



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1760

Introduced 2/9/2017, by Sen. Pat McGuire

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Wrongful Discharge from Employment Act. Provides that a discharge from employment is wrongful if it (1) was a constructive discharge, (2) was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy, (3) was not for good cause and the employee had completed the employer's probationary period for employment, or (4) the employer violated the express provisions of its written personnel policy. Provides remedies for wrongful discharge. Authorizes civil actions and provides for arbitration. Prohibits blacklisting. Defines terms. Provides that an employer that violates the Act is guilty of a Class A misdemeanor.

LRB100 09213 JLS 19369 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning employment.

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

4 Section 1. Short title. This Act may be cited as the  
5 Wrongful Discharge from Employment Act.

6 Section 5. In this Act:

7 "Constructive discharge" means the voluntary termination  
8 of employment by an employee because of a situation created by  
9 an act or omission of the employer that an objective,  
10 reasonable person would find so intolerable that voluntary  
11 termination is the only reasonable alternative.

12 "Discharge" includes a constructive discharge and any  
13 other termination of employment, including resignation,  
14 elimination of the job, layoff for lack of work, failure to  
15 recall or rehire, and any other cutback in the number of  
16 employees for a legitimate business reason.

17 "Employee" means any person who works for another for hire,  
18 but does not include a person who is an independent contractor  
19 as defined under Section 212 of the Unemployment Insurance Act.

20 "Employer" means anyone who engages an employee to do  
21 something for the benefit of the employer or a third person and  
22 includes a municipality or other governmental unit or agency,  
23 the State, and any political subdivision of them.

1 "Fringe benefits" means the value of any employer-paid  
2 vacation leave, sick leave, medical insurance plan, disability  
3 insurance plan, life insurance plan, annuity, and pension  
4 benefit plan in effect on the date of termination.

5 "Good cause" means reasonable job-related grounds for  
6 dismissal based on employee misconduct, an employee's failure  
7 to satisfactorily perform job duties, or other legitimate  
8 business reason.

9 "Grossly negligent conduct" means conduct that is  
10 performed when the individual is, or reasonably should be,  
11 aware of a substantial risk that the conduct will result in the  
12 harm sought to be prevented and the conduct constitutes a  
13 substantial deviation from the standard of care a reasonable  
14 person would exercise in the situation.

15 "Lost wages" means the gross amount of wages that would  
16 have been reported to the Internal Revenue Service as gross  
17 income on form W-2 and includes additional compensation  
18 deferred at the option of the employee.

19 "Misconduct" means the following work related  
20 circumstances:

21 (1) Falsification of an employment application or any  
22 other documentation provided to the employer to obtain  
23 employment through subterfuge.

24 (2) Failure to maintain licenses, registrations, and  
25 certifications reasonably required by the employer or  
26 those that the individual is required by law to possess to

1 perform his or her regular job duties, unless the failure  
2 is not within the control of the individual.

3 (3) Knowing, repeated violation of the attendance  
4 policies of the employer that are in compliance with State  
5 and federal law following written warning for an attendance  
6 violation, unless the individual can demonstrate that he or  
7 she has made a reasonable effort to remedy the reason or  
8 reasons for the violations or that the reason or reasons  
9 for the violations were out of the individual's control.  
10 Attendance policies of the employer shall be reasonable and  
11 provided to the individual in writing, electronically, or  
12 via a posting in the workplace.

13 (4) Damaging the employer's property through conduct  
14 that is grossly negligent.

15 (5) Refusal to obey the employer's reasonable and  
16 lawful instruction, unless refusal is due to the lack of  
17 ability, skills, or training for the individual required to  
18 perform the instruction or the instruction would result in  
19 an unsafe act.

20 (6) Knowingly consuming alcohol or illegal or  
21 non-prescribed prescription drugs or using an impairing  
22 substance in an off-label manner on the employer's premises  
23 during working hours in violation of the employer's  
24 policies.

25 (7) Reporting to work under the influence of alcohol,  
26 illegal or non-prescribed prescription drugs, or an

1           impairing substance used in an off-label manner in  
2           violation of the employer's policies, unless the  
3           individual is compelled to report to work by the employer  
4           outside of scheduled and on-call working hours and informs  
5           the employer that he or she is under the influence of  
6           alcohol, illegal or non-prescribed prescription drugs, or  
7           an impairing substance used in an off-label manner in  
8           violation of the employer's policies.

9           (8) Grossly negligent conduct endangering the safety  
10          of the individual or co-workers.

11          "Public policy" means a policy in effect at the time of  
12          discharge established by constitutional provision, statute, or  
13          administrative rule.

14          Section 10. Employee to be furnished on demand with reason  
15          for discharge.

16          (a) It is the duty of the employer after having discharged  
17          any employee from service, upon demand by the discharged  
18          employee, to furnish the discharged employee in writing a  
19          statement of reasons for the discharge. If the employer fails  
20          to furnish the statement of the reasons for discharge within a  
21          reasonable time after the demand, the employer shall be subject  
22          to the penalties and damages prescribed in this Act.

23          (b) A response to the demand may be modified at any time  
24          and may not limit the employer's ability to present a full  
25          defense in any action brought by the discharged employee.

1 Failure to provide a response as required under this Section  
2 does not limit the employer's ability to present a full defense  
3 in any action brought by the discharged employee.

4 Section 15. Protection of discharged employees. If the  
5 employer, after having discharged an employee from service,  
6 prevents or attempts to prevent, by word or writing of any  
7 kind, the discharged employee from obtaining employment with  
8 any other employer, the discharging employer is punishable as  
9 provided in Section 45 and is liable in punitive damages to the  
10 discharged person, to be recovered by civil action. An employer  
11 is not prohibited from informing by word or writing any other  
12 employer to whom the discharged employee has applied for  
13 employment a truthful statement of the reason for discharge.  
14 Notwithstanding the foregoing, an employer shall be prohibited  
15 from furnishing any statement of the reasons for discharge to  
16 another employer if the discharging employer has not furnished  
17 a written statement of the reasons for discharge to the  
18 discharged employee as provided in Section 10.

19 Section 20. Blacklisting prohibited.

20 (a) If an employer in this State authorizes or allows any  
21 of its agents to blacklist or if an employer does blacklist any  
22 discharged employee or attempts by word or writing or any other  
23 means to prevent any discharged employee or any employee who  
24 may have voluntarily left the company's service from obtaining

1 employment with another employer, except as provided for in  
2 Section 15, the employer is liable in punitive damages to the  
3 employee prevented from obtaining employment, to be recovered  
4 in a civil action, and is also punishable as provided in  
5 Section 45.

6 Section 25. Wrongful discharge.

7 (a) A discharge is wrongful if it (1) was a constructive  
8 discharge, (2) was in retaliation for the employee's refusal to  
9 violate public policy or for reporting a violation of public  
10 policy, (3) was not for good cause and the employee had  
11 completed the employer's probationary period for employment,  
12 or (4) the employer violated the express provisions of its  
13 written personnel policy.

14 (b) During a probationary period of employment, which may  
15 not exceed 90 days, the employment may be terminated at the  
16 will of either the employer or the employee on notice to the  
17 other for any reason or for no reason. If an employer does not  
18 establish a specific probationary period or provide that there  
19 is no probationary period prior to or at the time of hire,  
20 there is a probationary period of 90 days after the date of  
21 hire.

22 Section 30. Remedies.

23 (a) A discharged employee may bring a civil action against  
24 the employer for all relief necessary to make the discharged

1 employee whole including, but not limited to, the following, as  
2 appropriate:

3 (1) reinstatement with the same seniority status that  
4 the discharged employee would have had but for the  
5 violation;

6 (2) lost wages with interest and fringe benefits; and

7 (3) compensation for any damages sustained as a result  
8 of the violation, including litigation costs, expert  
9 witness fees, and reasonable attorney's fees.

10 (b) A party may make a written offer to arbitrate a dispute  
11 that otherwise could be adjudicated under this Act. If a  
12 complaint is filed under this Act, the offer to arbitrate must  
13 be made within 60 days after service of the complaint and must  
14 be accepted in writing within 30 days after the date the offer  
15 is made. A discharged employee who makes a valid offer to  
16 arbitrate that is accepted by the employer and who prevails in  
17 such arbitration is entitled to have the arbitrator's fee and  
18 all costs of arbitration paid by the employer. If a valid offer  
19 to arbitrate is made and accepted, the arbitration is the  
20 exclusive remedy for the wrongful discharge dispute and there  
21 is no right to bring or continue a lawsuit under this Act. The  
22 arbitrator's award is final and binding. A party who makes a  
23 valid offer to arbitrate that is not accepted by the other  
24 party and who prevails in an action under this Act is entitled,  
25 as an element of costs, to reasonable attorney fees incurred  
26 subsequent to the date of the offer.



1 Section 35. Limitation of actions.

2 (a) Except as provided under subsection (b), an action  
3 under this Act must be filed within one year after the date of  
4 discharge.

5 (b) If an employer maintains written internal procedures  
6 other than those described in subsection (c) under which a  
7 discharged employee may appeal a discharge within the  
8 organizational structure of the employer, the discharged  
9 employee shall first exhaust those procedures prior to filing  
10 an action under this Act. The discharged employee's failure to  
11 initiate or exhaust available internal procedures is a defense  
12 to an action brought under this Act. If the employer's internal  
13 procedures are not completed within 90 days after the date the  
14 discharged employee initiates the internal procedures, the  
15 discharged employee may file an action under this Act and, for  
16 the purposes of this Section, the employer's internal  
17 procedures are considered exhausted. The limitation period in  
18 subsection (a) does not commence until the procedures are  
19 exhausted. In no case may the provisions of the employer's  
20 internal procedures extend the limitation period in subsection  
21 (a) more than 120 days.

22 (c) If an employer maintains written internal procedures  
23 under which a discharged employee may appeal a discharge within  
24 the organizational structure of the employer, the employer  
25 shall within 7 days after the date of discharge notify the

1 discharged employee of the existence of the procedures and  
2 shall supply the discharged employee with a copy of the  
3 procedures. If the employer fails to comply with this  
4 subsection, the discharged employee need not comply with  
5 subsection (b).

6 Section 40. Exemptions. This Act does not apply to a  
7 discharge that is subject to any other State or federal law  
8 that provides a procedure or remedy for contesting the dispute.  
9 Those laws include laws that prohibit discharge for filing  
10 complaints, charges, or claims with administrative bodies or  
11 that prohibit unlawful discrimination based on race, national,  
12 origin, sex, age, disability, creed, religion, color, and other  
13 similar grounds. This Act does not apply to a discharge of an  
14 employee covered by a written collective bargaining agreement  
15 or a written contract of employment for a specific term.

16 Section 45. Violations. An employer that violates this Act  
17 is guilty of a Class A Misdemeanor.