

104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB3638

Introduced 2/18/2025, by Rep. Ann M. Williams

SYNOPSIS AS INTRODUCED:

820 ILCS 96/1-5
820 ILCS 96/1-10
820 ILCS 96/1-15
820 ILCS 96/1-20
820 ILCS 96/1-25
820 ILCS 96/1-30
820 ILCS 96/1-35
820 ILCS 96/1-40

Amends the Workplace Transparency Act. Provides that no contract, agreement, clause, covenant, waiver, or other document shall prohibit, prevent, or otherwise restrict an employee, prospective employee, or former employee from engaging in concerted activities to address work-related issues. Provides that any agreement, clause, covenant, or waiver that is a mutual condition of employment or continued employment may include provisions that would otherwise be against public policy if it acknowledges the right of the employee or prospective employee to engage in concerted activities to address work-related issues. Provides that an employee, prospective employee, or former employee and an employer may enter into a valid and enforceable settlement or termination agreement that includes promises of confidentiality related to alleged unlawful employment practices if the confidentiality provision expires no later than 5 years after the alleged unlawful employment practices occurred. Provides for the recovery of consequential damages incurred in challenging a contract for violation of the Act. Makes other changes.

LRB104 12137 SPS 22236 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 Workplace Transparency Act is amended by
5 changing Sections 1-5, 1-10, 1-15, 1-20, 1-25, 1-30, 1-35, and
6 1-40 as follows:

7 (820 ILCS 96/1-5)

8 Sec. 1-5. Purpose. This State has a compelling and
9 substantial interest in securing individuals' freedom from
10 unlawful discrimination and harassment in the workplace. This
11 State also recognizes the right of parties to freely contract
12 over the terms, privileges and conditions of employment as
13 they so choose. The purpose of this Act is to ensure that all
14 parties to a contract for the performance of services
15 understand and agree to the mutual promises and consideration
16 therein, and to protect the interest of this State in ensuring
17 all workplaces are free of unlawful discrimination, ~~and~~
18 harassment, and violations of State or federal employment
19 laws.

20 (Source: P.A. 101-221, eff. 1-1-20.)

21 (820 ILCS 96/1-10)

22 Sec. 1-10. Application.

1 (a) This Act does not apply to any collective bargaining
2 agreements ~~contracts~~ that are entered into in and subject to
3 the Illinois Public Labor Relations Act or the National Labor
4 Relations Act. If there is a conflict between any valid and
5 enforceable collective bargaining agreement and this Act, the
6 collective bargaining agreement controls.

7 (b) This Act shall have no effect on the determination of
8 whether an employment relationship exists for the purposes of
9 other State or federal laws, including, but not limited to,
10 the Illinois Human Rights Act, the Workers' Compensation Act,
11 the Unemployment Insurance Act, and the Illinois Wage Payment
12 and Collection Act.

13 (c) This Act applies to contracts entered into, modified,
14 or extended on or after the effective date of this Act.

15 (Source: P.A. 101-221, eff. 1-1-20.)

16 (820 ILCS 96/1-15)

17 Sec. 1-15. Definitions. As used in this Act:

18 "Employee" has the same meaning as set forth in Section
19 2-101 of the Illinois Human Rights Act. "Employee" includes
20 "nonemployees" as defined in Section 2-102 of the Illinois
21 Human Rights Act.

22 "Employer" has the same meaning as set forth in Section
23 2-101 of the Illinois Human Rights Act.

24 "Mutual condition of employment or continued employment"
25 means any contract, agreement, clause, covenant, or waiver

1 negotiated between an employer and an employee or prospective
2 employee in good faith for consideration in order to obtain or
3 retain employment.

4 "Prospective employee" means a person seeking to enter an
5 employment contract with an employer.

6 "Settlement agreement" means an agreement, contract, or
7 clause within an agreement or contract entered into between an
8 employee, prospective employee, or former employee and an
9 employer to resolve a dispute or legal claim between the
10 parties that arose or accrued before the settlement agreement
11 was executed.

12 "Termination agreement" means a contract or agreement
13 between an employee and an employer terminating the employment
14 relationship.

15 "Unlawful employment practice" means any practice made
16 unlawful that is ~~form of unlawful discrimination, harassment,~~
17 ~~or retaliation that is~~ actionable under Article 2 of the
18 Illinois Human Rights Act, Title VII of the Civil Rights Act of
19 1964, or any other ~~related~~ State or federal rule or law
20 regulating employment, including those that are ~~is~~ enforced by
21 the ~~Illinois~~ Department of Human Rights, Department of Labor,
22 Illinois Labor Relations Board, ~~or the~~ Equal Employment
23 Opportunity Commission, United States Department of Labor,
24 Occupational Safety and Health Administration, or National
25 Labor Relations Board.

26 "Unilateral condition of employment or continued

1 employment" means any contract, agreement, clause, covenant,
2 or waiver an employer requires an employee or prospective
3 employee to accept as a non-negotiable material term in order
4 to obtain or retain employment.

5 (Source: P.A. 101-221, eff. 1-1-20.)

6 (820 ILCS 96/1-20)

7 Sec. 1-20. Reporting of allegations. No contract,
8 agreement, clause, covenant, waiver, or other document shall
9 prohibit, prevent, or otherwise restrict an employee,
10 prospective employee, or former employee from reporting any
11 allegations of unlawful conduct to federal, State, or local
12 officials for investigation, including, but not limited to,
13 alleged criminal conduct or unlawful employment practices, or
14 from engaging in concerted activities to address work-related
15 issues.

16 (Source: P.A. 101-221, eff. 1-1-20.)

17 (820 ILCS 96/1-25)

18 Sec. 1-25. Conditions of employment or continued
19 employment.

20 (a) Any agreement, clause, covenant, or waiver that is a
21 unilateral condition of employment or continued employment and
22 has the purpose or effect of preventing an employee or
23 prospective employee from making truthful statements or
24 disclosures about alleged unlawful employment practices or

1 engaging in concerted activity to address work-related issues
2 is against public policy, void to the extent it prevents such
3 statements or disclosures, and severable from an otherwise
4 valid and enforceable contract under this Act.

5 (b) Any agreement, clause, covenant, or waiver that is a
6 unilateral condition of employment or continued employment and
7 requires the employee or prospective employee to waive,
8 ~~arbitrate,~~ or otherwise diminish any existing or future claim,
9 right, or benefit related to an unlawful employment practice
10 to which the employee or prospective employee would otherwise
11 be entitled under any provision of State or federal law,
12 including purporting to shorten an applicable statute of
13 limitation, apply non-Illinois law to an Illinois employee's
14 claim, or require a venue outside of Illinois to adjudicate an
15 Illinois employee's claim, is against public policy, void to
16 the extent it denies an employee or prospective employee a
17 substantive or procedural right or remedy related to alleged
18 unlawful employment practices, and severable from an otherwise
19 valid and enforceable contract under this Act.

20 (c) Any agreement, clause, covenant, or waiver that is a
21 mutual condition of employment or continued employment may
22 include provisions that would otherwise be against public
23 policy as a unilateral condition of employment or continued
24 employment, but only if the agreement, clause, covenant, or
25 waiver is in writing, demonstrates actual, knowing, and
26 bargained-for consideration from both parties, and

1 acknowledges the right of the employee or prospective employee
2 to:

3 (1) report any good faith allegation of unlawful
4 employment practices to any appropriate federal, State, or
5 local government agency enforcing discrimination laws;

6 (2) report any good faith allegation of criminal
7 conduct to any appropriate federal, State, or local
8 official;

9 (3) participate in a proceeding related to unlawful
10 employment practices, including any litigation brought by
11 any appropriate federal, State, or local government agency
12 or any other person who alleges that the employer has
13 violated any State, federal, or local law, regulation, or
14 rule ~~with any appropriate federal, State, or local~~
15 ~~government agency enforcing discrimination laws;~~

16 (4) make any truthful statements or disclosures
17 required by law, regulation, or legal process; ~~and~~

18 (5) request or receive confidential legal advice; and

19 -

20 (6) engage in concerted activities to address
21 work-related issues.

22 (d) Failure to comply with the provisions of subsection
23 (c) shall establish a rebuttable presumption that the
24 agreement, clause, covenant, or waiver is a unilateral
25 condition of employment or continued employment that is
26 governed by subsection (a) or (b).

1 (e) Nothing in this Section shall be construed to prevent
2 an employee or prospective employee and an employer from
3 negotiating and bargaining over the terms, privileges, and
4 conditions of employment.

5 (Source: P.A. 101-221, eff. 1-1-20; 102-558, eff. 8-20-21.)

6 (820 ILCS 96/1-30)

7 Sec. 1-30. Settlement or termination agreements.

8 (a) An employee, prospective employee, or former employee
9 and an employer may enter into a valid and enforceable
10 settlement or termination agreement that includes promises of
11 confidentiality related to alleged unlawful employment
12 practices, other than concerted activities related to
13 workplace conditions, so long as:

14 (1) confidentiality is the documented preference of
15 the employee, prospective employee, or former employee and
16 is mutually beneficial to both parties;

17 (2) the employer notifies the employee, prospective
18 employee, or former employee, in writing, of his or her
19 right to have an attorney or representative of his or her
20 choice review the settlement or termination agreement
21 before it is executed;

22 (3) there is valid, bargained for consideration in
23 exchange for the confidentiality separate from any release
24 of claims;

25 (4) the settlement or termination agreement does not

1 waive any claims of unlawful employment practices that
2 accrue after the date of execution of the settlement or
3 termination agreement;

4 (5) the settlement or termination agreement is
5 provided, in writing, to the parties to the prospective
6 agreement and the employee, prospective employee, or
7 former employee is given a period of 21 calendar days to
8 consider the agreement before execution, during which the
9 employee, prospective employee, or former employee may
10 sign the agreement at any time, knowingly and voluntarily
11 waiving any further time for consideration; ~~and~~

12 (6) unless knowingly and voluntarily waived by the
13 employee, prospective employee, or former employee, he or
14 she has 7 calendar days following the execution of the
15 agreement to revoke the agreement and the agreement is not
16 effective or enforceable until the revocation period has
17 expired; and -

18 (7) the confidentiality provision expires no later
19 than 5 years after the alleged unlawful employment
20 practices occurred.

21 (b) An employer may not unilaterally include any clause in
22 a settlement or termination agreement that prohibits the
23 employee, prospective employee, or former employee from making
24 truthful statements or disclosures regarding unlawful
25 employment practices or unilaterally include any clause in a
26 settlement or termination agreement that states that any

1 promises of confidentiality are the preference of the
2 employee.

3 (c) Failure to comply with the provisions of this Section
4 shall render any promise of confidentiality related to alleged
5 unlawful employment practices against public policy void and
6 severable from an otherwise valid and enforceable agreement.

7 (d) Nothing in this Section shall be construed to prevent
8 a mutually agreed upon settlement or termination agreement
9 from waiving or releasing the employee, prospective employee,
10 or former employee's right to seek or obtain any remedies
11 relating to an unlawful employment practice claim that
12 occurred before the date on which the agreement is executed.

13 (e) An employee or former employee and an employer may
14 enter into a valid and enforceable settlement or termination
15 agreement that prevents the employee or former employee from
16 working or from applying to work for the employer if that
17 provision expires 7 years after the settlement or termination
18 agreement is executed.

19 (Source: P.A. 101-221, eff. 1-1-20.)

20 (820 ILCS 96/1-35)

21 Sec. 1-35. Consequential damages, costs, ~~Costs~~ and
22 attorney's fees. An employee, prospective employee, or former
23 employee shall be entitled to consequential damages and
24 reasonable attorney's fees and costs incurred in challenging a
25 contract for violation of this Act upon a final,

1 non-appealable action in favor of the employee, prospective
2 employee, or former employee on the question of the validity
3 and enforceability of the contract or defending an action for
4 breach of a confidentiality agreement pursuant to this Act.

5 (Source: P.A. 101-221, eff. 1-1-20.)

6 (820 ILCS 96/1-40)

7 Sec. 1-40. Right to testify. Notwithstanding any other
8 law to the contrary, any agreement, clause, covenant, or
9 waiver, settlement agreement, or termination agreement that
10 waives the right of an employee, prospective employee, or
11 former employee to testify in an administrative, legislative,
12 arbitral, or judicial proceeding, including a deposition taken
13 in connection with any of the proceedings, concerning alleged
14 criminal conduct or alleged unlawful employment practices on
15 the part of the other party to the employment contract,
16 settlement agreement, or termination agreement, or on the part
17 of the party's agents or employees, when the employee,
18 prospective employee, or former employee has been required or
19 requested to attend the proceeding pursuant to a court order,
20 subpoena, or written request from an administrative agency or
21 the legislature, is void and unenforceable under the public
22 policy of this State. This Section is declarative of existing
23 law.

24 (Source: P.A. 101-221, eff. 1-1-20.)