



Sexual Harassment Prevention Training – For Legal Professionals

By: Sukrat A. Baber / Taft Stettinius & Hollister,
Chicago

Overview of Training Mandate

- Effective Jan. 1, 2020 – mandatory for all employers
- Part of the Illinois Human Rights Act (“IHRA”)
- All employees regardless of their status (i.e. short-term, part-time, or intern) must be trained.

Guidance Issued

- Complete training by Dec. 31
- Contractors excluded (with exceptions, discussed below)
- Training may be done outside work hours; but wage/hour laws apply
- New hires already trained in calendar year need not be retrained
- Accessibility for disabled employees and foreign language needs

Guidance Cont'd – Ambiguities

- How should employees review materials?
- Training independent contractors – liability considerations?
- Training out-of-state employees?
- Sufficiency of training by another employer?

What is Sexual Harassment?

Under IHRA, “Sexual harassment” means any unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment,
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Types of Unlawful Sexual Harassment

- 1. Quid Pro Quo Sexual Harassment.** *“You do something for me, and I’ll do something for you.”* This means that a manager or supervisor may not tell an employee that in order to receive a promotion, raise, preferred assignment, or other type of job benefit – or to avoid something negative like discipline or an unpleasant assignment – the employee must do something sexual in return.
- 2. Hostile Work Environment Sexual Harassment.** *“The air at work is full of sexual references and it is impacting me.”* A hostile work environment may occur when unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Unwelcome Behavior

- Sexual conduct becomes sexual harassment when the behavior is unwelcome. Behavior may be unwelcome in the sense that the victim did not solicit or invite it, or in the sense that the victim 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.
- Also, consent can be revoked at any time. When someone experiencing sexual harassment behavior says, "stop talking to me like this" **it must stop.** The perpetrator cannot use as a defense "Well you started it." or "You were ok with it at first."

Gender Identity & Sexual Orientation

- A person can be the victim of sexual harassment regardless of the victim's **gender identity** or the perpetrator's gender identity.
- A person can be the victim of sexual harassment regardless of the victim's **sexual orientation** or the perpetrator's sexual orientation.
- *Bostock v. Clayton County* and stronger IL protections

Employees and Nonemployees as Victims of Sexual Harassment

- The Illinois Human Rights Act protects **Employees** and now **Nonemployees** from sexual harassment.
 - **Employees** include co-workers, supervisors and managers.
 - **Nonemployees** include persons who are not employees, but are directly performing services for an employer, such as contractors or consultants (independent contractors or gig workers).
- Victims of sexual harassment can include **Employees and Nonemployees** when sexually harassed by other Employees or Nonemployees.
- Victims of sexual harassment can include not only the target of the sexual harassment, but also those Employees or Nonemployees who are **Bystanders or Witnesses** to the sexual harassment.

Employees and Nonemployees as **Perpetrators** of Sexual Harassment

- The Illinois Human Rights Act prohibits **Employees** and **Nonemployees** from engaging in sexual harassment.
 - **Employees** include co-workers, supervisors and managers.
 - **Nonemployees** include persons who are not employees, but are directly performing services for an employer, such as contractors or consultants.
- Employers are responsible for sexual harassment perpetrated by their Employees and Nonemployees against **other Employees and Nonemployees.**

Customers/Patrons and Third Parties as **Perpetrators** of Sexual Harassment

- The Illinois Human Rights Act **prohibits** sexual harassment of Employees and Nonemployees by **Customers/Patrons and Third Parties**.
 - Employers are responsible for sexual harassment of their Employees and Nonemployees by **Customers/Patrons**.
 - Employers are also responsible for sexual harassment of their Employees and Nonemployees by **Third Parties** such as sales representatives, vendors, and/or delivery persons.

Examples of Sexual Harassment

- Pressure for sexual favors or to go out on a date
- Deliberate touching, leaning over, or cornering another person
- Sexual looks or gestures or whistling at someone
- Sending letters, telephone calls, e-mails, texts, or other materials of a sexual nature
- Sexual teasing, jokes, remarks, or questions
- Referring to another as a “girl,” “hunk,” “doll,” “babe,” “honey,” etc.
- Actual or attempted rape or sexual assault

Considerations for the Legal Space

- Sexual harassment extends to court, depositions, locations for deals, etc.
- Sexual content of legal work is no defense to sexual harassment
 - Family law, employment law, IP, sexually charged matters like revenge porn cases
- Abuse of power structures
- Exploiting driven young professionals

Considerations for Legal Space Cont'd

- Crushing impact of publicized cases against law firm
- Lawyers as moral leaders
 - Jury expectations
 - Peer expectations
 - Licensure
- Generational considerations – don't get cancelled

Sexual Harassment in Online Environments

- Our conduct online and through social media can constitute sexual harassment even when it occurs “off the clock”, “off-site”, or even “out of state”.
- Online sexual harassment includes using e-mail, cell phone texts, internet posting, online comments, blog posts, and social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, and Snapchat) to send communications of a sexual nature. Examples include:
 - Flirting and requests or demands to go on a date or have sex
 - Sending inappropriate pictures or videos including sexually graphic material
 - Using sexual language or comments including sexually offensive language
 - Cyber stalking

Explanation of manager liability and responsibility under the law

- "Manager" means a person responsible for the hiring and firing of employees, including, but not limited to, a law office manager, partners, senior associates with hiring/firing authority
- Strict liability – harassment by manager means employer is liable
- Duty to investigate
- Duty to maintain confidentiality
- Duty to protect employees involved
- Duty to discipline when allegations sustained

What can I do if I experience, witness, or become aware of unwelcome sexual conduct?

If you experience, witness or become aware of unwelcome sexual conduct, know that:

1. You have the **right to tell the person to stop**. The initiating and participating persons must stop the unwelcome behavior upon request. If they continue the behavior or retaliate against you because you asked them to stop, they can be found to have violated the law by engaging in sexual harassment or retaliation.
2. You have the **right to report the sexual harassment**. Several reporting options are available. The option you choose may depend on the nature and severity of the unwelcome conduct of a sexual nature. Persons who report sexual harassment or participate in investigations are protected from retaliation.

Reporting Sexual Harassment – Several Options

The choice of how to report an allegation of sexual harassment is a personal one, and these options are not mutually exclusive. You may pursue one or more of the following reporting options:

1. Call the State of Illinois Sexual Harassment & Discrimination Helpline
2. Report the Incident to Your Employer
3. File a Charge with the Illinois Department of Human Rights (IDHR)
4. File a Charge with the U.S. Equal Employment Opportunity Commission (EEOC)

Call the State of Illinois Sexual Harassment and Discrimination Helpline

If you or someone you know has experienced or witnessed unwelcome conduct of a sexual nature in the workplace, please call the *State of Illinois Sexual Harassment and Discrimination Helpline* for assistance. Calls are confidential and can be made anonymously.

Call: 1-877-236-7703

Visit www.Illinois.gov/SexualHarassment

Helpline representatives can help callers navigate their numerous reporting options and share additional information related to counseling, legal assistance, and frequently asked questions.

Reporting Sexual Harassment to an Employer

Report the incident to one or more of the following employer representatives:

- 1. Your Supervisor** or any member of management you trust. Supervisors and members of management are responsible for knowing the employer's internal complaint investigation and resolution process. Supervisors can help effect immediate positive change.
- 2. Human Resources Officers** can work with management to investigate and resolve sexual harassment complaints. This option may be preferred, if the perpetrator of the sexual harassment is a supervisor or manager.
- 3. Designated Sexual Harassment Reporting Officers** are often established by employers to specifically receive and investigate sexual harassment complaints. Consult your employer's sexual harassment policy for specific reporting contact information.

Reporting Sexual Harassment to the Illinois Department of Human Rights (IDHR)

The Illinois Department of Human Rights (IDHR) is a state agency responsible for enforcing the Illinois Human Rights Act, the state law which makes it illegal to engage in sexual harassment or retaliation.

- Complainants (victims of sexual harassment) may file a charge at any time within 300 days of the incident(s).
- IDHR has jurisdiction (authority) to investigate employers who have 1 or more employees.
- To start the process, submit a Complainant Information Sheet to IDHR.

Remedies Available Under The Illinois Human Rights Act

- **After IDHR completes its investigation, the Complainant (the employee):**
 1. May file a lawsuit in civil court, or
 2. May file a complaint with the Illinois Human Rights Commission (HRC) if IDHR found “substantial evidence” of a violation.
- Complainants who prevail in the HRC or Court may receive an **order awarding remedies** allowed by the Illinois Human Rights Act to make the Complainant “whole.”
- **Remedies** may include: back pay, lost benefits, clearing of a personnel file, damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, and attorney’s fees and costs.

Reporting Sexual Harassment to the IDHR (Contact Information)

To file a charge, call IDHR or visit them online:

1-800-662-3942 | www.ILLINOIS.GOV/DHR

IDHR Offices Locations:

- **Chicago.** Office: 312-814-6200 | 866-740-3953 (TTY), 100 W Randolph St, Suite 10-100, Chicago, IL 60601
- **Springfield.** Office: 217-785- 5100 | 866-740-3953 (TTY), 535 W. Jefferson, 1st Floor, Intake Unit, Springfield, IL 62702
- **Marion.** Office: 618-993-7463 | 217-740-3953 (TTY), 2309 W Main St, Marion, IL 62959

Reporting Sexual Harassment to the U.S. EEOC

The United States Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, the federal law that make it illegal to engage in sexual harassment or retaliation.

- Complainants (victims of sexual harassment) may file a charge at any time within 300 days of the incident(s).
- The EEOC has jurisdiction (authority) to investigate employers who have 15 or more employees.
- To start the process, call the EEOC or visit their website.

Remedies Available Under Title VII of the Civil Rights Act of 1964

- **After EEOC completes its investigation:**
 1. The Complainant (the employee) may file a lawsuit in federal court.
 2. The EEOC may help parties reach a settlement through an informal process called “conciliation” if the EEOC finds “reasonable cause” to believe discrimination occurred.
- Complainants who prevail in federal court may receive an **order awarding remedies** allowed by Title VII to make the employee “whole.”
- **Remedies** may include: back pay, lost benefits, clearing of a personnel file, damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, punitive damages, and attorney’s fees and costs.

Reporting Sexual Harassment to the U.S. EEOC

To file a charge, call or visit online:

1-800-669-4000 | www.EEOC.GOV

1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only)

1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing callers only)

U.S. EEOC Offices Serving Illinois

- **Chicago District Office.** JCK Federal Building, 230 S. Dearborn St., Chicago, IL 60604
- **St. Louis District Office.** Robert A. Young Federal Building, 1222 Spruce St., Rm. 8.100, St. Louis, MO 63103

Is my Employer Responsible for Sexual Harassment?

Yes, employers are responsible for sexual harassment in two ways:

- **Manager/Supervisor Harassment.** Employers are *strictly liable* for sexual harassment perpetrated by its members of management *regardless* of whether the employer knew of the harassment.
- **Co-Worker & Nonemployee Harassment.** Employers are *liable* for sexual harassment perpetrated by an employee (co-worker) or nonemployees (vendors) *only if* the employer knew or reasonably should have known of the harassment and failed to take prompt corrective action.

Employer Responsibilities

We will now discuss employer responsibilities and liabilities concerning incidents of sexual harassment in workplaces including their responsibilities to:

- **Prevent** the incidence of sexual harassment in their workplaces;
- **Investigate** incidents of sexual harassment in their workplaces; and
- **Correct** the incidence of sexual harassment in their workplaces.

Employer Responsibility - Prevention

1. Develop, implement and regularly communicate the employer's sexual harassment policy.
2. Provide training for managers and employees on sexual harassment prevention.
3. Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.
4. Managers and supervisors should monitor their work environment to ensure the workplace is free of sexual harassment – supervisors should be aware of the conduct within their supervision.
5. Managers and supervisors must lead by example and model appropriate conduct – refrain from engaging in conduct of a sexual nature.
6. Managers and supervisors should conduct a sexual harassment climate check throughout the year -discuss the topic at a team or staff meeting, in-service day or as part of structured communication such as division/unit newsletters.

Employer Responsibility - Investigation

1. Immediately respond to a complaint of sexual harassment and initiate an inquiry or investigation.
2. Interview the complainant (victim) and take reasonable action to protect the victim from retaliation or experiencing further sexual harassment during the investigation.
3. Interview all relevant witnesses.
4. Interview the alleged perpetrator of the sexual harassment.
5. Document the investigation results and maintain the file as an employment record.
6. Take corrective action as appropriate.

Employer Responsibility – Corrective Measures

1. Take appropriate corrective disciplinary action up to and including termination of employment where organizational policy has been violated.
2. In situations where the conduct in question did not rise to the level of sexual harassment or a violation of policy, but is concerning or may be considered grooming behavior, consider counseling, training and closer supervision of the employee.
3. Take reasonable action within the organization to reduce the likelihood of future sexual harassment incidents by updating policies and communicating them to the workforce; providing supplemental or tailored sexual harassment training; or restructuring the working environment or reporting relationships.
4. Follow up with the complainant (victim) at regular intervals to ensure they and the workplace remains free from sexual harassment.

Questions?

****Must certify participation to be compliant with training requirements****

Thanks for participating!