

Anti-Discrimination/Harassment/Sexual Harassment

Under the amendments to the Illinois Human Rights Act which became effective January 1, 2020, protected categories are now defined as “actual or perceived.” This means that if an employee can prove that actions were taken against the employee because the employee was perceived to be a certain race or religion, for example, then even if the employee is not in actuality a member of that group, mere “perception” may qualify as illegal discrimination in Illinois. Discrimination based on a perception that an individual is a member of a protected group can now lead to liability for employers, even if that perception is erroneous.

Therefore, you will see that our updated policy includes the phrase “actual or perceived” before the list of protected categories “...without regard to “actual or perceived” race, color,...” We also added the phrase “actual or perceived” to the Equal Employment Opportunities policy.

Also as of January 1, 2020, non-employees are now protected from harassment and can file a complaint. Non-employees include contractors, consultants, and anyone else directly performing services for Illinois LICA pursuant to a contract with Illinois LICA. You will see that our updated policy includes mention of non-employees.

If there are non-employees (especially those who go into the work environment with some frequency), consider having the non-employees sign and date a copy of the Anti-Discrimination/Harassment/Sexual Harassment policy and keep it on file (so that in the event it became necessary, you can prove that non-employees are aware of the policy and complaint procedure).

As you know, effective January 1, 2020, all Illinois employers are now required to provide sexual harassment prevention training on an annual basis to all employees. As we discussed, this does not need to be mentioned in the employee handbook. Just be sure to keep a signed and dated receipt from each employee acknowledging that the employee has received the training.

Page 5: Drugs and Alcohol

Per your request, we revised Provision 2D about random drug testing. Instead of stating that Illinois LICA will do random drug testing, it now states Illinois LICA “reserves the right” to do random drug testing.

Pages 9 and 10: We added our policy on Marijuana (Cannabis) Restrictions in the Workplace.

Marijuana is becoming a separate category under Illinois law where the employer has to make a good faith belief determination rather than a reasonable suspicion determination. You will see that our policy addresses this issue.

Under Illinois law, the employer first has to make a good faith belief determination as to whether the employee is impaired or under the influence of cannabis while at work or performing his/her job. Then, before disciplining or terminating the employee, the employer must provide the employee with a reasonable opportunity to

contest that good faith belief determination. Once the employee is provided a reasonable opportunity to explain, then the employer may make a final determination regarding its good faith belief that the employee was impaired or under the influence of cannabis while on the job or while working.

Page 11: We added our policy on Business Expense Reporting.

Under an Illinois law (which became effective January 1, 2019), employers must reimburse employees for all business related expenses. There is no case law yet in Illinois on exactly what expenses an employer needs to reimburse an employee for; it's all guess work right now. Reimburse employees for reasonable business expenses in whatever way and to whatever extent the Association wishes to do so.

Our Business Expense Reporting policy requires employees to hand in expenses within 30 calendar days. You want this written 30 day limit so that if an employee hands in a request late, you can deny the request because the policy specifies that the request must be made within 30 days.

Page 16: Unpaid Leave Due To Domestic, Sexual, and Gender Violence

The amendments to the Victim's Economic Security and Safety Act (VESSA), effective January 1, 2020, expanded the protections for employees to include victims of gender violence.

Therefore, we added "gender" throughout the policy so that the phrase appears as: a victim of domestic, sexual, or gender violence.

Page 20: We added our sample policy "Disability – Reasonable Accommodation."

Page 31: Financial Responsibilities and Procedures

At the end of this policy, we added the following statement: "Violation of this policy may result in disciplinary action up to and including discharge."