

Counties of Illinois Risk Management Agency (CIRMA)

HR Management Seminar

Northfield Inn and Conference Center • September 24, 2024 • Springfield, Illinois



Welcome

Illinois Association of County Board Members and Commissioners

TODAY'S AGENDA

- Family and Medical Leave Act (FMLA)
- Paid Leave For All Workers Act (PLFAWA)
- Fair Labor Standards Act (FLSA)
- Hiring Practices and Pay Transparency

Wrap Up and Discussion

Important year end reminders to be prepared for 2025 to stay in compliance.



Family and Medical Leave Act Topics

Human Resource Management Seminar

- Employer coverage
- Employee eligibility
- Qualifying reasons for leave
- Basic provisions of the law
- FMLA policy and additional employer requirements
- Actions prohibited by the FMLA



FMLA Introduction

Human Resource Management Seminar

The Family and Medical Leave Act (FMLA) is a federal law enacted in 1993 that provides eligible employees with unpaid, job-protected leave for specified family and medical reasons.

Of all federal employment laws, the FMLA is one of the most popular and beneficial to employees.

Most employees are aware of the basic requirements of the law, but they may not realize the law provides employers with various options on how to administer FMLA leave.



FMLA – Employer Coverage

Human Resource Management Seminar

A covered employer is one of the following:

- A private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer.
- A public agency, including a local, state or federal government agency, regardless of the number of workers it employs.
- A public or private elementary or secondary school, regardless of the number of workers it employs.

FMLA – Employee Eligibility

Human Resource Management Seminar

An eligible employee meets the following criteria:

- Works for a covered employer
- Has worked for the employer for at least 12 months
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave
- Works at a location where the employer has at least 50 employees within 75 miles



FMLA – Employee Eligibility (continued)

Human Resource Management Seminar

The 12 months of employment do not need to be consecutive

Separate periods of employment will be counted, provided that the break in service does not exceed seven years

Separate periods of employment will be counted if the break in service exceeds seven years due to military service obligations or when there is a written agreement stating the employer's intention to rehire the employee after the service break



Qualifying Reasons for FMLA Leave

Human Resource Management Seminar

There are several qualifying reasons for FMLA leave:

- For the birth of a child and to care for the newborn child
- For placement with the employee of a child for adoption or foster care
- To care for the employee's spouse, child or parent with a serious health condition
- Because of a serious health condition that makes the employee unable to perform the functions of the employee's job



Qualifying Reasons for FMLA Leave

Human Resource Management Seminar

There are several qualifying reasons for FMLA leave:

- Because of any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active-duty status)
- To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the covered service member

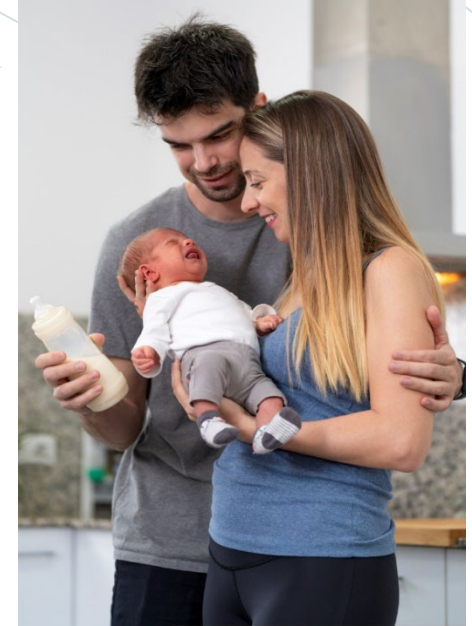


Qualifying Reasons (continued)

Human Resource Management Seminar

Birth of a child and to care for the newborn child (up to 12 weeks of leave in a 12-month period):

- Both the mother and father are entitled to take FMLA to bond with a newborn child. No medical necessity is required for bonding leave.
- An expectant mother may take FMLA leave for prenatal care appointments and time off during the pregnancy if the pregnancy makes her unable to work before the actual birth of the child due to severe morning sickness, bed rest, etc.
- The spouse of an expectant mother may take FMLA leave to attend prenatal care appointments or to care for the spouse if needed during or after the pregnancy.



NOTE: *An employee's entitlement to FMLA leave for birth and bonding expires 12 months after the date of birth.*

Qualifying Reasons (continued)

Human Resource Management Seminar

Placement with the employee of a child for adoption or foster care (up to 12 weeks of leave in a 12-month period):

- Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement process, including court appearances, counseling, doctor or attorney visits.
- Leave is also available for bonding with the child after adoption or placement.

NOTE: *An employee's entitlement to FMLA leave for the placement of a child for adoption or foster care expires 12 months after the placement.*



Qualifying Reasons (continued)

Human Resource Management Seminar

A serious health condition that makes the employee unable to perform the functions of the employee's job (up to 12 weeks of leave in a 12-month period):

- A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. In general, a serious health condition includes the following:
 - Any overnight admission to a hospital, hospice or residential medical care facility.
 - Continuing treatment by a health care provider that results in a period of incapacity of more than three consecutive days and necessary follow-up treatment (e.g., additional doctor or nurse visits, prescription medication, physical therapy).
 - Chronic conditions requiring periodic health care visits at least twice a year.

Caring for the employee's spouse, child or parent with a serious health condition. The same definition of serious health condition applies when leave is needed to care for a family member.

Qualifying Reasons (continued)

Human Resource Management Seminar

A qualifying exigency arising out of the fact that the employee's spouse, child or parent is a military member on covered active duty or has been notified of an impending call or order to covered active-duty status (up to 12 weeks of leave in a 12-month period).

This leave may commence as soon as the individual receives the call-up notice. A qualifying exigency must be one of the following:

- Short-notice deployment
 - Military events and activities
 - Childcare and school activities
 - Financial and legal arrangements
 - Counseling
 - Rest and recuperation (up to 15 days)
 - Post-deployment activities
 - Parental care
- Additional activities that arise out of active duty, provided the company and the employee agree*



Qualifying Reasons (continued)

Human Resource Management Seminar

To care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the covered service member (up to 26 weeks of leave in a single 12-month period).

- Next-of-kin is defined as the closest blood relative of the injured or recovering service member
- Leave is available to care for a current servicemember or recent veteran who is undergoing medical treatment, recuperation or therapy, and is otherwise in outpatient status or on the temporary disability retired list for a serious injury or illness incurred or aggravated in the line of duty on active duty



Basic Provisions of the FMLA

Human Resource Management Seminar

FMLA 12-month period

An employer is permitted to choose one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement occurs:

- The calendar year
- Any fixed 12-month leave year, such as a fiscal year
- The 12-month period measured forward from the date an employee's first FMLA leave begins
- A rolling 12-month period measured backward from the date an employee uses any FMLA leave

Basic Provisions (continued)

Human Resource Management Seminar

Spouses who work for the same company

- When spouses both work for the company and each wishes to take leave for the birth of a child, adoption or placement of a child for foster care, or to care for a parent (but not parent-in-law) with a serious health condition, the spouses may take only a combined total of 12 weeks of leave.
- When spouses both work for the company and each wishes to take leave to care for a covered ill or injured service member, the husband and wife may take only a combined total of 26 weeks of leave.
- Both spouses are entitled to a full 12 weeks of leave due to the employee's own serious health condition or to care for a child with a serious health condition.

Basic Provisions (continued)

Human Resource Management Seminar

Intermittent and reduced leave schedules

- Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason.
- A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.
- Employers must accommodate intermittent or reduced schedule leave when deemed medically necessary by a health care provider.
- When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees.

Basic Provisions (continued)

Human Resource Management Seminar

Transfer to an alternative position

- Employees taking FMLA leave intermittently or on a reduced leave schedule may be transferred temporarily to an available alternative position for which the employee is qualified, and which better accommodates recurring periods of leave than does the employee's regular position.
- The position into which the employee transfers must have the same pay and benefits as the previous position, although the duties may be different.



Basic Provisions (continued)

Human Resource Management Seminar

Substitution of paid leave

- FMLA does not require paid leave.
- The law allows employers to require employees to use any paid leave that they may have as part of their FMLA leave.
- The law also allows employees to use their paid time off (PTO) during FMLA leave if the use of the PTO would meet the normal requirements for use (i.e., if PTO policy allows an employee to use PTO leave to care for a sick child, the employee may also use this leave during FMLA leave to care for a sick child).



Basic Provisions (continued)

Human Resource Management Seminar

Medical Certification

The FMLA allows employers to require employees to submit certification of the need for FMLA leave.

Certification may be required for:

- An employee's serious health condition
- A family member's serious health condition
- The qualifying exigency for military family leave
- The serious injury or illness of a covered service member for military family leave

NOTE: *Employees must be given at least 15 calendar days to provide the certification.*



Basic Provisions (continued)

Human Resource Management Seminar

Notice Requirements

- Employees requesting FMLA leave must provide verbal or written notice of the need to the employer. Within five business days after the employee has provided this notice, HR will provide the employee with notice of FMLA eligibility and rights.
- When the need for leave is foreseeable, the employee must provide at least 30 days' notice.
- When the employee becomes aware of the need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day.

Basic Provisions (continued)

Human Resource Management Seminar

Notice Requirements (continued)

- When the need is not foreseeable, the employee must provide notice to the employer as soon as possible and practical within the time required by the employer's usual and customary notice requirements.
- Within five business days after the employee has provided enough information for the employer to determine if the leave is FMLA-qualifying, HR will complete and provide a written response to the employee regarding the designation of FMLA leave.



FMLA Policy/Employer Requirements

Human Resource Management Seminar

FMLA Policy and Process is Critical

- Notify employees of their rights to FMLA leave (point out the FMLA policy in the company handbook, display the FMLA poster and provide notices to an employee when you are made aware of a potential need for FMLA leave).
- Continue health benefits at the same level as before the start of the FMLA leave. Refer to the FMLA policy for information regarding other employee benefits during leave.
- Reinstatement the employee to the same or an equivalent position upon conclusion of the FMLA leave.

Actions Prohibited by the FMLA

Human Resource Management Seminar

- Do not make pre-hire inquiries regarding the need for FMLA leave.
- Do not ask a doctor's note for each use of intermittent FMLA leave. (Contact the HR manager if you question an employee's use of FMLA leave.)
- Do not interfere with an employee's rights under the FMLA.
- Do not retaliate against employees who exercise their FMLA rights or file FMLA complaints.

Managers and HR staff violating the requirements of the FMLA may be held individually liable for violations of the law.

FMLA Resources

Human Resource Management Seminar

Visit www.dol.gov/agencies/whd/fmla for links to:

- Title I of the FMLA, as amended (29 U.S.C. 2601—2654)
- Regulations (29 C.F.R. Part 825)
- *The Employer's Guide to the FMLA*
- *The Employee's Guide to the FMLA*
- *The Employee's Guide to Military Family Leave under the FMLA*
- FMLA Forms and Forms Frequently Asked Questions
- FMLA Fact Sheets
- FMLA Posters (WH-1420)
- FMLA Frequently Asked Questions
- FMLA elaws Advisor

Paid Leave for All Workers Act (PLFAWA)

Human Resource Management Seminar

Workers in Illinois began earning paid time off on January 1, 2024.

The new law allows workers to earn up to 40 hours of paid leave in a 12-month period. Workers will accrue one hour of leave for every 40 hours worked.

On March 31, 2024, or 90 days following commencement of employment, workers began using their earned time off for any reason without the requirement of providing documentation to their employer under the Paid Leave for Workers Act.



Guidance for PLFAWA

Human Resource Management Seminar

Nearly all employees – full-time and part-time — in Illinois are covered.

Exclusions include temporary part-time student employees at state colleges and universities and short-term college or university employees (i.e., those employed for less than two consecutive calendar quarters and not expected to be rehired for the same service in the next calendar year).

The Act clarifies that it does not affect the validity or change the terms of a CBA in effect on January 1, 2024 (or July 1, 2024, for employees of a state agency); however, after that date, requirements of the Act may only be waived if a bona fide CBA explicitly includes a waiver in clear and unambiguous terms.



Important Employer Considerations

Human Resource Management Seminar

Employers already offering at least 40 hours of discretionary paid leave do not have to provide additional paid leave to comply with the act.

Employers should continue to review the terms of existing paid leave programs to determine whether to take additional action.

Employers may not have needed to do anything to change their policy, only how the 40 hours of discretionary paid leave is administered.

The key to utilizing existing paid leave programs is that the employee does not have to provide a reason for taking time off for the 40-hour paid leave time.

Employer Considerations (continued)

Human Resource Management Seminar

Employers should have made the decision whether to continue existing paid vacation or PTO policies that satisfy the act but require payout of unused PTO on employment separation or instead design a paid leave policy that complies with the act but does not require PTO payout on separation.

Employers with part-time workers who don't qualify for the existing paid leave program should have made the decision whether to offer a separate program or include part-time employees in the current plan.

Employers are able to set a reasonable minimum increment of two or fewer hours for leave use. Unused accrued paid leave at year-end will carry over to the next year, but employers will not have to provide more than 40 hours of paid leave in each 12-month period.

Employer Considerations (continued)

Human Resource Management Seminar

Twelve-month period designated by the employer:

Examples include an employee's work anniversary date, a calendar year, an employer's fiscal year or health plan year, or some other 12-month period.

Employers have flexibility in designating the 12-month period, as long as they meet all of these requirements:

- The period must cover 12 consecutive months.
- The employer must provide written notice of the 12-month period at hire (or on or before Jan. 1, 2024, for current employees).
- Changes to the 12-month period must not reduce the accrual rate, and employees must receive advance notice of the change. If a change is made, the employer must provide documentation of each employee's hours worked, paid leave accrued and taken, and remaining balance.

Employer Considerations (continued)

Human Resource Management Seminar

Job protections

The act prohibits employers from requiring employees to find a replacement to work while they are on paid leave. Bars employers from including paid leave in a no-fault attendance policy or otherwise making use of paid leave a negative factor in work evaluations or promotional considerations.

Any adverse action, threat of adverse action or other form of retaliation against employees is prohibited for these activities:

- Exercising rights under the act
- Opposing impermissible employer practices
- Supporting another worker's rights under the act.

NOTE: *Noncompliant employers could face civil penalties.*



Employer Responsibilities

Human Resource Management Seminar

Health plan coverage continuation

Employers will have to maintain group health plan coverage for an employee on paid leave at the same level and conditions as when the employee was actively working.

Employers will have to notify employees about their responsibility to pay the employee share of the premium while on leave, if required.

Employers will likely continue benefit deductions through the normal payroll process.

This requirement does not extend to non-health benefits like life insurance or retirement plans.



Employer Responsibilities (continued)

Human Resource Management Seminar

In addition to providing paid leave and designating the 12-month period, covered employers will have to comply with posting and recordkeeping requirements.

Poster: Employers will have to post an ILDOL-created notice in a conspicuous place at the workplace and include the notice in an employee manual or policy.

The notice will summarize the act's requirements and contain information about employees' enforcement.



State of Illinois
Illinois Department of Labor

PAID LEAVE FOR ALL WORKERS ACT NOTICE

Employers must provide employees with up to 40 hours of paid leave for any reason.

Paid Leave

- **Workers:** Earn up to 40 hours of paid leave from work per year.
- **Use:** Workers can use paid leave for any reason of their choosing. Employers may not require workers to provide a reason for their paid leave request or require a worker to find a replacement worker.
- **Accrual:** Workers earn 1 hour of paid leave for every 40 hours they work. Employers may also provide workers with all paid leave hours at the start of the 12-month period (frontloading).
- **Carryover:** Workers rollover all unused accrued paid leave at the end of the year. Any unused frontloaded leave does not have to be carried over.
- **Retaliation is prohibited:** Penalties may apply to employers that take adverse action against workers who exercise their rights under this law.

Penalties

Workers may recover the amount they should have been paid for the leave, penalties, and other equitable relief.

Filing a Complaint

A worker may file a complaint with the Illinois Department of Labor alleging a violation of this Act by filling out a complaint form at labor.illinois.gov/paidleave.

Existing Policy and Exclusions

Certain exceptions may apply for employers who already provide their workers with paid leave. There are also certain categories of workers that are not covered by the law.

See QR code for more information on how to file a complaint and applicable exceptions to the law.

For a complete text of the law, visit our website at www.labor.illinois.gov

For more information on how to file a Complaint, contact us at DOL.PaidLeave@Illinois.gov
312-793-2600

THIS NOTICE MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES OF THE EMPLOYER WHERE OTHER NOTICES ARE POSTED.

Printed by the Authority of State of Illinois 12/23 KICJ 24-100

Employer Responsibilities (continued)

Human Resource Management Seminar

Recordkeeping: Covered employers will have to keep records of each employee's hours worked, paid leave accrued and taken, and paid leave balance for at least three years and the duration of any claim involving the employer's failure to comply with the law.

Employers will have to make records available to the ILDOL on request. In addition, employers will have to make the amount of an employee's paid leave accrued or used available on the employee's request.



Enforcement and Penalties

Human Resource Management Seminar

Employees will have three years after an alleged violation to file a complaint with the Illinois Department of Labor (IDOL).

Noncompliant employers will face liability for actual underpayment, compensatory damages and a \$500–\$1,000 penalty.

Employees will also be entitled to equitable relief like attorney's fees, expert witness expenses and other costs.



Implementation Group Discussion

Human Resource Management Seminar

Discussion Questions:

1. Changes to time off policies and employee handbooks?
2. Implementation ease and any continuing issues?
3. Impact on seasonal and part-time employees?
4. What else?



Fair Labor Standards Act - FLSA

Human Resource Management Seminar

The FLSA is a federal law with broad coverage.

The FLSA general requires employers to pay all covered non-exempt employees the statutory minimum wage and overtime pay of at least one and one-half times their regular rate of pay for hours worked in excess of 40 hours in a workweek.

Unless an employer can establish that it not covered by the FLSA or that an exemption from the FLSA applies, employees are presumed to be eligible for overtime.

Employers and employees cannot agree to waive coverage of the FLSA.

Collective bargaining agreements cannot waive coverage of the FLSA.

FLSA – Overtime Exemptions

Human Resource Management Seminar

The FLSA Section 13(a) (1) exemptions are referred to as the 'white-collar' exemptions.

To be exempt from overtime, a position must meet the following three criteria:

1. A minimum salary threshold
2. Payment on a salary basis as defined by the regulations
3. A primary duty test that is specific to each exemption

Minimum Salary

The overtime rule raises the standard salary-threshold levels in two phases.

Workers who do not earn at least \$43,888 a year (\$844 a week) as of July 1, 2024 would have to be paid overtime, even if they are classified as a manager or professional.

The salary-level threshold rises to \$58,656 a year (\$1,128 a week) as of January 1, 2025 with automatic increases to the salary threshold every three years.

FLSA – Overtime Exemptions (continued)

Human Resource Management Seminar

Salary Basis

An exempt employee must be paid a predetermined and fixed salary that meets minimum salary requirements in the regulations and not subject to reduction because of variations in the quality or quantity of work performed.

White-collar exemptions

- Executive Exemption
- Administrative Exemption
- Professional Exemption
- Teachers, doctors and artists
- Computer-related occupation
- Highly Compensated Employee
- Outside sales



FLSA – Overtime Exemptions (continued)

Human Resource Management Seminar

Executive Exemption

- Primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise
- The position must customarily and regularly direct work of at least two or more other full-time employees of their equivalent
- The position must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight

Administrative Exemption

- Primary duty must be the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

FLSA – Overtime Exemptions (continued)

Human Resource Management Seminar

Professional Exemption

Learned professional (examples include accountant, attorney, nurse, engineer):

- Primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominately intellectual in character and requires consistent exercise of discretion and judgment
- Advanced knowledge must be in a field of science or learning
- Advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction

Teachers, doctors and artists



FLSA – Overtime Exemptions (continued)

Human Resource Management Seminar

Computer-related Occupation Exemption

- Primary duty must consist of higher-level system-analyst techniques and procedures, higher-level design or testing of systems, higher-level design or testing for operating systems, or some combination of the three
- This exemption is meant for positions such as network analyst, developer and software engineer; it is specifically not meant for lower-level computer support roles
- The position must be compensated on a salary basis of not less than the minimum salary requirement or at least \$27.63 per hour



FLSA – Overtime Exemptions (continued)

Human Resource Management Seminar

Highly-compensated Employee Exemption

The position must be paid a total annual compensation of at least \$132,964 (effective July 1, 2024) and then \$151,164 (effective January 1, 2025), paid on a salary basis

The position customarily and regularly performs any one or more of the exempt duties of an executive, administrative or professional employee.

Combination Exemption

When an employee performs a combination of exempt duties that fall under the executive, administrative, professional, outside sales and computer employee exemptions, he or she may qualify under a combination exemption

New Thresholds – Are You Prepared?

Human Resource Management Seminar

While there are challenges to the new federal overtime rule by January 1, 2025, HR professionals must lay the groundwork now by taking the following steps:

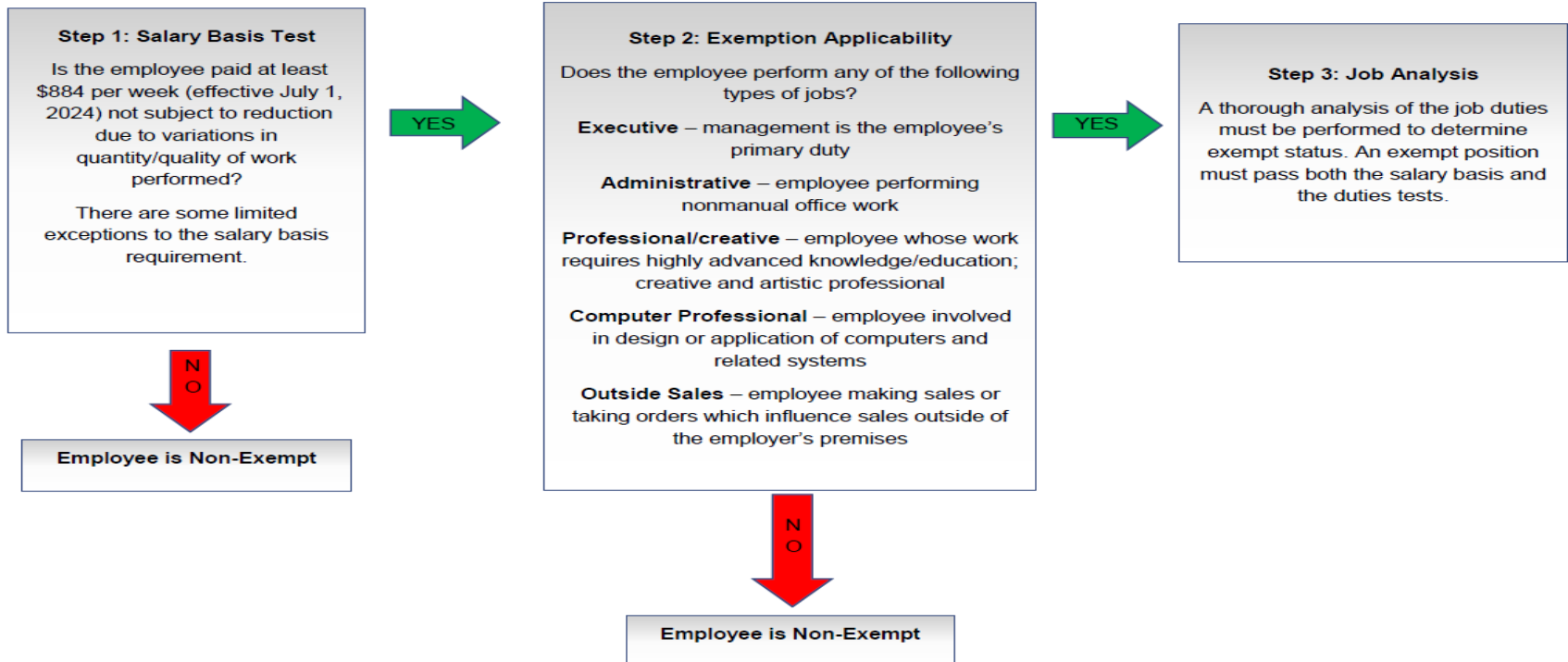
1. Identify currently exempt employees who earn less than the new annual threshold of \$58,656
2. Estimate how much overtime those employees currently work
3. Analyze your budget to help assess your compensation options
4. Review job descriptions for exempt positions to verify that the duties are accurately listed
5. Ensure that employees in the same roles aren't classified differently because they could prompt discrimination claims
6. Develop a communication plan for those moving from exempt to non-exempt status to minimize negative impact on morale
7. Consider placing restrictions on overtime and explore ways to track non-exempt workers' hours (if not already doing so)
8. Determine whether changes are needed in other policies such as remote work and mobile device usage to curtail overtime and working off-the-clock

FLSA White Collar Exemptions Flow Chart

Human Resource Management Seminar

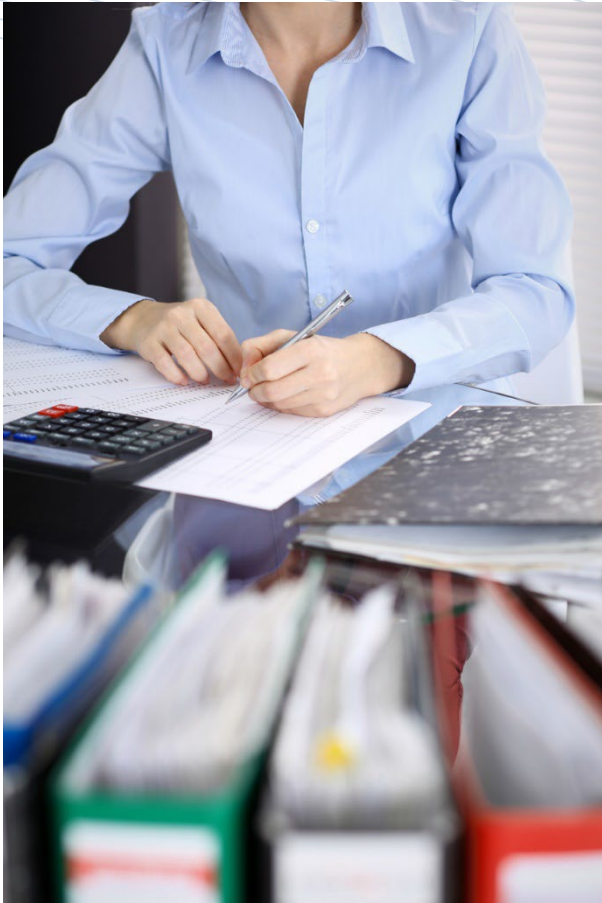
FLSA WHITE COLLAR EXEMPTIONS FLOW CHART

This exhibit serves as a basic outline for an employer's initial analysis of positions being considered for exemption under the FLSA and is meant to serve as one of several tools in an employer's analysis. SHRM strongly recommends that employers have legal counsel review their analysis efforts and exemption decisions. The three-step process is explained in greater detail on the following pages.



FLSA – Recordkeeping

Human Resource Management Seminar



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records
- Time clocks are not required, and records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers

FLSA – Recordkeeping (continued)

Human Resource Management Seminar

“Basic records” that a covered employer must keep for each non-exempt worker include:

- Full name, sex , DOB if younger than 19
- Regular rate of pay, total hours worked, total daily or weekly straight-time earnings, total overtime compensation, if any
- Deductions, date of payment and pay period for payment



FLSA – Posters

Human Resource Management Seminar

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

Download the poster electronically at:
<https://www.dol.gov/agencies/whd/posters/flsa>

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

PUMP AT WORK The FLSA requires employers to provide reasonable break time for a nursing employee to express breast milk for their nursing child for one year after the child's birth each time the employee needs to express breast milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
www.dol.gov/agencies/whd



816108 REV 10/22

Hiring Practices & Pay Transparency

Human Resource Management Seminar

Major Laws and Regulations that Affect the Selection Process

Following is a list of the major laws and regulations that affect the selection process. Before you proceed with recruiting, be sure you are familiar with these regulations:

- Age Discrimination in Employment Act
- Americans with Disabilities Act (ADA)
- Equal Pay Act
- Federal Executive Order #11246
- Illinois Human Rights Act
- Immigration Reform and Control Act (IRCA)
- Pregnancy Discrimination Act of 1978
- Title VII of the Civil Rights Act



Hiring Practices – Major Laws

Human Resource Management Seminar

Age Discrimination in Employment Act

- Prohibits discrimination against persons 40 years of age and over.
- Promotes the hiring, promotion, and other terms and conditions of employment of older people.
- Requires hiring decisions based on abilities rather than age.

May Ask: Are you at least 18 years of age?

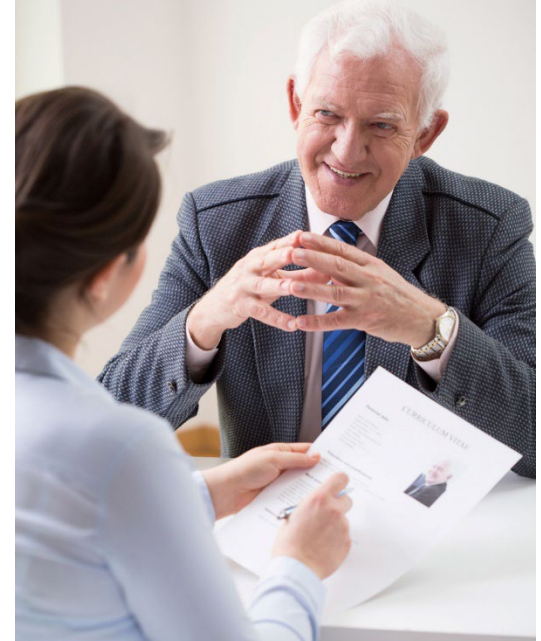
May Not Ask: What is your date of birth?

How old are you?

What are the ages of your children?

When did you attend high school?

When did you graduate from high school?



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Americans with Disabilities Act (ADA)

- Requires facilities to be accessible to the disabled.
- Prohibits employment discrimination on the basis of disability.
- Prohibits pre-employment medical inquiries and examinations.
- Prohibits an organization from excluding a qualified person if he or she can perform the "essential functions" of the job either unaided or with "reasonable accommodation."



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Americans with Disabilities Act (ADA)

May Ask:

Are you capable of performing the position's essential job functions with or without accommodation?

Can you meet the attendance requirements of this job?

May Not Ask:

Do you have a disability?

Do you have any previous major medical problems?

Have you ever received worker's compensation?

How many days were you sick last year?

What prescription drugs are you currently taking?

Have you ever been treated for alcoholism or mental health problems?



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Equal Pay Act

Prohibits discrimination based on sex in the payment of wages or benefits when men and women perform work requiring similar skills, effort, and responsibility for the same employer under similar working conditions.

Federal Executive Order #11246

Requires federal contractors to engage in affirmative action to address underrepresentation in the work force based on race, ethnicity, or gender.

Illinois Human Rights Act

Provides for freedom from discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, military status, or unfavorable military discharge, in connection with employment.

Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Immigration Reform and Control Act (IRCA)

- Prevents employment of illegal aliens.
- Requires employers to ensure applicants are legally employable in the United States.
- Requires employees to complete an Employment Eligibility Verification Form (I-9 Form).
- Employers often violate the act by asking for identification only from people of color; or applicants with obvious cultural, language, speech, or accent differences.



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Immigration Reform and Control Act (IRCA)

May Ask:

Are you legally employable in the United States?

Are you able to speak/write English fluently?

What languages other than English do you speak?

May Not Ask:

What kind of last name is Smith?

Where were you born? Were your parents born there?

What is your lineage or national origin?

What is your spouse's nationality?

Are you a citizen of a country other than the United States?

What is your native tongue? How well do you speak English?

What is your maiden name?



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Pregnancy Discrimination Act of 1978

- Prohibits discrimination based on pregnancy.
- Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same as non-pregnant employees for all employment-related purposes, including fringe benefits.

May Not Ask:

When do you plan to have children?

How many children do you have?

What are the ages of your children?

What is your maiden name?



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Title VII of the Civil Rights Act

Prohibits discrimination in hiring, compensation, and terms, conditions, or privileges of employment based on race, religion, color, sex, sexual orientation or national origin.

May Ask:

You may ask applicants to volunteer racial information – when it is not seen by the individual or office involved in the hiring decision.

What professional organizations do you belong to?

Are you available to work weekends? (*If job related*)

Have you used any other name(s) on employment or education records?

For purposes of checking your work record and credentials, have you ever changed your name or assumed another name?



Hiring Practices – Major Laws (continued)

Human Resource Management Seminar

Title VII of the Civil Rights Act

May Not Ask:

You may not ask applicants to supply a photo in the application process.

What race are you?

Tell me all the clubs you belong to.

What place of worship do you attend?

Do you wish to be addressed as Mrs., Miss, or Ms.?

What is your spouse's name?

Where is your spouse employed?



Are Your Leaders Prepared?

Human Resource Management Seminar

Step 1: PREPARING FOR THE INTERVIEW

- ☑ Review the job's tasks and responsibilities (and the competencies necessary to perform them)
- ☑ Be organized and prepared for every interview
- ☑ Look and act cordial, interested, and professional
- ☑ Create a comfortable atmosphere for candidates
- ☑ Ensure the interview location is quiet, comfortable, and non-threatening
- ☑ Ensure that any rooms and facilities used are accessible to applicants with disabilities
- ☑ When the candidates arrive greet them and lead them to the interview location
- ☑ Explain the interview process and ask if they have any questions

Are Your Leaders Prepared? (continued)

Human Resource Management Seminar

Step 2: A FEW BARRIERS TO A GREAT INTERVIEW (A.K.A., Things to Avoid)

Mistakes to Avoid	Explanation
Avoid Negative Emphasis	Unfavorable information tends to be more influential and memorable than favorable information. Interviewers should avoid focusing on negative information to the exclusion of positive information.
Don't Focus on Superficial Factors	The interviewer should avoid letting non-job-related factors influence perceptions of the candidates' responses or distract from objectively attending to the candidates' responses.
Beware of the Effects of Candidate Order	The order in which the candidates are interviewed can affect the interviewers' perception of the candidates. While evaluating the candidate, interviewers should refrain from comparing and contrasting candidates to those who have been previously interviewed.

Are Your Leaders Prepared? (continued)

Human Resource Management Seminar

Step 3: THE INTERVIEW

So, what **SHOULD** you ask?

You should ask the candidate....	You CANNOT ask or comment about the candidate's...
<ul style="list-style-type: none">✔ About their specific roles and responsibilities at current or past jobs or activities outside of work✔ How they would have done a task or project differently✔ Anything else that's job-related	<ul style="list-style-type: none">✘ Age, sex, race, national origin, or religion✘ Marital or familial status✘ Disabilities or health status✘ Or any other job-irrelevant factor

Are Your Leaders Prepared? (continued)

Human Resource Management Seminar

Other general tips for a successful interview:

- ☑ Be a good and unbiased listener
- ☑ Remain objective and fair during evaluations
- ☑ Treat all candidates the same
- ☑ Ensure your notes are comprehensive, professional, and non-judgmental
- ☑ Maintain control of the interview; ensure you don't go over the allotted time
- ☑ Provide the candidate an opportunity to ask questions about the job
- ☑ After the candidate has answered all of the questions, conclude the interview by thanking the candidate and explaining the next steps in the hiring process

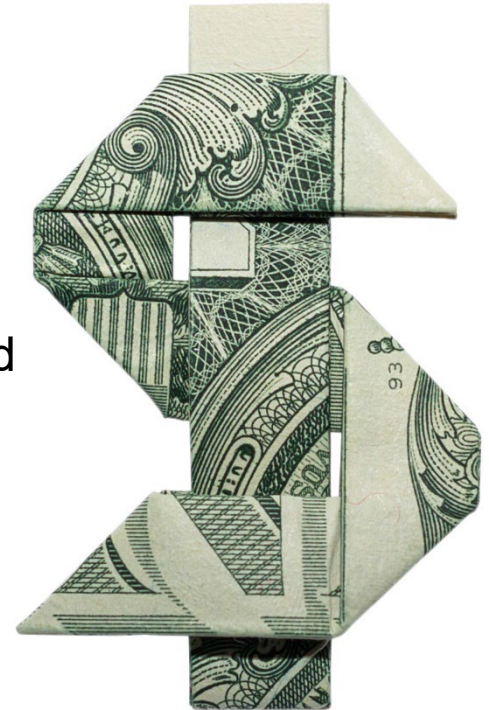
Pay Transparency – January 1, 2025

Human Resource Management Seminar

Starting January 1, 2025, employers with 15 or more employees must include pay ranges in posting for jobs in Illinois.

As an amendment to the Illinois Equal Pay Act, signed into law on August 23, 2023.

Amendment only applies when employers create job postings and does not require employers to make such postings in the first place.



Pay Transparency – What's Required?

Human Resource Management Seminar

Must include pay scale (range) and benefits in job postings

Law definition: "...the wage or salary, or wage or salary range, and a general description of the benefits and other compensation...that the employer reasonable expects in good faith to offer for the position."

How is the Pay Scale Set?

- Any applicable pay scale,
- The previously determined range for the position,
- The actual range of others currently holding equivalent positions, or
- The budgeted amount for the position, as applicable

Pay Transparency – What's Required?

Human Resource Management Seminar

What Are An Employer's Posting Obligations?

When creating a job posting, can provide pay scale and benefits by including a "hyperlink" to a publicly available webpage that includes the pay scale and benefits

May also satisfy the benefits posting requirement by posting a relevant and up-to-date general benefits description in an easily accessible, central and public location on the employer's website.

NOTE: *If an employer uses a third party to "announce, post, publish, or otherwise make known a job posting," employer must provide the third party with this information or a hyperlink of same. The third party is liable for failing to post the required information unless it can demonstrate that the employer did not provide the information.*

Pay Transparency – What's Required?

Human Resource Management Seminar

What If There Is No Job Posting?

If employer does not make a public or internal posting for a job (including a promotion, transfer or other employment opportunity), the employer or third party is still obligated to respond to an applicant's request for that information prior to any offer or discussion of compensation.



Pay Transparency – What's Required?

Human Resource Management Seminar

What Is the Requirement Related to Opportunities for Promotion?

If there is an external posting for a position, it must also "announce, post, or otherwise make known" all opportunities for promotion to all **current employees** no later than 14 calendar days after the employer makes the external job posting.



The only exception to this requirement is for "positions in the State of Illinois workforce designated as exempt from competitive selection".

Pay Transparency – What's Required?

Human Resource Management Seminar

Can an Employer Ask a Candidate About Salary Expectations?

The new Amendment does not prohibit an employer or employment agency from asking an applicant about his or her wage or salary expectations for the position for the position the applicant is applying.

As a reminder, under the 2019 amendments to the Equal Pay Act concerning salary history, employers cannot:

1. Screen job applicants based on their current or prior wages or salary histories, including benefits or other compensation, by requiring that the wage or salary history of an applicant satisfy minimum or maximum criteria;
2. Request or require a wage or salary history as a condition as being considered for employment, as a condition of being interviewed, as a condition of continuing to be considered for an offer of employment, or as a condition of an offer of employment
3. Request or require that an applicant disclose wage or salary history as a condition of employment

Pay Transparency – What's Required?

Human Resource Management Seminar

Recordkeeping Requirements

Along with other recordkeeping requirements under the Illinois Equal Pay Act, employer must make and preserve records documenting the pay scale and benefits for each position and the job posting for each position for not less than 5 years

The Upshot

While the Amendment does not take effect until January 1, 2025, you should be mindful of the Amendment and begin preparation to comply with all posting requirements in advance of the effective date.

Also, ensure your leaders are reminded of these requirements – especially that they are not to require an applicant to disclose their current wage or salary history.

Outlook Ahead – Federal & State Updates

Human Resource Management Seminar

Federal: Current working groups in both the House and Senate that are actively studying paid leave. In January 2024, the House Bipartisan Paid Family Leave Working Group release a policy framework for paid leave – includes the creation of an "Interstate Paid Leave Action Network (I-PLAN) – to drive improvements in the coordination and harmonization of these benefits across the growing number of states with their one paid leave programs.

State: August 9, Governor Pritzker signed a bill that amends the Illinois Human Rights Act to protect employees from discrimination from the use of AI in the workplace and it also ensures employers are transparent about their use of AI for employment-related decisions.

Changes will be effective January 1, 2026.

In Conclusion – Wrap Up

Human Resource Management Seminar

Continue to stay abreast of all new federal, state and local employment laws to prepare for changes needed to employee handbooks or stand along policies – review annually and gain employee acknowledgments.

Be sure to train your leaders on all hiring practices and interviewing skills – 'just in time' works best a couple of weeks prior to an interview.

Be sure to follow all FMLA and paid leave regulations and timelines.

Start now preparing for new FLSA thresholds and Pay Transparency requirements.

Don't forget the mandatory Sexual Harassment Prevention training before year end!

Contact your CIRMA HR Consultant for Handbook Reviews, Safety Manual Reviews, Training or other HR matters.

CIRMA HR Listserv

Human Resource Management Seminar

CIRMA hosts an HR listserv to facilitate interactive discussion and knowledge sharing within the insurance program, fostering engagement and collaboration among local government HR departments.

The HR Listserve is exclusive to CIRMA members only.



HR Managers can join the online listserv by emailing Kelly Murray at ilcounty@gmail.com.

Questions



Debbie Thompson, M.A., SPHR

Counties of Illinois Risk Management Agency

(636) 492-1582 • HR.CIRMA@gmail.com

www.cirma-il.org

Kelly Murray, Executive Director

Illinois Association of County Board Members

(217) 528-5331 • ilcounty@gmail.com

www.ilcounty.org

