

## Insights

### **Illinois' IDHR Publishes Long-Awaited Sexual Harassment Training Program**

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Through amendments to the Illinois Human Rights Act ("IHRA"), Illinois has mandated since January 1, 2020, that Illinois employers provide annual sexual harassment prevention training that meets or exceeds the Illinois Department of Human Rights ("IDHR") model training program. The IDHR has now completed and published that model anti-harassment training program, which are summarized in this alert.

#### **A. Training Program Requirements**

Using the IDHR's model anti-harassment training program will assure that the employer covers all training components required by Illinois statute, which include: (1) an explanation of sexual harassment that conforms with the Illinois Human Rights Act ("IHRA"); (2) examples of sexual harassment conduct; (3) a summary of federal and state laws that concern sexual harassment; and (4) a summary of the employer's obligation to prevent, investigate, and correct sexual harassment. Restaurants and bars must additionally provide employees with supplemental training and a written sexual harassment prevention policy (in English and Spanish) to show specific conduct, activities, or videos related to the restaurant or bar industry and to explain managers' liability and responsibility under the law.

##### **(1) Explanation of Sexual Harassment**

The training materials must include all three types of sexual harassment within the IHRA's definition: "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) 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." The conscientious employer may choose to offer more, perhaps by expounding on concepts such as "quid pro quo," "hostile work environment," or "implicit" conditions of employment.

##### **(2) Examples of Sexual Harassment**

The model sexual harassment training program includes many examples of sexual harassment including: pressure for sexual favors; deliberate touching; leaning over; sexual looks or gestures; letters, calls, texts, or emails of sexual nature; sexual teasing and joking; referring to a gender by a stereotypical name such as "doll" or "hunk," and actual or attempted rape. These and other relatable examples, including instances of online conduct that would violate a workplace sexual harassment policy, should be included in any anti-harassment training program to help employees understand what behavior constitutes sexual harassment and to meet the requirements of the new IHRA training requirement.

### (3) Summary of Relevant Laws

The training materials must also include a summary of all relevant federal and state laws that pertain to sexual harassment. This includes methods to report sexual harassment, such as calling the Illinois Sexual Harassment and Discrimination Helpline, reporting to the employer, filing a charge with the IDHR, and filing a charge with the Equal Employment Opportunity Commission. Each option should be fully explained including contact information, possible relief from pursuing each option, and any required deadlines. The training should also explain to employees the procedure to report sexual harassment to the employer.

### (4) Summary of Employers Obligations

The training program must also explain the employer's obligation to address, investigate, prevent and correct sexual harassment, with a detailed description of the employer's responsibility at each step. The training program must describe the employers' policies and procedures, which must cover all types of sexual harassment including employee-employee harassment, supervisor-employee harassment, and harassment by non-employees.

## **B. Record of Compliance and Mandatory Disclosures**

Employers must keep records of sexual harassment training, including names of employees trained, dates of training, name of the training provider, and copies of all written or recorded materials. These records may be kept in paper or electronic format but must be available for inspection by IDHR upon request. This requirement might be met by having employees sign in to training meetings, log in for online training, or sign certificates of completion after sexual harassment training.

Beginning October 1, 2020, and by each July 1 thereafter, employers must report to the IDHR information on adverse judgments or administrative rulings against the employer that find sexual harassment or unlawful discrimination. The record of compliance should include these reports to the IDHR.

## **C. Who Must be Trained?**

All employees who work or will work in Illinois or who regularly interact with Illinois employees must be trained by December 31, 2020 and annually thereafter, regardless whether the employer is based in Illinois and regardless whether the employee is short-term, part-time, intern, or other status. Although employers are not required to train independent contractors, the IDHR strongly recommends that they receive training if they are working on-site at an Illinois employer's workplace or interacting with an employer's Illinois staff. The training must be offered in a manner that is effective and accessible to all employees and, therefore, may need to be adapted to accommodate employees with disabilities or language barriers.

## **D. Risks of Noncompliance**

Civil penalties for failure to comply with the requirements of Illinois' sexual harassment legislation, including the annual disclosure and training requirements, depend on the number of employees. IDHR will initially issue a notice to show cause and, if no response or an insufficient response is received, may impose the following penalties:

- Employers with fewer than 4 employees face penalties
  - Up to \$500 for a first offense;
  - Up to \$1000 for a second offense; and
  - Up to \$3000 for a third or subsequent offense.
- Employers with 4 or more employees face penalties
  - Up to \$1,000 for a first offense;

- Up to \$3,000 for a second offense; and
- Up to \$5,000 for a third or subsequent offense.

In addition to IDHR fines for non-compliance, employers could suffer adversely in future litigation of sexual harassment complaints if they cannot show that they have complied with these training requirements. Conversely, proper training and compliance with IHRA's training program may be presented as evidence of the employer's good faith efforts to prevent and address sexual harassment.

The IDHR offers a **Frequently Asked Questions** page with informational handouts on sexual harassment prevention training, downloads of the **model Sexual Harassment Prevention Training** program in PowerPoint format and **PDF** format and **una versión en español (PDF Format)**, as well as further information through IDHR's Training Institute: **[www.illinois.gov/training](http://www.illinois.gov/training)**. The IDHR website also gives employees a telephone number and online form to report non-compliant employers.

Krieg DeVault LLP's Labor and Employment team is available to help you understand and implement these new sexual harassment training requirements. We are pleased to offer flexible flat fee arrangements to assist clients with compliance-related activities, including assistance with training programs and audits and updates of existing employee handbooks, policies, and training materials. Please contact **Elizabeth M. Roberson**, **Nancy J. Townsend**, or any member of our **Labor and Employment team** for more information.

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