

Employment & Labor Law FLASHPOINTS December 2020

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Sexual Harassment Prevention Training Compliance Required Before New Year

On August 9, 2019, the Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101, *et seq.*, was amended to require that Illinois employers train employees on sexual harassment prevention on or before December 31, 2020, and annually thereafter. P.A. 101-221 (eff. Jan. 1, 2020). Given everything that 2020 has brought us, this serves as a reminder for employers to meet this compliance obligation before bringing in the highly anticipated new year.

The Illinois Department of Human Rights (IDHR) was charged with developing a model training program and making it available online to employers and the public. Except for state employers subject to the sexual harassment training requirements in the State Officials and Employees Ethics Act, 5 ILCS 430/1-1, *et seq.*, every employer with employees working in Illinois must use the model program or establish a program that “equals or exceeds” the statutory standards for the IDHR’s program outlined in §2-109(B) and/or §2-110(C) of the IHRA. 775 ILCS 5/2-109(B), 5/2-110(C). Those standards require, at a minimum,

1. an explanation of sexual harassment consistent with the IHRA;
2. examples of conduct that constitutes unlawful sexual harassment;
3. a summary of relevant federal and state statutes concerning sexual harassment, including remedies available to victims; and
4. a summary of employer responsibilities in the prevention, investigation, and corrective measures of sexual harassment. 775 ILCS 5/2-109(B).

The IDHR’s training program satisfies the basic antiharassment training program, which can be accessed here [<https://www2.illinois.gov/dhr/Training/Documents/IDHR-SHPT-2020-OCT-V2.pdf>] as a PDF. Employers should consider enhancing the basic training program to address their specific policies and procedures, as well as adding information about their general harassment and discrimination prevention policies or practices into the required sexual harassment training.

Notably, restaurants and bars must provide additional antiharassment training to their employees including

1. specific conduct, activities, or videos related to the restaurant or bar industry;
2. an explanation of manager liability and responsibility under the law; and
3. English and Spanish language options. 775 ILCS 5/2-110(C).

To demonstrate compliance with this training obligation, employers should keep track of their employees' completion of the training, including the employees' names and signatures, date and location of the training, and the type of training conducted (e.g., IDHR program, employer-established program, training through an outside vendor). If using an employer-established training program or an outside vendor, employers should maintain a copy of the materials or at least the content covered to demonstrate that it "equals or exceeds" the minimum standards set forth above.

In looking forward to fulfilling this training requirement on an annual basis, employers should consider providing the training for existing employees on a particular date or dates or setting a deadline for employees to complete (with evidence of completion) the training program selected by the employer. In light of an FAQ published by the IDHR, employers may want to give special consideration when it comes to training for newly hired employees and conduct this as soon as possible after hire. Illinois Department of Human Rights, *FAQ for Sexual Harassment Prevention Training* [<https://www2.illinois.gov/dhr/Training/Pages/FAQ%20for%20Sexual%20Harassment%20Prevention%20Training.a>]. In the FAQ, the IDHR states that "employers are encouraged to train employees as soon as possible because employers are liable for the sexual harassment conduct of new employees upon their hire." *Id.*

Keep in mind that an employer that does not comply with the new training requirements is subject to civil penalties, depending on the employer's size and history of offenses. Employers with fewer than four employees may face penalties of up to \$500 for a first offense, up to \$1,000 for a second offense, and up to \$3,000 for three or more offenses. For employers with at least four employees, the maximum penalties increase to \$1,000, \$3,000, and \$5,000, respectively.

Cheers to training and the new year!

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