



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2181

by Rep. Anne Stava-Murray

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 an employer with 50 or more employees to: require an employee to sign a nondisclosure agreement if the employee is leaving his or her employment due to sexual harassment or assault; or fail to sign a nondisclosure agreement regarding the employee leaving his or her employment due to sexual harassment or assault. Provides that an employee may waive, in writing, the provisions of the employer's nondisclosure agreement for the purposes of commenting to a journalist. Provides that an employer that violates the provisions is subject to a \$25,000 penalty and that the Department of Human Rights, after an investigation, may increase the amount of the penalty depending on the grievance of the violation. Effective immediately.

LRB101 07039 LNS 52075 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
12 or apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of
14 unlawful 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
17 spoken by an employee in communications that are unrelated
18 to the 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 (B) Employment agency. For any employment agency to

1 fail or refuse to classify properly, accept applications
2 and register for employment referral or apprenticeship
3 referral, refer for employment, or refer for
4 apprenticeship on the basis of unlawful discrimination or
5 citizenship status or to accept from any person any job
6 order, requisition or request for referral of applicants
7 for employment or apprenticeship which makes or has the
8 effect of making unlawful discrimination or discrimination
9 on the basis of citizenship status a condition of referral.

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

20 (D) Sexual harassment. For any employer, employee,
21 agent of any employer, employment agency or labor
22 organization to engage in sexual harassment; provided,
23 that an employer shall be responsible for sexual harassment
24 of the employer's employees by nonemployees or
25 nonmanagerial and nonsupervisory employees only if the
26 employer becomes aware of the conduct and fails to take

1 reasonable corrective measures.

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

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

1 unable to reasonably accommodate the employee's or
2 prospective employee's sincerely held religious belief,
3 practice, or observance without undue hardship on the
4 conduct of the employer's business.

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

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

14 (G) Immigration-related practices.

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

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

1 recruitment, hiring, promotion, renewal of employment,
2 selection for training or apprenticeship, discharge,
3 discipline, tenure or terms, privileges or conditions
4 of employment without following the procedures under
5 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
10 or apprenticeship, discharge, discipline, tenure or terms,
11 privileges or conditions of employment on the basis of
12 pregnancy, childbirth, or medical or common conditions
13 related to pregnancy or childbirth. Women affected by
14 pregnancy, childbirth, or medical or common conditions
15 related to pregnancy or childbirth shall be treated the
16 same for all employment-related purposes, including
17 receipt of benefits under fringe benefit programs, as other
18 persons not so affected but similar in their ability or
19 inability to work, regardless of the source of the
20 inability to work or employment classification or status.

21 (J) Pregnancy; reasonable accommodations.

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

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

1 determine effective reasonable accommodations.

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

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

19 (4) For an employer to require an employee,
20 including a part-time, full-time, or probationary
21 employee, to take leave under any leave law or policy
22 of the employer if another reasonable accommodation
23 can be provided to the known medical or common
24 conditions related to the pregnancy or childbirth of an
25 employee. No employer shall fail or refuse to reinstate
26 the employee affected by pregnancy, childbirth, or

1 medical or common conditions related to pregnancy or
2 childbirth to her original job or to an equivalent
3 position with equivalent pay and accumulated
4 seniority, retirement, fringe benefits, and other
5 applicable service credits upon her signifying her
6 intent to return or when her need for reasonable
7 accommodation ceases, unless the employer can
8 demonstrate that the accommodation would impose an
9 undue hardship on the ordinary operation of the
10 business of the employer.

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

1 worksite; acquisition or modification of equipment; job
2 restructuring; a part-time or modified work schedule;
3 appropriate adjustment or modifications of examinations,
4 training materials, or policies; reassignment to a vacant
5 position; time off to recover from conditions related to
6 childbirth; and leave necessitated by pregnancy,
7 childbirth, or medical or common conditions resulting from
8 pregnancy or childbirth.

9 For the purposes of this subdivision (J), "undue
10 hardship" means an action that is prohibitively expensive
11 or disruptive when considered in light of the following
12 factors: (i) the nature and cost of the accommodation
13 needed; (ii) the overall financial resources of the
14 facility or facilities involved in the provision of the
15 reasonable accommodation, the number of persons employed
16 at the facility, the effect on expenses and resources, or
17 the impact otherwise of the accommodation upon the
18 operation of the facility; (iii) the overall financial
19 resources of the employer, the overall size of the business
20 of the employer with respect to the number of its
21 employees, and the number, type, and location of its
22 facilities; and (iv) the type of operation or operations of
23 the employer, including the composition, structure, and
24 functions of the workforce of the employer, the geographic
25 separateness, administrative, or fiscal relationship of
26 the facility or facilities in question to the employer. The

1 employer has the burden of proving undue hardship. The fact
2 that the employer provides or would be required to provide
3 a similar accommodation to similarly situated employees
4 creates a rebuttable presumption that the accommodation
5 does not impose an undue hardship on the employer.

6 No employer is required by this subdivision (J) to
7 create additional employment that the employer would not
8 otherwise have created, unless the employer does so or
9 would do so for other classes of employees who need
10 accommodation. The employer is not required to discharge
11 any employee, transfer any employee with more seniority, or
12 promote any employee who is not qualified to perform the
13 job, unless the employer does so or would do so to
14 accommodate other classes of employees who need it.

15 (K) Notice.

16 (1) For an employer to fail to post or keep posted
17 in a conspicuous location on the premises of the
18 employer where notices to employees are customarily
19 posted, or fail to include in any employee handbook
20 information concerning an employee's rights under this
21 Article, a notice, to be prepared or approved by the
22 Department, summarizing the requirements of this
23 Article and information pertaining to the filing of a
24 charge, including the right to be free from unlawful
25 discrimination, the right to be free from sexual
26 harassment, and the right to certain reasonable

1 accommodations. The Department shall make the
2 documents required under this paragraph available for
3 retrieval from the Department's website.

4 (2) Upon notification of a violation of paragraph
5 (1) of this subdivision (K), the Department may launch
6 a preliminary investigation. If the Department finds a
7 violation, the Department may issue a notice to show
8 cause giving the employer 30 days to correct the
9 violation. If the violation is not corrected, the
10 Department may initiate a charge of a civil rights
11 violation.

12 (L) Nondisclosure agreements. For an employer with 50
13 or more employees to:

14 (1) Require an employee to sign a nondisclosure
15 agreement if the employee is leaving his or her
16 employment due to sexual harassment or assault.

17 (2) Fail to sign a nondisclosure agreement
18 regarding the employee leaving his or her employment
19 due to sexual harassment or assault. An employee may
20 waive, in writing, the provisions of the employer's
21 nondisclosure agreement for the purposes of commenting
22 to a journalist.

23 In addition to any other remedies available under this
24 Act, an employer that violates this subdivision (L) is
25 subject to a \$25,000 penalty. The Department, after an
26 investigation, may increase the amount of the penalty

1 depending on the scale of the grievance of the violation.

2 (Source: P.A. 100-100, eff. 8-11-17; 100-588, eff. 6-8-18.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.