

CHICAGO PROHIBITS DISCRIMINATION BASED ON CHOICES RELATING TO BODILY AUTONOMY AND PROTECTS WORKERS' HEALTH CARE INFORMATION

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In an expansion of its protections for workers based on their gender identity, and in an effort to protect people's reproductive and gender-affirming choices and privacy, Chicago recently amended the Chicago Human Rights Ordinance to: (a) prohibit employment discrimination based on choices relating to "bodily autonomy"; and (b) prohibit employers from accessing information about such choices without consent. (Chicago Code Tit. 6, Art. II, §§ 6-120-010, 6-120-015.)

Effective February 1, 2023, employers in Chicago (except certain exempt religious organizations) are prohibited from:

- discriminating against an applicant because of the applicant's or the applicant's family member's decision regarding reproductive health care or gender-affirming care;
- discriminating or retaliating against a worker^[1] with respect to compensation, terms, conditions, or privileges of employment because of the worker's or worker's family member's decision regarding reproductive health care or gender-affirming care;
- requiring an applicant or worker to sign a waiver or other document which purports to deny the individual or the individual's family members the right to make their own decision regarding reproductive health care or gender-affirming care; or,
- accessing information about a worker's or worker's family member's decision regarding reproductive health care or gender-affirming care without the employee's informed affirmative written consent.

(Chicago Code Tit. 6, Art. II, § 6-120-010.)

Under the Ordinance, the following definitions apply:

- "Bodily autonomy" means self-governance over one's own reproductive options and gender identity, including reproductive health care and gender-affirming care.

- “Gender-affirming care” means all services, supplies, drug therapies, and other care that an individual may receive to support and affirm the individual’s gender identity.
- “Reproductive health care” means health care offered, arranged, or furnished for the purpose of preventing pregnancy, terminating a pregnancy, managing pregnancy loss, or improving maternal health and birth outcomes. Reproductive health care includes but is not limited to contraception, sterilization, preconception care, maternity care, abortion care, and counseling regarding reproductive health care.
- “Informed affirmative written consent” is consent voluntarily given by the worker in writing after having the opportunity to review a document that asks the worker’s permission for the employer to receive information related to reproductive health care, or related to gender-affirming care, or both, and after being informed, in the worker’s primary language, in writing and orally:
 - that disclosure is voluntary,
 - that the worker may revoke consent at any time,
 - that none of the information will be disclosed to the employer prior to the worker signing the document, should the worker choose to sign, and
 - that the employer may not discriminate or retaliate against the worker should the worker refuse to provide consent or later revoke consent.

(Chicago Code Tit. 6, Art. I, § 6-20-020; Tit. 6, Art. II, §§ 6-100-010, 6-120-015.)

The Ordinance does not include any posting, notice or training requirements specific to these new provisions. However, Chicago employers may wish to revise their anti-discrimination, harassment and retaliation policies to add “choices relating to reproductive health care or gender-affirming care” to the list of protected categories. Similarly, Chicago employers should consider adding these concepts to their anti-discrimination, harassment and retaliation training.

[1] These Code provisions use the term “worker” rather than “employee,” without explanation. Presumably this would include those defined as an “employee” under this Chapter of the Code: “an individual who is engaged to work within the geographical boundaries of the City of Chicago for or under the direction and control of another for monetary or other valuable consideration.” (Chicago Code Tit. 6, Art. I, § 6-10-020.) But it may also be intended to include non-employee service providers as well.

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