



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5574

Introduced 1/31/2022, by Rep. Denyse Wang Stoneback

SYNOPSIS AS INTRODUCED:

820 ILCS 96/1-15
820 ILCS 96/1-30

Amends the Workplace Transparency Act. Provides that an employer may not require a prospective, current, or former employee to sign a confidentiality provision of a settlement agreement or termination agreement relating to a claim of discrimination, retaliation, harassment, or sexual assault in the workplace. Provides that a confidentiality provision is permissible when it relates to the monetary amount of a settlement or it prohibits disclosure of facts that could lead to the identification of the employee. Provides for notice requirements. Defines "confidentiality provision". Effective January 1, 2023.

LRB102 25102 SPS 34362 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 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, or sexual assault brought by the employee subject
12 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.

17 "Employer" has the same meaning as set forth in Section
18 2-101 of the Illinois Human Rights Act.

19 "Mutual condition of employment or continued employment"
20 means any contract, agreement, clause, covenant, or waiver
21 negotiated between an employer and an employee or prospective
22 employee in good faith for consideration in order to obtain or
23 retain employment.

1 "Prospective employee" means a person seeking to enter an
2 employment contract with an employer.

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

9 "Termination agreement" means a contract or agreement
10 between an employee and an employer terminating the employment
11 relationship.

12 "Unlawful employment practice" means any form of unlawful
13 discrimination, harassment, or retaliation that is actionable
14 under Article 2 of the Illinois Human Rights Act, Title VII of
15 the Civil Rights Act of 1964, or any other related State or
16 federal rule or law that is enforced by the Illinois
17 Department of Human Rights or the Equal Employment Opportunity
18 Commission.

19 "Unilateral condition of employment or continued
20 employment" means any contract, agreement, clause, covenant,
21 or waiver an employer requires an employee or prospective
22 employee to accept as a non-negotiable material term in order
23 to obtain or retain employment.

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

25 (820 ILCS 96/1-30)

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

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

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

18 (1) it relates to the monetary amount of a settlement;
19 or

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

23 If the employee publicly reveals sufficient details of the
24 claim so that the employer is reasonably identifiable, then
25 the confidentiality provision shall also be unenforceable
26 against the employer.

1 Every settlement agreement or termination agreement
2 resolving a discrimination, retaliation, harassment, or sexual
3 assault claim by an employee against an employer shall include
4 a bold, prominently placed notice that although the parties
5 may have agreed to keep the settlement and underlying facts
6 confidential, such a provision in an agreement is
7 unenforceable against the employer if the employee publicly
8 reveals sufficient details of the claim so that the employer
9 is reasonably identifiable.

10 (a-10) Except as prohibited under subsections (a) and
11 (a-5), an ~~An~~ employee, prospective employee, or former
12 employee and an employer may enter into a valid and
13 enforceable settlement or termination agreement that includes
14 promises of confidentiality related to alleged unlawful
15 employment practices, 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;

26 (4) the settlement or termination agreement does not

1 waive any claims of unlawful employment practices that
2 accrue after the date of execution of the settlement or
3 termination agreement;

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

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

18 (b) An employer may not unilaterally include any clause in
19 a settlement or termination agreement that prohibits the
20 employee, prospective employee, or former employee from making
21 truthful statements or disclosures regarding unlawful
22 employment practices.

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

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

7 (e) The provisions of this amendatory Act of the 102nd
8 General Assembly apply to agreements entered into on or after
9 the effective date of this amendatory Act of the 102nd General
10 Assembly.

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

12 Section 99. Effective date. This Act takes effect January
13 1, 2023.