

SB3387



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3387

Introduced 2/14/2020, by Sen. Laura Ellman

SYNOPSIS AS INTRODUCED:

820 ILCS 96/1-15
820 ILCS 96/1-27 new

Amends the Workplace Transparency Act. Prohibits the enforcement of certain arbitration clauses. Provides that arbitration clauses must contain an exception for claims of harassment or discrimination. Establishes a rebuttable presumption that certain provisions are unconscionable in arbitration agreements, including venue conditions, waiver of other legal rights, and excessive fees.

LRB101 20248 JLS 69788 b

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 5. The Workplace Transparency Act is amended by
5 changing Section 1-15 and by adding Section 1-27 as follows:

6 (820 ILCS 96/1-15)

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

8 "Arbitration agreement" means an agreement between an
9 employer and an employee to submit to arbitration all or
10 certain disputes that arise in respect of a defined legal
11 relationship, whether contractual or not, and may be in the
12 form of an arbitration clause in a contract or in the form of a
13 separate agreement.

14 "Employee" has the same meaning as set forth in Section
15 2-101 of the Illinois Human Rights Act. "Employee" includes
16 "nonemployees" as defined in Section 2-102 of the Illinois
17 Human Rights Act.

18 "Employer" has the same meaning as set forth in Section
19 2-101 of the Illinois Human Rights Act.

20 "Mutual condition of employment or continued employment"
21 means any contract, agreement, clause, covenant, or waiver
22 negotiated between an employer and an employee or prospective
23 employee in good faith for consideration in order to obtain or

1 retain employment.

2 "Prospective employee" means a person seeking to enter an
3 employment contract with an employer.

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

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

13 "Unlawful employment practice" means any form of unlawful
14 discrimination, harassment, or retaliation that is actionable
15 under Article 2 of the Illinois Human Rights Act, Title VII of
16 the Civil Rights Act of 1964, or any other related State or
17 federal rule or law that is enforced by the Illinois Department
18 of Human Rights or the Equal Employment Opportunity Commission.

19 "Unilateral condition of employment or continued
20 employment" means any contract, agreement, clause, covenant,
21 or waiver an employer requires an employee or prospective
22 employee to accept as a non-negotiable material term in order
23 to obtain or retain employment.

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

25 (820 ILCS 96/1-27 new)

1 Sec. 1-27. Limitations on arbitration.

2 (a) Except when inconsistent with federal or State law, an
3 employer may enter into a contract or agreement with an
4 employee or applicant. However, an arbitration clause shall
5 contain a written exception for claims of harassment or
6 discrimination, as provided under Section 2-102 of the Illinois
7 Human Rights Act, and shall allow an employee or applicant to
8 pursue such claims against the employer through either arbitral
9 or judicial forums.

10 (b) An employer may not enforce or attempt to enforce an
11 arbitration clause entered into if the clause does not contain
12 the written exception required in subsection (a). Any such
13 arbitration clause is severable, and all other provisions of
14 the contract or agreement shall remain in effect.

15 (c) There is a rebuttable presumption that the following
16 contractual terms are unconscionable if they are included in an
17 arbitration agreement and the employee or applicant does not
18 draft the contract or agreement:

19 (1) A requirement that resolution of legal claims take
20 place in an inconvenient venue. As used in this paragraph,
21 "inconvenient venue" means:

22 (A) for State law claims, a place other than the
23 county in which the employee or applicant resides or
24 the contract was consummated; and

25 (B) for federal law claims, a place other than the
26 federal judicial district in which the employee or

1 applicant resides or the contract was consummated.

2 (2) A waiver of the employee or applicant's right to
3 assert claims or seek remedies provided by State or federal
4 statute.

5 (3) A waiver of the employee or applicant's right to
6 seek punitive damages as provided by law.

7 (4) A provision limiting the time within which an
8 employee or applicant may bring an action to a period
9 shorter than the applicable statute of limitations.

10 (5) A requirement that the employee or applicant pay
11 fees and costs to bring a legal claim substantially in
12 excess of the fees and costs that State or federal courts
13 require to bring a claim.