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ILLINOIS LAW MANUAL CHAPTER XVII EMPLOYMENT LAW

C. THE ILLINOIS HUMAN RIGHTS ACT

The Illinois Human Rights Act became effective in 1980 and created a cause of action for all civil rights violations in Illinois. 775 ILCS 5/8-111.

The Illinois Human Rights Act prohibits employers from terminating or otherwise discriminating against employees or job applicants on the basis of their race, color, citizenship status, national origin, ancestry, age, handicap, marital status, gender, religion, sexual orientation, military service or unfavorable military discharge status. 775 ILCS 5/1-102. The Act also prohibits sexual harassment and retaliation against any employee who opposes an action made unlawful by the Human Rights Act, or participates in a proceeding under the Act. Id.

The Act applies to all employers who employ 15 or more people within Illinois for at least 20 weeks during the year. 775 ILCS 5/2-101. It also applies to all employers who are sued for discriminating on the basis of handicap or for sexual harassment, regardless of the number of people they employ. Id. The Act also applies to the State government and any of its subdivisions, any party to a public contract, and any joint apprenticeship or training committee, all without regard to the number of people they employ. Id. Employment agencies and labor unions are also required to comply with the provisions of the Act. Id. Unlike Title VII, the Act also allows a direct cause of action

against a supervisor coworker for alleged workplace sexual harassment and retaliation.

1. Discrimination

Discrimination occurs when an employer treats an employee differently than other employees based on one of the reasons listed above. Discrimination can involve refusing to hire, segregating, failing to recruit, hire, promote, or train an employee, and firing or disciplining an employee on an illegal basis. 775 ILCS 5/2-102. The Act includes certain definitions of the groups it protects:

National Origin: The place in which a person or one of his or her ancestors was born.

Age: The chronological age of a person who is at least 40 years old. For the purposes of an apprenticeship program, age means the chronological age of a person between 18 and 40 years old.

Handicap: A determinable physical or mental characteristic of a person, including, but not limited to, one which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or a perception of such a characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic is unrelated to the person's ability to perform the duties of a particular job or position.

Marital Status: The legal status of being married, single, separated, divorced, or widowed.

Gender: The status of being male or female.

Religion: Includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Citizenship Status: Means the status of being (1) a born U.S. citizen; (2) a naturalized U.S. citizen; (3) a U.S. national; or (4) a person born outside the U.S. and not a U.S. citizen who is not an unauthorized alien.

Sexual Orientation: Means actual or perceived heterosexuality, homosexuality, bisexuality or gender-related identity.

Military Service: Means a person's status on active duty or status as a veteran of the armed forces of the U.S. or any reserve component of the armed forces of the U.S.

Unfavorable Military Discharge: Includes discharges from the Armed Services of the United States, their reserve components or any National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable."

775 ILCS 5/1-103.

2. Sexual Harassment

An employee's civil rights are violated when he or she is subject to sexual harassment. 775 ILCS 5/2-102(d). The Human Rights Act defines sexual harassment as "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature." 775 ILCS 5/2101. The Act is violated when these sexual advances or requests become an explicit or implicit term or condition of employment, the basis of an employment decision, or has the purpose or effect of substantially interfering with an individual's ability to perform a job or creates an "intimidating, hostile, or offensive work environment."

3. Retaliation

The Illinois Human Right Act makes it illegal to treat an employee adversely because he or she opposes an illegal employment practice. According to the Act:

[i]t is a civil rights violation for a person, or for two or more persons to conspire, to: [r]etaliat[e] against a person because he has opposed that which he reasonably and in good faith believes to be unlawful discrimination.

775 ILCS 5/6-101. It is also considered retaliation to treat an employee adversely because he or she has filed a charge of discrimination, filed a complaint, or participated in an investigation, hearing, or proceeding under the Act.

Illinois employers are also subject to various federal laws designed to protect the rights of employees. While the focus of this manual is Illinois law, a brief overview of certain federal causes of action is included in Section D of this chapter.