

## Publications

### New Year, New Rules: Changes to the Illinois Workplace Transparency Act Effective January 2026

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Effective January 1, 2026, significant amendments to the Illinois Workplace Transparency Act (WTA) impose stricter limits on the use of confidentiality clauses, broaden protected rights like “concerted activity,” and expand the legal exposure for employers who fail to comply. The changes will impact how employers must draft confidentiality clauses in employment contracts as well as release language in severance packages or settlement agreements with employees and independent contractors.

### Expanded Protections & Additional Prohibited Contractual Terms

The WTA, first enacted in 2020, aims to prevent workplace discrimination and harassment against independent contractor workers and current, prospective, or former employees by prohibiting any contractual terms that place restrictions on the ability to report allegations of unlawful discrimination, harassment, or retaliation practices to government officials. The amended WTA expands that prohibition to include any other state or federal law “governing employment,” including laws enforced by the Illinois and U.S. Departments of Labor, the Occupational Safety and Health Administration (OSHA), and the National Labor Relations Board (NLRB). The same prohibition will now also apply to any contractual restriction on an individual’s ability to engage in concerted activity, such as collective bargaining to address work-related issues.

Additionally, all agreements entered into on or after January 1 as a unilateral condition of employment or continued employment cannot contain terms purporting to shorten a statute of limitations, apply non-Illinois law to an Illinois employee’s claims, or require a venue outside Illinois to adjudicate an Illinois employee’s claims.

The WTA generally permits an agreement that is a mutual condition of employment or continued employment to include the above provisions if there is bargained-for consideration and the agreement acknowledges the employee’s or prospective employee’s right to report

good faith allegations of unlawful discriminatory practices or criminal conduct, participate in proceedings with government agencies enforcing discrimination law, make truthful disclosures required by law, and request or receive legal advice. The amended WTA continues to permit the inclusion of such provisions so long as the acknowledgment also includes the notice of the employee's or prospective employee's right to participate in proceeding related to unlawful employment practices, including any litigation alleging the employer has violated any state, federal, or local law, regulation, or rule, and to engage in concerted activity to address work-related issues.

### **New Limits on Confidentiality Clauses**

Another significant change involves new requirements for confidentiality clauses in separation and settlement agreements. Confidentiality clauses must now be supported by valid bargained-for consideration, separate and distinct from any consideration provided in exchange for a release of claims to remain enforceable. Separation or settlement agreements also may not unilaterally represent that confidentiality is the employee's preference (i.e., the clause must reflect mutual agreement). And such agreements cannot require confidentiality of future or prospective concerted activity related to workplace conditions.

### **New Remedies**

The amended WTA also comes with greater legal exposure for non-compliance and new enforceability conditions. Employees (including former or prospective employees and contractors) are now entitled to recover consequential damages (in addition to costs and attorney's fees) when they successfully challenge contracts that violate the amended WTA. Employees may also be entitled to consequential damages when they successfully defend against confidentiality breach claims brought by their former employers. Consequential damages, also known as "special" damages, are losses that do not flow directly from a contractual breach but are still foreseeable consequences of such conduct, such as lost profits or business opportunities—priming the landscape for ballooning damage judgments in otherwise standard breach of contract cases.

### **Practical Takeaways**

Contractual terms or clauses that were acceptable before may need to be revised or removed to avoid being declared void as against public policy. Employers should carefully review templates used for confidentiality clauses in employment agreements, releases, and severance agreements before the new year to ensure compliance.