

General Personnel

Equal Employment Opportunity and Minority Recruitment ¹

The School District shall provide equal employment opportunities² to all persons regardless of their race; color; creed; religion;³ national origin; sex;⁴ sexual orientation;⁵ age;⁶ ancestry; marital status;⁷ arrest record;⁸ military status; order of protection status;⁹ unfavorable military discharge;¹⁰

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¹ Federal and State law (see the policy's legal references) require that all districts have a policy on equal employment opportunities and control this policy's content. **This is a complex, confusing, and highly litigated area of the law; consult the board attorney for advice on the application of these laws to specific fact situations.**

² *Equal employment opportunities* apply to virtually all terms and conditions of employment, e.g., discharge, hire, promotion, pay, demotion, and benefits (see legal references). The Illinois Constitution protects the following categories from discrimination in employment: race, color, creed, national ancestry, sex, and handicap (Art. I, §§17, 18, and 19). The Ill. Human Rights Act protects the following categories from discrimination in employment: race, color, religion, national origin, ancestry, age, sex, marital status, physical or mental disability~~handicap~~, military status, order of protection status, sexual orientation, pregnancy, and unfavorable discharge from military service (775 ILCS 5/1-102 and 1-103).

The Equal Employment Opportunities Act (Title VII) prohibits discrimination because of an individual's race, color, religion, sex, or national origin (42 U.S.C. §2000e et seq., amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2).

The Lilly Ledbetter Fair Pay Act clarifies that a discriminatory compensation decision or other practice occurs each time an employee is paid or receives a last benefits check pursuant to the discriminatory compensation decision as opposed to only from the time when the discriminatory compensation decision or other practice occurred. The Act has no legislative history available to define what the phrase *or other practice* might mean beyond a discriminatory compensation decision.

While not exhaustive, other laws protecting these and additional classifications are named in subsequent footnotes.

³ In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in footnote f/n 2); see the Religious Freedom Restoration Act (775 ILCS 35/).

⁴ In addition to the Ill. Human Rights Act and the federal Equal Employment Opportunities Act (discussed in f/n 2), see Title IX of the Education Amendments, 20 U.S.C. §1681 et seq. The federal Equal Pay Act prohibits an employer from paying persons of one gender less than the wage paid to persons of the opposite gender for equal work (29 U.S.C. §206(d). The State Equal Pay Act of 2003, 820 ILCS 112/, offers greater protection by prohibiting the payment of wages to one gender less than another gender *for the same or substantially similar work*. ~~TSimilar to the Lilly Ledbetter Fair Pay Act~~, now defines *date of underpayment* as each time wages are underpaid. Employees have one year from the time they become aware of the underpayment to file a complaint with the Ill. Dept. of Labor (820 ILCS 112/15(b)). ~~The Pregnancy Discrimination Act amended the Equal Employment Opportunities Act to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions (42 U.S.C. §2000e(k).~~

⁵ Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. *Sexual orientation* means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity; it does not include a physical or sexual attraction to a minor by an adult (775 ILCS 5/1-103(O-1).

⁶ Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq., amended by The Lilly Ledbetter Fair Pay Act, Pub.L. 111-2 (see f/n 2). 29 C.F.R. Part 1625, amended the EEOC regulations under ADEA to reflect the U.S. Supreme Court's decision in General Dynamic Systems, Inc. v. Cline, 540 U.S. 581(2004), holding the ADEA to permit employers to favor older workers because of age. Thus favoring an older person over a younger person is not unlawful discrimination, even when the younger person is at least 40 years old.

⁷ 105 ILCS 5/10-22.4 and 775 ILCS 5/1-103(Q). The term *marital status* means an individual's legal status of being married, single, separated, divorced, or widowed (775 ILCS 5/1-103(J)). This statutory definition does not encompass the identity of one's spouse. Thus, school districts may adopt no-spouse policies. Boaden v. Dept. of Law Enforcement, 664 N.E.2d 61 (1996).

⁸ Districts may not make employment decisions on the basis of arrest history, but may use job-disqualifying criminal convictions (775 ILCS 5/2-103). The Job Opportunities for Qualified Applicants Act, 820 ILCS 75/, added by P.A. 98-774, eff. 1-1-2015, prohibits an employer from asking about a criminal record until the employer determines that the applicant is qualified for the position; however, this does not apply when employers are required to exclude applicants with certain criminal convictions from employment. School employers should limit their requests for criminal convictions to *job-disqualifying* convictions. See also the U.S. Equal Employment Opportunity Commission's guidance, *Consideration of Arrest and Conviction Records in Employment Decisions*, at www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

citizenship status provided the individual is authorized to work in the United States;¹¹ use of lawful products while not at work;¹² being a victim of domestic or sexual violence;¹³ genetic information;¹⁴ physical or mental handicap or disability, if otherwise able to perform the essential functions of the job with reasonable accommodation;¹⁵ pregnancy, childbirth, or related medical conditions;¹⁶ credit history, unless a satisfactory credit history is an established bona fide occupational requirement of a particular position;¹⁷ or other legally protected categories. **18 19 20 21** No one will be penalized solely

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⁹ 775 ILCS 5/1-103(Q). The term *order of protection status* means a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state (775 ILCS 5/1-103(K-5)).

¹⁰ *Military status* means a person's status on active duty or in status as a veteran in the U.S. Armed Forces, veteran of any reserve component of U.S. Armed forces, or current member or veteran of the Illinois Army National Guard or Illinois Air National Guard (775 ILCS 5/1-103). *Unfavorable military discharge* does not include those characterized as RE-4 or *dishonorable*, (Id.). The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§4301 et seq., prohibits employers from discriminating or retaliating against any person for reasons related to past, present, or future service in a *uniformed service*. See footnote f/n 9 in policy 5:30, *Hiring Process and Criteria*.

¹¹ 775 ILCS 5/1-102(C). According to the Immigration Reform and Control Act of 1986, 8 U.S.C. §§1324(a) et seq., all employers must verify that employees are either U.S. citizens or authorized to work in the U.S.

¹² 820 ILCS 55/5 prohibits discrimination based on use of lawful products, e.g., alcohol and tobacco, off premises during non-working hours.

¹³ Victims' Economic Security and Safety Act, 820 ILCS 180/30, amended by P.A. 98-766. An employer is prohibited from discriminating against any individual (e.g. an applicant for employment) because he or she "is an employee whose employer is subject to Section 21 of the Workplace Violence Prevention Act." The Workplace Violence Prevention Act (820 ILCS 275/1, amended by P.A. 98-766) allows an employer to seek a *workplace protection restraining order* when there is a credible threat of violence at the workplace. Section 21 requires the employer seeking a *workplace protection restraining order* to notify the employee who is a victim of unlawful violence.

¹⁴ Illinois' Genetic Information Protection Act (GIPA) (410 ILCS 513/25) and Title II of Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. §2000ff et seq.). Both laws protect job applicants and current and former employees from discrimination based on their genetic information. Note that GIPA provides greater protections to Illinois employees than Title II of GINA. See footnote f/n 75 in 2:260, *Uniform Grievance Procedure* for the definition of genetic information and a detailed description of both statutes, including of Title I of GINA affecting the use of genetic information in health insurance. In 2011, EEOC published an informative guidance letter, *ADA & GINA: Incentives for Workplace Wellness Program*, EEOC Informal Discussion Letter. Consult the board attorney for guidance regarding specific application of these laws and how they integrate with other related laws, e.g., the Family Medical Leave Act, the Americans with Disabilities Act, and other State laws governing time off for sickness and workers' compensation.

¹⁵ Americans with Disabilities Act, 42 U.S.C. §§12104-1 et seq., amended by the Americans with Disabilities Act Amendments Act (ADAAA), Pub. L. 110-325 and modified by the Lilly Ledbetter Fair Act, Pub. L. 111-2; Rehabilitation Act of 1973, 29 U.S.C. §791 et seq., modified by the Lilly Ledbetter Fair Pay Act, Pub. L. 111-2.

¹⁶ 775 ILCS 5/2-102(I). Employers must provide reasonable accommodations to employees with conditions related to pregnancy or childbirth (775 ILCS 5/2-102(J), added by P.A. 98-1050, eff. 1-1-2015). Employers are required to post a notice summarizing the right to be free from unlawful discrimination and the right to certain reasonable accommodations. Id. at 5/2-102(K). The Ill. Dept. of Labor is required to prepare such a notice, retrievable from its website, which employers may use.

Federal law also prohibits employers from discriminating against employees and applicants on the basis of pregnancy, childbirth, or related medical conditions (42 U.S.C. §2000e(k)). Pregnant workers with pregnancy-related impairments may have disabilities for which they may be entitled to reasonable accommodation under the ADA (42 U.S.C. §12112). Guidance from the U.S. Equal Employment Opportunity Commission (744/207-14-14) is available at: www.eeoc.gov/laws/guidance/pregnancy_qa.cfm.

¹⁷ Employee Credit Privacy Act, 820 ILCS 70/. Unless a satisfactory credit history is an *established bona fide occupational requirement* of a particular position, an employer may not: (1) refuse to hire, discharge, or otherwise discriminate against an individual with respect to employment because of the individual's credit history or credit report, (2) inquire about an applicant's or employee's credit history, or (3) order or obtain an applicant's or employee's credit report from a consumer reporting agency. The Act identifies circumstances that permit a satisfactory credit history to be a job requirement, such as, the position's duties include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more.

¹⁸ Optional sentence (775 ILCS 5/1-103 and 29 U.S.C. §631):

Age, as used in this policy, means the age of a person who is at least 40 years old.

for his or her status as a registered qualifying patient or a registered designated caregiver for purposes of the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/. 22

Persons who believe they have not received equal employment opportunities should report their claims to the Nondiscrimination Coordinator and/or a Complaint Manager for the Uniform Grievance Procedure. These individuals are listed below. No employee or applicant will be discriminated or retaliated against because he or she: (1) requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by the Illinois Human Rights Act, or (2) initiated a complaint, was a witness, supplied information, or otherwise participated in an investigation or proceeding involving an alleged violation of this policy or State or federal laws, rules or regulations, provided the employee or applicant did not make a knowingly false accusation nor provide knowingly false information. 23

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19 Optional provision (~~29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114~~):

Handicap and disability, as used in this policy, excludes persons:

1. Currently using illegal drugs (~~29 U.S.C. §705(10)(A) and (B), and 42 U.S.C. §12114~~);
2. Having a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, are unable to perform the duties of the job ~~29 U.S.C. §705(20)(D)~~; or
3. Whose current alcohol or drug use prevents them from performing the job's duties or constitutes a direct threat to the property or safety of others. ~~Id. at 705(20)(C)(ii)(I)~~.

Persons who have successfully completed or are participating in a drug rehabilitation program are considered ~~disabled/handicapped~~. ~~Id. at 705(20)(I)~~.

20 Districts may not make residency in the district a condition of employment for teachers or educational support personnel (105 ILCS 5/24-4.1 and 10-23.5). This ban on residency requirements for teachers applies only to instructional personnel, and not, for example, to assistant principals. Owen v. Kankakee School Dist., 632 N.E.2d 1073 (Ill.App.3, 1994). Districts also may not ask an applicant, or the applicant's previous employer, whether the applicant ever received, or filed a claim for, benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act (820 ILCS 55/10(a)). Districts are also prohibited from requiring, requesting, or coercing an employee or potential employee to provide a user name and password or any password or other related account information to gain or demand access to his or her personal online account (Id. at 55/10(b), amended by P.A. 99-610, eff. 1-1-17). While the law does not prohibit employers from viewing public information, consult the board attorney before engaging in this practice.

21 School districts must accommodate mothers who choose to continue breastfeeding after returning to work. See the Right to Breastfeed Act, 740 ILCS 137/; Nursing Mothers in the Workplace Act, 820 ILCS 260/; and Fair Labor Standards Act, 29 U.S.C. §207(r)(1), ~~added by P.L. 111-148~~. See sample language for a personnel handbook in 5:10-AP, *Administrative Procedure - Workplace Accommodations for Nursing Mothers*.

22 410 ILCS 130/40, ~~added by P.A. 98-122~~; 77 Ill.Admin.Code Part 946. To legally use medical cannabis, an individual must first become a *registered qualifying patient*. Their use of cannabis (e.g. permissible locations) is governed by the Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/, ~~added by P.A. 98-122~~). There are many situations in which no one, even a registered qualifying patient, may possess or use cannabis, including in a school bus or on the grounds of any preschool, or primary or secondary school (410 ILCS 130/30(a)(2) & (3)). See policy 5:50, *Drug- and Alcohol-Free Workplace; Tobacco Prohibition*.

23 775 ILCS 5/6-101. Discrimination on the basis of a request for or use of a reasonable accommodation is a civil rights violation under the Ill. Human Rights Act (~~Id.~~, ~~amended by P.A. 98-1050, eff. 1/1/2015~~). Most discrimination laws prohibit retaliation against employees who oppose practices made unlawful by those laws, including, for example, the Equal Employment Opportunities Act, Title IX, Americans with Disabilities Act, Age Discrimination in Employment Act, Victims' Economic Security and Safety Act, the Ill. Equal Pay Act, and the Ill. Whistleblower Act, ~~740 ILCS 174/~~.

The Ill. Whistleblower Act specifically prohibits employers from retaliating against employees for: (1) disclosing information to a government or law enforcement agency (740 ILCS 174/15(a)), (2) disclosing information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding where the employee has reasonable cause to believe that the information reveals a violation of a State or federal law, rule or regulation (740 ILCS 174/15(b)), (3) refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act (740 ILCS 174/20), and (4) disclosing or attempting to disclose public corruption or wrongdoing (740 ILCS 174/20.1). The definition of retaliation is expanded to include *other retaliation and threatening retaliation* (740 ILCS 174/20.1 and 20.2).

Administrative Implementation

The Superintendent shall appoint a Nondiscrimination Coordinator for personnel who shall be responsible for coordinating the District’s nondiscrimination efforts. The Nondiscrimination Coordinator may be the Superintendent or a Complaint Manager for the Uniform Grievance Procedure. The Superintendent shall insert into this policy the names, addresses, and telephone numbers of the District’s current Nondiscrimination Coordinator and Complaint Managers. 24

Nondiscrimination Coordinator:

Name

Address

Email

Telephone

Complaint Managers:

_____ Name	_____ Name
_____ Address	_____ Address
_____ Email	_____ Email
_____ Telephone	_____ Telephone

The Superintendent shall also use reasonable measures to inform staff members and applicants that the District is an equal opportunity employer, such as, by posting required notices and including this policy in the appropriate handbooks. 25

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The Ill. False Claims Act, 740 ILCS 175/, defines *State* to include school districts. Thus, boards may seek a penalty from a person for making a false claim for money or property (740 ILCS 175/4). For information regarding the Ill. Whistleblower Act and the tort of retaliatory discharge, see Thomas v. Guardsmark, 487 F.3d 531 (7th Cir., 2007)(discussing the elements of retaliatory discharge and Ill. Whistleblower Act), and Sherman v. Kraft General Foods, Inc., 651 N.E.2d 708 (Ill.App.4th Dist., 1995)(finding employee who reported asbestos hazard had a cause of action for retaliatory discharge).

24 Title IX regulations require districts to identify the name, address, and telephone number of the person who is responsible for coordinating the district’s compliance efforts. An email address is optional but may facilitate reporting. A policy should not be adopted with a person’s name in it; rather, the identifying information can be added and amended as necessary. Thus the policy should be adopted with blanks for the superintendent to fill in later.

25 In addition to notifying employees of the Uniform Grievance Procedure, a district must notify them of the person(s) designated to coordinate the district’s compliance with Title IX and the Rehabilitation Act of 1973 (34 C.F.R. §§106.8(a) and 104.8(a)). The Nondiscrimination Coordinator may be the same individual for both this policy and policy 7:10, *Equal Educational Opportunities*, as well as a Complaint Manager for policy 2:260, *Uniform Grievance Procedure*. A comprehensive faculty handbook can provide required notices, along with other important information, to recipients. The handbook can be developed by the building principal, but should be reviewed and approved by the superintendent and school board. Any *working conditions* contained in the handbook may be subject to mandatory collective bargaining.

Minority Recruitment 26

The District will attempt to recruit and hire minority employees. The implementation of this policy may include advertising openings in minority publications, participating in minority job fairs, and recruiting at colleges and universities with significant minority enrollments. This policy, however, does not require or permit the District to give preferential treatment or special rights based on a protected status without evidence of past discrimination.

LEGAL REF.: Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.
Americans With Disabilities Act, Title I, 42 U.S.C. §12111 et seq.
Civil Rights Act of 1991, ~~29 U.S.C. §§621 et seq.~~, 42 U.S.C. §1981 et seq., ~~§2000e et seq., and §12101 et seq.~~
Equal Employment Opportunities Act (Title VII of the Civil Rights Act of 1964), 42 U.S.C. §2000e et seq., 29 C.F.R. Part 1601.
Equal Pay Act, 29 U.S.C. §206(d).
Genetic Information Nondiscrimination Act, 42 U.S.C. §2000ff et seq.
Immigration Reform and Control Act, 8 U.S.C. §1324a et seq.
Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.
Pregnancy Discrimination Act, 42 U.S.C. §2000e(k).
Title IX of the Education Amendments, 20 U.S.C. §1681 et seq., 34 C.F.R. Part 106.
Uniformed Services Employment and Reemployment Rights Act (1994), 38 U.S.C. §§4301 et seq.
Ill. Constitution, Art. I, §§17, 18, and 19.
105 ILCS 5/10-20.7, 5/10-20.7a, 5/10-21.1, 5/10-22.4, 5/10-23.5, 5/22-19, 5/24-4, 5/24-4.1, and 5/24-7.
Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/40.
Genetic Information Protection Act, 410 ILCS 513/25.
Ill. Whistleblower Act, 740 ILCS 174/.
Ill. Human Rights Act, 775 ILCS 5/1-103, 5/2-102, 5/2-103, and 5/6-101.
Religious Freedom Restoration Act, 775 ILCS 35/5.
Right to Privacy in the Workplace Act, 820 ILCS 55/10.
Employee Credit Privacy Act, 820 ILCS 70/.
Job Opportunities for Qualified Applicants Act, 820 ILCS 820 ILCS 75/.
Ill. Equal Pay Act of 2003, 820 ILCS 112/.
Victims' Economic Security and Safety Act, 820 ILCS 180/30.
Nursing Mothers in the Workplace Act, 820 ILCS 260.

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²⁶ All districts must have a policy on minority recruitment (105 ILCS 5/10-20.7a). Unlike minority recruitment efforts, affirmative action plans are subject to significant scrutiny because of the potential for reverse discrimination. The U.S. Constitution's guarantee of equal protection prohibits school districts from using racial hiring quotas without evidence of past discrimination. See 29 C.F.R. §1608.1 et seq. (Equal Employment Opportunity Commission's guidelines for affirmative action plans); Wygant v. Jackson Board of Education, 106 S.Ct. 1842 (1986) (The goal of remedying societal discrimination does not justify race-based layoffs.); City of Richmond v. J.A. Croson Co., 109 S.Ct. 706 (1989) (Minority contractor quota struck; quotas must be narrowly tailored to remedy past discrimination and the city failed to identify the need for remedial action and whether race-neutral alternatives existed.)

The Ill. Human Rights Act, 775 ILCS 5/1-101.1, states that it shall not be construed as requiring any employer to give preferential treatment or special rights based on sexual orientation or to implement affirmative action policies or programs based on sexual orientation.

[23 Ill. Admin. Code §1-230.](#)

CROSS REF.: 2:260 (Uniform Grievance Procedure), 5:20 (Workplace Harassment Prohibited), 5:30 (Hiring Process and Criteria, 5:40 (Communicable and Chronic Infectious Disease), 5:50 (Drug- and Alcohol-Free Workplace; Tobacco Prohibition), 5:70 (Religious Holidays), 5:180 (Temporary Illness or Temporary Incapacity), 5:200 (Terms and Conditions of Employment and Dismissal), 5:250 (Leaves of Absence), 5:270 (Employment, At-Will, Compensation, and Assignment), 5:300, (Schedules and Employment Year), 5:330 (Sick Days, Vacation, Holidays, and Leaves), 7:10 (Equal Educational Opportunities), 7:180 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:70 (Accommodating Individuals with Disabilities)