employees may file a lawsuit if the Illinois Department of Labor fails to resolve complaint about alleged violations within 180 days or certifies it is unlikely to be able to do so.

Public Act 103-749: Pay During Winter Weather Closure (eff. 1/1/2025)

This legislation adds a new section to the *Public Community College Act*, along with laws impacting state universities, to require pay for educational support services during a winter weather emergency. Specifically, if a campus is closed due to a city, county, or State declaration of a winter weather emergency, a college must pay to its employees who provide educational support services to the campus, including, but not limited to, custodial employees, building maintenance employees, transportation employees, food service providers, classroom assistants, or administrative staff, their daily, regular rate of pay and benefits rendered for the campus closure if the closure precludes them from performing their regularly scheduled duties and the employee would have reported for work but for the closure. This requirement does not apply if the day is rescheduled and the employee will be paid the employee's daily, regular rate of pay and benefits for the rescheduled day when services are rendered.

Public Act 103-722: Worker Freedom of Speech Act (eff. 1/1/2025)

This new law restricts employers from holding *mandatory* meetings or communications “to communicate the opinion of the employer about religious matters or political matters.” Meetings where attendance is purely voluntary are not prohibited. The Act requires employers to post a notice of rights under the law.

The law is intended to prohibit “captive audience” meetings, where employers require their employees to hear the perspective of management related to potential unionization efforts. However, it also extends to any “religious matter” or “political matter” as defined by the statute. “Political matters” are matters related to: elections for political office; political parties; proposals to change legislation/regulations/public policy; and the decision to join or support any political party or political, civic, community, fraternal, or labor organization. Unless the meeting falls within one of the Act’s exemptions, such as for required anti-discrimination trainings or meetings to provide information that is necessary to perform duties, colleges should avoid mandatory meetings related to religious or political matters, particularly if they may be perceived as having an “anti-union” message or requiring employees to hear the employer’s religious perspective.

In order to comply with the Act, employers must not take (or threaten) any adverse employment action:

- because an employee declines a meeting or communication if it is to communicate the employer’s opinion about religious or political matters;
- as a means of inducing an employee to attend or participate in meetings or receive or listen to communications about political matters; or
- in retaliation for making a good faith report of a violation of the Act (whether real or only “suspected”).

The new law also establishes a right to sue for violations of the law and monetary penalties for prevailing plaintiffs or interested parties as defined in the law.

Public Act 103-867: Amendment to Whistleblower Act (eff. 1/1/2025)

The *Whistleblower Act* first took effect on January 1, 2004, with amendments made in 2008, 2009 and 2011. The changes made by Public Act 103-867 apply to claims arising or complaints filed on or after January 1, 2025.

This amendment adds a definition for “adverse action” to mean “an action that a reasonable employee would find materially adverse.” It also defines “retaliatory action” as “an adverse employment action or the threat of an adverse employment action by an employer or his or her agent to penalize or any non-employment action that would dissuade a reasonable worker from disclosing information under the Act.”

A “retaliatory action” includes, but is not limited to:

- taking, or threatening to take, any action that would intentionally interfere with an employee's ability to obtain future employment or post-termination retaliation to intentionally interfere with a former employee's employment;
- taking, or threatening to take, any action prohibited by subsection (G) of Section 2-102 of the IHRA, which pertains to immigration related practices; or
- contacting, or threatening to contact, immigration authorities, or otherwise reporting, or threatening to report, the suspected or actual citizenship or immigration status of the employee or their family or household member to a federal, State, or local agency (unless the employer is otherwise required to make a report).

The changes expand an employee’s protected activity to include when an employee discloses or threatens to disclose information “related to an activity, policy, or practice of the employer where the employee has a good faith belief that the activity, policy, or practice (i) violates a State or federal law, rule, or regulation or (ii) poses a substantial and specific danger to employees, public health, or safety.”

Perhaps most significantly, the Act’s section on retaliation for protected disclosures was also expanded to include disclosures to others **including supervisors and board members**, not just courts, administrative hearings, or other legal proceedings. Finally, the amendment provides even more options for enforcement and monetary or other relief available to employees for violations of the Act.

ILLINOIS HUMAN RIGHTS ACT

Public Act 103-785: Reproductive Health Decisions (eff. 1/1/2025)

Following the trend of many states taking steps to guarantee greater protections for reproductive health following the overturn of *Roe v. Wade* by the U.S. Supreme Court in 2022, this legislation adds “reproductive health decisions” to the list of categories protected from unlawful discrimination under the *Illinois Human Rights Act* (IHRA).

This means employers may not take adverse action with regard to “a person’s decisions regarding the person’s use of contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care.”

Public Act 103-797: Family Responsibilities (eff. 1/1/2025)

This legislation amends the IHRA to make it a civil rights violation for an employer to take an adverse employment action, harass or retaliate against an applicant or employee based on “family responsibilities.” “Family responsibilities” are defined as “an employee’s actual or perceived provision of personal care to a family member.”

“Personal care” is also defined by Illinois law, and it means:

- activities to ensure that a covered family member's basic medical, hygiene, nutritional, or safety needs are met; or
- to provide transportation to medical appointments for a covered family member who is unable to meet those needs himself or herself; or
- being physically present to provide emotional support to a covered family member with a serious health condition who is receiving inpatient or home care.

For purposes of this amendment, “family member” means an employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Importantly, the amendment express states that an employer is not obligated to make accommodations or modifications to reasonable workplace rules or policies for an employee based on family responsibilities. Nor is an employer prohibited from taking any adverse action or otherwise enforcing reasonable workplace rules or policies against an employee with family responsibilities as long as the policies are applied in accordance with the IHRA.

ARTIFICIAL INTELLIGENCE

Public Act 103-805: Predictive Analytics (eff. 1/1/2026)

Beginning in 2026, this amendment to the IHRA will require employers to provide notice if they are using AI with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or other terms, privileges, or conditions of employment.

The Illinois Department of Labor is charged with adopting necessary rules on the circumstances and conditions that require notice, as well as the time period and means for providing notice.

For purposes of the IHRA, “artificial intelligence” is defined as a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

“Generative artificial intelligence” is defined as an automated computing system that, when prompted with human prompts, descriptions, or queries, can produce outputs that simulate human-produced content, including, but not limited to, the following:

- textual outputs, such as short answers, essays, poetry, or longer compositions or answers;
- image outputs, such as fine art, photographs, conceptual art, diagrams, and other images;
- multimedia outputs, such as audio or video in the form of compositions, songs, or short-form or long-form audio or video; and

- other content that would be otherwise produced by human means.

This amendment also prohibits an employer from using AI that has the effect of subjecting employees to discrimination on the basis of protected classes under IHRA or to use zip codes as a proxy for protected classes under the IHRA. Proxy discrimination occurs when a facially neutral trait is used as a stand-in for a prohibited trait.

STUDENTS & ENROLLMENT

Public Act 103-877: No Legacy Admissions (eff. 8/9/2024)

This legislation prohibits a public institution of higher education from considering an applicant's legacy status or the applicant's familial relationship to any past, current, or prospective donor of something of value to the public institution of higher education as a factor in admitting the applicant.

Public Act 103-1046: Grants for Exonerated Persons and Their Dependents (eff. 1/1/2025)

This legislation amends the *Higher Education Student Assistance Act* to expand access to the Grant Program for Exonerated Persons, which will now allow unused program benefits to be passed on to a child or spouse. The grant provides funding to cover the cost of obtaining high school, undergraduate or graduate degrees for up to the equivalent of four regular school years. Additionally, it allows exonerated grant recipients to use their awards at any private, non-for-profit college or university in the state that is approved to participate in the Monetary Award Program beginning in the 2025-2026 academic school year.

Public Act 103-871: National Guard/Reserve Classwork Policy (eff. 1/1/2025)

This amendment to the *Public Higher Education Act* will require the governing board of each public institution of higher education to adopt a policy to allow a student who is a member of the National Guard of any state, the District of Columbia, a commonwealth, or a territory of the United States or any reserve component of the Armed Forces of the United States to submit classwork and complete any other class assignments missed due to the student participating in a drill or other military obligation required as a member of the National Guard or the reserve component.

Public Act 103-913: Refugee Transcript Evaluation Fee Waivers (eff. 8/9/2024)

Each public institution of higher education is now required to pay on behalf of a refugee or reimburse a refugee for payment of any transcript evaluation fees that are required by the public institution of higher education to be paid during the admission process. For purposes of this requirement, “refugee” only includes a person who has entered the United States on a refugee status from Iraq or Afghanistan.

Public Act 103-1020: Enrollment Data Reporting (eff. 8/9/2024)

These changes to the *Public Community College Act* establish new enrollment reporting obligations. Specifically, on or before October 1, each community college must report to the Illinois Community College Board all of the following student enrollment data:

- The number of students enrolled at the start of the previous academic year.
- The number of students enrolled full time at the start of the previous academic year.
- The number of students enrolled at the start of the current academic year.
- The number of students enrolled full time at the start of the current academic year.
- The number of students enrolled in online learning at the start of the previous academic year.
- The number of students enrolled in in-person learning at the start of the previous academic year.
- The number of students enrolled in online learning at the start of the current academic year.
- The number of students enrolled in in-person learning at the start of the current academic year.
- The rolling average number of students enrolled over the previous 5 academic years.

This legislation creates similar obligations for Illinois public universities to report to the Board of Higher Education, but with a deadline of 15 days after the start of an academic year.