

Consumer Legal Guide



Rights of Lesbians, Gays, Bisexuals, and Transgender Persons



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

This pamphlet briefly describes some of your rights under Illinois law. No pamphlet can tell you everything you need to know about your rights. You should contact a licensed attorney to learn more.

DISCRIMINATION AND EMPLOYMENT ISSUES

Am I protected if I am discriminated against because of my sexual orientation or gender identity?

Yes. The Illinois Human Rights Act protects against discrimination in employment, housing, financial credit, and public accommodations, as well as sexual harassment in employment and higher education. The Act prohibits discrimination based on someone's actual or perceived sexual orientation, which is defined to include heterosexuality, homosexuality, bisexuality, and gender-related identity. If you feel that you have been a victim of discrimination or sexual harassment, you should talk to a lawyer about filing a charge with the Illinois Department of Human Rights. It is also a violation of the Act to retaliate against you if you file a charge of discrimination.

Some cities and counties in Illinois also have local human rights ordinances that protect from specific acts of discrimination based on sexual orientation or gender identity. In some cases, you may also be protected at work by rights in an employee handbook, by the company's non-discrimination policy, or (if you are a union member) by a collective bargaining agreement between the union and your company. Ask your human resources department or union representative for a copy of any policies or programs.

What if I am sexually harassed at work?

You should consider seeking redress from: (1) your employer; and (2) the Illinois Department of Human Rights and the Equal Employment Opportunity Commission.

Seeking Redress from Your Employer

Many companies have established policies on sexual harassment. Look in the employee handbook or on the company website, or ask for a copy of the policy from the human resources department. Larger companies may have hotlines to call. Even if there is no policy in place, you should still consider reporting the harassment. If the harassment is from a coworker, your employer may not be held responsible until it knows (or should have known) about the harassment and fails to take corrective measures. No matter whom you talk to or call, write down the date and time of each conversation or attempted call, the name of the person with whom you spoke, and what each of you said during the conversation.

Seeking Redress from State and Federal Agencies

The laws that protect you from sexual harassment have deadlines for filing charges with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission, typically 180 days from the date of the alleged discrimination. Depending on where you live, there may be other local government agencies that can provide additional protection. Sexual harassment is not just sexual conduct or requests for sexual fa-

vors. Unlawful sexual harassment may include harassment by your employer or coworker because you might not look or act in a way that conforms to their stereotypes of how men and women should look or act.

MARRIAGE AND FAMILY ISSUES

Can I marry my same-sex partner?

Yes. Same-sex marriage has been legally recognized in Illinois since June 2014. Additionally, in June 2015, the United States Supreme Court ruled that state-level bans on same-sex marriage were unconstitutional. As a result, all states are required to issue marriage licenses to same-sex couples and to recognize same-sex marriages performed in other jurisdictions. Furthermore, same-sex couples that are legally married are now treated the same under both federal and state law as opposite-sex married couples. For example, the US Department of the Treasury and the IRS now recognize any couple, whether same-sex or opposite-sex, that has been legally issued a marriage license in any state as married for federal tax purposes. This means that same-sex married couples can now file taxes jointly and benefit from applicable marriage tax exemptions, among other things.

Prior to the legal recognition of same-sex marriage in 2014, Illinois enacted a law allowing any couple to enter into a civil union beginning June 2011, which entitled the couple to all of the rights, benefits, burdens, and obligations afforded to spouses under all of Illinois law. The enactment of the Illinois law that legalized same-sex marriage did not dissolve or nullify civil unions. Couples who entered into a civil union prior

to the legalization of same-sex marriage can convert their civil unions to marriages by applying for a marriage license and having a marriage ceremony within 60 days of application. This conversion to marriage is not required, however, and for those couples that choose not to convert, their civil unions will remain legally recognized as valid. Furthermore, both same-sex and opposite-sex couples can still enter into a civil union as opposed to getting married if they so choose. If two people in a civil union do get married, their civil union will cease to exist and their marriage will begin as of the date on their marriage certificate.

Can I adopt children?

A person can adopt children as a single parent under Illinois law regardless of sexual orientation. Additionally, Illinois has long permitted unmarried same-sex couples to jointly petition for adoption. Same-sex couples that are married or in civil unions may also adopt children, but they must do so jointly under Illinois law. In other words, unless the couple has been living separate and apart for 12 months or longer, spouses or civil union partners must jointly file the petition for adoption. When the court grants an adoption to a couple jointly, the names of both parents (regardless of gender) will appear on the new birth certificate.

Things get a little more complicated when only one party is the legal parent of the child. Illinois will not recognize rights to a child (such as access, visitation, custody, or any other right of parentage) without parentage. Where one party does not establish legal parentage, and the couple later breaks up, that person has no legal or de facto rights to the child. Illinois law therefore allows a

person to legally adopt his or her partner's legal (biological or adoptive) child through a process called second-parent (or co-parent) adoption, giving him or her the same legal rights as the other parent. If a same-sex couple is not married or in a civil union, the non-legal partner must adopt the child in order to have full legal rights as a parent. Illinois law presumes that both spouses are the legal parents of a child born into a marriage, so while it would seem that both same-sex married couples and those in a civil union (since the Illinois Civil Union Act equates civil unions to marriages) would have this presumption of parentage, it has not been explicitly guaranteed under Illinois law as of now. As a result, some attorneys might still recommend second-parent adoptions for these couples in order to ensure both parents have full legal rights, especially since judgments of adoption are guaranteed full faith and credit under the U.S. Constitution, which means they are recognized in every state even if that state's own law would not have allowed the adoption. If you are unsure of your parental rights under Illinois law or are considering having or adopting a child with your spouse or partner, you should consult an experienced attorney for advice regarding your particular situation.

Some same-sex couples have considered surrogacy arrangements to bring a child into their relationship. Although surrogacy may seem ideal where a family member or close friend is willing to help, surrogacy arrangements are always complex. The Illinois Gestational Surrogacy Act does not expressly contemplate that a same-sex couple would seek a gestational surrogacy agreement, but this may not be an issue if the parties are married or have a civil union. If you are considering

such a surrogacy arrangement, it is crucial to speak to an attorney knowledgeable in artificial reproductive technology and surrogacy.

What happens when same-sex couples split up?

Legally married same-sex married couples can pursue the same avenues that opposite-sex married couples can to obtain legal recognition of their separation (i.e., legal separation or divorce). Same-sex couples filing a petition for dissolution of marriage should follow the traditional divorce procedures, and as such, will be afforded all the rights and protections under Illinois law, including, for example, the rights to division of all property acquired during the union (or foreign marriage or substantially similar legal relationship), to maintenance or spousal support (formerly known as alimony), custody, child support, attorneys fees, and the like. Civil unions also follow the same procedures for divorce and legal separation as marriages under the Illinois Civil Union Act. Regardless of where it was obtained, same-sex couples can file for divorce or legal separation in Illinois so long as one of the parties is a resident of Illinois and has been so for 90 continuous days prior to filing.

VIOLENCE

What if I am the victim of a hate crime?

Sexual orientation is a protected category under the Illinois Hate Crimes Act and includes actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity. A person can be charged with a hate crime when, because of the actual or perceived sexual orienta-

tion of another individual or group of individuals, he or she commits assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle or to real property, mob action, disorderly conduct, or harassment by phone or through electronic communications. Any hate crime is punishable with criminal prosecution and remedies, including restitution paid to the victim. Even if a crime is not charged as a hate crime, crimes committed because of a victim's sexual orientation may be subject to greater penalties under Illinois law. You can also pursue a civil action for hate crime and seek damages, attorneys' fees, and other relief.

What if I am the victim of domestic violence?

The Illinois Domestic Violence Act permits a person abused or harassed by a family or household member to petition the court for an order of protection, regardless of the sexual orientation, marital status, or gender identity of the parties involved. If you are living with or even dating someone who is abusing you, you may seek protection under the Act. Conduct that will support an order of protection includes physical abuse, threats of violence, harassment at your home or workplace, financial exploitation, and stalking. An order of protection may include provisions aimed at protecting you from further harm, i.e. requiring the abuser to stay a certain distance away from you at all times, prohibiting the abuser from committing any other acts of abuse or neglect, removing the abuser from a shared residence, requiring the abuser to undergo counseling, prohibiting the abuser from possessing a

firearm, and providing for the care, possession, and visitation of minor children. To obtain an order of protection, you will have to describe in writing the abuse or harassment you experienced and its impact, attend a court hearing, and possibly testify in court. In emergencies, orders of protection can be granted without the abuser being present. Illinois has created a uniform, statewide Petition for Order of Protection. Some counties, such as DuPage County, have even created an online program to file Petitions for Orders of Protection. Violations of protective orders are subject to criminal and civil penalties.

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This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

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www.ISBALawyers.com

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