

Illinois- Introduction

This information is intended to familiarize women with employment discrimination law in Illinois, so that they may assess the strengths of any claims they may have, and educate them as to their rights so that they may informatively talk to their employers. Generally, the Illinois Human Rights Act (IHRA) makes it illegal to treat women differently than men in employment. While the focus here is on sex, it should be noted that the IHRA also makes it illegal to discriminate based on race or color, sexual orientation, physical or mental disability, religion, age, ancestry or national origin. Women should read the Filing Procedures section to understand the process involved in bringing a claim and what remedies they should expect.

Anyone seriously considering taking legal action should consult an attorney. Women should also be aware that those who take their cases to court are not often successful, and large awards are rare. Women may be more successful pursuing alternative dispute resolution methods such as those offered the Illinois Human Rights Commission (IHRC), where all claims must begin.

Illinois – What Does the Law Say?¹

Where is the law regarding sex discrimination and failure to promote in Illinois found?

Employment discrimination is covered by Article 1 §17 and §18 of the Bill of Rights of the Illinois state constitution. Section 17 states that, “all persons shall have the right to be free from discrimination on the basis of race, color, creed, national origin and sex in the hiring and promotion practices of any employer.” Section 18 more broadly states that, “the equal protection of the laws shall not be abridged on the account of sex by the State or units of local government and school districts.”² In addition, employment discrimination is also prohibited by the Illinois Human Right Act (“IHRA”). IHRA considers it to be a civil rights violation for any employer to refuse to hire, segregate, or act with respect to recruitment, hiring, promotion, renewal of employment, privileges or conditions of employment on the basis of unlawful discrimination.³

What is an employee under the Human Rights Act?

An employee is defined as any individual performing services for money within the state for an employer.⁴ A domestic servant in a private home does not qualify as an employee.

What is an employer under the Human Rights Act?

An employer is defined as any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of the incident. However, in some special instances, even if fewer than 15 employees are employed, the agency will qualify as an employer. These instances arise when the employer is the state or any political subdivision, municipality or government unit or when the employer is a party to a public contract (meaning the employer has a contract with the state).⁵

Are women a protected class?

Yes. Article 1 §17 and §18 of the Bill of Rights of the Illinois State Constitution prohibits discrimination on the basis of sex. Under the Illinois Human Rights Act, discrimination on the basis of sex is also prohibited.⁶

What is illegal?

Under the Illinois Human Rights Act, it is illegal to do any of the following: refuse to hire an applicant, fail to promote an employee, or fire an employee, on the basis of gender.⁷ Sexual harassment, pregnancy discrimination, and retaliation are also prohibited activities under the Illinois Human Rights Act.

Is there a federal law about sex discrimination?

Yes, under Title VII, discrimination on the basis of sex is prohibited.

How does the state law compare with the federal law in terms of coverage?

The Illinois Human Rights Act is based on Title VII, so the requirements you must meet to sustain a suit under the two are almost identical.

Is it ever okay for my employer to discriminate with regards to hiring or promotion?

Under the Illinois Human Rights Act, it is never okay for an employer to discriminate on the basis of sex. However, nothing in this Act prohibits employers from making an employment decision on a *bona fide* basis. This means that your employer must make its hiring or promotion decisions based on your qualifications. Under the IHRA, an employer is also allowed to make hiring and promotion decisions based on ability tests and merit systems (as long as these systems do not have the effect of unlawful discrimination.)

What must I prove to win my case?

In order to prove your case you must show the following:

- (1) You are a member of the protected class;
- (2) You applied for and were denied an open position;
- (3) You were rejected for the position despite your qualifications; and,
- (4) After you were rejected, the position remained open and the employer continued to seek applicants with your qualifications.⁸

In other words, in order to succeed in court, you must prove each one of the elements listed above. This means that the burden of proving the case is on you.⁹ You will be called the plaintiff in this case, because you are the one bringing the suit into court.

Once you have proven your case, your employer must articulate a legitimate, non-discriminatory reason for its action. For example, in a failure to promote situation, the employer can cite a seniority or merit system or demonstrate a legitimate business reason for not promoting you. In a failure to hire situation, they can show that they hired someone more qualified than you. If the employer is able to articulate a non-discriminatory reason for their action, you must then prove that the reason is pre-text. Pretext is a false reason given by your employer to cover up the real reason for the discrimination.¹⁰ Pretext can be shown by presenting evidence that your employer intended to discriminate. Examples of evidence include a record of past practices or by proving that the reason offered by your employer does not stand.

What is the time limit (“statue of limitations”) for filing a claim?

You must file your claim within 180 days of the alleged discrimination.

Who enforces the law?

The Illinois Department of Human Rights (IDHR) enforces the Human Rights Act. IDHR has three locations in Illinois. To file a charge, you can contact any of the three locations. You can reach them through the web at their website.¹¹

What are the filing procedures?

If you think that you have been subjected to discriminatory practices, you may file a charge with the Illinois Department of Human Rights. The process takes some time. The Human Rights Act requires that the Department make a finding within 365 days after the filing of the charge. If it has been 365 days and no action has been taken, you have an additional 30 days to file a complaint with the Human Rights Commission. Otherwise, the complaint will be dismissed. For more information, please see “How Do I File A Claim?”¹²

What type of remedies can I seek?

Remedies can include back pay (money your employer owes you from not paying you what it should have), lost benefits, emotional damages, hiring, promotion and attorney’s fees and costs. No punitive damages are available under the Act.¹³ For more information please see “What Am I Entitled to if I Win?”

Illinois – Unequal Pay

It Happened to Me: A Real Story

Maureen was upset when she found out a co-worker, Mr. Hansen, was making more than she was for doing the same work. The unequal pay was easy for Maureen to prove – she just had to show the difference between her salary and Mr. Hansen’s to the court. However, her employer denied that Maureen’s and Mr. Hansen’s jobs were the same, because they did not require “equal skills, effort, and responsibility.” Maureen had to persuade the court that it was more likely than not that the two jobs were similar enough to be paid the same salary. To demonstrate that the two jobs were alike, Maureen presented an office memo that described Mr. Hansen’s job requirements, and compared them to her own day-to-day duties. The court found that both workers did basically the same thing - hiring asbestos workers and scheduling them to work at various job sites. As a result, Maureen’s employer was unable to prove that the two positions were different in kind or responsibility. Since the defendant could not demonstrate that the pay difference was due to seniority, merit, quality or quantity of work, or any other factor not based on gender, Maureen won her claim and was awarded \$440. She was fired soon after, but was not able to prove that she was retaliated against.

Maureen Leeson v. Midwest Asbestos Removal Service, WL 407830 (Ill. Hum. Rts. Com. 1997).

What do Equal Pay cases require me to prove?

Equal Pay cases require plaintiffs to prove that:

- 1) Higher wages were paid to a male employee;¹⁴
- 2) For equal work¹⁵ requiring substantially similar skill, effort and responsibilities; and,¹⁶
- 3) The work was performed under similar working conditions.¹⁷

Can I bring a claim for pay discrimination under Illinois law?

Yes. Illinois passed the Equal Pay Act of 2003 to address the problem of unfair, lower wages that women earn when compared to men doing the same work.¹⁸ However, you cannot file a claim if the employer has 3 or less employees, or if the pay difference is based upon a merit system, seniority, a system that bases pay on the worker’s quantity/quality of production, or any factor not based on gender.¹⁹

Can I be fired by my employer for bringing an Equal Pay Act claim against him/her?

No. According to the law, employers are prohibited from firing individuals who exercise their rights under the Equal Pay Act.²⁰ If you have been fired for submitting an Equal Pay

claim, then you have been discriminated against and you should refer to the “Retaliation” section.

How do I go about bringing a claim?

The Illinois Department of Labor handles all Equal Pay Act claims in the state.²¹ However, if your equal pay claim is part of a larger set of discrimination claims (for example, equal pay and sexual harassment), the case will be referred to the Illinois Human Rights Commission.²² Complaint forms must be filled out within 180 days after learning of the pay difference, and must be returned to the Department of Labor’s Chicago office.²³ Forms can be found at the Department’s website, [their website](#)²⁴, under the “Complaint Forms” link on the left. The Department is the sole authority responsible for investigating your claim.²⁵ Claims should be accompanied by two “supporting documents,” which can include any documentation to support your claim (e.g., an office memo from your boss promising a raise).²⁶

Women may bring claims on their own directly in state court, but the process through the Illinois Department of Labor is probably faster because of the degree of specialization.²⁷ However, if you learned of the pay difference more than 180 days ago, you should pursue your claim in state court where you have three years to make a claim.²⁸

What happens when I bring a claim?

The Department of Labor will send a notice to your employer that they are conducting an investigation. Your employer will then have 30 days to respond to the Department with information that is relevant to the case including, for example, wages of employees.²⁹ The Department investigation of your claim could include in-person visits by Department workers, letters, phone calls, etc.³⁰

The Department will then notify you when it receives the employer’s response and will provide you with a copy. You will be given 30 days to complete a written “rebuttal” or answer to what your employer had to say.³¹ If you do not submit your rebuttal, the case will be dismissed.³² Also, you must remain available to the Department for investigation procedures, including interviews and conferences; if they cannot locate you, your case will be dismissed.³³

What happens at a “fact-finding conference?”

The Department may bring you and your employer together for a fact-finding conference during which it will discover evidence, explain the current status of the investigation, and explore the possibility of settlement.³⁴ You will be told about the conference at least 10 days in advance. You are allowed to bring an attorney, though the presence of an attorney is not required.³⁵

So what happens when the investigation is complete?

If the Department of Labor finds “reasonable cause” to support your case, you can try to settle the case with your employer out of court or sue your employer upon the Department’s recommendation.³⁶ If the Department does not find “reasonable cause” to support your case, your complaint will be dismissed.³⁷

What do I get if I win my case?

You can get “back pay” (money your employer owes you from not paying you what it should have), as well as any other relief that the court or a settlement deems appropriate.³⁸

Can I appeal my case if the Department finds there is no “reasonable cause” to support my case?

Yes, but you must do so within 15 days of the Department’s written decision by sending a written notice marked “Request for Informal Hearing” to the Department’s Chicago office.³⁹ If the Department believes your case might have merit after all, it can be tried before an administrative judge.⁴⁰

Illinois – Sexual Harassment

It Happened to Me: A Real Story

Linda was hired by the Illinois Department of Corrections (“Department”) in August 1978. After a few years between other sub-divisions, she became a public information officer in 1981. Linda filed a claim against her supervisor, Nicholas, for sexual harassment in May of 1984. Over the course of three years, Linda suffered verbal abuse by her supervisor. She testified that her supervisor referred to women in a derogatory and sexual manner, depending on whether he thought they were attractive. Linda also testified that her supervisor would bring inappropriate merchandise catalogues into work, asked workers to make long distance phone calls to pornographic services, and even asked Linda whether she was raising her daughter to be a “porno star.”

Linda filed a sexual harassment claim against the department. Beginning in May 1984, Linda also brought a tape recorder to work and placed it on her desk. After being accused of illegally taping conversations, she was placed on suspension and ultimately discharged in August of 1984. At the hearing before the Human Rights Commission (HRC), Linda, in addition to testifying on her own behalf, presented the testimony of other employees who either worked with or under her supervisor. Linda won her case before the HRC after proving the comments constituted a “hostile work environment.” She also won on a retaliation claim and was awarded \$81,465.27 for back pay and \$23,131.50 for lost benefits.

State of Illinois v. Human Rights Commission, 534 N.E.2d 161 (Ill. App. 4d 1989).

I think I am being sexually harassed at work, how do I prove it?

Sexual harassment exists when an employee experiences:

- 1) Sexual verbal or physical conduct;
- 2) Unwelcome by the individual alleging sexual harassment;
- 3) Having the purpose or effect of either: a) substantially interfering with the individual’s work performance; or b) creating an intimidating, hostile, or offensive working environment.⁴¹

There are two forms of sexual harassment: Quid Pro Quo and Hostile Work Environment.

What does “Quid Pro Quo” sexual harassment look like?

Quid Pro Quo is a form of sexual harassment where an employee’s refusal to submit to their employer’s sexual demands or inappropriate conduct can form the basis for termination or employment decisions taken against the employee.⁴²

What does “Hostile Work Environment” sexual harassment look like?

“Hostile Work Environment” sexual harassment involves a pattern of sexual misconduct by a co-worker that has is intended or results in “substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.”⁴³

How do I show that sexual harassment created a hostile work environment or affected my ability to work?

This can be done in several ways. For example, you can introduce evidence about events at the office, the context in which the comments were made, the nature and frequency of the comments or behavior,⁴⁴ or any complaints made to your supervisor or boss.⁴⁵

How do I show that my employer knew what was going on?

In Illinois, the employer will be held responsible for any harassment done by a supervisor or manager, even if the employer did not know about the harassment.⁴⁶

My employer has fewer than 15 employees – is there anything I can do?

Unlike other discrimination, an employer is liable for sexual harassment in Illinois even if it employs only one employee.⁴⁷

Can I file a claim against my co-worker if he is not my boss or supervisor?

No. Your employer (i.e. a supervisor or manager) must be made aware of the sexual harassment. The employer must then take reasonable action to correct the behavior or the employer will be held responsible for the sexual harassment.⁴⁸

I complained to my employer and they reprimanded the harasser. Can I still file a claim?

Yes, depending on whether or not your harasser was your supervisor or manager. If that is the case, you may still bring a claim under Illinois law. If s/he were your co-worker, the court will look at the reasonableness of your employer’s handling of the situation.⁴⁹

What if my harasser is also a woman?

This does not matter because same-sex sexual harassment is recognized in Illinois.⁵⁰

Is one incident of sexual harassment sufficient basis for a claim?

One incident is generally not sufficient for a claim of hostile work environment harassment.⁵¹ However, quid pro quo harassment could possibly be proven with only a single incident if the act was severe and extensive.

What if the harassment has been going on for a long time?

You should act as soon as possible. Illinois requires you to file within 180 days of the last incident of harassment. If you do not file within 180 days, the charge will be dismissed.⁵² Your employer must answer the allegations within 60 days or risk an automatic judgment in your favor.⁵³ For a claim of “hostile work environment” sexual harassment, you can bring in events or behavior that occurred outside of the 180 day time limit, as long as one of the events is within the 180 day period.⁵⁴

Can I get damages for emotional distress?

If the emotional distress is because of the sexual harassment at work, you must file a complaint with the Illinois Department of Human Rights (IDHR), which allows for emotional distress damages in the term “actual damages” found in the statute.⁵⁵

You may bring a claim for emotional distress directly to court without going through the IDHR if your emotional distress is not related to a discrimination claim.⁵⁶ In that case, every part of your emotional distress claim needs to be shown to be independent of the sexual harassment claim.⁵⁷

Illinois – Pregnancy Discrimination

It Happened to Me: A Real Story

Kim was a saleswoman in the accessories department at Lord and Taylor department store in Chicago, Illinois. Kim worked at the store for three years prior to becoming pregnant. During her first trimester, Kim was experiencing severe morning sickness which caused her to be tardy to work several times. As a result of her tardiness, Kim was put on probation, but during her probation period Kim continued to experience morning sickness and was tardy several more times. After the probation period ended, and on the day before Kim was to go on maternity leave, she was fired. Kim's boss told her she was being fired because she did not think that Kim would return to work after her child was born. Despite the fact that Kim was able to show that her boss discriminated against her, she ultimately did not prevail because she was unable to show that her tardiness was treated any differently than the tardiness of other non-pregnant employees.

Troupe v. The May Department Stores Company, 20 F.3d 734 (7th Cir. 1994).

What is pregnancy discrimination and does Illinois law cover it?

Pregnancy discrimination occurs when a woman is discriminated against because she is pregnant, suffering from some pregnancy-related illness, or is suspected of becoming pregnant in the future.

Under the Illinois Human Rights Act, women are protected from being discriminated against based on pregnancy.⁵⁸ The Illinois Human Rights Act prohibits discrimination on the basis of sex, and courts have found that sex encompasses pregnancy because it is a condition unique to the female condition.⁵⁹

Under federal law you are also protected from being discriminated against under the Pregnancy Discrimination Act (PDA) and the Family Medical Leave Act (FMLA).

I think I am being impacted or treated differently because of my pregnancy? How do I prove it?

To prove that you have been discriminated against because you are pregnant you must prove the four following factors:

(1) You are a member of the protected class (as a woman you are member of a protected class);⁶⁰

(2) You met your employer's expectations⁶¹ (this can be shown through performance evaluations, raises or promotions. If you plan on bringing a suit you should keep a record of such material and any feedback you receive from your superiors);

(3) You were subject to adverse action⁶² Adverse action can include being fired, demoted, passed over for a promotion or not being hired for a position; and,

(4) Other similarly situated employees who were not members of a protected class were treated more favorably.⁶³

If you are able to prove all four of the factors above, then your employer must show that you were fired for a legitimate non-discriminatory reason that was not pre-textual. Pre-text is a false reason given by the employer for the action to cover up the real discriminatory reason for the action. If your employer puts forward a legitimate non-discriminatory reason, you must show that their reason is pre-textual. If you are able to do this, you will have a valid claim in court and a chance of succeeding on your case.⁶⁴

I just found out that I'm pregnant, should I tell my employer?

It is your personal decision whether or not to tell your employer. However, if your employer does not know about your pregnancy and you suffer an adverse action, you will be hard pressed to prove that your pregnancy motivated your employer's action. In order to prove your case, you must show that your adverse action was motivated by employer's discriminatory intent, and this is usually shown by a short time span between employer's knowledge of your condition and adverse action.⁶⁵ Also, under the Family Medical Leave Act ("FMLA") you are required to give your employer 30 days notice when the leave is reasonably foreseeable. Pregnancy leave would be reasonably foreseeable.⁶⁶ For more information about the FMLA, please see "Family Medical Leave Act" under the Federal Laws section.

Can I ask my employer to make accommodations for me on account of my pregnancy?

Under the IHRA and the PDA, the employer is required to ignore the employee's pregnancy. In other words, while you may ask for accommodation (such as a reduced work schedule), your employer is not required to meet your requests because they are only required to treat you like all other non-pregnant employees.⁶⁷

For what amount of time can I take leave because of pregnancy?

Under the Family Medical Leave Act ("FMLA"), employers are required to give you up to 12 weeks of leave if you have worked for you employer for 12 months and for at least 1,250 hours.⁶⁸ However, the FMLA only applies to employers who employ more than 50 employees.⁶⁹ For more information about the FMLA, please see "Family Medical Leave Act" under the Federal Laws section.

What happens to my job while I am on pregnancy leave?

While on FMLA-approved leave, your job is still yours. Upon return from FMLA leave, you must be restored to your original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.⁷⁰

Can my employer deny me pregnancy leave?

If your employer is covered by FMLA (meaning they employ more than 50 employees) they cannot deny you 12 weeks unpaid leave.⁷¹ However, if you work for a smaller company that is not covered by the FMLA, it is their decision whether or not to grant you the leave.

I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?

Under both the IHRA and the federal PDA, an employer is required to treat pregnant employees like all other employees. An employer is not required to overlook your absences if they do not overlook the absences of non-pregnant employees.⁷² If you have excessive absences as a result of your pregnancy, whether it be for doctor's appointments or morning sickness, you can be fired.⁷³

Is my employer required to pay me while I am on pregnancy leave?

No, under the FMLA, all leave is unpaid. However, in certain circumstances and depending on your employer, you can use accrued sick and vacation time to be paid for at least a portion of your leave.⁷⁴

I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?

Under the FMLA, you have to be employed by your employer for 12 months in order to be eligible for leave,⁷⁵ so if you are already pregnant you might want to disclose this information to your potential employer in order to negotiate leave time. However, you are not required to disclose that you are pregnant if you do not want to.⁷⁶

Does my employer's health insurance have to cover the medical costs of my pregnancy?

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave, whenever such insurance was provided before the leave was taken and on the same terms as if you had continued to work.⁷⁷

Can my employer treat me differently because I am unmarried and pregnant?

No, an employer can not treat you differently because you are married irregardless of whether you are married or not. Under the IHRA and the PDA you have to be treated the same as all non-pregnant employees.⁷⁸

Does it matter how long ago the discrimination occurred?

Yes. You must file within 180 days from when the incident occurred.⁷⁹ Employers must answer the allegations within 60 days or risk a default judgment.⁸⁰

What options do I have if I my employer has fewer than 15 employees?

The Illinois Human Rights Act generally does not apply to employers with less than 15 employees.¹⁶ The exceptions are the State of Illinois, other Illinois government agencies, any company with a public contract, apprenticeships, and training committees, which have no requirement about the number of employees.¹⁷ Certain employers such as religious corporations, associations, non-profits, and educational institutions are excepted.¹⁸

For leave purposes, if you your employer employs fewer than 50 employees then you are not guaranteed maternity leave.⁸¹

Illinois – Discriminatory Hiring

It Happened to Me: A Real Story

A female accountant, Linda, sued her employer for not providing her a promotion opportunity. Linda was angry because she claimed that her firm had withdrawn her name from partnership consideration simply because she was female. Linda had a very strong case because she could show that she was qualified for the position. She had worked for the company for ten years, she had received positive employee evaluations from her supervisors, and she had previously been recommended for partnership status by her firm's Chicago and New York offices. In addition, Linda could show that the partnership positions were given to males, and that the firm had a policy of limiting the number of females hired out of college. Based on the strength of this evidence, Linda's case was strong enough to go to trial. The case was settled out of court.

Seitz v. Peat Marwick Main & Co. 704 F.Supp. 157 (N.D.Ill., 1989.)

Under what law is discriminatory hiring and promotion regulated?

Employment discrimination on the basis of sex is prohibited under Article I §§ 17-18 of the Illinois State Constitution.⁸² All actions are brought under the Illinois Human Rights Act 775 ILCS 5/1-101-102⁸³ (IHRA).⁸⁴ The IHRA is your exclusive avenue for employment discrimination claims; in other words, if you have a claim for emotional distress which resulted from discrimination, the IHRA is the only state remedy.⁸⁵

I wasn't hired and I think it is because I am a woman, How do I prove it?

In order to prove your case you must show the following:

- (1) You are a member of the protected class⁸⁶
- (2) You applied for and were qualified for the open position⁸⁷
- (3) You were rejected for the position despite your qualifications⁸⁸
- (4) After you were rejected the position remained open and the employer continued to seek applicants of your qualifications⁸⁹

How do I prove that I am a member of a protected group?

Under Article 1 §§17-18 of the Bill of Rights of the Illinois State Constitution and the Human Rights Act, gender is a protected class.⁹⁰

Must I prove that I didn't get the job or promotion because of my sex and not my qualifications? If so how?

If you have direct evidence of something discriminatory that your employer said (for example, a person on a hiring committee says "we need a man"), the employer will have

to persuade the court that the same decision would have been made, regardless of the discriminatory evidence against them.⁹¹

However, if you do not have such direct evidence (and most people do not), you must first prove what is called your “prima facie case,” which is set out above.⁹²

After you have proven that you were qualified for the position, the employer will have the opportunity to present a non-discriminatory reason for either not hiring or not promoting you, such as saying that the person who was promoted had superior job performance.⁹³

After the defendant has put forward a non-discriminatory reason, you must prove that the reason they offered is false (what lawyers call “pretext”). Pretext can be shown by persuading the court that a discriminatory purpose is more likely than not what motivated the employer’s decision.⁹⁴ This could be shown by evidence such as a record of the employer’s past practices.⁹⁵ For example, you could show that your employer typically went through a certain series of procedures before making a promotion, but failed to do so in your case.

Does it matter when the discrimination occurred?

You must file the complaint within 180 days of the alleged discrimination taking place - if you fail to file within 180 days, the statute of limitations will run and you will lose the right to make that claim.⁹⁶

What options do I have if my employer has fewer than 15 employees?

Under the Human Rights Act an employer is someone who employs more than 15 persons.⁹⁷ However, under the Act there are certain exceptions, where employers who employ fewer than 15 persons are covered. These exceptions apply to the state, municipalities, other government units (like school districts) and any entity that has a public contract (i.e. a contract with the state).⁹⁸

Illinois – Discriminatory Firing

It Happened to Me: A Real Story

Cynthia worked for Wal-Mart as a night receiving associate from February 1993 to June 1995. She worked with 10 to 15 male employees. Cynthia testified that the male employees would make derogatory remarks to her. She complained to a manager in March of 1995, but the behavior continued. In June 1995, Paul told Cynthia and the other employees that a shipment of fans was to be unloaded and kept separate from other merchandise. Cynthia tried to separate the fans according to her supervisor's instructions, but some of her male coworkers placed other merchandise on the fans' pallets. When she tried to stop them, they taunted her. Cynthia told Paul that she was tired of the way she was being treated and explained that her male coworkers were mixing up the merchandise on the pallets. She told Paul that she was too upset to continue working that night and wished to go home. Cynthia advised Paul that if the harassment did not stop she would have to consider giving her two-week notice. Paul then unlocked the door and walked Cynthia to her car.

When Cynthia returned to work on her next scheduled work night, Paul told her that she was fired for leaving work without permission. Cynthia's coworkers who had taunted her and mixed up the merchandise on her pallets were not disciplined in any way. Less than two weeks later, Cynthia filed a charge of discriminatory firing on the basis of sex against Wal-Mart. At the hearing before the Human Rights Commission (HRC), Cynthia proved that she is a member of a protected class, that she was performing her job satisfactorily, that she was fired despite performing satisfactorily, and that a similarly employee who was not a member of the protected group was not also fired. Cynthia gave evidence that one of her co-workers, John, was not fired for leaving work early.

Wal-Mart Stores Inc., v. Human Rights Commission, 717 N.E.2d 552

I think I was fired because I'm a woman, how do I prove it?

To show that you were fired because of your sex you must prove the following four factors:

1. You are a member of the protected class (meaning you are a woman)⁹⁹
2. You were performing your job satisfactorily¹⁰⁰
3. You were fired despite the adequacy of your job performance¹⁰¹
4. Similarly situated employees who were not members of the protected group were not fired¹⁰²
 - a. For example, if you are fired for leaving early and a male colleague who also left early is not fired than you could prove this factor.¹⁰³

If you are able to prove all four of the factors above then your employer must then show that you were fired for a legitimate non-discriminatory reason that was not pre-textual.

Pre-text is a false reason given by the employer for the action to cover up the real discriminatory reason for the action. If your employer puts forward a legitimate non-discriminatory reason then you must show that their reason is pre-textual. If you are able to do this then you will have a valid claim in court and a chance of succeeding on your case.¹⁰⁴

How do I prove that I belong to a protected group?

As a woman you are automatically a member of a protected group under the Illinois Human Rights Statute.¹⁰⁵

How do I prove that I performed at an acceptable level?

The court will look at various things to determine whether your job performance was acceptable among them are you past work evaluations, any increases in pay you have received, and your educational, knowledge and training level.¹⁰⁶ If you plan on bringing a claim you should keep a record of the above mentioned materials as well as a record of the date and details of anything you believe to be discriminatory behavior.

How do I show my employer did not discharge a similarly situated employee?

You must show that a similarly situated employee (a male) engaged in the same or similar behavior and was not subject to adverse action. For example, the male employee left work early and was subject to a performance review and a second chance while you left early and were fired.¹⁰⁷

What if I resigned or quit my job?

You might have a claim for constructive discharge.¹⁰⁸ Constructive discharge occurs when employer deliberately makes working conditions so intolerable as to force employee's involuntary resignation.¹⁰⁹

How do I prove constructive discharge?

Constructive discharge is illegal under the Illinois Human Rights Act. To prove it, the court must be satisfied that a reasonable employee in your employment situation would have felt forced to quit work.¹¹⁰ This means that common occurrences at work, such as stares and occasional off-color remarks, probably won't help your claim because reasonable employees are expected to put up with this kind of behavior. You will have to show that your work environment went beyond everyday annoyances.¹¹¹

Does it matter when the discrimination occurred?

Yes. You must file within 180 days.¹¹² Employer must answer the allegations within 60 days or risk a default judgment.¹¹³

What options do I have if I my employer has fewer than 15 employees?

The Illinois Human Rights Act generally does not apply to employers with less than 15 employees.¹¹⁴ The exceptions are the State of Illinois, other Illinois government agencies, any company with a public contract, apprenticeships, and training committees which have no requirement about the number of employees.¹¹⁵ Certain employers such as religious corporations, associations, non-profits, and educational institutions are excepted.¹¹⁶

If I prove my wrongful termination claim, what kind of remedies am I entitled to?

There are many options depending on your specific situations. Among the possible remedies are getting your job back or stop a transfer, receive back pay (money your employer owes you from not paying you what it should have) and any lost benefits, seniority, attorney and expert witness costs in addition to possible emotional damages. The employer will also pay civil penalties between \$10,000 to \$50,000 and be made to submit reports detailing how it is complying. Awards of interest on your actual damages from the date of the civil rights violation is also recoverable.¹¹⁷

If, in the process of filing your complaint, you received an offer in good faith from the employer to return to the same job with your position restored and resolving your complaint, you should entertain the thought seriously. Illinois law requires employees to reduce losses.¹¹⁸ If you fail to do so, you could forfeit backpay.¹¹⁹

Illinois - Retaliation

It Happened to Me: A Real Story

Mary was hired by the Company in 1978 and was the only full-time employee in the Peoria office. In March of 1981, Mary filed a charge with the Department of Human Rights (Department) and the Equal Employment Opportunity Commission alleging age and sex discrimination. She claimed she was denied training and promotion opportunities which were made available to a younger man. The company received notice of the discrimination charge on April 3, 1981. Seven days later, Mary was notified by the Company's president that she was discharged effective April 30, 1981. Mary testified that when she asked why she was being terminated, the Company's president stated that she was being fired for the letter she sent to Chicago. The only letter Mary sent to Chicago during this period was the discrimination charge submitted to the Department through her attorney.

An investigator from the Department assigned to Mary's case, recommended to the Company that it offer to reinstate her to her former position with back pay and seniority. The Company submitted a settlement offer to Mary in May. The terms of the offer included reinstatement at her former salary with full back pay and addressed her training and other work-related concerns. Mary refused to accept the offer. The only thing Mary wanted that wasn't in the terms was a raise, which the Company was unwilling to pay.

At the hearing, Department's administrative judge found that Mary was fired for retaliation. She won back her job, her seniority, and \$7,000 in attorney's fees and court costs. Her \$7,000 in costs all happened after the Company's offered her job back under the terms above. The company appealed the decision saying the Department did not properly consider its reasons for firing Mary and that Mary shouldn't have received \$7,000 for fees because she failed to accept the Company's offer to come back. At court, the Company was found to have retaliated against Mary, but Mary lost the \$7,000 in fees and partial back pay. She lost because she did not take a good offer from the Company. The offer would have placed her in as good or better position as she was when she was fired.

The moral of this story is that you should not reject a good faith offer from an employer to compensate for the discrimination. In making this decision, you need to compare how your situation was before you suffered retaliation, and what your situation would be after accepting the employer's offer. If the two are equal or if the offer makes your work circumstances better, you should probably accept the offer. Otherwise, you may have to forfeit any backpay from the date of the offer and have to pay your own attorney's fees and costs.

Heeren Co v. Human Rights Commission 502 N.E. 2d 17 (Ill.App.3d 1986).

What is retaliation or reprisal, and how do I prove it?

Retaliation is wrongful firing for reporting a workplace violation¹²⁰ you believe to be illegal.¹²¹ For example, if you reported unlawful discrimination based on age, sex, race, sexual harassment of yourself or another, or if you testified at a hearing against the company.¹²²

All retaliation claims are brought under the Illinois Human Rights Act (IHRA) which can be found at their website.¹²³ The IHRA preempts you from filing a common law claim based upon the retaliation.¹²⁴

How do I prove that I have been retaliated against?

Under the Illinois Human Rights Act to prove retaliation you must show the following:

- 1) You must show that you engaged in protected activity¹²⁵ (meaning that you reported in good faith what you believed to be unlawful discrimination or activity)
- 2) You must show that you suffered an adverse action¹²⁶ (meaning you must show that you suffered a detriment at work such as a firing or a demotion)¹²⁷
- 3) You must show that there is a causal connection between the protected activity and the adverse action suffered.¹²⁸ (This must be shown through substantial evidence. Substantial evidence can take different forms but can be shown by a short time span between you reporting the conduct and the adverse action and that your employer knew about the conduct.)

If you are able to prove all of the three of the factors above then your employer must show that you were fired for a legitimate non-discriminatory reason that was not pre-textual.¹²⁹ Pre-text is a false reason given by the employer for the action to cover up the real discriminatory reason for the action.¹³⁰ If your employer is able to put forward a legitimate non-discriminatory reason (they will most likely be able to do so), then you must show that its reason is pre-textual. If you are able to do this then you will have a valid claim in court and a chance of succeeding on your case.

For what reasons can I be fired?

You can be fired for a legitimate non-discriminatory reason.¹³¹ In other words, weak job performance, bad attendance record, violation of company policy and tardiness are all legitimate reasons for which you can be fired.¹³²

The state of Illinois follows a policy of at-will employment, meaning that your employer can fire you for any reason as long as it does not violate a clearly mandated public policy.¹³³ The test for determining if retaliatory discharge violates a public policy is if it violates the purpose for which the constitutional or statutory provision was enacted.¹³⁴ For example, the IHRA was enacted to prevent workplace discrimination so if you are

fired in retaliation for reporting discriminatory activity, then the retaliation would violate a clearly mandated public policy.¹³⁵

How do I show that my legally protected interests have been violated?

In order to show that your discharge was in retaliation for you engaging in legally protected conduct you must prove a causal link between the filing of your cause of action (or other protected conduct, testifying, etc.) and the adverse employment action suffered. One way to show this is by showing a short period of time between your filing the complaint and the adverse action suffered.¹³⁶ You must also prove that the employer knew about the protected conduct.

What is an "adverse action"?

An adverse action can include getting fired, being demoted, losing benefits, or being given less job responsibility.¹³⁷

The action must cause a materially adverse change in the terms and conditions of employment that is "more disruptive than a mere inconvenience or an alteration of job responsibilities."¹³⁸

For example, if you after you file a complaint you are transferred to another position at the same level with the same pay and benefits, that does not constitute an adverse action for retaliation purposes. Also, changing your work shift without a change in your title or responsibilities does not constitute an adverse action.¹³⁹ Receiving a warning or a performance evaluation does not necessarily constitute an adverse action in and of itself.¹⁴⁰

Must I show that my employer knew about my "protected conduct"?

Yes.¹⁴¹ If your employer didn't know about your protected conduct, then any action taken against you is not retaliation. The burden is on you to show that you were retaliated against in response to your protected conduct. If you can not show that your employer knew about your protected conduct then you will not be able to prove that its legitimate reason for firing you is pretext.¹⁴²

What could my employer do to deny my allegations, and how do I respond to its denials?

The employer can present a "legitimate non-discriminatory reason" as rebuttal. Common examples might include unsatisfactory job performance or violation of company policies.¹⁴³

If the employer does present a non-discriminatory reason it is then up to you to show that the reason the employer provided is not the real reason for your termination. This can be proven if the employer simply tells you that they are firing you for engaging in protected

conduct, like testifying in a case against the company. However, usually direct evidence such as this is unavailable. When such direct evidence is unavailable, though, inferences can be drawn in the employee's favor by showing circumstantial evidence that is relevant to the employee's situation.¹⁴⁴

While Title VII protects victims of sexual harassment from being terminated in retaliation for reporting harassment, an employee's complaint of harassment does not immunize her from being subsequently disciplined or terminated for inappropriate workplace behavior.

If I prove retaliation, what kind of remedies am I entitled to?

If you are able to prove retaliation then you have several remedies at hand. You can stop the adverse action like an unwanted transfer, you can get your job back, you can receive back-pay, lost benefits, restore lost seniority, and be reimbursed for any attorney and expert witness costs incurred as a result of trial.¹⁴⁵

The employer will also pay civil penalties between \$10,000 to \$50,000 and be made to submit reports detailing how it is complying. Awards of interest on your actual damages from the date of the civil rights violation is also recoverable.¹⁴⁶

If, in the process of filing your complaint, you received an offer in good faith from the employer to return to the same job with your position restored and resolving your complaint, you should entertain the thought seriously. Illinois law requires employees to reduce losses.¹⁴⁷ If you fail to do so, you could forfeit back-pay.¹⁴⁸

My employer has fewer than 15 employees – is there anything I can do?

The Illinois Human Rights Act generally does not apply to employers with less than 15 employees.¹⁴⁹ For retaliation claims, however, there is no employee minimum, so you can bring a claim even if your employer has less than 15 employees.¹⁵⁰

Is there a time limit for when I can file a claim with the HRC?

Yes. You must file your claim within 180 days. Your employer must answer the allegations within 60 days or risk a default judgment.¹⁵¹

Illinois – How Do I File a Claim?

How do I file a state claim with the Illinois Department of Human Rights?

To file a claim you can visit the office in person in either Springfield or Chicago. Walk-in interviews are offered Monday through Thursday without an appointment. You may also contact the office by email, but claims are filed either in person, through the mail or via fax.

Against whom can I file a claim?

You can file a claim under the Human Rights Act against your employer, employment agency, or labor organization.¹⁵² If you have a sexual harassment claim, you can file against an individual or an employer. Remember, you must file your claim within 180 days of the discrimination or risk losing it.¹⁵³

If I choose to file a claim, what is expected of me?

If you do choose to file a claim, you will be able to do so after an interview with an IDHR representative. The representative will discuss with you the options you have available as well as what is expected of you.¹⁵⁴

How long will the process take?

The IDHR has 365 days from the filing of your complaint to investigate, inform your employer, hold hearings, and prepare a report either recommending suit or not. That time period may be extended if both you and your employer agree to do so in writing.¹⁵⁵

Do I need an attorney?

You do not need an attorney for any part of the IDHR process. You may retain one if you choose, at your own expense.

What if I can't afford an attorney?

The IDHR does not recommend any specific private attorney, but it does have a list of legal aid associations and other organizations that can represent people who want to file a claim.¹⁵⁶ Remember too that you do not need an attorney to file a claim and there is no fee to file a claim.¹⁵⁷

What will my attorney need from me?

If you do choose to have an attorney file for you, the attorney will need to have the following information:¹⁵⁸

- Your full name, mailing address and a phone number;

- Accurate and complete information--including name(s), address(es) and telephone number(s)--of the individual(s) or organization that is charged with the discrimination;
- The most recent date the alleged discrimination;
- Names and contact information for any witnesses; and
- Copies of any relevant documents.

Do I have to contact the IDHR?

Yes if you don't want to go to the federal agency, the EEOC, you must contact IDHR to initiate a claim. Even if you do not want to go to court and prefer mediation, that is done through IDHR as well. If you would rather take your case to the EEOC, you may do so.

Can't I sue my employer directly without going through the IDHR?

No. Under Illinois law if you want to sue, you must initiate the process through IDHR. After the IDHR reviews your claim and hears what your employer has to say, it will then decide whether or not to give you leave to sue. You can appeal their final decision in state court.¹⁵⁹ If you wish to take your case to the federal level, you must wait 60 days from the start of your claim process with IDHR.¹⁶⁰

Who will investigate my complaint?

The IDHR will investigate your complaint. It has the power to look through documents and records, compel witnesses, and generally discover facts.¹⁶¹

What happens after I submit my claim?

The Department will ask you and your employer to consider conciliation (mediation). If you don't agree to mediation, it will then conduct an investigation. The Department then serves your complaint to your employer within 10 days and requires it to respond within 30 days. It will then issue a report stating facts, names and contacts of witnesses, summary of questionnaires, and documents. The director then determines if there is substantial evidence. If there is substantial evidence, the IDHR will issue a complaint that is filed with the IHRC. If no substantial evidence exists the Department will dismiss your claim.¹⁶²

What happens if the investigators determine that no "substantial evidence" exists on which to base a claim?

They will not refer your charge to the IHRC.¹⁶³

What happens if I appeal the IDHR's decision that there is not substantial evidence?

Your appeal goes to the IHRC, where they review the IDHR's report and any evidence you presented.¹⁶⁴

What happens if the investigator determines that "substantial evidence" exists on which to base a claim?

If your claim does have substantial evidence, the department will call a conciliation conference where you and your employer meet to possibly settle. If no settlement occurs, the department will refer the complaint to the Illinois Human Rights Commission (IHRC) for a hearing.¹⁶⁵

The IHRC will have 30-90 days after receiving the complaint to hold a hearing where both you and the employer will appear. The IHRC then will come to a final decision in writing and its recommendations based on whether it believes there was a civil rights violation or not.¹⁶⁶

What is the difference between mediation and a hearing?

Mediation is a voluntary meeting between you and your employer to see if the issue can be resolved. By going to mediation neither you, nor your employer, will give up any rights to pursue the matter further. What is said in mediation will not be disclosed.¹⁶⁷

What happens if I don't want mediation or no resolution can be reached through mediation?

If a solution cannot be found through mediation, the IDHR will then determine if your claim is valid and, if so, file a complaint with the IHRC.

Can I sue my employer?

Yes, but if the charge is discrimination in employment, you must follow the IDHR or EEOC procedure before you get to court.

Can I file a federal claim of employment discrimination as well? If so, how?

You can go directly to the EEOC, if you have decided not to go through the state agency. If you already started the IDHR procedure and wish to take your case to the federal level, you must wait 60 days from the start of your claim process with IDHR.¹⁶⁸

What are the advantages and disadvantages of filing a federal claim over a state claim?

The Illinois Human Rights Act closely follows federal law found in Title VII of the Civil Rights Act of 1964. It is no surprise then that Illinois courts follow the federal model in interpreting the Human Rights Act.¹⁶⁹

From a practical standpoint, the IDHR is good for smaller cases where less money is at stake. It has a mandatory mediation provision. Time is also a factor. IDHR is faster, but it

is tougher to get an order for cause. If you have no lawyer, stick to IDHR, because federal procedure is complicated and not all federal judges like to deal with non-lawyers, because of federal court procedures. However, the Chicago branch of EEOC is said to be the "best in the country" and procedures allow for some cross-examination, which is more than IDHR's "investigative" function.¹⁷⁰

Just remember that if you do file federally and then want to go back to state courts, filing with the EEOC is not a substitute for a final order from the IHRC.¹⁷¹ You will have to start from the beginning with the IDHR.

How do I contact the IDHR?

You can contact the IDHR by email, phone, fax, mail or in person.
Chicago¹⁷²:

Hours: Monday thru Friday, 8:30 AM - 5 PM.
By phone: (312) 814-4321. TDD: (312) 263-1579
By email: Angelina_Huerta@cms.state.il.us
By fax: (312) 814-1436 (Administration)
(312) 814-6251 (Charge Process)
(312) 814-2397 (Compliance)

By mail: Chicago
Department of Human Rights
James R. Thompson Center
100 West Randolph Street, Suite 10-100
Chicago, Illinois 60601

Springfield¹⁷³:

By phone: (217) 785-5100
(217) 785-5125 (TDD)
By email: Angelina_Huerta@cms.state.il.us
By fax: (217) 785-5106
By mail: Springfield
Department of Human Rights
222 South College, Floor 1
Springfield, Illinois 62704

Illinois – What Am I Entitled To If I Win?

What am I entitled to if I prove my claim?

Under the Illinois Human Rights Act, if you prove your claim, you can get your job back, stop a transfer, recover backpay, any lost benefits, seniority, attorney and expert witness costs in addition to possible emotional distress damages. The employer will also pay civil penalties between \$10,000 to \$50,000 and be made to submit reports detailing how it is complying with the ruling. Awards of interest on the complainant's actual damages from the date of the civil rights violation is also recoverable.¹⁷⁴

What are damages for emotional distress?

Emotional distress is emotional harm and/or mental suffering. Illinois law allows for compensation for emotional distress under the “actual damages” provision of the Human Rights Act.¹⁷⁵

What are attorney and expert witness costs?

First, you do not need an attorney for any part of the process in filing a discrimination claim. If you choose to have an attorney represent you and you win your claim before the Human Rights Commission, you can recover costs for your attorney and expert witnesses.

If I am not satisfied with the result, can I appeal?

Yes. You can ask for a review of the Human Rights Commission (HRC) decision within 30 days.¹⁷⁶ The HRC then reviews its own decision. If you want to appeal the HRC decision to state court, you have 35 days from the date you received the commission’s final decision.¹⁷⁷ Your appeal of the HRC’s decision will be reviewed in the Illinois Appellate Court.¹⁷⁸

¹ All endnotes in the Illinois section follow the standard Blue Book citation form.

² ILL. CONST. of 1970, art. I §18 (1970)

³ 775 ILL. COMP. STAT. ANN. 5/1-102(A).

⁴ 775 ILL. COMP. STAT. ANN. 5/2-102(A)(1)(a)-(c).

⁵ 775 ILL. COMP. STAT. ANN. 5/2-102(B)(1)-(2).

⁶ 775 ILL. COMP. STAT. ANN. 5/1-102(A).

⁷ 775 ILL. COMP. STAT. ANN. 5/2-102(A).

⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802–04 (1973).

⁹ *Stone v. Illinois Human Rights Commission*, 700 N.E.2d 11105 at 1110 (Ill. App. 4d. 1998).

¹⁰ *Stone v. Illinois Human Rights Commission*, 700 N.E.2d 11105 at 1110 (Ill. App. 4d. 1998).

¹¹ IDHR: Illinois Department of Human Rights, www.state.il.us/dhr.

¹² 775 ILL. COMP. STAT. ANN 5/7A-102 (G) (2007).

¹³ *Stone v. Illinois Human Rights Commission*, 700 N.E.2d 11105 at 1110 (Ill. App. 4d. 1998).

¹⁴ *Fallon v. Illinois*, 882 F.2d 1206 at 1209 (7th Cir.1989).

¹⁵ *Fallon v. Illinois*, 882 F.2d 1206 at 1209 (7th Cir.1989) (“[E]qual work” means jobs with a “common core” of tasks. If a “common core” of tasks is found, the court will make sure that there are not *any* other factors – skill, effort, and responsibilities - that make the jobs “substantially different....”).

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- ¹⁶ *Fallon v. Illinois*, 882 F.2d 1206 at 1209 (7th Cir.1989).
- ¹⁷ *Cullen v. Indiana University Board of Trustees*, 338 F.3d 693, at 698 (7th Cir. 2003).
- ¹⁸ Illinois Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007) (“Merit system” means an established, bona fide, uniform and objective system that rewards an employee with promotion, bonus, increased pay or other advantages based on competence, expertise, proficiency and human relations. “Seniority system” means a system that gives preference to employees based on years of service.).
- ¹⁹ Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007)
- ²⁰ Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007)
- ²¹ Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007)
- ²² Telephone interview with Nancy Hernandez, Equal Pay Specialist, Illinois Department of Labor (Mar. 2, 2007).
- ²³ Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007)
- ²⁴ IDOL: Illinois Department of Labor, www.state.il.us/agency/idol
- ²⁵ Department of Labor *Equal Pay Act of 2003*, Jan. 2004, <http://www.state.il.us/agency/idol/forms/PDFS/epaout.pdf> (last visited Feb. 22, 2007)
- ²⁶ Telephone interview with Nancy Hernandez, Equal Pay Specialist, Illinois Department of Labor (Mar. 2, 2007).
- ²⁷ Telephone interview with Nancy Hernandez, Equal Pay Specialist, Illinois Department of Labor (Mar. 2, 2007).
- ²⁸ 820 ILL. COMP. STAT. ANN. 112/30.
- ²⁹ Ill. Admin. Code tit. 56, §320.310(c).
- ³⁰ Ill. Admin. Code tit. 56, §320.310(a).
- ³¹ Ill. Admin. Code tit. 56, §320310(d).
- ³² Ill. Admin. Code tit. 56, §320.310(d).
- ³³ Ill. Admin. Code tit. 56, §320.310(f).
- ³⁴ Ill. Admin. Code tit. 56, §320.320(a).
- ³⁵ Ill. Admin. Code tit. 56, §320.320(b)(c).
- ³⁶ Ill. Admin. Code tit. 56, §320.330(a).
- ³⁷ Ill. Admin. Code tit. 56, §320.330(b).
- ³⁸ Ill. Admin. Code tit. 56, §320.340(a).
- ³⁹ Ill. Admin. Code tit. 56, §320.600.
- ⁴⁰ Ill. Admin. Code tit. 56, §320.600.
- ⁴¹ *Trayling v. Board of Fire and Police Commissioners of the Village of Bensenville*, 652 N.E.2d 386 at 393 (Ill. App. 2d 1995).
- ⁴² 775 ILL. COMP. STAT. ANN. 5/2-101(E)(1)(2) (2007).
- ⁴³ 775 ILL. COMP. STAT. ANN. 5/2-101(E)(3) (2007).
- ⁴⁴ *State of Illinois v. Human Rights Commission*, 534 N.E.2d 161 at 171 (Ill. App. 4d 1989).
- ⁴⁵ *Pinnacle Limited Partnership v. Illinois Human Rights Commission*, 820 N.E.2d 1206 at 1214 (Ill. App. 4d 2004).
- ⁴⁶ *Pinnacle Limited Partnership v. Illinois Human Rights Commission*, 820 N.E.2d 1206 at 1214 (Ill. App. 4d 2004); *Board of Directors, Green Hill Country Club v. Illinois Human Rights Commission*, 514 N.E.2d 1227 at 122 (Ill. App. 5d 1987).
- ⁴⁷ 775 ILL. COMP. STAT. ANN. 5/2-101(B)(1)(b).
- ⁴⁸ *Pinnacle Limited Partnership v. Illinois Human Rights Commission*, 820 N.E.2d 1206 at 1214 (Ill. App. 4d 2004).
- ⁴⁹ *Pinnacle Limited Partnership v. Illinois Human Rights Commission*, 820 N.E.2d 1206 at 1214 (Ill. App. 4d 2004).
- ⁵⁰ *Pinnacle Limited Partnership v. Illinois Human Rights Commission*, 820 N.E.2d 1206 at 1214 (Ill. App. 4d 2004).
- ⁵¹ *Keppler v. Hinsdale Tp. High School Dist.* 86, 715 F.Supp. 862 at 866-67 (7th Cir, 1989).

- ⁵² *Pickering v. Illinois Human Rights Commission*, 496 N.E.2d 746 at 752 (Ill. App. 2d 1986).
- ⁵³ *Ferrari v. Illinois Dept. of Human Rights Commission*, 815 N.E.2d 417 at 421 (Ill. App. 4d 2004).
- ⁵⁴ *Gusciara v. Lustig*, 806 N.E.2d 746 at 752 (Ill. App. 3d 2004).
- ⁵⁵ *Village of Bellwood Bd. of Fire and Police Com'rs v. Human Rights Commission*, 541 N.E.2d 1248 at 1258 (Ill. App. 3d 1989).
- ⁵⁶ *Quantock v. Shared Marketing Services, Inc.*, 312 F.3d 899 at 905 (7th Cir. 2002).
- ⁵⁷ *Quantock v. Shared Marketing Services, Inc.*, 312 F.3d 899 at 905 (7th Cir. 2002).
- ⁵⁸ 775 ILL. COMP. STAT. ANN. 5/1-102(A)(2007).
- ⁵⁹ *Tranquilli v. Irshad*, 454 N.E.2d 377 at 378 (Ill.App.4d 1983) (“[W]e recognize that in certain instances a hiring practice which discriminates on the basis of pregnancy may constitute sex discrimination. Where, however, no men are in the job applicant pool and the hiring practice only favors non-pregnant women over pregnant women, pregnancy discrimination is not sex discrimination...”).
- ⁶⁰ *Spector v. U.S. Bank Nat. Ass’n*, 460 F.Supp.2d 861 at 865 (7th Cir. 2006).
- ⁶¹ *Spector v. U.S. Bank Nat. Ass’n*, 460 F.Supp.2d 861 at 865 (7th Cir. 2006).
- ⁶² *Spector v. U.S. Bank Nat. Ass’n*, 460 F.Supp.2d 861 at 865 (7th Cir. 2006).
- ⁶³ *Spector v. U.S. Bank Nat. Ass’n*, 460 F.Supp.2d 861 at 865 (7th Cir. 2006).
- ⁶⁴ *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).
- ⁶⁵ *Heeren Co. v. Illinois Human Rights Com’n*, 502 N.E. 2d 17 at 20 (Ill. App. 3d 1986) (“[D]ischarged employee established prima facie case that discharge was in retaliation for filing of complaint alleging age and sex discrimination where employee was discharged one week after employer received notice of complaint...”).
- ⁶⁶ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-102(e)(1).
- ⁶⁷ *Troupe v. The May Department Stores Company*, 20 F.3d 734 at 738 (7th Cir. 1994) (“[P]regnancy Discrimination Act does not require employers to offer maternity leave or take other steps to make it easier for women to work; Act requires employer to ignore employee’s pregnancy and treat both pregnant and non-pregnant employees similarly...”).
- ⁶⁸ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-101(2)(A)(i)(ii).
- ⁶⁹ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-101(4)(A)(i).
- ⁷⁰ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-104(a).
- ⁷¹ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-101(4)(A)(1).
- ⁷² *Troupe v. The May Department Stores Company*, 20 F.3d 734 at 738 (7th Cir. 1994).
- ⁷³ *Troupe v. The May Department Stores Company*, 20 F.3d 734 at 738 (7th Cir. 1994).
- ⁷⁴ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-102(d)(1)(2).
- ⁷⁵ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-101(2)(i)(ii).
- ⁷⁶ Telephone Interview with Lori Hoadley, Attorney, Hinshaw and Culbertson in Rockford Ill. (Mar. 2 2007).
- ⁷⁷ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-104(c)(1).
- ⁷⁸ *Troupe v. The May Department Stores Company*, 20 F.3d 734 at 738 (7th Cir. 1994).
- ⁷⁹ *Ferrari v. Illinois Dept. of Human Rights*, 815 N.E.2d 417 at 423 (Ill.App.4d 2004).
- ⁸⁰ *Ferrari v. Illinois Dept. of Human Rights*, 815 N.E.2d 417 at 423 (Ill.App.4d 2004).
- ⁸¹ The Family Medical Leave Act of 1993, 42 U.S.C.A. §2601-101(2)(B)(ii).
- ⁸² ILL. CONST. of 1970 art. I §§ 17-18.(1970).
- ⁸³ 775 ILL. COMP. STAT. ANN. 5/2-101-102.
- ⁸⁴ *O’Young v. Hobart Corp.*, 579 F. Supp. 418 at 423 (7th Cir. 1983).
- ⁸⁵ *Sanglap v. LaSalle Bank*, 345 F.3d 515 at 519 (7th Cir. 2003) (under Illinois Human Rights Act, intentional torts that are “inextricably linked” to civil rights violations must be adjudicated before the Illinois Human Rights Commission); *Jimenez v. Thompson Steel Co., Inc.*, 264 F. Supp.2d 693, at 695 (7th Cir. 2003) (under Illinois law, courts cannot hear actions for alleged violations of the Illinois Human Rights Act); *Baker v. Miller*, 636 N.E. 2d 551 at 554 (Ill.1994) (IHRA is exclusive remedy for employment discrimination).
- ⁸⁶ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 – 04 (1973).
- ⁸⁷ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 – 04 (1973).
- ⁸⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 – 04 (1973).
- ⁸⁹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 at 802 – 04 (1973).
- ⁹⁰ ILL. CONST. of 1970 art. 1 §§ 17-18 (1970); 775 ILL. COMP. STAT. ANN. 775 5/1-102(A).

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- ⁹¹ *Lalvani v. Illinois Human Rights Commission*, 755 N.E.2d 51 at 64 (Ill.App. 2001).
- ⁹² *Lalvani v. Illinois Human Rights Commission*, 755 N.E.2d 51 at 64 (Ill.App. 2001).
- ⁹³ *Lalvani v. Illinois Human Rights Commission*, 755 N.E.2d 51 at 64 (Ill.App. 2001).
- ⁹⁴ *Lalvani v. Illinois Human Rights Commission*, 755 N.E.2d 51 at 64 (Ill.App. 2001).
- ⁹⁵ *Warren Achievement Center v. Human Rights Commission*, 575 N.E.2d 929 at 932 (Ill. App. 1991) (allegation of sexual harassment constituted pretext when employee proved that investigation into allegation was insufficient, received no hearing concerning termination, and was not able to present evidence or explain to contradict accusation. Employee's inference of employer bias was also satisfactory to the judge).
- ⁹⁶ *Pickering v. Illinois Human Rights Com'n*, 496 N.E.2d 746 at 752 (Ill.App.2d 1986).
- ⁹⁷ 775 ILL. COMP. STAT. ANN. 5/2-101(B)(1)(a) (2007).
- ⁹⁸ 775 ILL. COMP. STAT. ANN. 5/2-101(B)(1)(a) (2007).
- ⁹⁹ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999).
- ¹⁰⁰ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999).
- ¹⁰¹ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999).
- ¹⁰² *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999) (female employee who was discharged allegedly for leaving work early established that similarly situated males was not discharged).
- ¹⁰³ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999).
- ¹⁰⁴ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555 (Ill. App. 2d 1999).
- ¹⁰⁵ 775 ILL. COMP. STAT. ANN. 5/6-101 (2007).
- ¹⁰⁶ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 553 (Ill. App. 2d 1999) (when looking at whether plaintiff performed her job at an acceptable level the court looked at her past work reviews as well as the merit pay increases she had received).
- ¹⁰⁷ *Walmart Store Inc. v. The Human Rights Commission*, 717 N.E.2d 552 at 555-56 (Ill. App. 2d 1999).
- ¹⁰⁸ *Board of Directors, Green Hills Country Club v. Illinois Human Rights Commission*, 514 N.E.2D 1227 at 1228 (Ill. App. 5d 1987) (constructive discharge found where former employees were repeatedly subjected to crude language and unwanted sexual advances by their manager).
- ¹⁰⁹ *Raintree Health Care Center v. Human Rights Commission*, 655 N.E.2d 944 at 950 (Ill. App. 1995).
- ¹¹⁰ *Motley v. Human Rights Commission*, 636 N.E.2d 100 at 102 (Ill. App. 4d 1994).
- ¹¹¹ *Motley v. Human Rights Commission*, 636 N.E.2d 100 at 102 (Ill. App. 4d 1994).
- ¹¹² *Pickering v. Illinois Human Rights Commission*, 496 N.E.2d 746 at 752 (Ill. App. 2d 1986).
- ¹¹³ *Ferrari v. Illinois Dept. of Human Rights*, 815 N.E.2d 417 at 423 (Ill.App.4d 2004).
- ¹¹⁴ 775 ILL. COMP. STAT. ANN. 5/2-101 (B) (2007); *Baker v. Miller*, 636 N.E.2d 551 at 554 (Ill. 1994).
- ¹¹⁵ 775 ILL. COMP. STAT. ANN. 5/2-101 (B) (2007); *Baker v. Miller*, 636 N.E.2d 551 at 554 (Ill. 1994).
- ¹¹⁶ 775 ILL. COMP. STAT. ANN. 5/2-101 (B) (2007); *Baker v. Miller*, 636 N.E.2d 551 at 554 (Ill. 1994).
- ¹¹⁷ 775 ILL. COMP. STAT. ANN. 5/8B-104 (2007).
- ¹¹⁸ *Heeren Co. v. Human Rights Commission*, 502 N.E. 2d 17 at 22 (Ill.App.3d 1986) (at this time it is unknown if offers by another employer would constitute a duty to mitigate).
- ¹¹⁹ *Heeren Co. v. Human Rights Commission*, 502 N.E. 2d 17 at 22 (Ill.App.3d 1986) (at this time it is unknown if offers by another employer would constitute a duty to mitigate).
- ¹²⁰ *Carter Coal Co. v. Human Rights Commission*, 633 N.E. 2d 202 at 207 (Ill. App.3d 1994) (“[T]erm “retaliate” in Human Rights Act encompasses employer’s failure to hire applicant because applicant had filed discrimination charge against former employer; retaliation was possible for acts toward third party, and no previous connection between actor and recipient outside retaliatory conduct was necessary...”).
- ¹²¹ 775 ILL. COMP. STAT. ANN. 5/6-101(A) (2007).
- ¹²² 775 ILL. COMP. STAT. ANN. 5/6-101(A) (2007).
- ¹²³ IDHR: Illinois Department of Human Rights, <http://www.state.il.us/dhr/>.
- ¹²⁴ *Guy v. State of Ill.*, 958 F. Supp. 1300, at 1312 (7th Cir. 1997) (Illinois Human Rights Act preempted employee’s state law claim for intentional infliction of emotional distress, where claim was based on retaliation by supervisors, the court found that this was inextricably linked to employee’s sexual harassment claims); *Corluka v. Bridgeford Foods of Illinois, Inc.*, 671 N.E. 2d 814 at 817 (Ill. App. 3d 1996) (Illinois Human Rights Act preempted former employee’s common law retaliatory discharge claim against his former employer, which was based on allegation that he was discharged in retaliation for having reported his supervisor’s alleged sexual harassment of other employees).

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- ¹²⁵ *Carter Coal Co. v. Human Rights Commission*, 633 N.E.2d 202 at 207 (Ill. App. 3d 1994).
- ¹²⁶ *Carter Coal Co. v. Human Rights Commission*, 633 N.E.2d 202 at 207 (Ill. App. 3d 1994).
- ¹²⁷ *Carter Coal Co. v. Human Rights Commission*, 633 N.E.2d 202 (Ill. App., 3d 1994) (here employee was fired in retaliation for filing a discrimination charge against former employer. Employee was informed that he was hired and then later that same day he was informed by the employer that he would not be hired after the new employer found out about his pending lawsuit against former employer. The employer tried to argue that this type of retaliation was not covered by the statute because they were not retaliating for a complaint filed against them but against someone else. The court found for the employee).
- ¹²⁸ *Carter Coal Co. v. Human Rights Commission*, 633 N.E.2d 202 at 207 (Ill. App. 3d 1994).
- ¹²⁹ *Maye v. Human Rights Commission*, 586 N.E.2d 550 at 555 (Ill. App. 1991).
- ¹³⁰ *Maye v. Human Rights Commission*, 586 N.E.2d 550 at 555 (Ill. App. 1991).
- ¹³¹ *Maye v. Human Rights Commission*, 586 N.E.2d 550 at 556 (Ill. App. 1991) (“[O]nce prima facie case of retaliation has been established, employer must articulate legitimate, nondiscriminatory reason for its decision to discharge employee...”).
- ¹³² *Heeren Co. v. Illinois Human Rights Commission*, 502 N.E. 2d 17 at 20 (Ill. App. 3d 1986) (“[E]mployer articulated legitimate nondiscriminatory reason for discharge of employee after employee had filed complaint alleging age and sex discrimination where employer indicated that employee’s job performance had been deficient and that employer had received complaints about employee’s performance from customers...”).
- ¹³³ *Barr v. Kelso-Burnett Co.*, 478 N.E. 2d 1354 at 1356 (Ill. App. 2d 1985) (“[C]ommon-law doctrine that employer may discharge employee at will for any reason or for no reason is the law in Illinois, except for when discharge violates clearly mandated public policy...”).
- ¹³⁴ *Barr v. Kelso-Burnett Co.*, 478 N.E. 2d 1354 at 1356 (Ill. App. 2d 1985).
- ¹³⁵ *Gould v. Campbell’s Ambulance Service, Inc.*, 488 N.E. 2d 993 at 993, (Ill. 1986) (emergency medical technicians who were discharged after allegedly voicing objections that another technician was not certified as required by city ordinance and that employer was operating in violation of ordinance did not have a cause of action for retaliatory discharge; relevant statutory provision and ordinance failed to show existence of a clearly mandated public policy).
- ¹³⁶ *State v. Human Rights Commission*, 534 N.E. 2d 161 at 173 (Ill. App. 4d 1989).
- ¹³⁷ *Crady v. Liberty Nat’l Bank & Trust Co.*, 993 F.2d 132 at 135-36 (7th Cir. 1993).
- ¹³⁸ *Crady v. Liberty Nat’l Bank & Trust Co.*, 993 F.2d 132 at 132 (7th Cir. 1993) (employee filed an age discrimination claim and was then transferred from one branch to another but retained the same salary and an equivalent position. The court found that this action did not materially alter the terms and conditions of his employment to constitute an adverse action).
- ¹³⁹ *Grube v. Lau Indus.*, 257 F.3d 723 at 728 (7th Cir. 2001).
- ¹⁴⁰ *Balderrama v. Kraft Foods North America, Inc.*, 307 F.Supp.2d 1012 at 1014 (7th Cir., 2004).
- ¹⁴¹ *Heeren Co. v. Illinois Human Rights Commission*, 502 N.E. 2d 17 at 20 (Ill. App. 3d 1986).
- ¹⁴² *Hall v. Bodine Elec. Co.* 276 F.3d 345 at 358 (7th Cir. 2002).
- ¹⁴³ *Heeren Co. v. Illinois Human Rights Commission*, 502 N.E. 2d 17 at 20 (Ill. App. 3d 1986).
- ¹⁴⁴ *Treadwell v. Office of Ill. Secretary of State*, 455 F.3d. 778 at 781 (7th Cir. 2006).
- ¹⁴⁵ 775 ILL. COMP. STAT. ANN. 5/8B-104 (2007).
- ¹⁴⁶ 775 ILL. COMP. STAT. ANN. 5/8B-104 (2007).
- ¹⁴⁷ *Heeren Co. v. Human Rights Commission*, 502 N.E. 2d 17 at 22 (Ill.App.3d 1986) (at this time it is unknown if offers by another employer would constitute a duty to mitigate).
- ¹⁴⁸ *Heeren Co. v. Human Rights Commission*, 502 N.E. 2d 17 at 22 (Ill.App.3d 1986).
- ¹⁴⁹ 775 ILL. COMP. STAT. ANN. 5/2-101(B) (2007); *Baker v. Miller*, 636 N.E.2d 551 at 556 (1994).
- ¹⁵⁰ *Dana Tank Container v. Human Rights Commission* 687 N.E.2d 102 at 103 (Ill. App. 1997).
- ¹⁵¹ *Ferrari v. Illinois Dept. of Human Rights*, 815 N.E.2d 417 at 423 (Ill.App.4d 2004).
- ¹⁵² 775 ILL. COMP. STAT. ANN. 5/2-102(A)-(C) (2007).
- ¹⁵³ *Robinson v. Human Rights Commission*, 559 N.E.2d 229 at 232 (Ill. App. 1990).
- ¹⁵⁴ See IDHR “Frequently Asked Questions” Section II Page: http://www.state.il.us/dhr/FAQ/FAQ_2.htm
- ¹⁵⁵ 775 ILL. COMP. STAT. ANN 5/7A-102(G) (2007).
- ¹⁵⁶ Illinois Department of Human Rights, Frequently Asked Questions Section II, http://www.state.il.us/dhr/FAQ?FAQ_2.html (last visited Mar. 2, 2007).

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- ¹⁵⁷ Illinois Department of Human Rights, Frequently Asked Questions Section II, http://www.state.il.us/dhr/FAQ?FAQ_2.html (last visited Mar. 2, 2007)
- ¹⁵⁸ Illinois Department of Human Rights, Frequently Asked Questions Section II, http://www.state.il.us/dhr/FAQ?FAQ_2.html (last visited Mar. 2, 2007).
- ¹⁵⁹ *McCraven v. City of Chicago*, 18 F.Supp.2d 877 at 882 (7th Cir. 1998).
- ¹⁶⁰ *Hong v. Children's Memorial Hosp.*, 936 F.2d 967 at 969 (7th Cir. 1991).
- ¹⁶¹ 775 ILL. COMP. STAT. ANN 5/7A-102(C)(1)-(4) (2007).
- ¹⁶² 775 ILL. COMP. STAT. ANN 5/7A-102(A)-(F) (2007).
- ¹⁶³ 775 ILL. COMP. STAT. ANN 5/7A-102(A)-(F) (2007).
- ¹⁶⁴ 775 ILL. COMP. STAT. ANN 5/8-103(B) (2007).
- ¹⁶⁵ 775 ILL. COMP. STAT. ANN 5/7A-102(A)-(F) (2007).
- ¹⁶⁶ 775 ILL. COMP. STAT. ANN 5/8A-102(A)-(H) (2007).
- ¹⁶⁷ 775 ILL. COMP. STAT. ANN 5/7A-102(B) (2007).
- ¹⁶⁸ 42 U.S.C. § 2000e-5(c) (2007); *Hong v. Children's Memorial Hosp.*, 936 F.2d 967 at 969 (7th Cir. 1991).
- ¹⁶⁹ *Atkins v. City of Chicago Com'n on Human Relations ex rel. Lawrence*, 667 N.E.2d 664 at 668 (Ill. App. 1996); *Pioneer Life Ins. Co. of Illinois v. Woodard*, 504 N.E.2d 230 at 242 (Ill.App. 2d 1987).
- ¹⁷⁰ Telephone interview with Aaron Maduff, Associate, Maduff & Maduff, in Boston, MA (Mar. 13, 2007).
- ¹⁷¹ *Jimenez v. Thompson Steel Co., Inc.*, 264 F.Supp.2d 693 at 695 (7th Cir. 2003).
- ¹⁷² Illinois Department of Human Rights, Contacts Address, http://www.state.il.us/dhr/Dhr_Int/dhr_adrs.htm (last visited Mar. 2, 2007).
- ¹⁷³ Illinois Department of Human Rights, Contacts Address, http://www.state.il.us/dhr/Dhr_Int/dhr_adrs.htm (last visited Mar. 2, 2007).
- ¹⁷⁴ 775 ILL. COMP. STAT. ANN. 5/8B-104 (2007).
- ¹⁷⁵ *Szkoda v. Illinois Human Rights Commission*, 706 N.E.2d 962 at 972 (Ill. App. 1d 1998).
- ¹⁷⁶ 775 ILL. COMP. STAT. ANN. 5/8B-103(F) (2007).
- ¹⁷⁷ 775 ILL. COMP. STAT. ANN. 5/8-111(A-1) (2007).