

Employment Law Summary

Fair Employment Laws – Overview



Because You're Different

In addition to the workplace discrimination protections provided to employees under federal laws, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA) and the Equal Pay Law (EPA), Illinois law makes it unlawful for employers to engage in certain discriminatory employment practices.

In Illinois, the **Human Rights Act, Pregnancy Accommodation Act, Minimum Wage Law, Equal Pay Act, Equal Wage Law, Right to Privacy in the Workplace Act and Genetic Information Privacy Act** provide discrimination protections for employees. In addition, the **Illinois Employee Background Fairness Act (EBFA)**, enacted in March of 2021, makes it unlawful for an employer to take any adverse employment action against an individual on the basis of the individual's conviction record.

This Employment Law Summary provides a high-level overview of Illinois' fair employment laws and suggests compliance steps for employers.

HUMAN RIGHTS ACT

General Discrimination Prohibitions

The Human Rights Act makes it unlawful for covered employers to refuse to hire, segregate, or act (with respect to recruitment, hiring, promotion, renewal of employment, or selection for training or apprenticeship) discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of **unlawful discrimination**.

Unlawful discrimination means discrimination against a person because of the person's:

- Race (effective Jan. 1, 2023, this includes traits historically associated with race, such as hair texture and protective hairstyles such as braids, locks, and twists);
- Color;
- Religion;
- National origin;
- Ancestry;
- Age;
- Sex;
- Marital Status;
- Order of protection status;
- Disability (including association with a person with a disability);
- Military status;
- Sexual orientation;
- Pregnancy;
- Unfavorable discharge from military service;
- Citizenship status; and

- Work authorization status.

Among other fair employment provisions, the Human Rights Act contains prohibitions on discrimination regarding language, immigration-related practices and arrest records, sexual and national origin harassment and retaliation. It also places restrictions on employers' hiring practices and requires employers to make reasonable accommodations for otherwise qualified applicants or employees with disabilities.

Covered Employers

The Human Rights Act applies to employers with **one or more employees** during 20 or more calendar weeks during the current or preceding calendar year. In addition, all employers, regardless of size, are subject to the law's prohibitions against discrimination based on a physical or mental disability, retaliation and sexual harassment.

Enforcement

The Human Rights Act created a two-part enforcement procedure. The [Illinois Department of Human Rights \(IDHR\)](#) investigates charges of discrimination brought by employees under the law. The DHR may also initiate investigations on its own without receiving an employee complaint. The [Illinois Human Rights Commission](#) (Commission) reviews and issues decisions on complaints of unlawful discrimination.

PREGNANCY ACCOMMODATION ACT

The Pregnancy Accommodation Act (Act) amended the Human Rights Act to provide rights and protections for all employees affected by **pregnancy, childbirth and related medical or common conditions**. All employers in Illinois are subject to this law.

Reasonable Accommodations

Employers must provide reasonable accommodations to employees and applicants affected by pregnancy or related conditions, if requested. Specific examples of reasonable accommodations are outlined in the law, including:

- More frequent or longer bathroom breaks
- Breaks for increased water intake
- Breaks for periodic rest
- Private, non-bathroom space for expressing breast milk and breastfeeding
- Assistance with manual labor
- Light duty
- Temporary transfer to a less strenuous or hazardous position
- Time off to recover from conditions related to childbirth

Reasonable accommodation must be requested and mutually agreed to by the employee and employer. An employer may not force an employee to take leave if another reasonable accommodation is available. The employer should engage in a good faith and meaningful exchange with the employee to determine effective accommodations.

An employer is not required to create additional employment opportunities, discharge or transfer another employee, or promote an unqualified employee as a reasonable accommodation for a pregnant employee. An employer is also not required to implement an accommodation if it poses an undue hardship on the employer or its operations.

Medical Certification

An employer may require documentation from an employee's health care provider concerning the need for a requested accommodation, in the same manner that the employer requires documentation for other disability conditions.

Notice Requirements

Illinois employers are required to conspicuously post a [notice](#) made available from the IDHR informing employees of their rights under the Pregnancy Accommodation Act. In addition, employers that maintain handbooks must include information on employee rights regarding pregnancy accommodation.

WAGE DISCRIMINATION

Illinois has three laws that prohibit wage discrimination:

- The **Minimum Wage Law** generally prohibits wage discrimination on the basis of gender or physical or mental disability. The Minimum Wage Law applies to **Illinois employers with four or more employees**.

- The **Equal Pay Act** generally prohibits all employers from paying unequal wages to female and male employees for the same or substantially similar work on jobs requiring equal skill, effort and responsibility, which are performed under similar working conditions.
- The **Equal Wage Act** applies to **manufacturing** employers with **six or more employees** and requires equal pay for equal work, by time or piece work.

In general, the wage discrimination laws do not prohibit employers from varying employee wages based on seniority, skill and ability, differences in duties performed, a system that measures earnings by quantity or quality, or a reasonable differential based on any factor other than sex, disability or a factor that would constitute unlawful discrimination.

Illinois' wage discrimination laws are enforced by the [Illinois Department of Labor](#) (IDOL). Employers covered by the Minimum Wage Law and Equal Pay Act are required to [post notices](#) of the law in conspicuous places on the employers' premises.

EMPLOYEE BACKGROUND FAIRNESS ACT (EBFA)

The **Illinois Employee Background Fairness Act** (EBFA), enacted in March of 2021, makes it unlawful for an employer to take any adverse employment action against an individual on the basis of the individual's conviction record.

However, exceptions to this prohibition are available for situations in which:

- An adverse action based on a criminal conviction is otherwise authorized by law;
- There is a substantial relationship between an individual's previous criminal offenses and the employment the individual seeks or holds; or
- Hiring or continuing to employ an individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

The EBFA also requires employers to take certain actions before relying on either of the latter two exceptions. Specifically, before determining that either of those exceptions apply for a particular individual, an employer must consider certain factors and perform an interactive assessment regarding any conviction that the employer deems to be disqualifying for employment.

INTERACTIVE ASSESSMENT

The factors that an employer must consider before using a conviction as a basis for an adverse employment action are:

- The length of time since the conviction;
- The number of other convictions on the individual's record;
- The nature and severity of the conviction and its relationship to the safety and security of others;
- The facts or circumstances surrounding the conviction;
- The age of the employee at the time of the conviction; and
- Evidence of rehabilitation efforts.

PRELIMINARY DECISION NOTICE

After making a preliminary decision that an individual's conviction record disqualifies the individual from employment based on these factors, an employer must provide written notice to the individual. This notice must include:

- A statement indicating that the conviction is the basis for the employer's preliminary decision;
- An explanation of the employer's reasoning for the disqualification;
- A copy of the conviction history report on which the decision is based; and
- An explanation of the individual's right to respond before the employer's preliminary decision becomes final (this must inform the individual that the response may include evidence challenging the accuracy of the conviction record or information about mitigating evidence, such as rehabilitation).

An employer that provides this written notice must allow at least five business for the individual to respond. If the employer receives a timely response, it must consider the information submitted before making a final decision.

FINAL DECISION NOTICE

If the employer's final decision is to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer must provide written notice that includes:

- The disqualifying conviction or convictions and the employer's reasoning for the disqualification;

- Any existing procedure the employer has for the individual to challenge the decision or request reconsideration; and
- The right to file a charge with the DHR.

EMPLOYEE PRIVACY LAWS

In addition to the Human Rights Act and wage discrimination laws, Illinois prohibits employment discrimination under the **Right to Privacy in the Workplace Act** (Workplace Privacy Act) and the **Genetic Information Privacy Act** (Genetic Privacy Act).

Workplace Privacy Act

The Workplace Privacy Act prohibits employers from discriminating against employees or prospective employees who use **lawful products** outside the workplace during nonworking or on-call hours, if the use does not impair an employee's ability to perform his or her assigned duties. As of June 25, 2019, the law defines lawful products as products that are legal under state law. This includes marijuana, as legalized under the state's Cannabis Regulation and Tax Act.

The Workplace Privacy Act also makes it unlawful for employers to make pre-employment inquiries regarding workers' compensation and occupational disease claims and benefits. The Workplace Privacy Act **applies to all Illinois employers**, regardless of size.

Lawful products include tobacco products, alcoholic beverages, food products, over-the-counter drugs and drugs lawfully prescribed by an employee's physician. The Workplace Privacy Act is enforced by the IDOL.

Genetic Privacy Act

The Genetic Privacy Act restricts an employer's use of genetic tests and genetic information. Employers are required to treat genetic information in a manner that is consistent with federal law, including the federal Genetic Information Nondiscrimination Act (GINA), and they are also required to comply with specific nondiscrimination requirements. While GINA applies to employers with 15 or more employees, the Genetic Privacy Act **applies to all Illinois employers**, regardless of size.

Under Illinois law, "genetic information" means, with respect to any individual, information about the individual's genetic tests, the genetic tests of a family member of the individual and the manifestation or possible manifestation of a disease or disorder in a family member of the individual. Genetic information does not include information about an individual's age or sex.

Individuals may bring lawsuits in order to enforce their rights under the Genetic Privacy Act. Among other possible consequences, employers that violate the Genetic Privacy Act may be required to pay actual damages, liquidated damages and attorney's fees and costs.

COMPLIANCE STEPS FOR EMPLOYERS

In general, state employment nondiscrimination laws provide similar, but not identical, protections to employees as the federal employment nondiscrimination laws. For example, state laws may protect different individuals, cover small employers who are not subject to the federal provisions or provide different exemptions from their discrimination prohibitions. Employers should become familiar with how both federal and state laws apply to their employment practices.

Additionally, employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of working environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up to date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict "no tolerance" policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.

MORE INFORMATION

Please contact Heffernan Insurance Brokers for more information on fair employment laws in Illinois.

Provided By Heffernan Insurance Brokers

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational

