



Rep. Denyse Wang Stoneback

Filed: 3/1/2022

10200HB5574ham001

LRB102 25102 SPS 37060 a

1 AMENDMENT TO HOUSE BILL 5574

2 AMENDMENT NO. _____. Amend House Bill 5574 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Workplace Transparency Act is amended by
5 changing Sections 1-15 and 1-30 as follows:

6 (820 ILCS 96/1-15)

7 Sec. 1-15. Definitions. As used in this Act:

8 "Confidentiality provision" means a provision in an
9 agreement which has the purpose or effect of concealing the
10 details relating to a claim of discrimination, retaliation,
11 harassment, sexual harassment, or sexual assault brought by
12 the employee subject to the agreement.

13 "Employee" has the same meaning as set forth in Section
14 2-101 of the Illinois Human Rights Act. "Employee" includes
15 "nonemployees" as defined in Section 2-102 of the Illinois
16 Human Rights Act.

1 "Employer" has the same meaning as set forth in Section
2 2-101 of the Illinois Human Rights Act.

3 "Mutual condition of employment or continued employment"
4 means any contract, agreement, clause, covenant, or waiver
5 negotiated between an employer and an employee or prospective
6 employee in good faith for consideration in order to obtain or
7 retain employment.

8 "Prospective employee" means a person seeking to enter an
9 employment contract with an employer.

10 "Settlement agreement" means an agreement, contract, or
11 clause within an agreement or contract entered into between an
12 employee, prospective employee, or former employee and an
13 employer to resolve a dispute or legal claim between the
14 parties that arose or accrued before the settlement agreement
15 was executed.

16 "Termination agreement" means a contract or agreement
17 between an employee and an employer terminating the employment
18 relationship.

19 "Unlawful employment practice" means any form of unlawful
20 discrimination, harassment, sexual harassment, or retaliation
21 that is actionable under Article 2 of the Illinois Human
22 Rights Act, Title VII of the Civil Rights Act of 1964, or any
23 other related State or federal rule or law that is enforced by
24 the Illinois Department of Human Rights or the Equal
25 Employment Opportunity Commission.

26 "Unilateral condition of employment or continued

1 employment" means any contract, agreement, clause, covenant,
2 or waiver an employer requires an employee or prospective
3 employee to accept as a non-negotiable material term in order
4 to obtain or retain employment.

5 (Source: P.A. 101-221, eff. 1-1-20.)

6 (820 ILCS 96/1-30)

7 Sec. 1-30. Settlement or termination agreements.

8 (a) An employer may not require a prospective, current, or
9 former employee to sign a confidentiality provision of a
10 settlement agreement or termination agreement relating to a
11 claim of discrimination, retaliation, harassment, sexual
12 harassment, or sexual assault in the workplace brought by the
13 employee or prevent the employee from disclosing a claim of
14 discrimination, retaliation, harassment, sexual harassment, or
15 sexual assault occurring in the workplace or at a work-related
16 event coordinated by or through the employer.

17 (a-5) This Section does not prohibit a settlement
18 agreement or termination agreement relating to a claim
19 alleging discrimination, retaliation, harassment, sexual
20 harassment, or sexual assault in the workplace between an
21 employer and an employee or former employee from containing
22 confidentiality provisions as provided in this subsection. A
23 confidentiality provision is permissible when:

24 (1) it relates to the monetary amount of a settlement;

25 or

1 (2) at the employee's request, it prohibits disclosure
2 of facts that could lead to the identification of the
3 employee.

4 If the employee publicly reveals sufficient details of the
5 claim so that the employer is reasonably identifiable, then
6 the confidentiality provision shall also be unenforceable
7 against the employer.

8 Every settlement agreement or termination agreement
9 resolving a discrimination, retaliation, harassment, sexual
10 harassment, or sexual assault claim by an employee against an
11 employer shall include a bold, prominently placed notice that
12 although the parties may have agreed to keep the settlement
13 and underlying facts confidential, such a provision in an
14 agreement is unenforceable against the employer if the
15 employee publicly reveals sufficient details of the claim so
16 that the employer is reasonably identifiable.

17 (a-10) An employee, prospective employee, or former
18 employee and an employer may enter into a valid and
19 enforceable settlement or termination agreement that includes
20 promises of confidentiality related to the monetary amount of
21 the settlement or facts that could lead to the identification
22 of the employee as described in subsection (a-5) ~~alleged~~
23 ~~unlawful employment practices~~, so long as:

24 (1) confidentiality is the documented preference of
25 the employee, prospective employee, or former employee ~~and~~
26 ~~is mutually beneficial to both parties;~~

1 (2) the employer notifies the employee, prospective
2 employee, or former employee, in writing, of his or her
3 right to have an attorney or representative of his or her
4 choice review the settlement or termination agreement
5 before it is executed;

6 (3) there is valid, bargained for consideration in
7 exchange for the confidentiality;

8 (4) the settlement or termination agreement does not
9 waive any claims of unlawful employment practices that
10 accrue after the date of execution of the settlement or
11 termination agreement;

12 (5) the settlement or termination agreement is
13 provided, in writing, to the parties to the prospective
14 agreement and the employee, prospective employee, or
15 former employee is given a period of 21 calendar days to
16 consider the agreement before execution, during which the
17 employee, prospective employee, or former employee may
18 sign the agreement at any time, knowingly and voluntarily
19 waiving any further time for consideration; and

20 (6) unless knowingly and voluntarily waived by the
21 employee, prospective employee, or former employee, he or
22 she has 7 calendar days following the execution of the
23 agreement to revoke the agreement and the agreement is not
24 effective or enforceable until the revocation period has
25 expired.

26 (b) An employer may not unilaterally include any clause in

1 a settlement or termination agreement that prohibits the
2 employee, prospective employee, or former employee from making
3 truthful statements or disclosures regarding unlawful
4 employment practices.

5 (c) Failure to comply with the provisions of this Section
6 shall render any promise of confidentiality related to alleged
7 unlawful employment practices against public policy void and
8 severable from an otherwise valid and enforceable agreement.

9 (d) Nothing in this Section shall be construed to prevent
10 a mutually agreed upon settlement or termination agreement
11 from waiving or releasing the employee, prospective employee,
12 or former employee's right to seek or obtain any remedies
13 relating to an unlawful employment practice claim that
14 occurred before the date on which the agreement is executed.

15 (e) The provisions of this amendatory Act of the 102nd
16 General Assembly apply to agreements entered into on or after
17 the effective date of this amendatory Act of the 102nd General
18 Assembly.

19 (Source: P.A. 101-221, eff. 1-1-20.)

20 Section 99. Effective date. This Act takes effect January
21 1, 2023."