



Rep. Ann M. Williams

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10400HB3638ham001

LRB104 12137 SPS 23811 a

1 AMENDMENT TO HOUSE BILL 3638

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3638 by replacing  
3 everything after the enacting clause with the following:

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

1 all workplaces are free of unlawful discrimination, ~~and~~  
2 harassment, and violations of State or federal employment  
3 laws.

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

5 (820 ILCS 96/1-10)

6 Sec. 1-10. Application.

7 (a) This Act does not apply to any collective bargaining  
8 agreements ~~contracts~~ that are entered into in and subject to  
9 the Illinois Public Labor Relations Act or the National Labor  
10 Relations Act. If there is a conflict between any valid and  
11 enforceable collective bargaining agreement and this Act, the  
12 collective bargaining agreement controls.

13 (b) This Act shall have no effect on the determination of  
14 whether an employment relationship exists for the purposes of  
15 other State or federal laws, including, but not limited to,  
16 the Illinois Human Rights Act, the Workers' Compensation Act,  
17 the Unemployment Insurance Act, and the Illinois Wage Payment  
18 and Collection Act.

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

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

22 (820 ILCS 96/1-15)

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

24 "Employee" has the same meaning as set forth in Section

1 2-101 of the Illinois Human Rights Act. "Employee" includes  
2 "nonemployees" as defined in Section 2-102 of the Illinois  
3 Human Rights Act.

4 "Employer" has the same meaning as set forth in Section  
5 2-101 of the Illinois Human Rights Act.

6 "Mutual condition of employment or continued employment"  
7 means any contract, agreement, clause, covenant, or waiver  
8 negotiated between an employer and an employee or prospective  
9 employee in good faith for consideration in order to obtain or  
10 retain employment.

11 "Prospective employee" means a person seeking to enter an  
12 employment contract with an employer.

13 "Settlement agreement" means an agreement, contract, or  
14 clause within an agreement or contract entered into between an  
15 employee, prospective employee, or former employee and an  
16 employer to resolve a dispute or legal claim between the  
17 parties that arose or accrued before the settlement agreement  
18 was executed.

19 "Termination agreement" means a contract or agreement  
20 between an employee and an employer terminating the employment  
21 relationship.

22 "Unlawful employment practice" means any practice made  
23 unlawful that is ~~form of unlawful discrimination, harassment,~~  
24 ~~or retaliation that is~~ actionable under Article 2 of the  
25 Illinois Human Rights Act, Title VII of the Civil Rights Act of  
26 1964, or any other ~~related~~ State or federal rule or law

1 governing employment, including those that are ~~is~~ enforced by  
2 the Illinois Department of Human Rights, Illinois Department  
3 of Labor, Illinois Labor Relations Board, ~~or the~~ Equal  
4 Employment Opportunity Commission, United States Department of  
5 Labor, Occupational Safety and Health Administration, or  
6 National Labor Relations Board.

7 "Unilateral condition of employment or continued  
8 employment" means any contract, agreement, clause, covenant,  
9 or waiver an employer requires an employee or prospective  
10 employee to accept as a non-negotiable material term in order  
11 to obtain or retain employment.

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

13 (820 ILCS 96/1-20)

14 Sec. 1-20. Reporting of allegations. No contract,  
15 agreement, clause, covenant, waiver, or other document shall  
16 prohibit, prevent, or otherwise restrict an employee,  
17 prospective employee, or former employee from (1) reporting  
18 any allegations of unlawful conduct to federal, State, or  
19 local officials for investigation, including, but not limited  
20 to, alleged criminal conduct or unlawful employment practices,  
21 or (2) engaging in concerted activity to address work-related  
22 issues.

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

24 (820 ILCS 96/1-25)

1       Sec. 1-25. Conditions of employment or continued  
2 employment.

3       (a) Any agreement, clause, covenant, or waiver that is a  
4 unilateral condition of employment or continued employment and  
5 has the purpose or effect of preventing an employee or  
6 prospective employee from making truthful statements or  
7 disclosures about alleged unlawful employment practices or  
8 engaging in protected concerted activity to address  
9 work-related issues is against public policy, void to the  
10 extent it prevents such statements or disclosures, and  
11 severable from an otherwise valid and enforceable contract  
12 under this Act.

13       (b) Any agreement, clause, covenant, or waiver that is a  
14 unilateral condition of employment or continued employment and  
15 requires the employee or prospective employee to waive,  
16 arbitrate, or otherwise diminish any existing or future claim,  
17 right, or benefit related to an unlawful employment practice  
18 to which the employee or prospective employee would otherwise  
19 be entitled under any provision of State or federal law,  
20 including that which purports to shorten the applicable  
21 statute of limitation, apply non-Illinois law to an Illinois  
22 employee's claim, or require a venue outside of Illinois to  
23 adjudicate an Illinois employee's claim, is against public  
24 policy, void to the extent it denies an employee or  
25 prospective employee a substantive or procedural right or  
26 remedy related to alleged unlawful employment practices, and

1 severable from an otherwise valid and enforceable contract  
2 under this Act.

3 (c) Any agreement, clause, covenant, or waiver that is a  
4 mutual condition of employment or continued employment may  
5 include provisions that would otherwise be against public  
6 policy as a unilateral condition of employment or continued  
7 employment, but only if the agreement, clause, covenant, or  
8 waiver is in writing, demonstrates actual, knowing, and  
9 bargained-for consideration from both parties, and  
10 acknowledges the right of the employee or prospective employee  
11 to:

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

15 (2) report any good faith allegation of criminal  
16 conduct to any appropriate federal, State, or local  
17 official;

18 (3) participate in a proceeding related to unlawful  
19 employment practices, including any litigation brought by  
20 any federal, State, or local government agency or any  
21 other person who alleges that the employer has violated  
22 any State, federal, or local law, regulation, or rule ~~with~~  
23 ~~any appropriate federal, State, or local government agency~~  
24 ~~enforcing discrimination laws;~~

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

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

2 -

3 (6) engage in concerted activity to address  
4 work-related issues.

5 (d) Failure to comply with the provisions of subsection  
6 (c) shall establish a rebuttable presumption that the  
7 agreement, clause, covenant, or waiver is a unilateral  
8 condition of employment or continued employment that is  
9 governed by subsection (a) or (b).

10 (e) Nothing in this Section shall be construed to prevent  
11 an employee or prospective employee and an employer from  
12 negotiating and bargaining over the terms, privileges, and  
13 conditions of employment.

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

15 (820 ILCS 96/1-30)

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

17 (a) An employee, prospective employee, or former employee  
18 and an employer may enter into a valid and enforceable  
19 settlement or termination agreement that includes promises of  
20 confidentiality related to alleged unlawful employment  
21 practices, other than concerted activity related to workplace  
22 conditions, so long as:

23 (1) confidentiality is the documented preference of  
24 the employee, prospective employee, or former employee and  
25 is mutually beneficial to both parties;

1           (2) the employer notifies the employee, prospective  
2           employee, or former employee, in writing, of his or her  
3           right to have an attorney or representative of his or her  
4           choice review the settlement or termination agreement  
5           before it is executed;

6           (3) there is valid, bargained for consideration in  
7           exchange for the confidentiality separate from any  
8           consideration that is provided in exchange for a release  
9           of claims;

10          (4) the settlement or termination agreement does not  
11          waive any claims of unlawful employment practices that  
12          accrue after the date of execution of the settlement or  
13          termination agreement;

14          (5) the settlement or termination agreement is  
15          provided, in writing, to the parties to the prospective  
16          agreement and the employee, prospective employee, or  
17          former employee is given a period of 21 calendar days to  
18          consider the agreement before execution, during which the  
19          employee, prospective employee, or former employee may  
20          sign the agreement at any time, knowingly and voluntarily  
21          waiving any further time for consideration; ~~and~~

22          (6) unless knowingly and voluntarily waived by the  
23          employee, prospective employee, or former employee, he or  
24          she has 7 calendar days following the execution of the  
25          agreement to revoke the agreement and the agreement is not  
26          effective or enforceable until the revocation period has



1 expired; and -

2 (7) any promises of confidentiality by the employee,  
3 prospective employee, or former employee expire within 5  
4 years after the date of the incident that was disclosed.

5 (b) An employer may not unilaterally include any clause in  
6 a settlement or termination agreement that prohibits the  
7 employee, prospective employee, or former employee from making  
8 truthful statements or disclosures regarding unlawful  
9 employment practices or unilaterally include any clause in a  
10 settlement or termination agreement that states that the  
11 promises of confidentiality are the preference of the  
12 employee.

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

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

23 (e) An employee or former employee and an employer may  
24 enter into a valid and enforceable settlement or termination  
25 agreement that prevents the employee or former employee from  
26 working or from applying to work for the employer in the future

1 if the provision expires within 7 years.

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

3 (820 ILCS 96/1-35)

4 Sec. 1-35. Consequential damages, costs, ~~Costs~~ and  
5 attorney's fees. An employee, prospective employee, or former  
6 employee shall be entitled to consequential damages, in  
7 addition to reasonable attorney's fees and costs incurred in  
8 challenging a contract for violation of this Act upon a final,  
9 non-appealable action in favor of the employee, prospective  
10 employee, or former employee on the question of the validity  
11 and enforceability of the contract or defending an action for  
12 breach of a confidentiality agreement pursuant to this Act.

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

14 (820 ILCS 96/1-40)

15 Sec. 1-40. Right to testify. Notwithstanding any other  
16 law to the contrary, any agreement, clause, covenant, or  
17 waiver, settlement agreement, or termination agreement that  
18 waives the right of an employee, prospective employee, or  
19 former employee to testify in an administrative, legislative,  
20 arbitral, or judicial proceeding, including a deposition taken  
21 in connection with any of the proceedings, concerning alleged  
22 criminal conduct or alleged unlawful employment practices on  
23 the part of the other party to the employment contract,  
24 settlement agreement, or termination agreement, or on the part

1 of the party's agents or employees, when the employee,  
2 prospective employee, or former employee has been required or  
3 requested to attend the proceeding pursuant to a court order,  
4 subpoena, or written request from an administrative agency or  
5 the legislature, is void and unenforceable under the public  
6 policy of this State. This Section is declarative of existing  
7 law.

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