



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3851

by Rep. Stephanie A. Kifowit

SYNOPSIS AS INTRODUCED:

775 ILCS 5/2-102

from Ch. 68, par. 2-102

Amends the Illinois Human Rights Act. Provides that it is a civil rights violation for an employer to refuse to make certain reasonable accommodations in the workplace for an employee protected under an order of protection. Provides that an employer is not required to make the reasonable accommodations if they cause undue hardship on the work operations of the employer. For purposes of the new provisions, defines "undue hardship" as significant difficulty or expense on the operation of an employer, when considered in light of: (1) the nature and cost of the reasonable accommodation needed; (2) the overall financial resources, number of employees, and the number, type, and placement of the work locations of an employer; and (3) the type of operation of the employer, including the composition, structure, and functions of the workforce of the employer, the geographic separateness of the employee's work location from the employer, and the administrative or fiscal relationship of the work location to the employer. Provides that prior to making the reasonable accommodations, an employer may verify that an employee is protected by an order of protection entered under the Code of Criminal Procedure of 1963 or the Illinois Domestic Violence Act of 1986.

LRB099 07314 HEP 27422 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, or to act with respect to recruitment, hiring,
11 promotion, renewal of employment, selection for training or
12 apprenticeship, discharge, discipline, tenure or terms,
13 privileges or conditions of employment on the basis of unlawful
14 discrimination or citizenship status.

15 (A-5) Language. For an employer to impose a restriction
16 that has the effect of prohibiting a language from being spoken
17 by an employee in communications that are unrelated to the
18 employee's duties.

19 For the purposes of this subdivision (A-5), "language"
20 means a person's native tongue, such as Polish, Spanish, or
21 Chinese. "Language" does not include such things as slang,
22 jargon, profanity, or vulgarity.

23 (B) Employment Agency. For any employment agency to fail or

1 refuse to classify properly, accept applications and register
2 for employment referral or apprenticeship referral, refer for
3 employment, or refer for apprenticeship on the basis of
4 unlawful discrimination or citizenship status or to accept from
5 any person any job order, requisition or request for referral
6 of applicants for employment or apprenticeship which makes or
7 has the effect of making unlawful discrimination or
8 discrimination on the basis of citizenship status a condition
9 of referral.

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

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

1 (E) Public Employers. For any public employer to refuse to
2 permit a public employee under its jurisdiction who takes time
3 off from work in order to practice his or her religious beliefs
4 to engage in work, during hours other than such employee's
5 regular working hours, consistent with the operational needs of
6 the employer and in order to compensate for work time lost for
7 such religious reasons. Any employee who elects such deferred
8 work shall be compensated at the wage rate which he or she
9 would have earned during the originally scheduled work period.
10 The employer may require that an employee who plans to take
11 time off from work in order to practice his or her religious
12 beliefs provide the employer with a notice of his or her
13 intention to be absent from work not exceeding 5 days prior to
14 the date of absence.

15 (F) Training and Apprenticeship Programs. For any
16 employer, employment agency or labor organization to
17 discriminate against a person on the basis of age in the
18 selection, referral for or conduct of apprenticeship or
19 training programs.

20 (G) Immigration-Related Practices.

21 (1) for an employer to request for purposes of
22 satisfying the requirements of Section 1324a(b) of Title 8
23 of the United States Code, as now or hereafter amended,
24 more or different documents than are required under such
25 Section or to refuse to honor documents tendered that on
26 their face reasonably appear to be genuine; or

1 (2) for an employer participating in the E-Verify
2 Program, as authorized by 8 U.S.C. 1324a, Notes, Pilot
3 Programs for Employment Eligibility Confirmation (enacted
4 by PL 104-208, div. C title IV, subtitle A) to refuse to
5 hire, to segregate, or to act with respect to recruitment,
6 hiring, promotion, renewal of employment, selection for
7 training or apprenticeship, discharge, discipline, tenure
8 or terms, privileges or conditions of employment without
9 following the procedures under the E-Verify Program.

10 (H) (Blank).

11 (I) Pregnancy. For an employer to refuse to hire, to
12 segregate, or to act with respect to recruitment, hiring,
13 promotion, renewal of employment, selection for training or
14 apprenticeship, discharge, discipline, tenure or terms,
15 privileges or conditions of employment on the basis of
16 pregnancy, childbirth, or medical or common conditions related
17 to pregnancy or childbirth. Women affected by pregnancy,
18 childbirth, or medical or common conditions related to
19 pregnancy or childbirth shall be treated the same for all
20 employment-related purposes, including receipt of benefits
21 under fringe benefit programs, as other persons not so affected
22 but similar in their ability or inability to work, regardless
23 of the source of the inability to work or employment
24 classification or status.

25 (J) Pregnancy; reasonable accommodations.

26 (1) If after a job applicant or employee, including a

1 part-time, full-time, or probationary employee, requests a
2 reasonable accommodation, for an employer to not make
3 reasonable accommodations for any medical or common
4 condition of a job applicant or employee related to
5 pregnancy or childbirth, unless the employer can
6 demonstrate that the accommodation would impose an undue
7 hardship on the ordinary operation of the business of the
8 employer. The employer may request documentation from the
9 employee's health care provider concerning the need for the
10 requested reasonable accommodation or accommodations to
11 the same extent documentation is requested for conditions
12 related to disability if the employer's request for
13 documentation is job-related and consistent with business
14 necessity. The employer may require only the medical
15 justification for the requested accommodation or
16 accommodations, a description of the reasonable
17 accommodation or accommodations medically advisable, the
18 date the reasonable accommodation or accommodations became
19 medically advisable, and the probable duration of the
20 reasonable accommodation or accommodations. It is the duty
21 of the individual seeking a reasonable accommodation or
22 accommodations to submit to the employer any documentation
23 that is requested in accordance with this paragraph.
24 Notwithstanding the provisions of this paragraph, the
25 employer may require documentation by the employee's
26 health care provider to determine compliance with other

1 laws. The employee and employer shall engage in a timely,
2 good faith, and meaningful exchange to determine effective
3 reasonable accommodations.

4 (2) For an employer to deny employment opportunities or
5 benefits to or take adverse action against an otherwise
6 qualified job applicant or employee, including a
7 part-time, full-time, or probationary employee, if the
8 denial or adverse action is based on the need of the
9 employer to make reasonable accommodations to the known
10 medical or common conditions related to the pregnancy or
11 childbirth of the applicant or employee.

12 (3) For an employer to require a job applicant or
13 employee, including a part-time, full-time, or
14 probationary employee, affected by pregnancy, childbirth,
15 or medical or common conditions related to pregnancy or
16 childbirth to accept an accommodation when the applicant or
17 employee did not request an accommodation and the applicant
18 or employee chooses not to accept the employer's
19 accommodation.

20 (4) For an employer to require an employee, including a
21 part-time, full-time, or probationary employee, to take
22 leave under any leave law or policy of the employer if
23 another reasonable accommodation can be provided to the
24 known medical or common conditions related to the pregnancy
25 or childbirth of an employee. No employer shall fail or
26 refuse to reinstate the employee affected by pregnancy,

1 childbirth, or medical or common conditions related to
2 pregnancy or childbirth to her original job or to an
3 equivalent position with equivalent pay and accumulated
4 seniority, retirement, fringe benefits, and other
5 applicable service credits upon her signifying her intent
6 to return or when her need for reasonable accommodation
7 ceases, unless the employer can demonstrate that the
8 accommodation would impose an undue hardship on the
9 ordinary operation of the business of the employer.

10 For the purposes of this subdivision (J), "reasonable
11 accommodations" means reasonable modifications or adjustments
12 to the job application process or work environment, or to the
13 manner or circumstances under which the position desired or
14 held is customarily performed, that enable an applicant or
15 employee affected by pregnancy, childbirth, or medical or
16 common conditions related to pregnancy or childbirth to be
17 considered for the position the applicant desires or to perform
18 the essential functions of that position, and may include, but
19 is not limited to: more frequent or longer bathroom breaks,
20 breaks for increased water intake, and breaks for periodic
21 rest; private non-bathroom space for expressing breast milk and
22 breastfeeding; seating; assistance with manual labor; light
23 duty; temporary transfer to a less strenuous or hazardous
24 position; the provision of an accessible worksite; acquisition
25 or modification of equipment; job restructuring; a part-time or
26 modified work schedule; appropriate adjustment or

1 modifications of examinations, training materials, or
2 policies; reassignment to a vacant position; time off to
3 recover from conditions related to childbirth; and leave
4 necessitated by pregnancy, childbirth, or medical or common
5 conditions resulting from pregnancy or childbirth.

6 For the purposes of this subdivision (J), "undue hardship"
7 means an action that is prohibitively expensive or disruptive
8 when considered in light of the following factors: (i) the
9 nature and cost of the accommodation needed; (ii) the overall
10 financial resources of the facility or facilities involved in
11 the provision of the reasonable accommodation, the number of
12 persons employed at the facility, the effect on expenses and
13 resources, or the impact otherwise of the accommodation upon
14 the operation of the facility; (iii) the overall financial
15 resources of the employer, the overall size of the business of
16 the employer with respect to the number of its employees, and
17 the number, type, and location of its facilities; and (iv) the
18 type of operation or operations of the employer, including the
19 composition, structure, and functions of the workforce of the
20 employer, the geographic separateness, administrative, or
21 fiscal relationship of the facility or facilities in question
22 to the employer. The employer has the burden of proving undue
23 hardship. The fact that the employer provides or would be
24 required to provide a similar accommodation to similarly
25 situated employees creates a rebuttable presumption that the
26 accommodation does not impose an undue hardship on the

1 employer.

2 No employer is required by this subdivision (J) to create
3 additional employment that the employer would not otherwise
4 have created, unless the employer does so or would do so for
5 other classes of employees who need accommodation. The employer
6 is not required to discharge any employee, transfer any
7 employee with more seniority, or promote any employee who is
8 not qualified to perform the job, unless the employer does so
9 or would do so to accommodate other classes of employees who
10 need it.

11 (K) Notice.

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

24 (2) Upon notification of a violation of paragraph (1)
25 of this subdivision (K), the Department may launch a
26 preliminary investigation. If the Department finds a

1 violation, the Department may issue a notice to show cause
2 giving the employer 30 days to correct the violation. If
3 the violation is not corrected, the Department may initiate
4 a charge of a civil rights violation.

5 (L) Order of protection status. For an employer to refuse
6 to make reasonable accommodations in the workplace for an
7 employee protected under an order of protection, including:

8 (1) changing the contact information, such as
9 telephone number, fax number, or electronic-mail address
10 of the employee;

11 (2) screening the telephone calls of the employee;

12 (3) restructuring the job functions of the employee;

13 (4) changing the work location of the employee;

14 (5) installing locks and other security devices; and

15 (6) allowing the employee to work flexible hours.

16 An employer is not required to make the reasonable
17 accommodations if they cause undue hardship on the work
18 operations of the employer. As used in this subsection (L),
19 "undue hardship" means significant difficulty or expense on the
20 operation of an employer, when considered in light of the
21 following factors:

22 (1) the nature and cost of the reasonable accommodation
23 needed;

24 (2) the overall financial resources, number of
25 employees, and the number, type, and placement of the work
26 locations of an employer; and

1 (3) the type of operation of the employer, including
2 the composition, structure, and functions of the workforce
3 of the employer, the geographic separateness of the
4 employee's work location from the employer, and the
5 administrative or fiscal relationship of the work location
6 to the employer.

7 Prior to making the reasonable accommodations under this
8 subsection (L), an employer may verify that an employee is
9 protected by an order of protection entered under Article 112A
10 of the Code of Criminal Procedure of 1963 or the Illinois
11 Domestic Violence Act of 1986.

12 (Source: P.A. 97-596, eff. 8-26-11; 98-212, eff. 8-9-13;
13 98-1050, eff. 1-1-15.)