



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5586

by Rep. Aaron M. Ortiz

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102

from Ch. 68, par. 2-102

Amends the Employment Article of the Illinois Human Rights Act. Provides that an employer shall take all reasonable efforts to ensure the notice summarizing the requirements of the Article and information pertaining to the filing of a charge is made available to an employee in the employee's primary language, if English is not his or her primary language. Provides that the Department of Human Rights may make the notice available in other languages, at the request of an employer, for a reasonable fee.

LRB101 17810 LNS 67240 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, to engage in harassment as defined in subsection
11 (E-1) of Section 2-101, or to act with respect to
12 recruitment, hiring, promotion, renewal of employment,
13 selection for training or apprenticeship, discharge,
14 discipline, tenure or terms, privileges or conditions of
15 employment on the basis of unlawful discrimination or
16 citizenship status. An employer is responsible for
17 harassment by the employer's nonmanagerial and
18 nonsupervisory employees only if the employer becomes
19 aware of the conduct and fails to take reasonable
20 corrective measures.

21 (A-5) Language. For an employer to impose a restriction
22 that has the effect of prohibiting a language from being
23 spoken by an employee in communications that are unrelated

1 to the employee's duties.

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

6 (A-10) Harassment of nonemployees. For any employer,
7 employment agency, or labor organization to engage in
8 harassment of nonemployees in the workplace. An employer is
9 responsible for harassment of nonemployees by the
10 employer's nonmanagerial and nonsupervisory employees only
11 if the employer becomes aware of the conduct and fails to
12 take reasonable corrective measures. For the purposes of
13 this subdivision (A-10), "nonemployee" means a person who
14 is not otherwise an employee of the employer and is
15 directly performing services for the employer pursuant to a
16 contract with that employer. "Nonemployee" includes
17 contractors and consultants. This subdivision applies to
18 harassment occurring on or after the effective date of this
19 amendatory Act of the 101st General Assembly.

20 (B) Employment agency. For any employment agency to
21 fail or refuse to classify properly, accept applications
22 and register for employment referral or apprenticeship
23 referral, refer for employment, or refer for
24 apprenticeship on the basis of unlawful discrimination or
25 citizenship status or to accept from any person any job
26 order, requisition or request for referral of applicants

1 for employment or apprenticeship which makes or has the
2 effect of making unlawful discrimination or discrimination
3 on the basis of citizenship status a condition of referral.

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

14 (D) Sexual harassment. For any employer, employee,
15 agent of any employer, employment agency or labor
16 organization to engage in sexual harassment; provided,
17 that an employer shall be responsible for sexual harassment
18 of the employer's employees by nonemployees or
19 nonmanagerial and nonsupervisory employees only if the
20 employer becomes aware of the conduct and fails to take
21 reasonable corrective measures.

22 (D-5) Sexual harassment of nonemployees. For any
23 employer, employee, agent of any employer, employment
24 agency, or labor organization to engage in sexual
25 harassment of nonemployees in the workplace. An employer is
26 responsible for sexual harassment of nonemployees by the

1 employer's nonmanagerial and nonsupervisory employees only
2 if the employer becomes aware of the conduct and fails to
3 take reasonable corrective measures. For the purposes of
4 this subdivision (D-5), "nonemployee" means a person who is
5 not otherwise an employee of the employer and is directly
6 performing services for the employer pursuant to a contract
7 with that employer. "Nonemployee" includes contractors and
8 consultants. This subdivision applies to sexual harassment
9 occurring on or after the effective date of this amendatory
10 Act of the 101st General Assembly.

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

26 (E-5) Religious discrimination. For any employer to

1 impose upon a person as a condition of obtaining or
2 retaining employment, including opportunities for
3 promotion, advancement, or transfer, any terms or
4 conditions that would require such person to violate or
5 forgo a sincerely held practice of his or her religion
6 including, but not limited to, the wearing of any attire,
7 clothing, or facial hair in accordance with the
8 requirements of his or her religion, unless, after engaging
9 in a bona fide effort, the employer demonstrates that it is
10 unable to reasonably accommodate the employee's or
11 prospective employee's sincerely held religious belief,
12 practice, or observance without undue hardship on the
13 conduct of the employer's business.

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

18 (F) Training and apprenticeship programs. For any
19 employer, employment agency or labor organization to
20 discriminate against a person on the basis of age in the
21 selection, referral for or conduct of apprenticeship or
22 training programs.

23 (G) Immigration-related practices.

24 (1) for an employer to request for purposes of
25 satisfying the requirements of Section 1324a(b) of
26 Title 8 of the United States Code, as now or hereafter

1 amended, more or different documents than are required
2 under such Section or to refuse to honor documents
3 tendered that on their face reasonably appear to be
4 genuine; or

5 (2) for an employer participating in the E-Verify
6 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
7 Programs for Employment Eligibility Confirmation
8 (enacted by PL 104-208, div. C title IV, subtitle A) to
9 refuse to hire, to segregate, or to act with respect to
10 recruitment, hiring, promotion, renewal of employment,
11 selection for training or apprenticeship, discharge,
12 discipline, tenure or terms, privileges or conditions
13 of employment without following the procedures under
14 the E-Verify Program.

15 (H) (Blank).

16 (I) Pregnancy. For an employer to refuse to hire, to
17 segregate, or to act with respect to recruitment, hiring,
18 promotion, renewal of employment, selection for training
19 or apprenticeship, discharge, discipline, tenure or terms,
20 privileges or conditions of employment on the basis of
21 pregnancy, childbirth, or medical or common conditions
22 related to pregnancy or childbirth. Women affected by
23 pregnancy, childbirth, or medical or common conditions
24 related to pregnancy or childbirth shall be treated the
25 same for all employment-related purposes, including
26 receipt of benefits under fringe benefit programs, as other

1 persons not so affected but similar in their ability or
2 inability to work, regardless of the source of the
3 inability to work or employment classification or status.

4 (J) Pregnancy; reasonable accommodations.

5 (1) If after a job applicant or employee, including
6 a part-time, full-time, or probationary employee,
7 requests a reasonable accommodation, for an employer
8 to not make reasonable accommodations for any medical
9 or common condition of a job applicant or employee
10 related to pregnancy or childbirth, unless the
11 employer can demonstrate that the accommodation would
12 impose an undue hardship on the ordinary operation of
13 the business of the employer. The employer may request
14 documentation from the employee's health care provider
15 concerning the need for the requested reasonable
16 accommodation or accommodations to the same extent
17 documentation is requested for conditions related to
18 disability if the employer's request for documentation
19 is job-related and consistent with business necessity.
20 The employer may require only the medical
21 justification for the requested accommodation or
22 accommodations, a description of the reasonable
23 accommodation or accommodations medically advisable,
24 the date the reasonable accommodation or
25 accommodations became medically advisable, and the
26 probable duration of the reasonable accommodation or

1 accommodations. It is the duty of the individual
2 seeking a reasonable accommodation or accommodations
3 to submit to the employer any documentation that is
4 requested in accordance with this paragraph.
5 Notwithstanding the provisions of this paragraph, the
6 employer may require documentation by the employee's
7 health care provider to determine compliance with
8 other laws. The employee and employer shall engage in a
9 timely, good faith, and meaningful exchange to
10 determine effective reasonable accommodations.

11 (2) For an employer to deny employment
12 opportunities or benefits to or take adverse action
13 against an otherwise qualified job applicant or
14 employee, including a part-time, full-time, or
15 probationary employee, if the denial or adverse action
16 is based on the need of the employer to make reasonable
17 accommodations to the known medical or common
18 conditions related to the pregnancy or childbirth of
19 the applicant or employee.

20 (3) For an employer to require a job applicant or
21 employee, including a part-time, full-time, or
22 probationary employee, affected by pregnancy,
23 childbirth, or medical or common conditions related to
24 pregnancy or childbirth to accept an accommodation
25 when the applicant or employee did not request an
26 accommodation and the applicant or employee chooses

1 not to accept the employer's accommodation.

2 (4) For an employer to require an employee,
3 including a part-time, full-time, or probationary
4 employee, to take leave under any leave law or policy
5 of the employer if another reasonable accommodation
6 can be provided to the known medical or common
7 conditions related to the pregnancy or childbirth of an
8 employee. No employer shall fail or refuse to reinstate
9 the employee affected by pregnancy, childbirth, or
10 medical or common conditions related to pregnancy or
11 childbirth to her original job or to an equivalent
12 position with equivalent pay and accumulated
13 seniority, retirement, fringe benefits, and other
14 applicable service credits upon her signifying her
15 intent to return or when her need for reasonable
16 accommodation ceases, unless the employer can
17 demonstrate that the accommodation would impose an
18 undue hardship on the ordinary operation of the
19 business of the employer.

20 For the purposes of this subdivision (J), "reasonable
21 accommodations" means reasonable modifications or
22 adjustments to the job application process or work
23 environment, or to the manner or circumstances under which
24 the position desired or held is customarily performed, that
25 enable an applicant or employee affected by pregnancy,
26 childbirth, or medical or common conditions related to

1 pregnancy or childbirth to be considered for the position
2 the applicant desires or to perform the essential functions
3 of that position, and may include, but is not limited to:
4 more frequent or longer bathroom breaks, breaks for
5 increased water intake, and breaks for periodic rest;
6 private non-bathroom space for expressing breast milk and
7 breastfeeding; seating; assistance with manual labor;
8 light duty; temporary transfer to a less strenuous or
9 hazardous position; the provision of an accessible
10 worksite; acquisition or modification of equipment; job
11 restructuring; a part-time or modified work schedule;
12 appropriate adjustment or modifications of examinations,
13 training materials, or policies; reassignment to a vacant
14 position; time off to recover from conditions related to
15 childbirth; and leave necessitated by pregnancy,
16 childbirth, or medical or common conditions resulting from
17 pregnancy or childbirth.

18 For the purposes of this subdivision (J), "undue
19 hardship" means an action that is prohibitively expensive
20 or disruptive when considered in light of the following
21 factors: (i) the nature and cost of the accommodation
22 needed; (ii) the overall financial resources of the
23 facility or facilities involved in the provision of the
24 reasonable accommodation, the number of persons employed
25 at the facility, the effect on expenses and resources, or
26 the impact otherwise of the accommodation upon the

1 operation of the facility; (iii) the overall financial
2 resources of the employer, the overall size of the business
3 of the employer with respect to the number of its
4 employees, and the number, type, and location of its
5 facilities; and (iv) the type of operation or operations of
6 the employer, including the composition, structure, and
7 functions of the workforce of the employer, the geographic
8 separateness, administrative, or fiscal relationship of
9 the facility or facilities in question to the employer. The
10 employer has the burden of proving undue hardship. The fact
11 that the employer provides or would be required to provide
12 a similar accommodation to similarly situated employees
13 creates a rebuttable presumption that the accommodation
14 does not impose an undue hardship on the employer.

15 No employer is required by this subdivision (J) to
16 create additional employment that the employer would not
17 otherwise have created, unless the employer does so or
18 would do so for other classes of employees who need
19 accommodation. The employer is not required to discharge
20 any employee, transfer any employee with more seniority, or
21 promote any employee who is not qualified to perform the
22 job, unless the employer does so or would do so to
23 accommodate other classes of employees who need it.

24 (K) Notice.

25 (1) For an employer to fail to post or keep posted
26 in a conspicuous location on the premises of the

1 employer where notices to employees are customarily
2 posted, or fail to include in any employee handbook
3 information concerning an employee's rights under this
4 Article, a notice, to be prepared or approved by the
5 Department, summarizing the requirements of this
6 Article and information pertaining to the filing of a
7 charge, including the right to be free from unlawful
8 discrimination, the right to be free from sexual
9 harassment, and the right to certain reasonable
10 accommodations. The Department shall make the
11 documents required under this paragraph available for
12 retrieval from the Department's website. An employer
13 shall take all reasonable efforts to ensure this notice
14 is made available to an employee in the employee's
15 primary language if English is not his or her primary
16 language. The Department may make documents required
17 under this paragraph available in other languages
18 available, at the request of an employer, for a
19 reasonable fee.

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

1 violation.

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

3 101-221, eff. 1-1-20.)