



NON-REGULATORY GUIDANCE

ILLINOIS PROTECTIONS AGAINST DISCRIMINATION BASED ON PREGNANCY, CHILDBIRTH, AND RELATED CONDITIONS, INCLUDING REPRODUCTIVE DECISION-MAKING

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I. INTRODUCTION

All Illinois residents have a right to reproductive autonomy, including freedom from discrimination based on pregnancy, childbirth, and pregnancy-related conditions. The Illinois Human Rights Act (the “Act”), provides broad protection against discrimination based on a person’s current pregnancy, past pregnancy, potential or intended pregnancy, and medical conditions related to pregnancy or childbirth.¹ Fundamental reproductive health decisions relating to pregnancy, such as use of contraception, sterilization, abortion, miscarriage management, and fertility care are protected in Illinois.²

Following the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* to overrule *Roe v. Wade*, many states have rolled back the freedom of individuals to make reproductive health decisions.³ In contrast to other states narrowing of civil and human rights, Illinois law protects the choice to have an abortion and treats abortion in the same manner as other kinds of healthcare.⁴ Individuals are entitled to exercise this choice – or any other reproductive health decision – free from discrimination regardless of their sexual orientation, gender identity, race, ethnicity, immigration status, disability status, or any other protected characteristic.

The Illinois Department of Human Rights (the “IDHR”) and the Illinois Attorney General’s Office (the “OAG”) issue this non-regulatory guidance to clarify Illinois law as it relates to pregnancy and related reproductive health decisions, and to identify protections from pregnancy discrimination that exist in Illinois. The guidance is intended for Illinois residents, employers, housing providers, and the business and healthcare communities to better understand their rights and responsibilities concerning reproductive autonomy and to refrain from discrimination in these contexts.

II. ILLINOIS LAW CONTINUES TO AFFORD PROTECTIONS AGAINST DISCRIMINATION BASED ON PREGNANCY, CHILDBIRTH, AND RELATED CONDITIONS, INCLUDING REPRODUCTIVE DECISION-MAKING

The Illinois Human Rights Act provides broad civil rights protections throughout Illinois in the areas of employment, real estate transactions (housing), financial credit, and places of public accommodation. The IDHR is charged with enforcing the Act by securing for all individuals in Illinois freedom from unlawful discrimination and establishing equal opportunity and affirmative

¹ The term “pregnancy” under the Act is defined as “pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth.” 775 ILCS 5/1-103(L-5).

² *In the Matter of the Request for Review by Darolyn Lee*, Charge No. 2018CP2109, ALS 19-0830; *see also*, Reproductive Health Act, 775 ILCS 55/1-1 *et seq.*

³ Recently, the U.S. Supreme Court, in *Dobbs v. Jackson Women’s Health Organization*, held that the U.S. Constitution does not confer a right to abortion. *See* No. 19-1392, 597 U.S. (2022). This landmark case overruled *Roe v. Wade* and parts of *Planned Parenthood v. Casey*, giving individual states the full power to regulate abortion. *See* 410 U.S. 113 (1973); 505 U.S. 833 (1992).

⁴ *See, e.g.*, Reproductive Health Act, 775 ILCS 55/1-1 *et seq.*

action as the policies of the State.⁵ The OAG has authority to enforce the Act when any person or group of people engages in a pattern or practice of discrimination prohibited by the Act.⁶

A. DISCRIMINATION

The Act prohibits discrimination on the basis of distinctly defined protected classes, including but not limited to pregnancy, sex, race, age, sexual orientation, and disability.⁷ The Act defines “pregnancy” to include “pregnancy, childbirth, or medical or common conditions relating to pregnancy or childbirth.”⁸ Pregnancy discrimination includes discrimination based on:

1. Current pregnancy;
2. Past pregnancy;
3. Potential or intended pregnancy, including the use of fertility treatments to become pregnant, contraception to prevent a pregnancy, or abortion to end a pregnancy;⁹
4. Medical or common conditions related to pregnancy or childbirth, including pre-eclampsia, gestational diabetes, post-partum depression, ectopic pregnancy, miscarriage, lactation and breastfeeding;¹⁰ and
5. Medical or common conditions related to pregnancy or childbirth, which may be a disability, perceived disability, or record of disability even if not permanent in nature.¹¹

B. HARASSMENT

Harassment based on a person’s pregnancy, childbirth, or pregnancy-related condition is a form of unlawful discrimination under the Act. This includes harassment based on a person’s reproductive decisions, such as whether to use contraception, fertility treatments, or abortion care. Actionable harassment in the workplace, housing, or public accommodation occurs when there is unwelcome conduct that is either severe or pervasive enough that it alters the conditions of the

⁵ See 775 ILCS 5/1-102.

⁶ 775 ILCS 5/10-104.

⁷ See 775 ILCS 5/1-102.

⁸ See 775 ILCS 5/1-103(L-5).

⁹ *In the Matter of the Request for Review by Darolyn Lee*, Charge No. 2018CP2109, ALS 19-0830 (pregnancy discrimination includes discrimination based on a non-pregnant person’s choice to use contraception as “a means to prevent, and to control the timing of, the medical condition of pregnancy.”). See also *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 206 (1991) (interpreting federal pregnancy discrimination law to prohibit discrimination based on capacity to become pregnant); *Turic v. Holland Hosp., Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996) (interpreting federal pregnancy discrimination law to prohibit discrimination based on having an abortion, or contemplating having an abortion); *Pacourek v. Inland Steel Co.*, 858 F. Supp. 1393, 1402 (N.D. Ill. 1994) (interpreting federal pregnancy discrimination law to prohibit discrimination based on “potential or intended pregnancy”).

¹⁰ 56 Ill. Admin. Code §2535.20.

¹¹ 775 ILCS 5/1-103(I).

victim's employment, housing, or full and equal enjoyment of a public accommodation, and creates a hostile or abusive environment.¹² Either one extremely serious act of harassment, or a series of less severe acts, could be severe or pervasive enough to constitute actionable harassment.¹³

C. REASONABLE ACCOMMODATIONS

The Act specifically requires employers to make reasonable accommodations for an employee's pregnancy, childbirth, and related medical or common conditions. Failure to accommodate on the basis of pregnancy is specifically prohibited under the Act.¹⁴ In other contexts, such as public accommodations and housing, a refusal to provide accommodations for pregnancy, childbirth, or related conditions may also constitute unlawful discrimination under the Act.¹⁵

D. RETALIATION

Retaliation is also unlawful under the Act. In the areas of employment,¹⁶ public accommodations, housing,¹⁷ and financial credit, it is a violation of the Act to retaliate against a person who engages in a protected activity. In this context, "protected activity" includes conduct where a person has opposed that which they reasonably and in good faith believe to be unlawful discrimination; has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Act; or has requested a reasonable accommodation.

¹² See, e.g., *Grimes v. Cnty. of Cook*, 455 F. Supp. 3d 630, 644 (N.D. Ill. 2020) (harassment in employment); *In the Matter of IDHR and Robin Hobson, Individually and On Behalf of Oquela Hobson et al.*, 2007 WL 6004201, Charge No. 2001CH2383, ALS NO. 11936 (Ill. Hum. Rts. Comm'n July 25, 2007) (harassment in housing); *In the Matter of the Request For Review By: Daniel Igwe, Petitioner*, ALS No. 16-0010, 2019 WL 1527836, at *2 (Ill. Hum. Rts. Comm'n March 27, 2019) (harassment in public accommodations).

¹³ See, e.g., *Hall v. City of Chicago*, 713 F.3d 325, 330 (7th Cir. 2013).

¹⁴ 775 ILCS 5/2-102(A), 2-102(I), and 2-102(J).

¹⁵ See, e.g., *In the Matter of: Michael S. and Andrea S., On Behalf, of P.S., A Minor, Complainants and Komarek Sch. Dist #94*, Charge No. 2015CP3418, ALS No. 16-0003, September 11, 2019, 2019 WL 7494510, at *12 (quoting *Ivanka Kojic and Gerald Haaman, et al.*, IHRC, ALS No. 5999 (A), December 18, 1995) (in the context of disability, finding that the Act imposes the same duty on public accommodations for reasonable accommodations that exists in the context of employment, because "the term 'discrimination' includes the refusal to eliminate barriers to accessibility when the elimination of such barriers will not impose undue financial and administrative burdens."). See also 775 ILCS 5/3-102.1 (requiring reasonable accommodations for disability in housing).

¹⁶ 775 ILCS 5/6-101(A).

¹⁷ 775 ILCS 5/6-101.5; 775 ILCS 5/3-105.1.

III. HOW THE ILLINOIS HUMAN RIGHTS ACT PROTECTS AGAINST DISCRIMINATION BASED ON PREGNANCY, CHILDBIRTH, AND RELATED CONDITIONS

The Act prohibits discrimination on the basis of pregnancy in multiple contexts. The sections below further explain protections against pregnancy discrimination under the Act, and provide examples of potentially discriminatory conduct and solutions to consider.

A. EMPLOYERS/WORKPLACES

Discrimination against employees because of their pregnancy, childbirth, or related medical or common conditions is a civil rights violation under the Act. This includes matters such as hiring, firing, pay, job assignments, promotions, and other terms and conditions of employment.¹⁸ Employees who are affected by pregnancy, childbirth, or other related conditions must be treated the same as other employees who are similar in their ability to work.¹⁹

The prohibitions against pregnancy discrimination are broadly interpreted to give full effect to the purpose of the Act. As a result, the Act's workplace protections reach beyond the condition of actual pregnancy to cover non-pregnant employees with capacity to become pregnant.²⁰ An employer is prohibited from discriminating against an employee by failing to hire, disciplining, terminating, or harassing an employee because they may become pregnant in the future, or making assumptions or stereotyping an employee about what type of work they are capable of because of their pregnancy or their ability to become pregnant in the future.

The Act's protections from pregnancy discrimination also encompass the right to make reproductive health and family planning decisions, such as use or non-use of contraception, fertility treatments, and abortion.²¹ This means an employer may not take adverse action against an employee for choosing to use or not use contraception, terminating an unplanned pregnancy, or seeking treatment for fertility issues, and an employer may not require an employee to engage in any of the above to obtain or retain employment. Adverse actions include, but are not limited to failing to hire, discipline, terminating or harassing an employee. An employer is also prohibited from retaliating against an employee for exercising their rights under the Act or making a complaint.

Examples of Discriminatory Treatment

¹⁸ See 775 ILCS 5/2-102(I) (Pregnancy). In addition to the non-discrimination provisions of the Act, federal law also protects individuals from discrimination on the basis of pregnancy, childbirth, or related medical conditions and is enforced by the U.S. Equal Employment Opportunity Commission ("EEOC"). Under federal law, discrimination on the basis of pregnancy is a form of sex discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII") – unlike the Act which protects pregnancy as its own protected basis. Another notable distinction between Title VII and the Act is that to file a charge of pregnancy discrimination at the EEOC, the employer must have a minimum of 15 employees. To file a charge of pregnancy discrimination at the Department, an employer need have only 1 employee.

¹⁹ See 775 ILCS 5/2-102(I).

²⁰ *Pacourek v. Inland Steel Co.*, 858 F. Supp. 1393, 1402 (N.D. Ill. 1994); see also *Hall v. Nalco Co.*, 534 F.3d 644, 649 (7th Cir. 2008).

²¹ See, e.g., *Hall v. Nalco Co.*, 534 F.3d 644, 649 (7th Cir. 2008).

In the context of employment, examples of discriminatory treatment by employers prohibited by the Act may include:

- An employer denying a person a request for scheduled medical time off when that person is seeking fertility treatments, while permitting those not seeking fertility treatments to take scheduled medical time off for a dental appointment.
- Forcing a pregnant employee to take leave when there is no medical necessity to do so.
- Threatening a pregnant employee with termination if they do not terminate their pregnancy.
- Failing to promote a non-pregnant employee capable of becoming pregnant because of the assumption that they will or may become pregnant and might be less committed to their work.
- Discharging a pregnant employee because they requested a reasonable accommodation to go to their medical appointments.
- Retaliating against an employee by denying them a promotion because they complained of pregnancy discrimination.

Harassment or creating a hostile work environment because of a person's pregnancy is also prohibited under the Act in the employment context.²² An employer may be strictly liable for harassment based on pregnancy if the alleged harasser is a member of management. An employer may also be liable for harassment based on pregnancy if an employee or a non-employee reported to employer that an alleged harasser subjected them to harassment based on pregnancy, and the employer did not take corrective measures or attempt to stop the harassment.

Examples of Harassment

Examples of harassing conduct based on pregnancy or a related condition may include:

- Subjecting a pregnant employee to harassment and ridicule because the pregnant employee cannot perform the strenuous functions of their position.
- Addressing a pregnant employee with derogatory terms after learning the pregnant employee plans to have an abortion.
- A manager harassing an employee with offensive comments about the employee's weight gain due to pregnancy.

Finally, employment discrimination based on failure to reasonably accommodate an employee on the basis of pregnancy is specifically prohibited under the Act.²³ Under the Act, if an employee has a pregnancy-related medical condition and needs a reasonable accommodation to do their job, the employer must accommodate the employee if it is not an undue hardship on the employer. To do this, the employee and employer must both participate in an interactive process

²² 775 ILCS 5/2-102(A).

²³ 775 ILCS 5/2-102(A), 2-102(I), and 2-102(J).

to try to find a reasonable accommodation that enables the pregnant employee to perform the essential functions of their position but does not place too great a burden on the employer. Each situation is decided on an individual basis, taking into consideration the type of work, the requested accommodation, and the employer's size, among other factors.

Examples of Failure to Reasonably Accommodate

Possible examples of a failure to reasonably accommodate pregnancy-related conditions may include, depending on the situation:

- Failing to provide a lactating employee a place, other than a restroom, to express milk.
- Refusing to let a pregnant employee with gestational diabetes eat snacks while working.
- Denying a pregnant employee's request to use time off for abortion care.
- Immediately discharging a pregnant employee who requests a reasonable accommodation without discussing potential options for the accommodation.

Examples of Positive Solutions

The Act requires all employers in Illinois to inform workers about their rights regarding pregnancy in the workplace by (1) posting a notice in a conspicuous location on the employer's premises, and (2) including information in any employee handbook. Notices and a fact sheet are available in English and Spanish on the IDHR website at:

<https://dhr.illinois.gov/publications/pregnancy-rights-notice-requirement.html>

In the context of employment and pregnancy, childbirth, and other related medical conditions, employers should also consider steps including, but not limited to:

- **Know the law.** Make certain to stay up to date on federal, state, and local laws to avoid potential violations.
- **Training materials.** Develop mandatory training materials for leadership and staff on what constitutes harassment and discrimination on all aspects of pregnancy, childbirth, related conditions, and reproductive decisions.
- **Policies.** Regularly review and update employee handbooks and other written policies to address the requirements under federal and state law with respect to pregnancy, childbirth, related medical conditions, and other reproductive decisions.
- **Take action.** Make sure that leadership and staff are trained on these policies and follow them consistently. Respond to employee complaints concerning treatment in the workplace and take corrective action as appropriate to the circumstances.

B. PUBLIC ACCOMMODATIONS

A place of public accommodation cannot deny a person the full and equal enjoyment of their facilities, goods, or services because the person is pregnant or breastfeeding, or because of

reproductive decisions like seeking an abortion or using contraceptives. A place of public accommodation must also make accommodations upon request for a person's pregnancy or pregnancy-related condition when failing to do so would deny that person the full and equal enjoyment of their facilities, goods, or services.²⁴

Places of public accommodation include a wide range of business, recreation, lodging, service, entertainment, and transportation facilities in Illinois. The Act includes public officials and non-religious schools in the category of public accommodations and prohibits them from engaging in discrimination based on pregnancy, childbirth, and related conditions. The kinds of businesses and facilities prohibited from engaging in discrimination under Illinois law include, but are not limited to:

- Hotels, motels, and inns;
- Restaurants and bars;
- Theaters, movie theaters, concert halls, stadiums, and other entertainment facilities;
- Auditoriums, convention centers, lecture halls, and other places of public gathering;
- Bakeries, grocery stores, clothing stores, hardware stores, and shopping centers;
- Laundromats, dry cleaners, banks, gas stations, barber shops, beauty shops, travel agencies, shoe repair stores, funeral parlors, and other service establishments;
- Law, insurance, and accounting offices;
- Pharmacies, dentist offices, healthcare offices, and hospitals;
- Public transportation trains, buses, terminals, and stations;
- Museums, libraries, and galleries;
- Parks, zoos, amusement parks, and other places of recreation;
- Senior citizen centers, homeless shelters, food banks, non-religious adoption agencies, and other social service center establishments;
- Gyms, spas, bowling alleys, and golf courses;
- Non-religious nursery schools, day care centers, K-12 schools, colleges, and universities; and
- Public officials.

Certain exceptions apply to medical, dental, or other health care professionals, as well as to private professional service providers such as lawyers, accountants or insurance agents. These professionals are not considered to have committed a civil rights violation if they refer an individual to other service providers or refuse to treat or provide services to an individual for a non-discriminatory reason. So long as the professional would also refer or refuse to treat or provide services to all individuals who sought the same treatment or service, they do not violate the Act.²⁵

²⁴ See *In the Matter of: Michael S. and Andrea S., On Behalf, of P.S., A Minor, Complainants and Komarek Sch. Dist #94*, Charge No. 2015CP3418, ALS No. 16-0003, September 11, 2019, 2019 WL 7494510, at *12 (quoting *Ivanka Kojic and Gerald Haaman, et al. IHRC*, ALS No. 5999 (A), December 18, 1995) (in the context of disability, finding that the Act imposes the same duty on public accommodations for reasonable accommodations that exists in the context of employment, because “the term ‘discrimination’ includes the refusal to eliminate barriers to accessibility when the elimination of such barriers will not impose undue financial and administrative burdens.”).

²⁵ 775 ILCS 5/5-102.1.

Types of Public Accommodations

Below are examples of the Act's protections as they relate to various types of public accommodations.

1. HEALTH CARE FACILITIES

Illinois law protects against discrimination by healthcare providers and facilities including doctor's offices, hospitals, dentist offices, pharmacies, and health insurance offices. This includes discrimination because a person is pregnant or breastfeeding, because of childbirth decisions like having a cesarean section, or because of other reproductive decisions like having an abortion, seeking fertility treatments or sterilization, or using contraceptives.

Examples of Discriminatory Treatment

In the context of full and equal access to healthcare, examples of discriminatory treatment prohibited by the Act could include:

- Refusing to admit or schedule a consultation with a patient because the patient had an abortion.
- Refusing to provide individual services that are provided to other patients (such as a pap smear or prescriptions) because the patient seeks contraception or does not want to be pregnant.
- Subjecting a pregnant patient to intrusive and unnecessary examinations because of stereotypes about pregnancy (for example, subjecting pregnant patients to nonconsensual drug tests that are not required of non-pregnant patients).
- Harassing a patient, or refusing to respond to harassment by staff or other patients, based on the patient's decisions regarding pregnancy, childbirth, breastfeeding, or other reproductive healthcare.
- Denying an accommodation to a lactating patient who needs to breastfeed a baby during a clinic visit.
- Refusing to allow a patient to enter a facility because they previously complained of pregnancy discrimination by that facility.

The Act does not require healthcare providers to perform services outside their specialty area.²⁶ Nor does the Act require providing a particular health service when a provider has a legitimate, nondiscriminatory reason for denying or limiting that service, such as when a provider reasonably determines that a particular service is not clinically appropriate for a particular patient.

²⁶ See 775 ILCS 5/5-102.1.

Related State and Federal Laws

Other state and federal laws and protections may also apply in healthcare settings, such as:

- The Illinois Health Care Right of Conscience Act generally protects healthcare providers who refuse to participate in healthcare services to which they have conscience objections.²⁷ However, even if a healthcare provider does not provide a service like abortion or contraception due to a conscience objection, they cannot engage in other activities that constitute unlawful pregnancy-related discrimination (such as harassing a patient for seeking such services).
- The Illinois Insurance Code may apply to health insurance offices. An FAQ about insurance coverage for reproductive healthcare services is available here: <https://www2.illinois.gov/sites/Insurance/Consumers/Pages/Reproductive-Health-Care-Services.aspx>
- The federal Emergency Medical Treatment and Active Labor Act places certain mandates on qualified medical personnel to examine or treat a patient with an emergency medical condition, such as an ectopic pregnancy or complications of pregnancy loss. Recent guidance can be found here: <https://www.cms.gov/files/document/qso-22-22-hospitals.pdf>
- Section 1557 of the federal Affordable Care Act prohibits discrimination in covered health programs or activities. The Office of Civil Rights (“OCR”) of the U.S. Department of Health & Human Services enforces this law. For more information (including how to submit a complaint with OCR), go to: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

²⁷ 745 ILCS 70/5.

2. SCHOOLS, COLLEGES, AND DAY CARES

The Act's protections apply to non-religious day care centers and schools including nursery schools, K-12 schools, colleges, and universities. These places are prohibited from denying anyone enrollment or access to facilities, goods, or services because of a pregnancy-related condition and are required to respond to harassment based on pregnancy, pregnancy-related conditions, or reproductive health decisions.

Examples of Discriminatory Treatment

In the context of non-religious schools, examples of discriminatory treatment prohibited by the Act could include:

- Refusing to enroll a pregnant student.
- Failure to respond when a teacher or student engages in severe or pervasive harassment of another student for being pregnant or having an abortion.
- Denying a lactating student access to a place, other than a restroom, to express breastmilk.²⁸

Examples of Positive Solutions

A variety of resources are available to schools to ensure equitable treatment of pregnant and parenting students. Some state and federal agency resources for school settings include:

- The Illinois School Code prohibits sex discrimination, including discrimination based on actual or potential marital or parental status.²⁹ The Illinois State Board of Education's Student Care Department has resources, including model inclusive policies for schools, at: <https://www.isbe.net/Pages/Student-Care.aspx>
- Federal law (Title IX) protects pregnant and parenting students from discrimination at school. This includes discrimination against students who choose to terminate a pregnancy. The U.S. Department of Education has resources for schools and students on this issue, including:
<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-pregnancy-resource.pdf>
<https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue03.html>

²⁸ In addition to protections under the Illinois Human Rights Act, the Illinois School Code also includes specific requirements that public and charter schools must make for lactating students who need to express breastmilk or breastfeed. *See* 105 ILCS 5/10-20.60, 34-18.53, and 27A-5(g).

²⁹ *See* 105 ILCS 5/10-22.5, 27-1 and 34-18(1); 23 Ill. Adm. Code 200.

3. PUBLIC OFFICIALS

Under the Illinois Human Rights Act, public officials must not deny any person the full and equal enjoyment of their office's services, accommodations, facilities, privileges, or property because of unlawful discrimination.³⁰ This includes discrimination based on pregnancy, childbirth, and pregnancy-related conditions, including the person's reproductive decision-making.

In addition, the Reproductive Health Act prohibits government officials in Illinois from denying, interfering with, or discriminating against a person's fundamental right to make reproductive care decisions.³¹ This fundamental right includes decisions such as whether to use birth control, how to manage a pregnancy loss, and decisions about giving birth such as whether to have a caesarean surgery or epidural anesthesia.

Finally, government officials are prohibited from punishing or otherwise penalizing a person for exercising certain decisions or taking certain actions during their pregnancy. This prohibition is triggered when the predominant basis for the punishment or penalty is the impact of the person's decision or action on their pregnancy, pregnancy outcome, or health.³²

4. SERVICE, RETAIL STORES, LODGINGS, AND OTHER PUBLIC ACCOMMODATIONS

Places of public accommodation such as restaurants, hotels, and retail stores are prohibited from discriminating against patrons based on pregnancy-related conditions. Since the *Dobbs* decision, Illinois has experienced an influx of out-of-state patients traveling to Illinois for reproductive healthcare. Because these traveling patients and their companions rely on Illinois hospitality and service industries during their travel, a heightened risk of pregnancy-related discrimination exists in these public accommodations if service providers and other establishments are not informed and aware of their obligations.

Places of public accommodation like service, lodging, retail stores, and entertainment establishments should review their policies and take steps to ensure that managers and staff are aware of their obligations under the Act and other applicable laws.

Examples of Discriminatory Treatment

Examples of discriminatory treatment in these establishments may include:

- A hotel refusing lodging to a guest because the guest has an appointment for an abortion during their stay.
- A restaurant policy that prohibits staff from serving pregnant patrons raw fish or alcohol.

³⁰ 775 ILCS 5/5-102(c).

³¹ 775 ILCS 55/1-20(a)(1).

³² 775 ILCS 55/1-20(a)(2).

- A gym operator failing to respond when a gym member harasses a guest for engaging in strenuous exercise while pregnant.
- A storeowner harassing a visitor for breastfeeding on the premises.³³
- A theater operator refusing to grant access to an available private non-bathroom space so that a lactating parent can express breastmilk during the intermission of a lengthy performance.
- A concert hall operator refusing to permit a pregnant patron to use a stool or the accessible seating area that is available to other patrons, such as patrons with disabilities.

Examples of Positive Solutions

Training on preventing pregnancy-related discrimination can be incorporated into other required non-discrimination trainings offered to employees, such as the sexual harassment prevention training programs required for all employers and for restaurants and bars under Illinois law. The IDHR’s website has more information about these required trainings at:

<https://dhr.illinois.gov/training/state-of-illinois-sexual-harassment-prevention-training-model.html>

C. LANDLORDS/HOUSING PROVIDERS

The Act includes protection from discrimination in housing and housing-related transactions, including refusing to rent or sell, posting discriminatory advertisements, or offering unequal terms and conditions of rental or sale on the basis of pregnancy.³⁴ In addition to discrimination because of pregnancy in housing matters, it is a violation of the Act to discriminate on the basis of “familial status” – which refers to a person who has children under 18 years of age.³⁵ Thus, under the Act’s housing-related protections, it is a civil rights violation to discriminate both against a person who is pregnant or planning to become pregnant, as well as a person who has children.³⁶

The Act’s protection against pregnancy and familial status discrimination in housing also extends to the ability to apply for and receive mortgage loans. Under the Act, mortgage lenders are prohibited from denying mortgages solely because a family member is pregnant or on

³³ In addition to protections under the Illinois Human Rights Act, the Illinois Right to Breastfeed Act also generally guarantees the right to breastfeed in any location, public or private, where the lactating person is otherwise authorized to be. 740 ILCS 137/1 *et seq.*

³⁴ *See* 775 ILCS 5/3, *et seq.*

³⁵ *See* 775 ILCS 5/3-101(E). The Act specifically provides that discrimination on the basis of “familial status” applies to “any person who is pregnant” or to anyone “in the process of securing legal custody of any individual who has not attained the age of 18 years.” *See id.*

³⁶ Under the federal Fair Housing Act, persons who are affected by pregnancy, childbirth or medical or common conditions related to pregnancy, are also protected from discrimination in housing; however, the protection is solely rooted in the basis of “familial status” rather than “pregnancy” specifically.

pregnancy-related leave, as long as they intend to return to work and can otherwise meet income requirements to qualify for the loan.³⁷

The Act also protects against harassment based on pregnancy in housing.³⁸ Harassment occurs when a housing provider or its agent or employee engages in conduct of such severity or pervasiveness that it alters the terms or conditions of tenancy for a tenant and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable. Also, a housing provider may be liable if it has reasonable knowledge of harassment based on pregnancy by one of its tenants toward a pregnant tenant, and fails to take corrective remedial measures or does not attempt to stop the harassment.

Finally, the Act has specific requirements around reasonable accommodations for tenants. The Act states that landlords must provide a reasonable accommodation for disabilities, which includes any pregnancy-related condition of a tenant that rises to the level of a disability. In order to establish discrimination for failure to make a reasonable accommodation for disability in housing, a tenant must establish that they have a disability, that they requested a reasonable accommodation in the housing, and that the housing provider unreasonably denied the accommodation and did not offer a reasonable alternative accommodation or engage in an interactive process.³⁹ For more information, consult IDHR's "Guidebook on Reasonable Accommodations and Modifications: A Guide for Housing Professionals" available on IDHR's website at <https://dhr.illinois.gov/publications/ra-rmguidebook.html>.

Examples of Discriminatory Treatment

Examples of discriminatory treatment in housing may include:

- Declining a person's request for a rental application because they are pregnant.
- Denying a mortgage loan because the applicant is on parental leave.
- Advertising to a potential buyer that housing is unavailable because they are pregnant.
- A landlord informing a pregnant tenant that they would not have rented to them had the tenant's pregnancy been more noticeable.
- Refusing to make repairs to a pregnant tenant's unit in hopes that they will vacate the premises.
- Evicting a tenant who filed a previous charge of discrimination against the landlord for subjecting them to pregnancy discrimination.

Examples of Positive Solutions

Examples of Positive Solutions:

- **Know the law.** Make certain to stay up to date on federal, state, and local laws to avoid potential violations.

³⁷ See <https://archives.hud.gov/news/2011/pr11-108.cfm>.

³⁸ 775 ILCS 5/3-102(B).

³⁹ 775 ILCS 5/3-102.1.

OAG & IDHR Non-Regulatory Guidance:

- **Training materials.** Develop mandatory training materials for landlords and housing providers and their agents on what constitutes harassment and discrimination in housing.
- **Policies.** Regularly review and update handbooks and other written policies to address the requirements under federal, state and local law with respect to preventing discrimination on the basis of family status, pregnancy, and pregnancy related conditions, including reproductive decisions.
- **Take action.** Make sure that staff are trained on these policies and follow them consistently. Respond to complaints concerning treatment in housing and take corrective action as appropriate to the circumstances.

Landlords and housing providers can participate in fair housing training provided by IDHR on regular basis. “The Basic Fair Housing Training for Landlords and Property Managers” course is offered regularly via webinar and is free of charge. For more information about IDHR training on fair housing, visit IDHR online at <https://dhr.illinois.gov/filing-a-charge/housing.html>.

IV. ENFORCEMENT AND HOW TO FILE A COMPLAINT

A. ILLINOIS ATTORNEY GENERAL'S OFFICE

The Illinois Attorney General's Office is committed to protecting the civil rights of all in Illinois, including the right to be free from discrimination and harassment based on pregnancy, childbirth, and related conditions including reproductive decision-making. The Illinois Human Rights Act grants the Attorney General the authority to investigate patterns and practices of discrimination and file suits to remedy pattern and practice violations.

- **Filing a Complaint with OAG*:** A complaint of a pattern or practice of discrimination can be filed with the OAG's Civil Rights Bureau by submitting a [Civil Rights Complaint Form](#) as follows:
 - By *calling* the Civil Rights Hotline at (877) 581-3692;
 - By *emailing* a Civil Rights Complaint Form to civilrights@ilag.gov;
 - By *faxing* a Civil Rights Complaint Form to (312) 814-3212; or
 - By *mailing* or *delivering in-person* a Civil Rights Complaint Form to the OAG's Chicago office: 100 W. Randolph Street, 11th Floor, Chicago, IL 60601.

* Please note that the OAG does not represent individuals or give individual legal advice. The choice of how to report an allegation of discrimination is a personal one and options to report to the OAG and the IDHR are not mutually exclusive. You may pursue one or more of the reporting options as differing procedures apply.

B. ILLINOIS DEPARTMENT OF HUMAN RIGHTS

The Illinois Department of Human Rights is committed to securing for all individuals in Illinois freedom from unlawful discrimination and establishing equal opportunity and affirmative action as the policies of the State. A person who believes they have experienced discrimination, harassment or retaliation based on pregnancy, childbirth or pregnancy-related conditions including reproductive decision-making, can file a charge of discrimination with the IDHR within 300 days of the date of the incident (violation) or within one year for housing violations.

- **Filing a Charge with IDHR*:** A charge of discrimination can be filed with the Illinois Department of Human Rights by submitting a completed [Complainant Information Sheet Form \(Form CIS\)](#) as follows:
 - By *calling* the IDHR at (312) 814-4320 or (866) 740-3953 (TTY);
 - By *emailing* a Form CIS to IDHR.Intake@illinois.gov;
 - By *faxing* a Form CIS to (312) 814-6251;
 - By *mailing* a Form CIS to the IDHR's Chicago or Springfield addresses at 555 W. Monroe St. Chicago, IL 60661 or 524 S. 2nd Street, Suite 300, Springfield, IL 62701; or
 - *In person* at the IDHR's Chicago or Springfield offices located at 555 W. Monroe St. Chicago, IL 60661, or 524 S. 2nd Street, Suite 300, Springfield, IL 62701.

* Please note that the IDHR does not represent individuals or give individual legal advice. The choice of how to report an allegation of discrimination is a personal one and options to report to the OAG and the IDHR are not mutually exclusive. You may pursue one or more of the reporting options as differing procedures apply.

IDHR Investigation & Mediation of Charges

Once a charge is received, the IDHR serves notice of the filing of a charge to all parties. The notice also contains an invitation to participate in the IDHR's mediation services. If all parties agree to mediation, the IDHR will assign a mediator who will schedule a mediation meeting with the goal of resolving the dispute in a mutually beneficial manner. If any party does not agree to mediation or the parties are unsuccessful reaching a resolution, the IDHR will assign the charge to an investigator to conduct an investigation. An investigation includes but is not limited to interviewing of witnesses, requesting the production of documents, and conducting a conference to determine the facts ("a fact-finding conference").

Once the investigation is complete, the IDHR will issue a determination either dismissing the charge due to a lack of substantial evidence that discrimination occurred or finding that substantial evidence exists that discrimination occurred. The IDHR may also dismiss the charge if it determines it lacks jurisdiction if, for example, the time to file has expired or the information given does not correlate to a protected category.

Where the IDHR dismisses a charge based on lack of substantial evidence or lack of jurisdiction and the individual believes the IDHR erred, the individual may file a Request for Review (appeal) of the IDHR's determination with the Commission. If the IDHR concludes that substantial evidence exists to support the charge, the individual may request that the IDHR prepare and file a Discrimination Complaint on their behalf in the Commission, or the individual may prepare and file their own Discrimination Complaint before the Commission or in the Illinois Circuit Court in their location.

More detailed information on this process can be found at <https://dhr.illinois.gov/filing-a-charge.html>.