



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4053

Introduced 3/17/2021, by Rep. Angelica Guerrero-Cuellar

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102

from Ch. 68, par. 2-102

Amends the Employment Article of the Illinois Human Rights Act. Provides that it is a civil rights violation for an employer to: refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period, not to exceed 4 months, and thereafter return to work; refuse to maintain and pay for coverage for an eligible employee disabled by pregnancy, childbirth, or a related medical condition who takes leave under a group health plan, for the duration of the leave, not to exceed 4 months over the course of a 12-month period, commencing on the date the leave taken begins, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave; or refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave.

LRB102 12130 LNS 17467 b

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
11 subsection (E-1) of Section 2-101, or to act with respect
12 to 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
22 restriction that has the effect of prohibiting a language
23 from being spoken by an employee in communications that

1 are unrelated 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,
4 or Chinese. "Language" does not include such things as
5 slang, 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
9 is 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
16 a contract with that employer. "Nonemployee" includes
17 contractors and consultants. This subdivision applies to
18 harassment occurring on or after the effective date of
19 this 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
4 referral.

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

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

23 (D-5) Sexual harassment of nonemployees. For any
24 employer, employee, agent of any employer, employment
25 agency, or labor organization to engage in sexual
26 harassment of nonemployees in the workplace. An employer

1 is responsible for sexual harassment of nonemployees by
2 the employer's nonmanagerial and nonsupervisory employees
3 only if the employer becomes aware of the conduct and
4 fails to take reasonable corrective measures. For the
5 purposes of this subdivision (D-5), "nonemployee" means a
6 person who is not otherwise an employee of the employer
7 and is directly performing services for the employer
8 pursuant to a contract with that employer. "Nonemployee"
9 includes contractors and consultants. This subdivision
10 applies to sexual harassment occurring on or after the
11 effective date of this amendatory Act of the 101st General
12 Assembly.

13 (E) Public employers. For any public employer to
14 refuse to permit a public employee under its jurisdiction
15 who takes time off from work in order to practice his or
16 her religious beliefs to engage in work, during hours
17 other than such employee's regular working hours,
18 consistent with the operational needs of the employer and
19 in order to compensate for work time lost for such
20 religious reasons. Any employee who elects such deferred
21 work shall be compensated at the wage rate which he or she
22 would have earned during the originally scheduled work
23 period. The employer may require that an employee who
24 plans to take time off from work in order to practice his
25 or her religious beliefs provide the employer with a
26 notice of his or her intention to be absent from work not

1 exceeding 5 days prior to the date of absence.

2 (E-5) Religious discrimination. For any employer to
3 impose upon a person as a condition of obtaining or
4 retaining employment, including opportunities for
5 promotion, advancement, or transfer, any terms or
6 conditions that would require such person to violate or
7 forgo a sincerely held practice of his or her religion
8 including, but not limited to, the wearing of any attire,
9 clothing, or facial hair in accordance with the
10 requirements of his or her religion, unless, after
11 engaging in a bona fide effort, the employer demonstrates
12 that it is unable to reasonably accommodate the employee's
13 or prospective employee's sincerely held religious belief,
14 practice, or observance without undue hardship on the
15 conduct of the employer's business.

16 Nothing in this Section prohibits an employer from
17 enacting a dress code or grooming policy that may include
18 restrictions on attire, clothing, or facial hair to
19 maintain workplace safety or food sanitation.

20 (F) Training and apprenticeship programs. For any
21 employer, employment agency or labor organization to
22 discriminate against a person on the basis of age in the
23 selection, referral for or conduct of apprenticeship or
24 training programs.

25 (G) Immigration-related practices.

26 (1) for an employer to request for purposes of

1 satisfying the requirements of Section 1324a(b) of
2 Title 8 of the United States Code, as now or hereafter
3 amended, more or different documents than are required
4 under such Section or to refuse to honor documents
5 tendered that on their face reasonably appear to be
6 genuine; or

7 (2) for an employer participating in the E-Verify
8 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
9 Programs for Employment Eligibility Confirmation
10 (enacted by PL 104-208, div. C title IV, subtitle A) to
11 refuse to hire, to segregate, 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
15 of employment without following the procedures under
16 the E-Verify Program.

17 (H) (Blank).

18 (I) Pregnancy. For an employer to refuse to hire, to
19 segregate, or to act with respect to recruitment, hiring,
20 promotion, renewal of employment, selection for training
21 or apprenticeship, discharge, discipline, tenure or terms,
22 privileges or conditions of employment on the basis of
23 pregnancy, childbirth, or medical or common conditions
24 related to pregnancy or childbirth. Women affected by
25 pregnancy, childbirth, or medical or common conditions
26 related to pregnancy or childbirth shall be treated the

1 same for all employment-related purposes, including
2 receipt of benefits under fringe benefit programs, as
3 other persons not so affected but similar in their ability
4 or inability to work, regardless of the source of the
5 inability to work or employment classification or status.

6 (I-5) Pregnancy; disability and health care coverage.

7 (1) For an employer to refuse to allow an employee
8 disabled by pregnancy, childbirth, or a related
9 medical condition to take a leave for a reasonable
10 period, not to exceed 4 months, and thereafter return
11 to work. An employer may require an employee who plans
12 to take a leave pursuant to this subdivision to give
13 the employer reasonable notice of the date the leave
14 shall commence and the estimated duration of the
15 leave.

16 (2) For an employer to refuse to maintain and pay
17 for coverage for an eligible employee who takes leave
18 pursuant to paragraph (1) under a group health plan,
19 as defined in Section 5000(b)(1) of the Internal
20 Revenue Code of 1986, for the duration of the leave,
21 not to exceed 4 months over the course of a 12-month
22 period, commencing on the date the leave taken under
23 paragraph (1) begins, at the level and under the
24 conditions that coverage would have been provided if
25 the employee had continued in employment continuously
26 for the duration of the leave. Nothing in this

1 paragraph shall preclude an employer from maintaining
2 and paying for coverage under a group health plan
3 beyond 4 months. If the employer is a State agency, the
4 collective bargaining agreement shall govern with
5 respect to the continued receipt by an eligible
6 employee of the health care coverage.

7 The Department may adopt rules to implement this
8 subdivision.

9 (J) Pregnancy; reasonable accommodations.

10 (1) If after a job applicant or employee,
11 including a part-time, full-time, or probationary
12 employee, requests a reasonable accommodation, for an
13 employer to not make reasonable accommodations for any
14 medical or common condition of a job applicant or
15 employee related to pregnancy or childbirth, unless
16 the employer can demonstrate that the accommodation
17 would impose an undue hardship on the ordinary
18 operation of the business of the employer. The
19 employer may request documentation from the employee's
20 health care provider concerning the need for the
21 requested reasonable accommodation or accommodations
22 to the same extent documentation is requested for
23 conditions related to disability if the employer's
24 request for documentation is job-related and
25 consistent with business necessity. The employer may
26 require only the medical justification for the

1 requested accommodation or accommodations, a
2 description of the reasonable accommodation or
3 accommodations medically advisable, the date the
4 reasonable accommodation or accommodations became
5 medically advisable, and the probable duration of the
6 reasonable accommodation or accommodations. It is the
7 duty of the individual seeking a reasonable
8 accommodation or accommodations to submit to the
9 employer any documentation that is requested in
10 accordance with this paragraph. Notwithstanding the
11 provisions of this paragraph, the employer may require
12 documentation by the employee's health care provider
13 to determine compliance with other laws. The employee
14 and employer shall engage in a timely, good faith, and
15 meaningful exchange to determine effective reasonable
16 accommodations.

17 (2) For an employer to deny employment
18 opportunities or benefits to or take adverse action
19 against an otherwise qualified job applicant or
20 employee, including a part-time, full-time, or
21 probationary employee, if the denial or adverse action
22 is based on the need of the employer to make reasonable
23 accommodations to the known medical or common
24 conditions related to the pregnancy or childbirth of
25 the applicant or employee.

26 (3) For an employer to require a job applicant or

1 employee, including a part-time, full-time, or
2 probationary employee, affected by pregnancy,
3 childbirth, or medical or common conditions related to
4 pregnancy or childbirth to accept an accommodation
5 when the applicant or employee did not request an
6 accommodation and the applicant or employee chooses
7 not to accept the employer's accommodation.

8 (4) For an employer to require an employee,
9 including a part-time, full-time, or probationary
10 employee, to take leave under any leave law or policy
11 of the employer if another reasonable accommodation
12 can be provided to the known medical or common
13 conditions related to the pregnancy or childbirth of
14 an employee. No employer shall fail or refuse to
15 reinstate the employee affected by pregnancy,
16 childbirth, or medical or common conditions related to
17 pregnancy or childbirth to her original job or to an
18 equivalent position with equivalent pay and
19 accumulated seniority, retirement, fringe benefits,
20 and other applicable service credits upon her
21 signifying her intent to return or when her need for
22 reasonable accommodation ceases, unless the employer
23 can demonstrate that the accommodation would impose an
24 undue hardship on the ordinary operation of the
25 business of the employer.

26 For the purposes of this subdivision (J), "reasonable

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

24 For the purposes of this subdivision (J), "undue
25 hardship" means an action that is prohibitively expensive
26 or disruptive when considered in light of the following

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

22 No employer is required by this subdivision (J) to
23 create additional employment that the employer would not
24 otherwise have created, unless the employer does so or
25 would do so for other classes of employees who need
26 accommodation. The employer is not required to discharge

1 any employee, transfer any employee with more seniority,
2 or promote any employee who is not qualified to perform
3 the job, unless the employer does so or would do so to
4 accommodate other classes of employees who need it.

5 (K) Notice.

6 (1) For an employer to fail to post or keep posted
7 in a conspicuous location on the premises of the
8 employer where notices to employees are customarily
9 posted, or fail to include in any employee handbook
10 information concerning an employee's rights under this
11 Article, a notice, to be prepared or approved by the
12 Department, summarizing the requirements of this
13 Article and information pertaining to the filing of a
14 charge, including the right to be free from unlawful
15 discrimination, the right to be free from sexual
16 harassment, and the right to certain reasonable
17 accommodations. The Department shall make the
18 documents required under this paragraph available for
19 retrieval from the Department's website.

20 (2) Upon notification of a violation of paragraph
21 (1) of this subdivision (K), the Department may launch
22 a preliminary investigation. If the Department finds a
23 violation, the Department may issue a notice to show
24 cause giving the employer 30 days to correct the
25 violation. If the violation is not corrected, the
26 Department may initiate a charge of a civil rights

1 violation.

2 (L) Family care and medical leave. For any employer to
3 refuse to grant a request by any employee with more than 12
4 months of service with the employer, and who has at least
5 1,250 hours of service with the employer during the
6 previous 12-month period, to take up to a total of 12
7 workweeks in any 12-month period for family care and
8 medical leave. Family care and medical leave requested
9 pursuant to this subdivision shall not be deemed to have
10 been granted unless the employer provides the employee,
11 upon granting the leave request, a guarantee of employment
12 in the same or a comparable position upon the termination
13 of the leave.

14 The Department may adopt rules to implement this
15 subdivision.

16 For the purposes of this subdivision, "family care and
17 medical leave" means:

18 (i) leave for reason of the birth of a child of the
19 employee or the placement of a child with an employee
20 in connection with the adoption or foster care of the
21 child by the employee;

22 (ii) leave to care for a child, parent,
23 grandparent, grandchild, sibling, spouse, or domestic
24 partner who has a serious health condition;

25 (iii) leave because of an employee's own serious
26 health condition that makes the employee unable to

1 perform the functions of the position of that
2 employee, except for leave taken for disability on
3 account of pregnancy, childbirth, or a related medical
4 condition; or

5 (iv) leave because of a qualifying exigency
6 related to the covered active duty or call to covered
7 active duty of an employee's spouse, domestic partner,
8 child, or parent in the Armed Forces of the United
9 States.

10 (Source: P.A. 100-100, eff. 8-11-17; 100-588, eff. 6-8-18;
11 101-221, eff. 1-1-20.)