

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 Workplace Transparency Act is amended by  
5 changing Sections 1-5, 1-10, 1-15, 1-20, 1-25, 1-30, 1-35, and  
6 1-40 as follows:

7 (820 ILCS 96/1-5)

8 Sec. 1-5. Purpose. This State has a compelling and  
9 substantial interest in securing individuals' freedom from  
10 unlawful discrimination and harassment in the workplace. This  
11 State also recognizes the right of parties to freely contract  
12 over the terms, privileges and conditions of employment as  
13 they so choose. The purpose of this Act is to ensure that all  
14 parties to a contract for the performance of services  
15 understand and agree to the mutual promises and consideration  
16 therein, and to protect the interest of this State in ensuring  
17 all workplaces are free of unlawful discrimination, ~~and~~  
18 harassment, and violations of State or federal employment  
19 laws.

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

21 (820 ILCS 96/1-10)

22 Sec. 1-10. Application.

1 (a) This Act does not apply to any collective bargaining  
2 agreements ~~contracts~~ that are entered into in and subject to  
3 the Illinois Public Labor Relations Act or the National Labor  
4 Relations Act. If there is a conflict between any valid and  
5 enforceable collective bargaining agreement and this Act, the  
6 collective bargaining agreement controls.

7 (b) This Act shall have no effect on the determination of  
8 whether an employment relationship exists for the purposes of  
9 other State or federal laws, including, but not limited to,  
10 the Illinois Human Rights Act, the Workers' Compensation Act,  
11 the Unemployment Insurance Act, and the Illinois Wage Payment  
12 and Collection Act.

13 (c) This Act applies to contracts entered into, modified,  
14 or extended on or after the effective date of this Act.

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

16 (820 ILCS 96/1-15)

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

18 "Employee" has the same meaning as set forth in Section  
19 2-101 of the Illinois Human Rights Act. "Employee" includes  
20 "nonemployees" as defined in Section 2-102 of the Illinois  
21 Human Rights Act.

22 "Employer" has the same meaning as set forth in Section  
23 2-101 of the Illinois Human Rights Act.

24 "Mutual condition of employment or continued employment"  
25 means any contract, agreement, clause, covenant, or waiver

1 negotiated between an employer and an employee or prospective  
2 employee in good faith for consideration in order to obtain or  
3 retain employment.

4 "Prospective employee" means a person seeking to enter an  
5 employment contract with an employer.

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

12 "Termination agreement" means a contract or agreement  
13 between an employee and an employer terminating the employment  
14 relationship.

15 "Unlawful employment practice" means any practice made  
16 unlawful that is ~~form of unlawful discrimination, harassment,~~  
17 ~~or retaliation that is~~ actionable under Article 2 of the  
18 Illinois Human Rights Act, Title VII of the Civil Rights Act of  
19 1964, or any other ~~related~~ State or federal rule or law  
20 governing employment, including those that are ~~is~~ enforced by  
21 the Illinois Department of Human Rights, Illinois Department  
22 of Labor, Illinois Labor Relations Board, ~~or the~~ Equal  
23 Employment Opportunity Commission, United States Department of  
24 Labor, Occupational Safety and Health Administration, or  
25 National Labor Relations Board.

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 96/1-20)

7 Sec. 1-20. Reporting of allegations. No contract,  
8 agreement, clause, covenant, waiver, or other document shall  
9 prohibit, prevent, or otherwise restrict an employee,  
10 prospective employee, or former employee from (1) reporting  
11 any allegations of unlawful conduct to federal, State, or  
12 local officials for investigation, including, but not limited  
13 to, alleged criminal conduct or unlawful employment practices,  
14 or (2) engaging in concerted activity to address work-related  
15 issues.

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

17 (820 ILCS 96/1-25)

18 Sec. 1-25. Conditions of employment or continued  
19 employment.

20 (a) Any agreement, clause, covenant, or waiver that is a  
21 unilateral condition of employment or continued employment and  
22 has the purpose or effect of preventing an employee or  
23 prospective employee from making truthful statements or  
24 disclosures about alleged unlawful employment practices or

1 engaging in protected concerted activity to address  
2 work-related issues is against public policy, void to the  
3 extent it prevents such statements or disclosures, and  
4 severable from an otherwise valid and enforceable contract  
5 under this Act.

6 (b) Any agreement, clause, covenant, or waiver that is a  
7 unilateral condition of employment or continued employment and  
8 requires the employee or prospective employee to waive,  
9 arbitrate, or otherwise diminish any existing or future claim,  
10 right, or benefit related to an unlawful employment practice  
11 to which the employee or prospective employee would otherwise  
12 be entitled under any provision of State or federal law,  
13 including that which purports to shorten the applicable  
14 statute of limitation, apply non-Illinois law to an Illinois  
15 employee's claim, or require a venue outside of Illinois to  
16 adjudicate an Illinois employee's claim, is against public  
17 policy, void to the extent it denies an employee or  
18 prospective employee a substantive or procedural right or  
19 remedy related to alleged unlawful employment practices, and  
20 severable from an otherwise valid and enforceable contract  
21 under this Act.

22 (c) Any agreement, clause, covenant, or waiver that is a  
23 mutual condition of employment or continued employment may  
24 include provisions that would otherwise be against public  
25 policy as a unilateral condition of employment or continued  
26 employment, but only if the agreement, clause, covenant, or

1 waiver is in writing, demonstrates actual, knowing, and  
2 bargained-for consideration from both parties, and  
3 acknowledges the right of the employee or prospective employee  
4 to:

5 (1) report any good faith allegation of unlawful  
6 employment practices to any appropriate federal, State, or  
7 local government agency enforcing discrimination laws;

8 (2) report any good faith allegation of criminal  
9 conduct to any appropriate federal, State, or local  
10 official;

11 (3) participate in a proceeding related to unlawful  
12 employment practices, including any litigation brought by  
13 any federal, State, or local government agency or any  
14 other person who alleges that the employer has violated  
15 any State, federal, or local law, regulation, or rule with  
16 any appropriate federal, State, or local government agency  
17 enforcing discrimination laws;

18 (4) make any truthful statements or disclosures  
19 required by law, regulation, or legal process; ~~and~~

20 (5) request or receive confidential legal advice; and  
21 ~~and~~

22 (6) engage in concerted activity to address  
23 work-related issues.

24 (d) Failure to comply with the provisions of subsection  
25 (c) shall establish a rebuttable presumption that the  
26 agreement, clause, covenant, or waiver is a unilateral

1 condition of employment or continued employment that is  
2 governed by subsection (a) or (b).

3 (e) Nothing in this Section shall be construed to prevent  
4 an employee or prospective employee and an employer from  
5 negotiating and bargaining over the terms, privileges, and  
6 conditions of employment.

7 (Source: P.A. 101-221, eff. 1-1-20; 102-558, eff. 8-20-21.)

8 (820 ILCS 96/1-30)

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

10 (a) An employee, prospective employee, or former employee  
11 and an employer may enter into a valid and enforceable  
12 settlement or termination agreement that includes promises of  
13 confidentiality related to alleged unlawful employment  
14 practices, other than concerted activity related to workplace  
15 conditions, so long as:

16 (1) confidentiality is the documented preference of  
17 the employee, prospective employee, or former employee and  
18 is mutually beneficial to both parties;

19 (2) the employer notifies the employee, prospective  
20 employee, or former employee, in writing, of his or her  
21 right to have an attorney or representative of his or her  
22 choice review the settlement or termination agreement  
23 before it is executed;

24 (3) there is valid, bargained for consideration in  
25 exchange for the confidentiality separate from any

1 consideration that is provided in exchange for a release  
2 of claims;

3 (4) the settlement or termination agreement does not  
4 waive any claims of unlawful employment practices that  
5 accrue after the date of execution of the settlement or  
6 termination agreement;

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

15 (6) unless knowingly and voluntarily waived by the  
16 employee, prospective employee, or former employee, he or  
17 she has 7 calendar days following the execution of the  
18 agreement to revoke the agreement and the agreement is not  
19 effective or enforceable until the revocation period has  
20 expired; and -

21 (7) any promises of confidentiality by the employee,  
22 prospective employee, or former employee expire within 5  
23 years after the date of the incident that was disclosed.

24 (b) An employer may not unilaterally include any clause in  
25 a settlement or termination agreement that prohibits the  
26 employee, prospective employee, or former employee from making

1 truthful statements or disclosures regarding unlawful  
2 employment practices or unilaterally include any clause in a  
3 settlement or termination agreement that states that the  
4 promises of confidentiality are the preference of the  
5 employee.

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

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

16 (e) An employee or former employee and an employer may  
17 enter into a valid and enforceable settlement or termination  
18 agreement that prevents the employee or former employee from  
19 working or from applying to work for the employer in the future  
20 if the provision expires within 7 years.

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

22 (820 ILCS 96/1-35)

23 Sec. 1-35. Consequential damages, costs, ~~Costs~~ and  
24 attorney's fees. An employee, prospective employee, or former  
25 employee shall be entitled to consequential damages, in

1 addition to reasonable attorney's fees and costs incurred in  
2 challenging a contract for violation of this Act upon a final,  
3 non-appealable action in favor of the employee, prospective  
4 employee, or former employee on the question of the validity  
5 and enforceability of the contract or defending an action for  
6 breach of a confidentiality agreement pursuant to this Act.

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

8 (820 ILCS 96/1-40)

9 Sec. 1-40. Right to testify. Notwithstanding any other  
10 law to the contrary, any agreement, clause, covenant, or  
11 waiver, settlement agreement, or termination agreement that  
12 waives the right of an employee, prospective employee, or  
13 former employee to testify in an administrative, legislative,  
14 arbitral, or judicial proceeding, including a deposition taken  
15 in connection with any of the proceedings, concerning alleged  
16 criminal conduct or alleged unlawful employment practices on  
17 the part of the other party to the employment contract,  
18 settlement agreement, or termination agreement, or on the part  
19 of the party's agents or employees, when the employee,  
20 prospective employee, or former employee has been required or  
21 requested to attend the proceeding pursuant to a court order,  
22 subpoena, or written request from an administrative agency or  
23 the legislature, is void and unenforceable under the public  
24 policy of this State. This Section is declarative of existing  
25 law.

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