

New Illinois Mandatory Anti-Harassment Training

*Prepared for Members of the Leadership Council
Southwestern Illinois*

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Sexual Harassment and Prevention Training

- IHRA mandates all training to be completed in 2020 (no later than December 31, 2020);
- All employers will be **required** to conduct sexual harassment training for **all employees** at least once a year, or face penalties of up to \$5,000 per year per infraction.
- All employees, including part-time, short-term, and interns.
- If an employee is based elsewhere, but regularly interacts with other employees in Illinois, even if they are not physically present in Illinois, they should be trained.
- Must maintain a record of the training (e.g. course sign-in).
- If employees have disabilities or **speak a language other than English**, employers must train employees in a manner that is accessible to them.
- Independent contractors should attest to compliance with all laws, including anti-harassment mandatory training pursuant to the IHRA

Mandatory, Annual Anti-Harassment Training

- Employers in Illinois will be required to train ALL EMPLOYEES, ANNUALLY regarding prohibitions against unlawful sexual harassment.
- Pursuant to the Statute... Mandatory training must include:
 - 1) An explanation of sexual harassment consistent with the Illinois Human Rights Act;
 - 2) Examples of conduct that constitutes unlawful sexual harassment;
 - 3) A summary of relevant federal and State statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and
 - 4) A summary of responsibilities of employers in the prevention, investigation, and corrective measures of sexual harassment.
- The IDHR released model training for this purpose as well as guidance.

Applicable Laws

- **Federal/Title VII:**; sex (which includes sexual orientation/gender identity and pregnancy);
- **State/Illinois Human Rights Act:** (actual or perceived sex and/or sexual orientation; pregnancy)
 - "Sex" means the status of being male or female.
 - "Sexual orientation" means **actual or perceived** heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult

What is Sex Harassment According to Illinois and Federal Law?

Types of Sex Harassment

- *Quid Pro Quo* (sexual)
 - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- Hostile Work Environment.

Quid Pro Quo Sexual Harassment Under the Illinois Human Rights Act

- Under the Illinois Human Rights Act, “sexual harassment” is defined as any *unwelcome* sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - Submission to the conduct is made either explicitly or implicitly a term or condition of employment; or
 - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

Quid Pro Quo

This

- Sex
- Other sexual contact
- Dates
- Flirting
- Putting up with sexual comments/touching



That

- Promotion
- Positive Review
- Keeping job
- Pay increase
- Bonus
- More favorable assignments, office, etc.

Unwelcome Conduct

- “*Unwelcome* sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - Behavior may be unwelcome if the individual did not solicit or invite it, or the individual *regarded* the conduct as undesirable or offensive.
 - Welcome behavior can quickly become unwelcome behavior. What starts off as welcome behavior (consensual joking) can cross a line and become unwelcome behavior.
 - Importantly, consent can be revoked at any time. When someone experiencing sexual harassment behavior says, for example, “stop talking to me like this” **it must stop.**
 - Cannot use as a defense “Well you started it.” or “You were ok with it at first.” **Intent of the perpetrator is not a defense.**

Hostile Work Environment Sex Harassment Under the Illinois Human Rights Act

- Under the Illinois Human Rights Act, “sexual harassment” also is defined as any *unwelcome* sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - Such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment
 - “**Work environment**” is not limited to the physical location where the employee is assigned, but includes other work sites including off-site, mobile or moving work sites/locations.

Hostile Work Environment

- Unwelcome conduct
- Based on a **protected characteristic**
- Enduring the unwelcome conduct becomes a condition of continued employment, *or*
- The conduct is **severe or pervasive** enough to create a work environment that a **reasonable person** would consider **intimidating, hostile, or abusive**; or
- Such conduct has the purpose or effect of substantially interfering with an individual's work performance



Who Can Be the Perpetrator?

- Management (supervisors, managers)
- Co-workers
- Clients
- Vendors
- Contractors

Who Can Be the Victim?

- The employee to whom the conduct is directed
- Other employees who witness or overhear and are impacted
- Non-employees – consultants and independent contractors (IL only as of January 1, 2020).

Employer Liability for Harassment

- **Co-worker or non-employee harassment**
 - Employer liable only when it:
 - Knew or reasonably should have known of the alleged conduct, **and**
 - The employer failed to implement prompt and appropriate corrective action (*i.e.* investigate and take preventive action, if warranted);

Employer Liability for Harassment

Manager/Supervisor

- If harassment from a supervisor or manager results in an adverse employment action (e.g. discipline or termination) employers are **strictly liable** for that harassment.
- If harassment from a supervisor or manager does NOT result in an adverse employment action, employer can defeat the claim if it can establish:
 - Exercised reasonable care to prevent and correct the harassing behavior (*i.e.* has a harassment policy and complaint procedure); and
 - Employee unreasonably failed to take advantage of the preventative and/or corrective opportunities provided by the employer (*i.e.* the employee failed to report the harassment)

Elements of Employer Defense

- Comprehensive written policy
- Clear complaint procedure with alternative avenues
- Policy effectively communicated
- Training
- Consistent and effective enforcement
- Adequate corrective measures

Remedies for Discrimination/Harassment

- Call the State of Illinois Sexual Harassment & Discipline Helpline
- Report the incident to Human Resources, supervisor or the individual whom the company has designated to receive and investigate complaints.
- File a charge of discrimination under the IHRA with the Illinois Department of Human Rights or under various federal laws (e.g. Title VII, ADA, ADEA) with the U.S. Equal Employment Opportunity Commission.
 - 300 days from the date of the incident to file a Charge of Discrimination.
 - IDHR may investigate any employer with 1 or more employee; EEOC may investigate any employer who has 15 or more employees.

YOU HAVE THE RIGHT TO BE FREE FROM JOB DISCRIMINATION AND SEXUAL HARASSMENT.



The Illinois Human Rights Act states that you have **the right to be free from unlawful discrimination and sexual harassment**. This means that employers may not treat people differently based on race, age, gender, pregnancy, disability, sexual orientation or any other protected class named in the Act. This applies to all employer actions, including hiring, promotion, discipline and discharge.

REASONABLE ACCOMMODATIONS

You also have the right to reasonable accommodations based on pregnancy and disability. This means you can ask for reasonable changes to your job if needed because you are pregnant or disabled.



RETALIATION

It is also unlawful for employers to treat people differently because they have reported discrimination, participated in an investigation, or helped others exercise their right to complain about discrimination.

REPORT DISCRIMINATION

To report discrimination, you may:

1. Contact your employer's human resources or personnel department.
2. Contact the Illinois Department of Human Rights (IDHR) to file a charge.
3. Call the Illinois Sexual Harassment and Discrimination Helpline at 1-877-236-7703 to talk to someone about your concerns.

Chicago:

James R. Thompson Center
100 West Randolph Street, Suite 10-100
Chicago, IL 60601
(312) 814-6200
(866) 740-3953 (TTY)
(312) 814-6251 (Fax)

Springfield:

535 W. Jefferson Street
1st Floor
Springfield, IL 62702
(217) 785-5100
(866) 740-3953 (TTY)
(217) 785-5106 (Fax)

Website: www.illinois.gov/dhr
Email: IDHR.Intake@illinois.gov

Employers shall make this poster available and display it where employees can readily see it.
This notice is available for download at: www.illinois.gov/dhr

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IDHR Job Discrimination And Sexual Harassment Poster

Remedies for Harassment

- Back pay – the lost pay and benefits you would have received absent the adverse personnel action (e.g. Salary from the date of a termination or demotion until the date of the trial);
- Compensatory damages – out of pockets expenses caused by the harassment (such as costs associated with job search or medical expenses), damages to compensate emotional distress and reputational harm that you suffered because of the sexual harassment;
- Punitive damages – damages to punish the company if it acted with malice or reckless indifference
 - 15-100 employees, the limit is \$50K; 101-200 employees, the limit is \$100K; 201-500 employees, the limits \$200K; more than 500, the limit is \$300K
- Lost future earnings;
- Attorney's fee and litigation expenses

Examples of Sexual Harassment: Verbal Conduct

- Examples of **verbal conduct** that may constitute harassment include:
 - Foul or obscene language.
 - Making derogatory comments.
 - Slurs or discussions about sexual activities or behaviors.
 - Comments about another person's physical attributes.
 - Spreading rumors about another person's sexual activities, conduct, or partners.
 - Jokes, including those about gender-specific traits.
 - Sexual advances.
 - Sexual innuendos or double entendres.

Examples of Sexual Harassment: Visual and Written Conduct

- Examples of **visual conduct** that may constitute harassment include:
 - Leering, such as slowly looking someone up and down.
 - Making sexual gestures.
 - Displaying sexually suggestive or explicit objects, pictures, cartoons, or posters.
 - Computer games depicting sexual situations or behaviors.
 - Examples of **written conduct** that may include harassment include suggestive, obscene, or propositioning communications in the form of:
 - Letters or notes
 - Greeting cards
 - Invitations
 - Emails or texts

Receiving a Sex Harassment Complaint

- Thank the person for coming to you
- Take the complaint seriously
- Listen to the employee
- Never discourage an employee from reporting a complaint
- Report promptly
- Don't promise confidentiality. Maintain discretion regarding the complaint. (Remember "need to know")
- Explain what will happen when reporting according to the company policy
- Advise that an investigation will be conducted
- Never Retaliate!

TO DO ...

1. Take immediate steps to review all relevant policies, employee handbook provisions, and posters re: harassment and discrimination --- pay careful attention to clear complaint procedures and anti-retaliation promises;
2. Evaluate whether your internal anti-harassment and discrimination training program and practices meet the new requirements; and
3. Ensure all training can be tracked and recorded for later use/proof by the individual worker.

Certificate of Participation

2020 Sexual Harassment Prevention Training

I certify that I have carefully read and reviewed the content of, and completed, the 2020 Sexual Harassment Prevention Training pursuant to the Illinois Human Rights Act, 775 ILCS 5/2-109.

Training Participant Information:

(Printed Name - First, Middle Initial, Last)

(Signature)

(Birth Month and Day)

Training Date/Location:

(Company Name/Work Location)

(Training Date)

Training Method

VIRTUAL TRAINING SERIES:

Sexual Harassment Prevention

As of January 1, 2020, all Illinois employers are required to conduct annual sexual harassment prevention training. At a minimum, this must include:

- an explanation and examples of what constitutes unlawful sexual harassment
- a summary of relevant federal and state provisions and remedies available to victims
- a summary of employers' responsibilities in preventing, investigating and taking corrective measures in regard to sexual harassment

Greensfelder is providing multiple virtual options to meet the needs of all Illinois employers. Each session not only meets but exceeds Illinois' annual training requirements.

WHY CHOOSE OUR TRAINING?

- ☑ Our comprehensive training courses offer separate and distinct sessions for employees and supervisors, with each covering the prevention of discrimination, harassment, retaliation and bullying in the workplace under Illinois and federal laws. The full program covers all aspects of a true comprehensive training on these important topics for employers of all types, in all industries.
- ☑ Following the U.S. Supreme Court's recent ruling that all employers are prohibited from discriminating against employees based on the employee's sexual orientation and/or gender identity, our training covers this important change as well.
- ☑ Failure to provide training each year is a violation of the Illinois Human Rights Act. Illinois employers who do not provide compliant training will be subject to civil penalties, including a \$500 penalty to any business with fewer than 4 employees, or \$1,000 to those with 4 or more employees. Penalties for subsequent violations can rise to \$5,000 each.



Trainings will be led by Greensfelder Officer [Scott Cruz](#), an experienced labor and employment attorney. For more information or to order training sessions, contact Scott at 312-345-5008 or scruz@greensfelder.com.

TRAINING OPTIONS

PRE-RECORDED TRAININGS

Employee or supervisor recording
(one program)

\$499

Employee and supervisor recordings
(two programs)

\$899

BEST VALUE

Programs are about 1.5 hours each. Recordings are password-protected and available through Dec. 31, 2020, when links will be removed from the cloud.

LIVE VIRTUAL TRAININGS

Live virtual training via Zoom customized for your workplace, including a live Q&A opportunity

\$1,999

Live programs will run about 1.5 to 2 hours. Recordings can be provided afterward as well, available through Dec. 31, 2020, when the link will be removed from the cloud.

Because employers must maintain documentation for each employee establishing compliance with the training requirement, a certificate of attendance/completion will be made available for each employee, and a copy of the PowerPoint also will be made available to download.

Virtual Training Series on Sexual Harassment Prevention

Questions?



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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.