



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3062

by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

New Act

Creates the Wrongful Discharge from Employment Act. Requires an employer to furnish to a discharged employee a statement of reasons for the discharge. Prohibits an employer from preventing or attempting to prevent a discharged employee from obtaining other employment. Prohibits blacklisting. Provides that a discharge is wrongful if the discharge was a constructive discharge, if it was not for good cause, or if the discharge was in violation of the employer's personnel policy. Establishes remedies. Defines terms. Provides that an employer who violates the Act commits a Class A misdemeanor.

LRB100 06952 JLS 17003 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 1. Short title. This Act may be cited as the
5 Wrongful Discharge from Employment Act.

6 Section 5. Definitions. As used in this Act:

7 "Constructive discharge" means the voluntary termination
8 of employment by an employee because of a situation created by
9 an act or omission of the employer which an objective,
10 reasonable person would find so intolerable that voluntary
11 termination is the only reasonable alternative.

12 "Discharge" includes a constructive discharge and any
13 other termination of employment, including resignation,
14 elimination of the job, layoff for lack of work, failure to
15 recall or rehire, and any other cutback in the number of
16 employees for a legitimate business reason.

17 "Employee" means any person who works for another for hire.
18 The term does not include a person who is an independent
19 contractor as defined under Section 212 of the Unemployment
20 Insurance Act.

21 "Employer" means anyone who engages another, who is called
22 the employee, to do something for the benefit of the employer
23 or a third person. The term employer also includes the State

1 and any political subdivision, municipality, or other
2 governmental unit or agency.

3 "Fringe benefits" means the value of any employer-paid
4 vacation leave, sick leave, medical insurance plan, disability
5 insurance plan, life insurance plan, annuity, and pension
6 benefit plan in effect on the date of termination.

7 "Good cause" means reasonable job-related grounds for
8 dismissal based on an employee's failure to satisfactorily
9 perform job duties, employee misconduct, or other legitimate
10 business reason.

11 "Lost wages" means the gross amount of wages that would
12 have been reported to the internal revenue service as gross
13 income on Form W-2 and includes additional compensation
14 deferred at the option of the employee.

15 "Misconduct" means the following work related
16 circumstances:

17 (1) Falsification of an employment application, or any
18 other documentation provided to the employer, to obtain
19 employment through subterfuge.

20 (2) Failure to maintain licenses, registrations, and
21 certifications reasonably required by the employer, or
22 those that the individual is required to possess by law, to
23 perform his or her regular job duties, unless the failure
24 is not within the control of the individual.

25 (3) Knowing, repeated violation of the attendance
26 policies of the employer that are in compliance with State

1 and federal law following written warning for an attendance
2 violation, unless the individual demonstrates that he or
3 she has made a reasonable effort to remedy the reason or
4 reasons for the violations or that the reason or reasons
5 for the violations were out of the individual's control.
6 Attendance policies of the employer shall be reasonable and
7 provided to the individual in writing, electronically, or
8 via a posting in the workplace.

9 (4) Damaging the employer's property through conduct
10 that is grossly negligent.

11 (5) Refusal to obey an employer's reasonable and lawful
12 instruction, unless refusal is due to the lack of ability,
13 skills, or training for the individual required to obey the
14 instruction or the instruction would result in an unsafe
15 act.

16 (6) Knowingly consuming alcohol or illegal or
17 non-prescribed prescription drugs, or using an impairing
18 substance in an off-label manner, on the employer's
19 premises during working hours in violation of the
20 employer's policies.

21 (7) Reporting to work under the influence of alcohol,
22 illegal or non-prescribed prescription drugs, or an
23 impairing substance used in an off-label manner in
24 violation of the employer's policies, unless the
25 individual is compelled to report to work by the employer
26 outside of scheduled and on-call working hours and informs

1 the employer that he or she is under the influence of
2 alcohol, illegal or non-prescribed prescription drugs, or
3 an impairing substance used in an off-label manner in
4 violation of the employer's policies.

5 (8) Grossly negligent conduct endangering the safety
6 of the individual or co-workers.

7 For the purposes of paragraphs (4) and (8), conduct is
8 "grossly negligent" if the individual is, or reasonably should
9 be, aware of a substantial risk that the conduct will result in
10 the harm sought to be prevented and the conduct constitutes a
11 substantial deviation from the standard of care a reasonable
12 person would exercise in the situation.

13 Nothing in paragraph (6) or (7) prohibits the lawful use of
14 over-the-counter drug products as defined in Section 206 of the
15 Illinois Controlled Substances Act if the medication does not
16 affect the safe performances of the employee's work duties.

17 "Public policy" means a policy in effect at the time of
18 discharge established by constitutional provision, law, or
19 administrative rule.

20 Section 10. Employee to be furnished on demand with reason
21 for discharge.

22 (a) It is the duty of the employer, after having discharged
23 an employee from service, upon demand by the discharged
24 employee, to furnish the discharged employee in writing a
25 statement of reasons for the discharge. If the employer fails

1 to furnish the statement of the reasons for discharge within a
2 reasonable time after the demand, the employer shall be subject
3 to the penalties and damages prescribed in this Act.

4 (b) A response to the demand may be modified at any time
5 and does not limit an employer's ability to present a full
6 defense in any action brought by the discharged employee.
7 Failure to provide a response as required under this Section
8 does not limit an employer's ability to present a full defense
9 in any action brought by the discharged employee.

10 Section 15. Protection of discharged employees. If an
11 employer, after having discharged an employee from service,
12 prevents or attempts to prevent, by word or writing of any
13 kind, the discharged employee from obtaining employment with
14 any other employer, the discharging employer may be punished as
15 provided in Section 30 and is liable for punitive damages to
16 the discharged person, to be recovered in a civil action. An
17 employer is not prohibited from informing by word or writing
18 any other employer to whom the discharged employee has applied
19 for employment a truthful statement of the reason for
20 discharge. Notwithstanding the foregoing an employer is
21 prohibited from furnishing any statement of the reasons for
22 discharge to another employer if the discharging employer has
23 not furnished a written statement of the reasons for discharge
24 to the discharged employee as provided in Section 10.

1 Section 20. Blacklisting prohibited. If an employer
2 authorizes or allows any of its agents to blacklist a
3 discharged employee or if an employer blacklists a discharged
4 employee or attempts by word or writing or any other means to
5 prevent any discharged employee or any employee who has
6 voluntarily left the company's service from obtaining
7 employment with another employer, except as provided in Section
8 15, the employer is liable for punitive damages to the employee
9 prevented from obtaining employment, to be recovered in a civil
10 action, and is also punishable as provided in Section 30.

11 Section 25. Wrongful discharge.

12 (a) A discharge is wrongful if: it was a constructive
13 discharge; it was in retaliation for the employee's refusal to
14 violate public policy or for reporting a violation of public
15 policy; it was not for good cause and the employee had
16 completed the employer's probationary period for employment;
17 or the employer violated the express provisions of its written
18 personnel policy. During a probationary period of employment
19 not to exceed 90 days, the employment may be terminated at the
20 will of either the employer or the employee on notice to the
21 other for any reason or for no reason. If an employer does not
22 establish a specific probationary period or provide that there
23 is no probationary period prior to or at the time of hire,
24 there is a probationary period of 90 days from the date of
25 hire.

1 (b) A discharged employee may bring a civil action against
2 the employer for all relief necessary to make the discharged
3 employee whole, including but not limited to the following, as
4 appropriate:

5 (1) reinstatement with the same seniority status that
6 the discharged employee would have had but for the
7 violation;

8 (2) lost wages with interest and fringe benefits; and

9 (3) compensation for any damages sustained as a result
10 of the violation, including litigation costs, expert
11 witness fees, and reasonable attorney's fees.

12 (c) An action under this Act must be filed within one year
13 after the date of discharge.

14 If an employer maintains written internal procedures,
15 other than those specified in this subsection, under which a
16 discharged employee may appeal a discharge within the
17 organizational structure of the employer, the discharged
18 employee shall first exhaust those procedures prior to filing
19 an action under this Act. The discharged employee's failure to
20 initiate or exhaust available internal procedures is a defense
21 to an action brought under this Act. If the employer's internal
22 procedures are not completed within 90 days after the date the
23 discharged employee initiates the internal procedures, the
24 discharged employee may file an action under this Act and, for
25 the purposes of this Section, the employer's internal
26 procedures are considered exhausted. The limitation period in

1 this subsection shall not commence until the procedures are
2 exhausted. In no case may the provisions of the employer's
3 internal procedures extend the limitation period in this
4 subsection by more than 120 days.

5 If the employer maintains written internal procedures
6 under which a discharged employee may appeal a discharge within
7 the organizational structure of the employer, the employer
8 shall, within 7 days of the date of discharge, notify the
9 discharged employee of the existence of such procedures and
10 shall supply the discharged employee with a copy of them. If
11 the employer fails to notify the employ and provide a copy of
12 the procedures, the discharged employee need not exhaust the
13 appeal procedures.

14 (d) This Act does not apply to a discharge that is subject
15 to any other State or federal law that provides a procedure or
16 remedy for contesting the dispute. The laws include those that
17 prohibit discharge for filing complaints, charges, or claims
18 with administrative bodies or that prohibit unlawful
19 discrimination based on race, national, origin, sex, age,
20 disability, creed, religion, color, and other similar grounds.
21 This Act does not apply to a discharge of an employee covered
22 by a written collective bargaining agreement or a written
23 contract of employment for a specific term.

24 (e) A party may make a written offer to arbitrate a dispute
25 that otherwise could be adjudicated under this Act. If a
26 complaint is filed under this Act, the offer to arbitrate must

1 be made within 60 days after service of the complaint and must
2 be accepted in writing within 30 days after the date the offer
3 is made. A discharged employee who makes a valid offer to
4 arbitrate that is accepted by the employer and who prevails in
5 such arbitration is entitled to have the arbitrator's fee and
6 all costs of arbitration paid by the employer. If a valid offer
7 to arbitrate is made and accepted, the arbitration is the
8 exclusive remedy for the wrongful discharge dispute and there
9 is no right to bring or continue a lawsuit under this Act. The
10 arbitrator's award is final and binding. A party who makes a
11 valid offer to arbitrate that is not accepted by the other
12 party and who prevails in an action under this Act is entitled
13 as an element of costs to reasonable attorney fees incurred
14 subsequent to the date of the offer.

15 Section 30. Violations. An employer who violates any of
16 the provisions of this Act relating to the protection of
17 discharged employees, the prevention of blacklisting, or
18 wrongful discharge is guilty of a Class A misdemeanor.