



**SEXUAL HARASSMENT PREVENTION**  
Employee & Employer Rights & Responsibilities

2020 Chicago Social Work Conference  
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Webinar

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HEALTH | MENTAL HEALTH & CONFIDENTIALITY | CHILD WELFARE | ELDER LAW  
ESTATE PLANNING | ESTATE & TRUST ADMINISTRATION | GUARDIANSHIP & PROBATE

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**Introduction**

- Sexual harassment is unlawful discrimination
- Title VII of the Civil Rights Act of 1964
- Context of employment
  - Constitutional question
  - "Equal protection of the laws"
  - 14<sup>th</sup> Amendment
  - Can racial, ethnic, or gender criteria be used in an attempt to bring social justice and social benefits?
    - Plessy v. Ferguson...

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### Definitions (federal)

- Unwelcome conduct or comments based on sex
- that are so frequent or severe
- that they objectively create a hostile or offensive work environment **or**
- result in a negative employment action

- including pregnancy, sexual orientation, or gender identity
- such as being fired or demoted



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### Circumstances

- The victim may be a woman or a man.
- The victim does not have to be of the opposite sex.
- The harasser can be a supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.



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### Statistics

- **The Equal Employment Opportunity Commission (EEOC) 2016 report**
- Details the findings of "The Task Force on the Study of Harassment in the Workplace."

- Sex-based harassment claims
- Percentage of women who experience harassment in the workplace
- Retaliation
- Percentage of victims who do not file a complaint
- Cost of sexual harassment



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### Illinois Human Rights Act

- 1979
- Broadest civil rights coverage for the people of Illinois in the history of the State.
- Laundry list of protected classes
- **Any person employing one or more employees within Illinois**



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### Definitions (IL)

- **“Sexual harassment” means any unwelcome sexual advances or 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, or
  - 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.



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### Sexual Harassment

- **Hostile work environment**
  - sexual or verbal conduct;
  - unwelcome by individual alleging sexual harassment;
  - has purpose or effect of;
  - either:
    - substantially interfering with individual's work performance, or
    - creating intimidating, hostile, or offensive working environment.
- **Unwelcome behavior**
- **Quid pro quo**
- **Hostile work environment**



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### Case Law

- *Trayling v. Board of Fire and Police Com'rs of Village of Bensenville*, 273 Ill.App.3d (2nd Dist. 1995).
- *Sangamon County Sheriff's Department v. Illinois Human Rights Com'n*, 233 Ill.2d 125 (2009).

- Examples of inappropriate conduct
- Sexual Harassment in Online Environments



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### Employee Rights

- **If you experience, witness or become aware of unwelcome sexual conduct, know that:**
  - You have the right to tell the person to stop.
  - You have the right to report the sexual harassment.
- **Reporting options:**
  - Call the State of Illinois Sexual Harassment & Discrimination Helpline
  - Report the Incident to Your Employer
  - File a Charge with the Illinois Department of Human Rights (IDHR)
  - File a Charge with the U.S. Equal Employment Opportunity Commission (EEOC)



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### Reporting to IDHR

- **Complainants may file a charge at any time within 300 days of the incident(s).**
- **Remedies available under the Illinois Human Rights Act**
  - After IDHR completes its investigation, the Complainant (the employee):
    - May file a lawsuit in civil court, or
    - May file a complaint with the Illinois Human Rights Commission (HRC) if IDHR found "substantial evidence" of a violation.
- 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.



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### Reporting to EEOC

- May file a charge at any time within 300 days of the incident(s).
- Remedies available under Title VII of the Civil Rights Act of 1964 after the EEOC completes its investigation:
  - The Complainant may file a lawsuit in federal court.
  - The EEOC may help parties reach a settlement through an informal process called "conciliation" if the EEOC finds "reasonable cause" to believe discrimination occurred.
- 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.



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### Employer Liability (IL)

- **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.



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### Employer Responsibilities

- 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



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### Prevention

- Implement a sexual harassment policy.
- Provide training on sexual harassment prevention.
- Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.
- Monitor the work environment to ensure the workplace is free of sexual harassment.
- Lead by example and model appropriate conduct.
- Conduct a sexual harassment climate check throughout the year.

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### Investigation

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

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### Corrective Measures

- Take appropriate corrective disciplinary action up to and including termination of employment.
- In situations where the conduct in question did not rise to the level of sexual harassment or a violation of policy, but is concerning, consider counseling, training and closer supervision of the employee.
- Take action within the organization to reduce the likelihood of future incidents
  - Update policies and communicate them to the workforce; provide supplemental sexual harassment training; or restructure working environment or reporting relationships.
- Follow up with the complainant to ensure they remain free from sexual harassment.

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### Anti-Sexual Harassment Policy

- Describe what sexual harassment is
- Outline the means by which employees can report the occurrence of harassment
- Provide assurances that no retaliatory actions will be taken against the employee for doing so
- Developing and distributing clear employee policies, updating the policies, and consistently enforcing the policies may:
  - help employees understand and comply with your rules and expectations;
  - help prevent problems that may result in discrimination complaints; and
  - limit your liability should a complaint arise.

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### IL Workplace Transparency Act (WTA)

- New employer obligations under the WTA
- Effective 2020
  - Limitations on Non-disclosure, Non-disparagement, and Arbitration Clauses
  - Mandatory Annual Disclosures
  - Sexual Harassment Training
  - Protections for Independent Contractors
  - Unpaid Leave for Treatment following Sexual Harassment
  - "Regarded As" Discrimination Claims

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### IL Sexual Harassment Training

- Minimum training requirements
- The Model Program
- Guidance
- Nuances and ambiguities
- Specific industries

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### Sample Policy & Complaint Procedure

- Prohibition Against Harassment
- Protection Against Retaliation
- Effective Complaint Process
- Confidentiality
- Effective Investigative Process
- Questions to Ask Parties and Witnesses
- Credibility Determinations
- Reaching a Determination
- Assurance of Immediate and Appropriate Corrective Action
- Examples of Measures to Stop the Harassment and Ensure that it Does Not Recur
- Examples of Measures to Correct the Effects of the Harassment:

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