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Sexual Harassment Prevention for Illinois Professionals

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This course was adapted from the State of Illinois Department of Human Rights “State of Illinois Sexual Harassment Prevention Training” Version 2.0., which is in the public domain.

Also, please refer to below details for more information:

<http://www.illinois.gov/DHR/Training>

<http://www.illinois.gov/SexualHarassment>

Helpline: (877) 236-7703

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Overview of Illinois Sexual Harassment Prevention

Sexual Harassment Is Prohibited in Illinois

The Illinois Human Rights Act makes it a civil rights violation “[f]or any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment.” 775 ILCS 5/2-102(D).

The Illinois General Assembly finds that tolerance of sexual harassment has a detrimental influence in workplaces by creating a hostile environment for employees, reducing productivity, and increasing legal liability.

The State of Illinois encourages employers to adopt and actively implement policies to ensure their workplaces are safe for employees to report concerns about sexual harassment without fear of retaliation, loss of status, or loss of promotional opportunities.

Employers Required to Provide Sexual Harassment Prevention Training for All Employees

Every employer in the State of Illinois is required to provide employees with sexual harassment prevention training that complies with section 2-109 of the Illinois Human Rights Act (“IHRA”).

All employees regardless of their status (i.e. short-term, part-time, or intern) must be trained. If an employer has an independent contractor working on-site with the employer’s staff, the independent contractor should receive sexual harassment prevention training.

Chapter 1

An Explanation of Sexual Harassment Consistent with the Illinois Human Rights Act

What is Sexual Harassment?

Under the Illinois Human Rights Act, “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.”

Working Environment

An employee’s “working environment” is not limited to the physical location where the employee is assigned. The “working environment” extends to other worksites including off- site, mobile or moving worksites/locations.

For example, a “working environment” includes the courthouse for a lawyer, or an off-site event for a caterer.

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.

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.

Customers/Patrons as Victims of Sexual Harassment

The Illinois Human Rights Act protects Customers/Patrons from sexual harassment in “places of public accommodation,” such as stores, hotels, restaurants, theaters, museums, health clubs and hospitals.

Employers that are also “places of public accommodation” are responsible for sexual harassment of Customers/Patrons when perpetrated by their Employees or Nonemployees.

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 (independent contractors or gig workers).

Employers are responsible for sexual harassment perpetrated by their Employees and Nonemployees against other Employees and Nonemployees.

Employers are also responsible for sexual harassment perpetrated by their Employees and Nonemployees against customers/patrons.

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.

Workplace Scenario

SCENARIO 1: SAM'S NEW JOB

Sam applies for their first job at a restaurant. Sam is interviewed by Adrian, the manager. Sam felt the interview went well but thought the question about whether Sam is single was strange. Sam is offered a position to wait tables. Sam notes that Adrian stares from a distance but believes Adrian is just watching Sam work. Sam starts to feel uncomfortable as Adrian is always near the door to the kitchen and bumps into Sam all the time. One day Sam walks through the door and feels something on their butt. Sam turns and sees Adrian smiling and turns away quickly. Later that shift, Sam confronts Adrian about Adrian's behavior. Adrian says to Sam, "if you like it, your job can be much easier."

Is Sam being sexually harassed and if so, is the employer liable for Adrian's actions?

- Correct Answer: Yes. Adrian's conduct toward Sam could be sexual harassment.
- Rationale: Adrian's comments toward Sam could be sexual harassment given that they were sexual in nature and appear to have been unwelcome conduct. The restaurant is automatically liable for Adrian's actions because Adrian is in a management role and holds a position of authority.

Chapter 2

Examples of Conduct That May Constitute Unlawful Sexual Harassment

What are Examples of Inappropriate Conduct?

Sexual harassment includes unwelcome conduct of a sexual nature (sexual advances and requests for sexual favors). Examples include:

- 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,” “tootsie”, etc.
- Actual or attempted rape or sexual assault

More examples of conduct that may constitute sexual harassment include:

- Turning work discussions to sexual topics
- Asking about sexual fantasies, preferences, or history
- Sexual comments, sexual innuendos, or sexual stories
- Sexual comments about a person’s clothing, body, or looks
- Kissing sounds, howling and smacking lips
- Telling lies or spreading rumors about a person’s sex life
- Massaging neck, shoulders, etc.
- Touching another employee such as their clothing, hair, or body

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

Workplace Scenarios

SCENARIO 2: SPRINGFIELD TIGERS

The Springfield Tigers softball team has just won the championship game and decides to stop at Mike’s Pub for a few drinks to celebrate. Server comes to the table to take their drink orders and Teammates A and B start making statements to Server like “I bet you can quench my thirst. Wouldn’t you like to cool me down? I’d like to drink from your fountain.” Server replies, “Yes, I can cool you all down and quench all of your thirsts.” Teammates A and B proceed and say, “how about you give us your phone number, and we can take this to the next level.” Server says “I don’t think so. I am married.” Everyone at the table laughs and proceeds to place their drink orders. Teammate C turns to Server and says, “you know they’re just kidding and didn’t mean anything by it.” Server replies, “I know, no worries” and leaves to retrieve the drink order.

Could the conduct of Teammates A and B toward Server be sexual harassment, and if so, what could be done?

- A. The conduct of Teammates A and B is not sexual harassment because the comments made by the Server show that the Server participated in the conversation and then told Teammate C not to worry about it.
 - B. The conduct could be sexual harassment because the comments made to the Server were sexual in nature and may have been unwelcome to the Server.
 - C. Server should report the conduct of Teammates A and B to the Mike’s Pub manager, who should then inform Teammates to refrain from similar or like behavior or they will be denied service and asked to leave Mike’s Pub.
 - D. Answers B and C.
-
- The correct answer is D. Both Answers B and C are correct.
 - Rationale: Server’s participation in the conversation with Teammates A and B does not necessarily mean that the conduct was welcomed by Server. The comments were intended as sexual in nature. If Server is uncomfortable, the comments should be reported to a Mike’s Pub Manager, who should ensure that the Teammates refrain from the conduct or leave the Pub.

SCENARIO 3: THE COFFEE SHOP

Employee A & B are co-workers at The Coffee Shop. They have been working together for almost two years. Employee B has recently become Facebook friends with Employee A. Employee B sends a message to Employee A through Messenger asking Employee A out on a date. Employee A ignores the message and does not respond. Employee B sends another message through Messenger to Employee A, this time stating, "This could be the best date you've ever had." Employee A does not respond. Employee B sends a third message to Employee A and it read "I didn't want to date you anyway. I heard you're a slut." Employee A becomes very upset by the message and decides to share the messages with the Manager, indicating that "Employee B's comments have made it difficult to concentrate at work."

What is the responsibility of the Manager in this situation?

- A. The Manager should conduct an investigation into Employee A's complaint.
 - B. If the investigation reveals that the conduct occurred, the Manager should take corrective action, including taking appropriate disciplinary action against Employee B, if warranted.
 - C. The Manager should ensure that all Coffee Shop employees are aware of the Coffee Shop's policy against sexual harassment, and how to report it.
 - D. All of the above are correct.
-
- The correct answer is D. All of the above are correct.
 - Rationale: The Manager is responsible for responding to Employee A's complaint by conducting an investigation putting a stop to the harassment. The Manager is also responsible for reminding employees of the Coffee Shop's sexual harassment prevention policy and employees' responsibilities to report sexual harassment to management.

Chapter 3

A Summary of Federal and State Statutory Laws Concerning Sexual Harassment Including Remedies Available to Victims

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 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.

2. Reporting Sexual Harassment to an Employer

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

- 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.
- 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.
- 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.

3. File a Charge with the Illinois Department of Human Rights (IDHR)

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.

- a. Complainants (victims of sexual harassment) may file a charge at any time within 300 days of the incident(s).
- b. IDHR has jurisdiction (authority) to investigate employers who have 1 or more employees.
- c. 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

4. File a Charge with the U.S. Equal Employment Opportunity Commission (EEOC) 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 (Contact Information)

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 6310

Workplace Scenario

SCENARIO 4: A BARTENDER'S DILEMMA

On a daily basis at the Sunset Bar, Servers B, C, D, and E called Bartender A “Gay Preacher” and a “pedophile.” Server B repeatedly grabbed Bartender A’s buttocks and pinched Bartender A’s chest. Manager 1 witnessed the behavior of Servers B, C, D, and E on several occasions, and sometimes joined in as Servers B, C, D, and E laughed at Bartender A. The actions taken by Servers B, C, D, and E occurred during work hours in front of different managers, including Manager 1, and in the employee break room and restroom.

Could the conduct of Servers B, C, D and E toward Bartender A be considered sexual harassment, and if so, are the managers liable?

- A. The situation is not sexual harassment because the conduct is occurring because of Bartender’s A’s sexual orientation.
 - B. Whether the situation is sexual harassment depends on whether the Bartender and the Servers are male or female.
 - C. The conduct could be sexual harassment because Servers B, C, D and E are engaging in unwelcome conduct of a sexual nature toward Bartender A.
 - D. The managers of the Sunset Bar are not liable because Manager 1 only laughed but did not otherwise participate in the conduct.
-
- The correct answer is C. The conduct could be considered sexual harassment.
 - Rationale: The conduct of the Servers toward the Bartender was unwelcome and of a sexual nature, and therefore, it could constitute sexual harassment, even if sexual orientation (e.g., “gay preacher”) is referenced. The gender of the Bartender and the Servers is not relevant to whether sexual harassment occurred. Because Manager 1 and the other managers are supervisory employees and in positions of authority, the Sunset Bar is automatically liable for the conduct toward Bartender.

Chapter 4

A Summary of Employer Responsibilities in the Prevention, Investigation, and Corrective Measures of Sexual Harassment

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.

Workplace Scenario

SCENARIO:8 A DANGEROUS TRANSACTION

Customer was attempting to purchase a drink at the Local Bar and Grill. While passing the drink to Customer, Employee A intentionally brushed Customer's breasts. Customer recoiled and, in disbelief of what had occurred, handed Employee A money for the drink. When Employee A gave Customer her change, Employee A again brushed Customer's breasts, then laughed and made an unintelligible remark to another employee, Employee B. As Employee A started to make another gesture towards Customer, Customer moved out of Employee A's reach and fled out of the bar and grill visibly upset.

Who is liable for the treatment for Customer, and what is the best course of action?

- A. There is no liability for Employee A's conduct because Customer is not an employee of the Local Bar and Grill.
- B. Customer may file a charge of discrimination based on sexual harassment at the Illinois Department of Human Rights against the Local Bar and Grill.
- C. Employee B should report what they witnessed to a Local Bar and Grill manager. An investigation should be immediately conducted by the Local Bar and Grill, and appropriate disciplinary action should be taken against Employee A, if warranted.
- D. Both answers B and C are correct.

- The correct answer is "D. Both answers B and C are correct."
- Rationale: The Local Bar and Grill is liable for the behavior of Employee A and is responsible for conducting an investigation and taking any appropriate disciplinary action, if warranted. Since Customer was not an employee of the Local Bar and Grill, Customer cannot file a charge against Employee A directly. However, Customer may file a charge of discrimination based on sexual harassment against the Local Bar and Grill because it is a place of public accommodation.