



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2321

Introduced 2/10/2023, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

410 ILCS 705/10-50
820 ILCS 55/5

from Ch. 48, par. 2855

Amends the Right to Privacy in the Workplace Act. Provides that an employer may not refuse to hire an individual or discipline an employee because results of an individual's drug test indicate the presence of THC on the part of that individual. Permits an employer to enforce a pre-employment drug testing policy, zero-tolerance drug testing policy, random drug testing policy, or a drug-free workplace policy or disciplining an employee for violating such policy, but provides that an employer may not take adverse action against an employee solely because of a positive drug test for cannabis unless the test result exceeds limits set forth in certain DUI provisions of the Illinois Vehicle Code. Sets forth conditions under which an employer may discipline an employee for impairment. Provides that there is not a cause of action for any person against an employer for disciplining or terminating the employment of an individual when enforcing a compliant policy. Amends the Cannabis Regulation and Tax Act. Repeals provisions concerning employment and employer liability.

LRB103 30823 SPS 57322 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 Cannabis Regulation and Tax Act is amended
5 by changing Section 10-50 as follows:

6 (410 ILCS 705/10-50)

7 Sec. 10-50. Employment; employer liability.

8 ~~(a) Nothing in this Act shall prohibit an employer from~~
9 ~~adopting reasonable zero tolerance or drug free workplace~~
10 ~~policies, or employment policies concerning drug testing,~~
11 ~~smoking, consumption, storage, or use of cannabis in the~~
12 ~~workplace or while on call provided that the policy is applied~~
13 ~~in a nondiscriminatory manner.~~

14 ~~(b) Nothing in this Act shall require an employer to~~
15 ~~permit an employee to be under the influence of or use cannabis~~
16 ~~in the employer's workplace or while performing the employee's~~
17 ~~job duties or while on call.~~

18 ~~(c) Nothing in this Act shall limit or prevent an employer~~
19 ~~from disciplining an employee or terminating employment of an~~
20 ~~employee for violating an employer's employment policies or~~
21 ~~workplace drug policy.~~

22 ~~(d) An employer may consider an employee to be impaired or~~
23 ~~under the influence of cannabis if the employer has a good~~

1 ~~faith belief that an employee manifests specific, articulable~~
2 ~~symptoms while working that decrease or lessen the employee's~~
3 ~~performance of the duties or tasks of the employee's job~~
4 ~~position, including symptoms of the employee's speech,~~
5 ~~physical dexterity, agility, coordination, demeanor,~~
6 ~~irrational or unusual behavior, or negligence or carelessness~~
7 ~~in operating equipment or machinery; disregard for the safety~~
8 ~~of the employee or others, or involvement in any accident that~~
9 ~~results in serious damage to equipment or property; disruption~~
10 ~~of a production or manufacturing process; or carelessness that~~
11 ~~results in any injury to the employee or others. If an employer~~
12 ~~elects to discipline an employee on the basis that the~~
13 ~~employee is under the influence or impaired by cannabis, the~~
14 ~~employer must afford the employee a reasonable opportunity to~~
15 ~~contest the basis of the determination.~~

16 ~~(e)~~ Nothing in this Act shall be construed to create or
17 imply a cause of action under this Act for any person against
18 an employer for:

19 (1) actions taken pursuant to an employer's ~~reasonable~~
20 workplace drug policy that complies with the Right to
21 Privacy in the Workplace Act ~~, including but not limited~~
22 ~~to subjecting an employee or applicant to reasonable drug~~
23 ~~and alcohol testing, reasonable and nondiscriminatory~~
24 ~~random drug testing, and discipline, termination of~~
25 ~~employment, or withdrawal of a job offer due to a failure~~
26 ~~of a drug test;~~

1 (2) actions based on the employer's good faith belief
2 that an employee used or possessed cannabis in the
3 employer's workplace or while performing the employee's
4 job duties or while on call in violation of the employer's
5 employment policies;

6 (3) actions, including discipline or termination of
7 employment, based on the employer's good faith belief that
8 an employee was impaired as a result of the use of
9 cannabis, or under the influence of cannabis, while at the
10 employer's workplace or while performing the employee's
11 job duties or while on call in violation of the employer's
12 workplace drug policy; or

13 (4) injury, loss, or liability to a third party if the
14 employer neither knew nor had reason to know that the
15 employee was impaired.

16 ~~(f) Nothing in this Act shall be construed to enhance or~~
17 ~~diminish protections afforded by any other law, including but~~
18 ~~not limited to the Compassionate Use of Medical Cannabis~~
19 ~~Program Act or the Opioid Alternative Pilot Program.~~

20 ~~(g) Nothing in this Act shall be construed to interfere~~
21 ~~with any federal, State, or local restrictions on employment~~
22 ~~including, but not limited to, the United States Department of~~
23 ~~Transportation regulation 49 CFR 40.151(e) or impact an~~
24 ~~employer's ability to comply with federal or State law or~~
25 ~~cause it to lose a federal or State contract or funding.~~

26 ~~(h) As used in this Section, "workplace" means the~~

1 ~~employer's premises, including any building, real property,~~
2 ~~and parking area under the control of the employer or area used~~
3 ~~by an employee while in the performance of the employee's job~~
4 ~~duties, and vehicles, whether leased, rented, or owned.~~
5 ~~"Workplace" may be further defined by the employer's written~~
6 ~~employment policy, provided that the policy is consistent with~~
7 ~~this Section.~~

8 ~~(i) For purposes of this Section, an employee is deemed~~
9 ~~"on call" when such employee is scheduled with at least 24~~
10 ~~hours' notice by his or her employer to be on standby or~~
11 ~~otherwise responsible for performing tasks related to his or~~
12 ~~her employment either at the employer's premises or other~~
13 ~~previously designated location by his or her employer or~~
14 ~~supervisor to perform a work-related task.~~

15 (Source: P.A. 101-27, eff. 6-25-19; 101-593, eff. 12-4-19.)

16 Section 10. The Right to Privacy in the Workplace Act is
17 amended by changing Section 5 as follows:

18 (820 ILCS 55/5) (from Ch. 48, par. 2855)

19 Sec. 5. Discrimination for use of lawful products
20 prohibited.

21 (a) Except as otherwise specifically provided by law,
22 ~~including Section 10-50 of the Cannabis Regulation and Tax~~
23 ~~Act,~~ and except as provided in subsections (a-5), (b), and
24 (c), (d), (e), (f), (g), (h), and (i) of this Section, it shall

1 be unlawful for an employer to refuse to hire or to discharge
2 any individual, or otherwise disadvantage any individual, with
3 respect to compensation, terms, conditions or privileges of
4 employment because:

5 (1) the individual uses lawful products off the
6 premises of the employer's workplace ~~employer~~ during
7 nonworking hours and hours the individual is not on-call
8 ~~non-call hours; or-~~

9 (2) the results of an individual's drug test indicate
10 the presence of tetrahydrocannabinol, unless:

11 (A) the employee works in a safety sensitive
12 position;

13 (B) the applicant or employee demonstrates
14 impairment as provided in subsection (f); or

15 (C) the test results for tetrahydrocannabinol
16 meets or exceeds the legal limits set forth in Section
17 11-501.2 of the Illinois Vehicle Code.

18 Except as provided in paragraphs (1) and (2), nothing in
19 this Act prohibits an employer from (i) enforcing a
20 pre-employment drug testing policy, random drug testing
21 policy, or zero-tolerance or drug-free workplace policy or
22 from disciplining an employee or withdrawing a job offer from
23 an applicant for violating such a policy; (ii) disciplining or
24 discharging an employee whose use of a lawful product
25 adversely affects or impairs the employee's job performance,
26 conduct, or ability to safely perform the assigned job duties

1 in the employer's workplace during working hours or hours the
2 individual is on call; or (iii) implementing and enforcing
3 workplace policies regarding the possession, use, or
4 impairment of lawful products in the employer's workplace
5 during working hours or hours the individual is on call.

6 (a-5) As used in this Section:

7 (1) "Lawful ~~lawful~~ products" means products that are
8 legal for the employee to use under state law.

9 (2) "Workplace" means the employer's premises,
10 including any building, real property, and parking area
11 under the control of the employer or area used by an
12 employee while in the performance of the employee's job
13 duties.

14 (3) "On-call" means ~~For purposes of this Section, an~~
15 ~~employee is deemed on-call~~ when the employee is scheduled
16 with at least 24 hours' notice by his or her employer to be
17 on standby or otherwise responsible for performing tasks
18 related to his or her employment either at the employer's
19 workplace premises or other previously designated location
20 by his or her employer or supervisor to perform a
21 work-related task.

22 (4) "Safety sensitive position" means a position that
23 meets all of the following requirements:

24 (A) is designated as a safety sensitive position
25 in writing by the employer;

26 (B) requires tasks and duties that could

1 reasonably result in injury, illness, death, or damage
2 to property if the person performing them is under the
3 influence of tetrahydrocannabinol; and

4 (C) requires one or more of the following
5 responsibilities:

6 (i) carrying a firearm or working for a law
7 enforcement agency in a capacity that impacts the
8 safety of others;

9 (ii) performing medical procedures or
10 emergency services;

11 (iii) working with hazardous or flammable
12 materials, controlled substances, or
13 pharmaceuticals;

14 (iv) working around heavy machinery in a
15 retail distribution center or manufacturing
16 facility; or

17 (v) operating, repairing, maintaining,
18 monitoring, or designing one or more of the
19 following: (I) heavy machinery; (II) aircraft;
20 (III) motorized watercrafts; (IV) motor vehicles;
21 or (V) critical services and infrastructure. As
22 used in this subparagraph, "critical services and
23 infrastructure" means physical and cyber systems
24 and assets that are so vital to the public that
25 their incapacity, compromise, or destruction would
26 have a debilitating impact on physical or economic

1 security, public health, or safety.

2 (5) "Retail distribution center" means a distribution
3 center where products are received and temporarily stored
4 and where orders for products are packaged or repackaged
5 for distribution to resellers, wholesalers, or consumers.

6 "Retail distribution center" does not mean a warehouse
7 used only for purposes of storing products.

8 (b) This Section does not apply to any employer that ~~is a~~
9 ~~non profit organization that~~, as one of its primary purposes
10 or objectives, discourages the use of one or more lawful
11 products by the general public. ~~This Section does not apply to~~
12 ~~the use of those lawful products which impairs an employee's~~
13 ~~ability to perform the employee's assigned duties.~~

14 (c) It is not a violation of this Section for an employer
15 to offer, impose or have in effect a health, disability or life
16 insurance policy that makes distinctions between employees for
17 the type of coverage or the price of coverage based upon the
18 employees' use of lawful products provided that:

19 (1) differential premium rates charged employees
20 reflect a differential cost to the employer; and

21 (2) employers provide employees with a statement
22 delineating the differential rates used by insurance
23 carriers.

24 (d) Nothing in this Act limits an employer's ability to
25 withdraw a job offer from an applicant or discipline an
26 employee for failing a drug test if failing to do so would put

1 the employer in violation of federal or State law or cause it
2 to lose a federal or State contract or funding.

3 (e) Nothing in this Act shall be construed to create a
4 defense for a third party who fails a drug test.

5 (f) An employer may consider an applicant or employee to
6 be impaired when:

7 (1) he or she tests positive for tetrahydrocannabinol
8 at a level that meets or exceeds the legal limits set forth
9 in Section 11-501.2 of the Illinois Vehicle Code; or

10 (2) manifests specific, articulable symptoms or
11 behavior while working that decrease or lessen his or her
12 performance of the duties or tasks of the employee's job
13 position, including manifestations of the employee's
14 speech, physical dexterity, agility, coordination,
15 demeanor, irrational or unusual behavior, negligence or
16 carelessness in operating equipment or machinery,
17 disregard for the safety of the employee or others,
18 involvement in an accident that results in serious damage
19 to equipment or property, disruption of a production or
20 manufacturing process, or carelessness that results in any
21 injury to the employee or others.

22 If an employer elects to withdraw a job offer from an
23 applicant or discipline an employee because the employer
24 considers the applicant or employee to be impaired, it must
25 afford the applicant or employee a reasonable opportunity to
26 contest the basis of the determination.

1 (g) Nothing in this Act shall be construed to create or
2 imply a cause of action for any person against an employer for:

3 (1) actions based on the employer's good faith belief
4 that an employee used or possessed tetrahydrocannabinol
5 while at the employer's workplace or during the hours of
6 employment;

7 (2) actions based on the employer's good faith belief
8 that an employee was impaired while working, while working
9 at the employer's workplace during the hours of
10 employment;

11 (3) discipline or termination of the employment of an
12 employee or withdrawal of a job offer from an applicant
13 when enforcing a drug policy that complies with this
14 Section; or

15 (4) injury or loss to a third party if the employer
16 neither knew nor had reason to know that the employee was
17 impaired.

18 (h) Nothing in this Act shall be construed to interfere
19 with any federal restrictions on employment, including, but
20 not limited to, the United States Department of Transportation
21 regulation 49 CFR 40.151(e).

22 (i) Nothing in this Act shall be construed to interfere
23 with the application of the Illinois Workers' Compensation
24 Act, specifically, but without limitation, Section 11 of the
25 Workers' Compensation Act, the Workers' Occupational Diseases
26 Act, or the rules of practice before the Illinois Workers'

1 Compensation Commission.

2 (Source: P.A. 101-27, eff. 6-25-19.)