



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB6299

by Rep. Martin J. Moylan

SYNOPSIS AS INTRODUCED:

New Act
775 ILCS 5/2-102

from Ch. 68, par. 2-102

Creates the Protection of Reproductive Health Care Decisions Act. Provides that an employer shall provide written notice to its employees and prospective employees regarding any applicable exclusions in contraceptive coverage the employer provides to its employees as part of the employee health insurance plan. Provides that the employer shall post the notice in conspicuous places on the premises of the employer. Defines "contraceptive coverage" as that portion of a health insurance policy that provides coverage for the cost of contraceptive drugs or devices approved by the federal Food and Drug Administration, or generic equivalents approved as substitutes by the Food and Drug Administration, under the prescription of a health care provider legally authorized to prescribe. Directs the Department of Labor to adopt rules to implement the new provisions. Amends the Illinois Human Rights Act. Provides that it is a civil rights violation for an employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of an individual's reproductive health care decisions.

LRB098 22245 HEP 61591 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 1. Short title. This Act may be cited as the
5 Protection of Reproductive Health Care Decisions Act.

6 Section 5. Contraceptive coverage notification.

7 (a) An employer shall provide written notice to its
8 employees prior to substituting an employer-provided health
9 insurance policy with another policy or that alters, restricts,
10 or terminates contraceptive coverage. The notice shall be
11 provided not less than 90 days prior to the substitution. If
12 the employees are represented by a labor organization, the
13 notice shall also be promptly provided to the representative of
14 the labor organization. The employer shall provide a copy of
15 the notice to the Director of Labor.

16 (b) An employer who is issued a health insurance policy
17 that covers some or all of its employees shall provide notice
18 to all persons who seek employment with the employer as to
19 whether the policy includes contraceptive coverage. If the
20 policy includes some, but not all, contraceptive drugs and
21 devices or their generic equivalents approved by the federal
22 Food and Drug Administration, the notice shall specify which
23 drugs or devices are not included in the insurance coverage.

1 The notice shall be prominently displayed on the face of any
2 written application for employment utilized by an employer or
3 included on a separate written notice form to be provided to
4 each person who receives the written application. If the
5 employer maintains a publicly accessible webpage that provides
6 information on prospective employment opportunities, the
7 employer shall provide clear and conspicuous notice on the
8 webpage as to whether the employer provides contraceptive
9 coverage and, if so, whether the coverage includes some, but
10 not all, contraceptive drugs and devices or their generic
11 equivalent approved by the federal Food and Drug
12 Administration.

13 (c) Every employer covered by this Act shall post and keep
14 posted, in conspicuous places on the premises of the employer
15 where notices to employees are customarily posted, a notice, to
16 be approved by the Director of Labor, listing which
17 contraceptive drugs or devices, if any, are excluded from
18 employee health insurance policies.

19 (d) As used in this Act, "contraceptive coverage" means
20 that portion of a health insurance policy that provides
21 coverage for the cost of contraceptive drugs or devices
22 approved by the federal Food and Drug Administration, or
23 generic equivalents approved as substitutes by the Food and
24 Drug Administration, under the prescription of a health care
25 provider legally authorized to prescribe.

26 (e) The Department of Labor shall adopt rules to implement

1 this Section.

2 Section 10. The Illinois Human Rights Act is amended by
3 changing Section 2-102 as follows:

4 (775 ILCS 5/2-102) (from Ch. 68, par. 2-102)

5 (Text of Section after amendment by P.A. 98-1050)

6 Sec. 2-102. Civil Rights Violations - Employment. It is a
7 civil rights violation:

8 (A) Employers. For any employer to refuse to hire, to
9 segregate, or to act with respect to recruitment, hiring,
10 promotion, renewal of employment, selection for training or
11 apprenticeship, discharge, discipline, tenure or terms,
12 privileges or conditions of employment on the basis of unlawful
13 discrimination or citizenship status.

14 (A-5) Language. For an employer to impose a restriction
15 that has the effect of prohibiting a language from being spoken
16 by an employee in communications that are unrelated to the
17 employee's duties.

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

22 (B) Employment Agency. For any employment agency to fail or
23 refuse to classify properly, accept applications and register
24 for employment referral or apprenticeship referral, refer for

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

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

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

25 (E) Public Employers. For any public employer to refuse to
26 permit a public employee under its jurisdiction who takes time

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

13 (F) Training and Apprenticeship Programs. For any
14 employer, employment agency or labor organization to
15 discriminate against a person on the basis of age in the
16 selection, referral for or conduct of apprenticeship or
17 training programs.

18 (G) Immigration-Related Practices.

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

25 (2) for an employer participating in the E-Verify
26 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot

1 Programs for Employment Eligibility Confirmation (enacted
2 by PL 104-208, div. C title IV, subtitle A) to refuse to
3 hire, to segregate, or to act with respect to recruitment,
4 hiring, promotion, renewal of employment, selection for
5 training or apprenticeship, discharge, discipline, tenure
6 or terms, privileges or conditions of employment without
7 following the procedures under the E-Verify Program.

8 (H) (Blank).

9 (I) Pregnancy. For an employer to refuse to hire, to
10 segregate, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training or
12 apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of
14 pregnancy, childbirth, or medical or common conditions related
15 to pregnancy or childbirth. Women affected by pregnancy,
16 childbirth, or medical or common conditions related to
17 pregnancy or childbirth shall be treated the same for all
18 employment-related purposes, including receipt of benefits
19 under fringe benefit programs, as other persons not so affected
20 but similar in their ability or inability to work, regardless
21 of the source of the inability to work or employment
22 classification or status.

23 (J) Pregnancy; reasonable accommodations.

24 (1) If after a job applicant or employee, including a
25 part-time, full-time, or probationary employee, requests a
26 reasonable accommodation, for an employer to not make

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

1 reasonable accommodations.

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

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

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

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

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

1 recover from conditions related to childbirth; and leave
2 necessitated by pregnancy, childbirth, or medical or common
3 conditions resulting from pregnancy or childbirth.

4 For the purposes of this subdivision (J), "undue hardship"
5 means an action that is prohibitively expensive or disruptive
6 when considered in light of the following factors: (i) the
7 nature and cost of the accommodation needed; (ii) the overall
8 financial resources of the facility or facilities involved in
9 the provision of the reasonable accommodation, the number of
10 persons employed at the facility, the effect on expenses and
11 resources, or the impact otherwise of the accommodation upon
12 the operation of the facility; (iii) the overall financial
13 resources of the employer, the overall size of the business of
14 the employer with respect to the number of its employees, and
15 the number, type, and location of its facilities; and (iv) the
16 type of operation or operations of the employer, including the
17 composition, structure, and functions of the workforce of the
18 employer, the geographic separateness, administrative, or
19 fiscal relationship of the facility or facilities in question
20 to the employer. The employer has the burden of proving undue
21 hardship. The fact that the employer provides or would be
22 required to provide a similar accommodation to similarly
23 situated employees creates a rebuttable presumption that the
24 accommodation does not impose an undue hardship on the
25 employer.

26 No employer is required by this subdivision (J) to create

1 additional employment that the employer would not otherwise
2 have created, unless the employer does so or would do so for
3 other classes of employees who need accommodation. The employer
4 is not required to discharge any employee, transfer any
5 employee with more seniority, or promote any employee who is
6 not qualified to perform the job, unless the employer does so
7 or would do so to accommodate other classes of employees who
8 need it.

9 (J-5) Reproductive Health Care. For an employer to refuse
10 to hire, to segregate, or to act with respect to recruitment,
11 hiring, promotion, renewal of employment, selection for
12 training or apprenticeship, discharge, discipline, tenure or
13 terms, privileges or conditions of employment on the basis of
14 an individual's reproductive health care decisions.

15 (K) Notice.

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

1 retrieval from the Department's website.

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

9 (Source: P.A. 97-596, eff. 8-26-11; 98-212, eff. 8-9-13;
10 98-1050, eff. 1-1-15.)