

# HB5335



## 101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5335

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 if a petition alleging a civil rights violation by an employer is filed with the Department of Human Rights, the Human Rights Commission, or in court, a rebuttable presumption that the employer violated the petitioner's civil rights is created. Effective immediately.

LRB101 19445 LNS 68917 b

A BILL FOR

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.

13 (2) Upon notification of a violation of paragraph  
14 (1) of this subdivision (K), the Department may launch  
15 a preliminary investigation. If the Department finds a  
16 violation, the Department may issue a notice to show  
17 cause giving the employer 30 days to correct the  
18 violation. If the violation is not corrected, the  
19 Department may initiate a charge of a civil rights  
20 violation.

21 If a petition alleging a civil rights violation by an  
22 employer under this Section is filed with the Department, the  
23 Commission, or in court, a rebuttable presumption that the  
24 employer violated the petitioner's civil rights under this  
25 Section is created.

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

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

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