



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4116

Introduced 9/3/2021, by Rep. Bob Morgan - Kambium Buckner -
Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

820 ILCS 55/5

from Ch. 48, par. 2855

Amends the Right to Privacy in the Workplace Act. Provides that an employer may not refuse to hire an individual or discipline an employee because results of an individual's drug test indicate the presence of THC on the part of that individual. Permits an employer to enforce a pre-employment drug testing policy, zero-tolerance drug testing policy, random drug testing policy, or a drug-free workplace policy or disciplining an employee for violating such policy, but provides that an employer may not take adverse action against an employee solely because of a positive drug test for cannabis unless the test result exceeds limits set forth in certain DUI provisions of the Illinois Vehicle Code. Sets forth conditions under which an employer may discipline an employee for impairment. Provides that there is not a cause of action for any person against an employer for disciplining or terminating the employment of an individual when enforcing a compliant policy. Effective immediately.

LRB102 19297 KTG 28063 b

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 5. The Right to Privacy in the Workplace Act is
5 amended by changing Section 5 as follows:

6 (820 ILCS 55/5) (from Ch. 48, par. 2855)

7 Sec. 5. Discrimination for use of lawful products
8 prohibited.

9 (a) Except as otherwise specifically provided by law,
10 including Section 10-50 of the Cannabis Regulation and Tax
11 Act, and except as provided in subsections (b) and (c) of this
12 Section, it shall be unlawful for an employer to refuse to hire
13 or to discipline or discharge any individual, or otherwise
14 disadvantage any individual, with respect to compensation,
15 terms, conditions or privileges of employment because the
16 individual uses lawful products off the premises of the
17 employer during nonworking and non-call hours or because
18 results of an individual's drug test indicates the presence of
19 tetrahydrocannabinol. As used in this Section, "lawful
20 products" means products that are legal under state law. For
21 purposes of this Section, an employee is deemed on-call when
22 the employee is scheduled with at least 24 hours' notice by his
23 or her employer to be on standby or otherwise responsible for

1 performing tasks related to his or her employment either at
2 the employer's premises or other previously designated
3 location by his or her employer or supervisor to perform a
4 work-related task.

5 (b) This Section does not apply to any employer that is a
6 non-profit organization that, as one of its primary purposes
7 or objectives, discourages the use of one or more lawful
8 products by the general public. This Section does not apply to
9 the use of those lawful products which impairs an employee's
10 ability to perform the employee's assigned duties.

11 (c) It is not a violation of this Section for an employer
12 to offer, impose or have in effect a health, disability or life
13 insurance policy that makes distinctions between employees for
14 the type of coverage or the price of coverage based upon the
15 employees' use of lawful products provided that:

16 (1) differential premium rates charged employees
17 reflect a differential cost to the employer; and

18 (2) employers provide employees with a statement
19 delineating the differential rates used by insurance
20 carriers.

21 (d) Nothing in this Act prohibits an employer from
22 enforcing a pre-employment drug testing policy, zero-tolerance
23 drug testing policy, random drug testing policy, or a
24 drug-free workplace policy or from disciplining an employee
25 for violating such policy. An employer, however, may not take
26 adverse action against an employee solely because of a

1 positive drug test for cannabis unless the test result exceeds
2 the limits set forth in Section 11-501.2 of the Illinois
3 Vehicle Code.

4 (e) Nothing in this Act limits an employer's ability to
5 discipline an employee for failing a drug test if failing to do
6 so would put the employer in violation of federal law or cause
7 it to lose a federal contract or funding.

8 (f) Nothing in this Act shall be construed to create a
9 defense for a third party who fails a drug test.

10 (g) An employer may consider an employee to be impaired
11 when he or she tests positive for cannabis that exceeds the
12 limits set forth in Section 11-501.2 of the Illinois Vehicle
13 Code or manifests specific, articulable symptoms or behavior
14 while working that decrease or lessen his or her performance
15 of the duties or tasks of the employee's job position,
16 including manifestations of the employee's speech, physical
17 dexterity, agility, coordination, demeanor, irrational or
18 unusual behavior, negligence or carelessness in operating
19 equipment or machinery, disregard for the safety of the
20 employee or others, involvement in an accident that results in
21 serious damage to equipment or property, disruption of a
22 production or manufacturing process, or carelessness that
23 results in any injury to the employee or others. If an employer
24 elects to discipline an employee under this subsection, it
25 must afford the employee a reasonable opportunity to contest
26 the basis of the determination.

1 (h) Nothing in this Act shall be construed to create or
2 imply a cause of action for any person against an employer for:

3 (1) actions based on the employer's good faith belief
4 that an employee used or possessed cannabis while on the
5 employer's premises or during the hours of employment;

6 (2) actions based on the employer's good faith belief
7 that an employee was impaired while working on the
8 employer's premises during the hours of employment;

9 (3) discipline or termination of the employment of an
10 employee when enforcing a drug policy that complies with
11 this Section; or

12 (4) injury or loss to a third party if the employer
13 neither knew nor had reason to know that the employee was
14 impaired.

15 (i) Nothing in this Act shall be construed to interfere
16 with any federal restrictions on employment, including, but
17 not limited to, the United States Department of Transportation
18 regulation 49 CFR 40.151(e).

19 (Source: P.A. 101-27, eff. 6-25-19.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.