



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5516

by Rep. Nicholas K Smith

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102

from Ch. 68, par. 2-102

Amends the Illinois Human Rights Act. Provides that it is a civil rights violation for any employer, employment agency, labor organization, or public employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring or selection for training or apprenticeship on the basis of a prospective employee's status as unemployed.

LRB100 17842 LNS 33022 b

1 AN ACT concerning human rights.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Human Rights Act is amended by
5 changing Section 2-102 as follows:

6 (775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

7 Sec. 2-102. Civil Rights Violations - Employment. It is a
8 civil rights violation:

9 (A) Employers. For any employer to refuse to hire, to
10 segregate, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training or
12 apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of unlawful
14 discrimination or citizenship status.

15 (A-5) Language. For an employer to impose a restriction
16 that has the effect of prohibiting a language from being spoken
17 by an employee in communications that are unrelated to the
18 employee's duties.

19 For the purposes of this subdivision (A-5), "language"
20 means a person's native tongue, such as Polish, Spanish, or
21 Chinese. "Language" does not include such things as slang,
22 jargon, profanity, or vulgarity.

23 (A-10) Prospective employees. For any employer, employment

1 agency, labor organization, or public employer to refuse to
2 hire, to segregate, or to act with respect to recruitment,
3 hiring, or selection for training or apprenticeship on the
4 basis of a prospective employee's status of unemployed.

5 (B) Employment Agency. For any employment agency to fail or
6 refuse to classify properly, accept applications and register
7 for employment referral or apprenticeship referral, refer for
8 employment, or refer for apprenticeship on the basis of
9 unlawful discrimination or citizenship status or to accept from
10 any person any job order, requisition or request for referral
11 of applicants for employment or apprenticeship which makes or
12 has the effect of making unlawful discrimination or
13 discrimination on the basis of citizenship status a condition
14 of referral.

15 (C) Labor Organization. For any labor organization to
16 limit, segregate or classify its membership, or to limit
17 employment opportunities, selection and training for
18 apprenticeship in any trade or craft, or otherwise to take, or
19 fail to take, any action which affects adversely any person's
20 status as an employee or as an applicant for employment or as
21 an apprentice, or as an applicant for apprenticeships, or
22 wages, tenure, hours of employment or apprenticeship
23 conditions on the basis of unlawful discrimination or
24 citizenship status.

25 (D) Sexual Harassment. For any employer, employee, agent of
26 any employer, employment agency or labor organization to engage

1 in sexual harassment; provided, that an employer shall be
2 responsible for sexual harassment of the employer's employees
3 by nonemployees or nonmanagerial and nonsupervisory employees
4 only if the employer becomes aware of the conduct and fails to
5 take reasonable corrective measures.

6 (E) Public Employers. For any public employer to refuse to
7 permit a public employee under its jurisdiction who takes time
8 off from work in order to practice his or her religious beliefs
9 to engage in work, during hours other than such employee's
10 regular working hours, consistent with the operational needs of
11 the employer and in order to compensate for work time lost for
12 such religious reasons. Any employee who elects such deferred
13 work shall be compensated at the wage rate which he or she
14 would have earned during the originally scheduled work period.
15 The employer may require that an employee who plans to take
16 time off from work in order to practice his or her religious
17 beliefs provide the employer with a notice of his or her
18 intention to be absent from work not exceeding 5 days prior to
19 the date of absence.

20 (E-5) Religious discrimination. For any employer to impose
21 upon a person as a condition of obtaining or retaining
22 employment, including opportunities for promotion,
23 advancement, or transfer, any terms or conditions that would
24 require such person to violate or forgo a sincerely held
25 practice of his or her religion including, but not limited to,
26 the wearing of any attire, clothing, or facial hair in

1 accordance with the requirements of his or her religion,
2 unless, after engaging in a bona fide effort, the employer
3 demonstrates that it is unable to reasonably accommodate the
4 employee's or prospective employee's sincerely held religious
5 belief, practice, or observance without undue hardship on the
6 conduct of the employer's business.

7 Nothing in this Section prohibits an employer from enacting
8 a dress code or grooming policy that may include restrictions
9 on attire, clothing, or facial hair to maintain workplace
10 safety or food sanitation.

11 (F) Training and Apprenticeship Programs. For any
12 employer, employment agency or labor organization to
13 discriminate against a person on the basis of age in the
14 selection, referral for or conduct of apprenticeship or
15 training programs.

16 (G) Immigration-Related Practices.

17 (1) for an employer to request for purposes of
18 satisfying the requirements of Section 1324a(b) of Title 8
19 of the United States Code, as now or hereafter amended,
20 more or different documents than are required under such
21 Section or to refuse to honor documents tendered that on
22 their face reasonably appear to be genuine; or

23 (2) for an employer participating in the E-Verify
24 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
25 Programs for Employment Eligibility Confirmation (enacted
26 by PL 104-208, div. C title IV, subtitle A) to refuse to

1 hire, to segregate, or to act with respect to recruitment,
2 hiring, promotion, renewal of employment, selection for
3 training or apprenticeship, discharge, discipline, tenure
4 or terms, privileges or conditions of employment without
5 following the procedures under the E-Verify Program.

6 (H) (Blank).

7 (I) Pregnancy. For an employer to refuse to hire, to
8 segregate, or to act with respect to recruitment, hiring,
9 promotion, renewal of employment, selection for training or
10 apprenticeship, discharge, discipline, tenure or terms,
11 privileges or conditions of employment on the basis of
12 pregnancy, childbirth, or medical or common conditions related
13 to pregnancy or childbirth. Women affected by pregnancy,
14 childbirth, or medical or common conditions related to
15 pregnancy or childbirth shall be treated the same for all
16 employment-related purposes, including receipt of benefits
17 under fringe benefit programs, as other persons not so affected
18 but similar in their ability or inability to work, regardless
19 of the source of the inability to work or employment
20 classification or status.

21 (J) Pregnancy; reasonable accommodations.

22 (1) If after a job applicant or employee, including a
23 part-time, full-time, or probationary employee, requests a
24 reasonable accommodation, for an employer to not make
25 reasonable accommodations for any medical or common
26 condition of a job applicant or employee related to

1 pregnancy or childbirth, unless the employer can
2 demonstrate that the accommodation would impose an undue
3 hardship on the ordinary operation of the business of the
4 employer. The employer may request documentation from the
5 employee's health care provider concerning the need for the
6 requested reasonable accommodation or accommodations to
7 the same extent documentation is requested for conditions
8 related to disability if the employer's request for
9 documentation is job-related and consistent with business
10 necessity. The employer may require only the medical
11 justification for the requested accommodation or
12 accommodations, a description of the reasonable
13 accommodation or accommodations medically advisable, the
14 date the reasonable accommodation or accommodations became
15 medically advisable, and the probable duration of the
16 reasonable accommodation or accommodations. It is the duty
17 of the individual seeking a reasonable accommodation or
18 accommodations to submit to the employer any documentation
19 that is requested in accordance with this paragraph.
20 Notwithstanding the provisions of this paragraph, the
21 employer may require documentation by the employee's
22 health care provider to determine compliance with other
23 laws. The employee and employer shall engage in a timely,
24 good faith, and meaningful exchange to determine effective
25 reasonable accommodations.

26 (2) For an employer to deny employment opportunities or

1 benefits to or take adverse action against an otherwise
2 qualified job applicant or employee, including a
3 part-time, full-time, or probationary employee, if the
4 denial or adverse action is based on the need of the
5 employer to make reasonable accommodations to the known
6 medical or common conditions related to the pregnancy or
7 childbirth of the applicant or employee.

8 (3) For an employer to require a job applicant or
9 employee, including a part-time, full-time, or
10 probationary employee, affected by pregnancy, childbirth,
11 or medical or common conditions related to pregnancy or
12 childbirth to accept an accommodation when the applicant or
13 employee did not request an accommodation and the applicant
14 or employee chooses not to accept the employer's
15 accommodation.

16 (4) For an employer to require an employee, including a
17 part-time, full-time, or probationary employee, to take
18 leave under any leave law or policy of the employer if
19 another reasonable accommodation can be provided to the
20 known medical or common conditions related to the pregnancy
21 or childbirth of an employee. No employer shall fail or
22 refuse to reinstate the employee affected by pregnancy,
23 childbirth, or medical or common conditions related to
24 pregnancy or childbirth to her original job or to an
25 equivalent position with equivalent pay and accumulated
26 seniority, retirement, fringe benefits, and other

1 applicable service credits upon her signifying her intent
2 to return or when her need for reasonable accommodation
3 ceases, unless the employer can demonstrate that the
4 accommodation would impose an undue hardship on the
5 ordinary operation of the business of the employer.

6 For the purposes of this subdivision (J), "reasonable
7 accommodations" means reasonable modifications or adjustments
8 to the job application process or work environment, or to the
9 manner or circumstances under which the position desired or
10 held is customarily performed, that enable an applicant or
11 employee affected by pregnancy, childbirth, or medical or
12 common conditions related to pregnancy or childbirth to be
13 considered for the position the applicant desires or to perform
14 the essential functions of that position, and may include, but
15 is not limited to: more frequent or longer bathroom breaks,
16 breaks for increased water intake, and breaks for periodic
17 rest; private non-bathroom space for expressing breast milk and
18 breastfeeding; seating; assistance with manual labor; light
19 duty; temporary transfer to a less strenuous or hazardous
20 position; the provision of an accessible worksite; acquisition
21 or modification of equipment; job restructuring; a part-time or
22 modified work schedule; appropriate adjustment or
23 modifications of examinations, training materials, or
24 policies; reassignment to a vacant position; time off to
25 recover from conditions related to childbirth; and leave
26 necessitated by pregnancy, childbirth, or medical or common

1 conditions resulting from pregnancy or childbirth.

2 For the purposes of this subdivision (J), "undue hardship"
3 means an action that is prohibitively expensive or disruptive
4 when considered in light of the following factors: (i) the
5 nature and cost of the accommodation needed; (ii) the overall
6 financial resources of the facility or facilities involved in
7 the provision of the reasonable accommodation, the number of
8 persons employed at the facility, the effect on expenses and
9 resources, or the impact otherwise of the accommodation upon
10 the operation of the facility; (iii) the overall financial
11 resources of the employer, the overall size of the business of
12 the employer with respect to the number of its employees, and
13 the number, type, and location of its facilities; and (iv) the
14 type of operation or operations of the employer, including the
15 composition, structure, and functions of the workforce of the
16 employer, the geographic separateness, administrative, or
17 fiscal relationship of the facility or facilities in question
18 to the employer. The employer has the burden of proving undue
19 hardship. The fact that the employer provides or would be
20 required to provide a similar accommodation to similarly
21 situated employees creates a rebuttable presumption that the
22 accommodation does not impose an undue hardship on the
23 employer.

24 No employer is required by this subdivision (J) to create
25 additional employment that the employer would not otherwise
26 have created, unless the employer does so or would do so for

1 other classes of employees who need accommodation. The employer
2 is not required to discharge any employee, transfer any
3 employee with more seniority, or promote any employee who is
4 not qualified to perform the job, unless the employer does so
5 or would do so to accommodate other classes of employees who
6 need it.

7 (K) Notice.

8 (1) For an employer to fail to post or keep posted in a
9 conspicuous location on the premises of the employer where
10 notices to employees are customarily posted, or fail to
11 include in any employee handbook information concerning an
12 employee's rights under this Article, a notice, to be
13 prepared or approved by the Department, summarizing the
14 requirements of this Article and information pertaining to
15 the filing of a charge, including the right to be free from
16 unlawful discrimination and the right to certain
17 reasonable accommodations. The Department shall make the
18 documents required under this paragraph available for
19 retrieval from the Department's website.

20 (2) Upon notification of a violation of paragraph (1)
21 of this subdivision (K), the Department may launch a
22 preliminary investigation. If the Department finds a
23 violation, the Department may issue a notice to show cause
24 giving the employer 30 days to correct the violation. If
25 the violation is not corrected, the Department may initiate
26 a charge of a civil rights violation.

HB5516

- 11 -

LRB100 17842 LNS 33022 b

1 (Source: P.A. 100-100, eff. 8-11-17.)