

AN ACT concerning human rights.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Human Rights Act is amended by changing Section 2-104 as follows:

(775 ILCS 5/2-104) (from Ch. 68, par. 2-104)

Sec. 2-104. Exemptions.

(A) Nothing contained in this Act shall prohibit an employer, employment agency or labor organization from:

(1) Bona Fide Qualification. Hiring or selecting between persons for bona fide occupational qualifications or any reason except those civil-rights violations specifically identified in this Article.

(2) Veterans. Giving preferential treatment to veterans and their relatives as required by the laws or regulations of the United States or this State or a unit of local government.

(3) Unfavorable Discharge From Military Service.

(a) Using unfavorable discharge from military service as a valid employment criterion when authorized by federal law or regulation or when a position of employment involves the exercise of fiduciary responsibilities as defined by rules and

regulations which the Department shall adopt; or -

(b) Participating in a bona fide recruiting incentive program, sponsored by a branch of the United States Armed Forces, a reserve component of the United States Armed Forces, or any National Guard or Naval Militia, where participation in the program is limited by the sponsoring branch based upon the service member's discharge status.

(4) Ability Tests. Giving or acting upon the results of any professionally developed ability test provided that such test, its administration, or action upon the results, is not used as a subterfuge for or does not have the effect of unlawful discrimination.

(5) Merit and Retirement Systems.

(a) Applying different standards of compensation, or different terms, conditions or privileges of employment pursuant to a merit or retirement system provided that such system or its administration is not used as a subterfuge for or does not have the effect of unlawful discrimination.

(b) Effecting compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately preceding retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit

from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans of the employer of such employee, which equals, in the aggregate, at least \$44,000. If any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits) or if the employees contribute to any such plan or make rollover contributions, the retirement benefit shall be adjusted in accordance with regulations prescribed by the Department, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(c) Until January 1, 1994, effecting compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education as defined by Section 1201(a) of the Higher Education Act of 1965.

(6) Training and Apprenticeship programs. Establishing an educational requirement as a prerequisite to selection for a training or apprenticeship program, provided such requirement does not operate to discriminate on the basis of any prohibited classification except age.

(7) Police and Firefighter/Paramedic Retirement.

Imposing a mandatory retirement age for firefighters/paramedics or law enforcement officers and discharging or retiring such individuals pursuant to the mandatory retirement age if such action is taken pursuant to a bona fide retirement plan provided that the law enforcement officer or firefighter/paramedic has attained:

(a) the age of retirement in effect under applicable State or local law on March 3, 1983; or

(b) if the applicable State or local law was enacted after the date of enactment of the federal Age Discrimination in Employment Act Amendments of 1996 (P.L. 104-208), the age of retirement in effect on the date of such discharge under such law.

This paragraph (7) shall not apply with respect to any cause of action arising under the Illinois Human Rights Act as in effect prior to the effective date of this amendatory Act of 1997.

(8) Police and Firefighter/Paramedic Appointment. Failing or refusing to hire any individual because of such individual's age if such action is taken with respect to the employment of an individual as a firefighter/paramedic or as a law enforcement officer and the individual has attained:

(a) the age of hiring or appointment in effect under applicable State or local law on March 3, 1983; or

(b) the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after the date of enactment of the federal Age Discrimination in Employment Act Amendments of 1996 (P.L. 104-208).

As used in paragraph (7) or (8):

"Firefighter/paramedic" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or to provide emergency medical services, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of criminal offenses, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

(9) Citizenship Status. Making legitimate distinctions based on citizenship status if specifically authorized or required by State or federal law.

(B) With respect to any employee who is subject to a collective bargaining agreement:

(a) which is in effect on June 30, 1986,

(b) which terminates after January 1, 1987,

(c) any provision of which was entered into by a labor organization as defined by Section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(d) which contains any provision that would be superseded by this amendatory Act of 1987 (Public Act 85-748),

such amendatory Act of 1987 shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

(C)(1) For purposes of this Act, the term "disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when an employer acts on the basis of such use.

(2) Paragraph (1) shall not apply where an employee or applicant for employment:

(a) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) is erroneously regarded as engaging in such use, but is not engaging in such use.

It shall not be a violation of this Act for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure

that an individual described in subparagraph (a) or (b) is no longer engaging in the illegal use of drugs.

(3) An employer:

(a) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and the Drug Free Workplace Act;

(d) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(e) may, with respect to federal regulations regarding alcohol and the illegal use of drugs, require that:

(i) employees comply with the standards established in such regulations of the United States Department of Defense, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in

such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Department of Defense);

(ii) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the employer are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(iii) employees comply with the standards established in such regulations of the United States Department of Transportation, if the employees of the employer are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the employer who are employed in such positions (as defined in the regulations of the United States Department of Transportation).

(4) For purposes of this Act, a test to determine the illegal use of drugs shall not be considered a medical examination. Nothing in this Act shall be construed to

encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(5) Nothing in this Act shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by an employer subject to the jurisdiction of the United States Department of Transportation of authority to:

(a) test employees of such employer in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(b) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to subparagraph (a) from safety-sensitive duties in implementing paragraph (3).

(Source: P.A. 97-877, eff. 8-2-12.)

Section 99. Effective date. This Act takes effect upon becoming law.