**Section 350.125 Discrimination Prohibited Against Employees**

a) Basic Requirement

Section 110 of the Act provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

1) Filed any complaint under the Act or related to the Act;

2) Instituted or caused to be instituted any proceeding under the Act or related to the Act;

3) Testified or is about to testify in any proceeding under the Act or related to the Act; or

4) Exercised on the employee's own behalf or on behalf of another any right afforded by the Act.

b) Any employee who believes that they have has been discriminated against in violation of Section 110 may, within 30 calendar days after the violation occurs, lodge a written complaint with the Division alleging the violation.

c) The Division shall then cause appropriate investigation to be made. If, as a result of the investigation, it is determined that the provisions of Section 110 have been violated, civil action may be instituted in any appropriate court to restrain violations of Section 110 and to obtain appropriate relief, including rehiring or reinstatement of the employee to their former position with back pay.

d) Section 110 of the Act further provides for notification of complainants by the Division of determinations made pursuant to their complaints.

e) Section 110 does not limit the actions to employers against employees. A person may be chargeable with discriminatory action against an employee of another person. It would extend to such entities as organizations representing employees for collective bargaining purposes or any other person in a position to discriminate against an employee.

f) All public employees are afforded the full protection of Section 110. The Act does not define the term "employ"; however, the broad remedial nature of the Act demonstrates a clear intent that the existence of an employment relationship is to be based upon economic realities rather than upon common law doctrines and concepts.

g) Actions taken by an employer, or others, that adversely affect an employee may be predicated upon non-discriminatory grounds. The proscriptions of Section 110 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render that employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

h) At the same time, to establish a violation of Section 110, the employee's engagement in a protected activity need not be the sole consideration behind discharge or other adverse action. If a protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in a protected activity, Section 110 has been violated. Ultimately, the issue as to whether a discharge was because of a protected activity will have to be determined on the basis of the facts in the particular case.

i) Complaints Under or Related to the Act

1) Discharge or discrimination against an employee because the employee has filed *any complaint under or related to the Act*] is prohibited by Section 110. (Sec. 110(a) of the Act) An example of a complaint made under the Act would be an employee request for inspection pursuant to Section 70 of the Act. However, this would not be the only type of complaint protected by Section 110.

2) The salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. These complaints to employers, if made in good faith, therefore would be related to the Acts, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

j) Proceedings Under or Related to the Act

1) Discharge or discrimination against an employee because the employee has *instituted or caused to be instituted any proceeding under* the *Act* is also prohibited by Section 110. (Sec. 110(a) of the Act) Examples of proceedings that could arise specifically under the Act include inspection of worksites under Section 65 of the Act, employee contest of abatement date under Section 95 of the Act, employee initiation of proceeding for promulgation of an occupational safety and health standard under Section 25 of the Act, and employee application for modification or revocation of a variance under Section 50 of the Act.

2) An employee need not directly institute the proceedings to be protected by the anti-discrimination provisions of this Section. It is sufficient if the employee sets into motion activities of others that result in proceedings under or related to the Act.

k) Testimony

1) Discharge or discrimination against an employee because the employee has *testified or is about to testify in any proceedings* under or related to the Act is also prohibited under Section 110. (Sec. 110(a) of the Act) This protection would not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial and administrative proceedings, including inspections, investigations and administrative rulemaking or adjudicative functions.

2) If the employee is giving or is about to give testimony in any proceeding under or related to the Act, the employee is protected against discrimination resulting from that testimony.

l) Exercise of Any Right Afforded by the Act

1) Section 110 also protects employees from discrimination occurring because of the exercise of any right afforded by the Act. Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the Division; these requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Department in the course of inspections or investigations could not be subsequently discriminated against because of their cooperation.

2) As a general matter, there is no right afforded by the Act that entitles employees to walk off the job because of potential unsafe conditions at the workplace, because hazardous conditions that may be a violation of the Act will ordinarily be corrected by the employer, once brought to their attention. Under these circumstances, an employer would not ordinarily be in violation of Section 110 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards. Notwithstanding the above, if corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have the opportunity to request inspection of the workplace. In no circumstance shall an employee be subject to discipline solely because the employee files, or plans to file, a complaint with Illinois OSHA.

3) An employee may be confronted with a choice between performing assigned tasks or risking serious injury or death arising from a hazardous condition in the workplace. If the employee, with no reasonable alternative, refuses in good faith to be exposed to the dangerous condition, the employee would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, when possible, must also have sought from the employer, and been unable to obtain, a correction of the dangerous condition.

m) Filing of a Discrimination Complaint

1) A complaint of Section 110 discrimination may be filed by the employee or by an authorized representative of the employee.

A) Nature of Filing. The complaint must be received in a verbal or written form by the employee or authorized representative of the employee.

B) Place of Filing. A complaint should be filed with Illinois OSHA .

C) Time for Filing. Section 110 provides that an employee who believes that discrimination has occurred *may, within 30 calendar days after the violation occurs,* file a complaint with Illinois OSHA. (Sec. 110(b) of the Act)

D) Circumstances that would justify tolling of the 30-calendar-day period on recognized equitable principles or because of strongly extenuating circumstances include, but are not limited to, e.g., when the employer has concealed the nature of, or misled the employee regarding the grounds for, discharge or other adverse action; or when the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances that do not justify tolling the 30-calendar-day period. In the absence of circumstances justifying tolling of the 30-calendar-day period, untimely complaints will not be processed.

n) Notification of the Division's Determination. The complainant shall be notified of the Division's determination in a timely manner.

o) Withdrawal of Complaint. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the investigation. The Division's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw the complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

p) Arbitration or Other Agency Proceedings. The Division's jurisdiction to entertain Section 110 complaints, to investigate, and to determine whether discrimination has occurred is independent of the jurisdiction of other agencies or bodies. Due deference may be paid to the jurisdiction of other forums established to resolve disputes that may also be related to Section 110 complaints. Postponement of the Division's determination, and deferral to the results of the proceedings of another jurisdiction, may be warranted.

1) Postponement of Determination. Postponement of determination would be justified when the rights asserted in other proceedings are substantially the same as rights under Section 110, and those proceedings are not likely to violate the rights guaranteed under Section 110. The factual issues in such proceedings must be substantially the same as those raised by the Section 110 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

2) Deferral to Outcome of Other Proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-by-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if the other actions initiated by a complainant are dismissed without adjudicatory hearing, that dismissal will not ordinarily be regarded as determinative of the Section 110 complaint.

q) Employee Refusal to Comply with Safety Rules. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by an employer solely in response to an employee's refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Section 110. This situation should be distinguished from refusals to work as discussed in subsection (l).

(Source: Amended at 46 Ill. Reg. 3518, effective February 15, 2022)