

12 of 14 DOCUMENTS

ILLINOIS COMPILED STATUTES ANNOTATED  
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\*\*\* STATUTES CURRENT THROUGH PUBLIC ACT 95-1003 \*\*\*  
\*\*\* ANNOTATIONS CURRENT TO STATE CASES THROUGH OCTOBER 1, 2008 \*\*\*

CHAPTER 775. HUMAN RIGHTS  
ILLINOIS HUMAN RIGHTS ACT  
ARTICLE 2. EMPLOYMENT

**GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY**

**775 ILCS 5/2-105 (2008)**

§ **775 ILCS 5/2-105**. Equal Employment Opportunities; Affirmative Action

Sec. **2-105**. Equal Employment Opportunities; Affirmative Action. (A) Public Contracts. Every party to a public contract and every eligible bidder shall:

(1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;

(2) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(3) Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request;

(4) Have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act [775 ILCS 5/6-101]. A copy of the policies shall be provided to the Department upon request.

(B) State Agencies. Every State executive department, State agency, board, commission, and instrumentality shall:

(1) Comply with the procedures and requirements of the Department's regulations concerning equal employment opportunities and affirmative action;

(2) Provide such information and assistance as the Department may request.

(3) Establish, maintain, and carry out a continuing affirmative action plan consistent with this Act and the regulations of the Department designed to promote equal opportunity for all State residents in every aspect of agency personnel policy and practice. For purposes of these affirmative action plans, the race and national origin categories to

be included in the plans are: African American, Hispanic or Latino, Native American, Asian, and any other category as required by Department rule. This plan shall include a current detailed status report:

(a) indicating, by each position in State service, the number, percentage, and average salary of individuals employed by race, national origin, sex and disability, and any other category that the Department may require by rule;

(b) identifying all positions in which the percentage of the people employed by race, national origin, sex and disability, and any other category that the Department may require by rule, is less than four-fifths of the percentage of each of those components in the State work force;

(c) specifying the goals and methods for increasing the percentage by race, national origin, sex and disability, and any other category that the Department may require by rule, in State positions;

(d) indicating progress and problems toward meeting equal employment opportunity goals, including, if applicable, but not limited to, Department of Central Management Services recruitment efforts, publicity, promotions, and use of options designating positions by linguistic abilities;

(e) establishing a numerical hiring goal for the employment of qualified persons with disabilities in the agency as a whole, to be based on the proportion of people with work disabilities in the Illinois labor force as reflected in the most recent decennial Census.

(4) If the agency has 1000 or more employees, appoint a full-time Equal Employment Opportunity officer, subject to the Department's approval, whose duties shall include:

(a) Advising the head of the particular State agency with respect to the preparation of equal employment opportunity programs, procedures, regulations, reports, and the agency's affirmative action plan.

(b) Evaluating in writing each fiscal year the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction in recruiting, hiring or promotion needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to cooperate fully or who are in violation of the program.

(c) Making changes in recruitment, training and promotion programs and in hiring and promotion procedures designed to eliminate discriminatory practices when authorized.

(d) Evaluating tests, employment policies, practices and qualifications and reporting to the head of the agency and to the Department any policies, practices and qualifications that have unequal impact by race, national origin as required by Department rule, sex or disability or any other category that the Department may require by rule, and to assist in the recruitment of people in underrepresented classifications. This function shall be performed in cooperation with the State Department of Central Management Services.

(e) Making any aggrieved employee or applicant for employment aware of his or her remedies under this Act.

In any meeting, investigation, negotiation, conference, or other proceeding between a State employee and an Equal Employment Opportunity officer, a State employee (1) who is not covered by a collective bargaining agreement and (2) who is the complaining party or the subject of such proceeding may be accompanied, advised and represented by (1) an attorney licensed to practice law in the State of Illinois or (2) a representative of an employee organization whose membership is composed of employees of the State and of which the employee is a member. A representative of an employee, other than an attorney, may observe but may not actively participate, or advise the State employee during the course of such meeting, investigation, negotiation, conference or other proceeding. Nothing in this Section shall be construed to permit any person who is not licensed to practice law in Illinois to deliver any legal services or otherwise engage in any activities that would constitute the unauthorized practice of law. Any representative of an employee who

is present with the consent of the employee, shall not, during or after termination of the relationship permitted by this Section with the State employee, use or reveal any information obtained during the course of the meeting, investigation, negotiation, conference or other proceeding without the consent of the complaining party and any State employee who is the subject of the proceeding and pursuant to rules and regulations governing confidentiality of such information as promulgated by the appropriate State agency. Intentional or reckless disclosure of information in violation of these confidentiality requirements shall constitute a Class B misdemeanor.

(5) Establish, maintain and carry out a continuing sexual harassment program that shall include the following:

(a) Develop a written sexual harassment policy that includes at a minimum the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the agency's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act [775 ILCS 5/6-101]. The policy shall be reviewed annually.

(b) Post in a prominent and accessible location and distribute in a manner to assure notice to all agency employees without exception the agency's sexual harassment policy. Such documents may meet, but shall not exceed, the 6th grade literacy level. Distribution shall be effectuated within 90 days of the effective date of this amendatory Act of 1992 and shall occur annually thereafter.

(c) Provide training on sexual harassment prevention and the agency's sexual harassment policy as a component of all ongoing or new employee training programs.

(6) Notify the Department 30 days before effecting any layoff. Once notice is given, the following shall occur:

(a) No layoff may be effective earlier than 10 working days after notice to the Department, unless an emergency layoff situation exists.

(b) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must notify each employee targeted for layoff, the employee's union representative (if applicable), and the State Dislocated Worker Unit at the Department of Commerce and Economic Opportunity.

(c) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur must conform to applicable collective bargaining agreements.

(d) The State executive department, State agency, board, commission, or instrumentality in which the layoffs are to occur should notify each employee targeted for layoff that transitional assistance may be available to him or her under the Economic Dislocation and Worker Adjustment Assistance Act [29 USCS § 2101 et seq.] administered by the Department of Commerce and Economic Opportunity. Failure to give such notice shall not invalidate the layoff or postpone its effective date.

As used in this subsection (B), "disability" shall be defined in rules promulgated under the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

(C) Civil Rights Violations. It is a civil rights violation for any public contractor or eligible bidder to:

(1) fail to comply with the public contractor's or eligible bidder's duty to refrain from unlawful discrimination and discrimination based on citizenship status in employment under subsection (A)(1) of this Section; or

(2) fail to comply with the public contractor's or eligible bidder's duties of affirmative action under subsection (A) of this Section, provided however, that the Department has notified the public contractor or eligible bidder in writing by

certified mail that the public contractor or eligible bidder may not be in compliance with affirmative action requirements of subsection (A). A minimum of 60 days to comply with the requirements shall be afforded to the public contractor or eligible bidder before the Department may issue formal notice of non-compliance.

**HISTORY:** Source: P.A. 86-1004; 86-1343; 87-579; 87-116; 87-895; 87-1257, § 1; 88-498, § 15; 89-370, § 5; 91-178, § 5; 94-793, § 865.

**NOTES:**

NOTE.

This section was Ill.Rev.Stat., Ch. 68, para. **2-105**.

Section 995 of P.A. 94-793 contains a "no acceleration or delay" provision, and Section 996 contains a "no revival or extension" provision.

ILLINOIS ADMINISTRATIVE CODE.

See 17 Illinois Administrative Code, §§ 1-1522.30, 3025.70, 3030.50, 3040.70, 3050.80, 56 Illinois Administrative Code, §§ 2520.710, 2520.720.

EFFECT OF AMENDMENTS.

The 1992 amendment, effective July 1, 1993, added subdivision (A)(4); substituted "that the Department" for "which the Department" in subdivisions (B)(3)(a) through (B)(3)(c); added subdivision (B)(5); deleted the (5) designation at the beginning of the last undesignated paragraph in subsection (B); in the last paragraph of subsection (B) substituted "promulgated under" for "promulgated pursuant to"; and in subdivision (C)(2) substituted "60 days" for "sixty days".

The 1993 amendment by P.A. 88-498, effective July 1, 1994, in subdivision (B)(4), added the last paragraph.

The 1995 amendment by P.A. 89-370, effective August 18, 1995, and applicable to causes of action as specified in each Section or part of the Act, in subdivision (C)(2), in the first sentence, substituted "(A)" for "(A)(1)", deleted "and subsection (A)(2) and (A)(3) of this Section" preceding "provided however" and deleted from the end "(1) and with subsections (A)(2) and (A)(3) of this Section, and is given" and in the second sentence added at the end "shall be afforded to the public contractor or eligible bidder before the Department may issue formal notice of non-compliance".

The 1999 amendment by P.A. 91-178, effective January 1, 2000, inserted subdivision (B)(6).

The 2006 amendment of P.A. 93-25 by revisory act P.A. 94-793, effective May 19, 2006, substituted references to "Governor's Office of Management and Budget" for references to "Bureau of the Budget", and substituted references to "Department of Commerce and Economic Opportunity" for references to "Department of Commerce and Community Affairs" throughout the Illinois Compiled Statutes.

CASE NOTES

ANALYSIS

Affirmative Action

Applicability

--Federal Preemption

Burden of Proof

Injunctive Relief

--Administrative Authority

--Pre-Enforcement Review

--Ripeness

Public Contracts

--Eligibility

Retaliatory Discrimination

--In General

--Not Shown

#### AFFIRMATIVE ACTION

The term "affirmative action," as it was used in section 4 of the former Fair Employment Act (see now this section), was not limited in its application to individual acts of discrimination in employment. *Eastman Kodak Co. v. Fair Emp. Practices Comm'n*, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

The obligation to take affirmative action imports more than the negative obligation not to discriminate. *S. N. Nielsen Co. v. Public Bldg. Comm'n*, 81 Ill. 2d 290, 43 Ill. Dec. 40, 410 N.E.2d 40 (1980).

#### APPLICABILITY

##### --FEDERAL PREEMPTION

Title VII, 42 U.S.C. § 2000h-4, expressly disclaims any intent to preempt state action relating to affirmative action programs. *Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n*, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

#### BURDEN OF PROOF

A complainant in a civil rights case need not present direct evidence of discrimination, but may meet his burden of proof by presenting evidence of a genuine issue of fact as to whether discrimination occurred. *All Purpose Nursing Serv. v. Human Rights Comm'n*, 205 Ill. App. 3d 816, 150 Ill. Dec. 717, 563 N.E.2d 844 (1 Dist. 1990).

#### INJUNCTIVE RELIEF

##### --ADMINISTRATIVE AUTHORITY

The former Fair Employment Practices Commission did not exceed its authority in requiring appellant to submit a reasonable recruitment area and an affirmative action program following its determination that appellant was underutilizing minorities at one of its facilities. *Eastman Kodak Co. v. Fair Emp. Practices Comm'n*, 86 Ill. 2d 60, 55 Ill. Dec. 552, 426 N.E.2d 877 (1981).

##### --PRE-ENFORCEMENT REVIEW

Where administrative and judicial review were available to the plaintiffs and all members of the class pursuant to the former Fair Employment Practices Act (see now **775 ILCS 5/7A-104** and **775 ILCS 5/8-111**), they had an adequate remedy at law and pre-enforcement review of rules and regulations of the former Fair Employment Practices Commission promulgated pursuant to the former Fair Employment Practices Act was in error. *Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n*, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

##### --RIPENESS

In an action seeking to bar enforcement of rules and regulations of the former Fair Employment Practices Commission (now Human Rights Commission) purportedly promulgated pursuant to former sections 4 and 4A of the former Fair Employment Practices Act (see now this section) pertaining to affirmative action programs regarding public contracts, upon the issue of plaintiffs' standing to sue and ripeness for judicial determination, where the alleged immediate severity of the regulations' impact upon the plaintiffs in no way indicated pre-enforcement relief, and the feared injury was clearly prospective and it was neither severe nor immediate; therefore, the trial court's issuance of preliminary injunction was error. *Alfred Eng'g, Inc. v. Illinois Fair Emp. Practices Comm'n*, 19 Ill. App. 3d 592, 312 N.E.2d 61 (4 Dist. 1974).

#### PUBLIC CONTRACTS

##### --ELIGIBILITY

Authorization for a Public Building Commission's minorities canvassing formula was found in the affirmative action provisions of the former Fair Employment Practices Act (see now this section); therefore, a contractor's affirmative action efforts were properly taken into account in determining whether that contractor was the lowest responsible bidder

within the meaning of the Commission's bidding statute (50 ILCS 20/20). *S. N. Nielsen Co. v. Public Bldg. Comm'n*, 81 Ill. 2d 290, 43 Ill. Dec. 40, 410 N.E.2d 40 (1980).

A decision of the former Fair Employment Practices Commission (now Human Rights Commission) that an employer was not eligible for public contracts because its recruitment area was unreasonable within the rules and regulations promulgated under the former Fair Employment Practices Act (see now this section) was not against the manifest weight of the evidence. *Eastman Kodak Co. v. Fair Emp. Practices Comm'n*, 83 Ill. App. 3d 215, 38 Ill. Dec. 620, 403 N.E.2d 1224 (2 Dist. 1980).

#### RETALIATORY DISCRIMINATION

##### --IN GENERAL

Plaintiffs cannot state a cause of action for wrongful discharge outside the purview of this Act. *Mein v. Masonite Corp.*, 124 Ill. App. 3d 617, 80 Ill. Dec. 154, 464 N.E.2d 1137 (1 Dist. 1984).

##### --NOT SHOWN

Where plaintiff alleged in his complaint, grounded in the tort of wrongful discharge, that he was dismissed because of he was 55 years old, and not because of his conduct or activity, plaintiff's allegations of discrimination of the basis of his status were insufficient to support a cause of action for retaliatory discharge. *Mein v. Masonite Corp.*, 124 Ill. App. 3d 617, 80 Ill. Dec. 154, 464 N.E.2d 1137 (1 Dist. 1984).

#### RESEARCH REFERENCES

Necessity of, and what constitutes, employer's reasonable accommodation of employee's religious preference under state law. 107 ALR5th 623.

#### PRACTICE GUIDES AND TREATISES

Employment Termination 2002 Ed., Updated 2005 § 15.13 Sexual Harassment Policy (IICLE)  
 Employment Discrimination § 11.10 Private Employers with Government Contracts (IICLE)  
 Employment Discrimination § 4.107 State Contractors (IICLE)  
 Employment Discrimination § 4.106 State Agencies (IICLE)  
 1-2 Employment in Illinois § 2-2 Discrimination  
 1-8 Employment in Illinois § 8-5 Sex Discrimination, Pregnancy, Sexual Harassment, Marital Status, Sexual Preference  
 Illinois Jurisprudence, Labor and Employment § 4:08 Compliance by State agencies  
 Illinois Jurisprudence, Labor and Employment § 4:07 Applicability of Act to public contracts