

SEXUAL HARASSMENT IN STATE AGENCIES

WHEREAS, in 1980 Executive Order No. 1, entitled "Sexual Harassment," declared that all state employees have the right to work in an environment free of sexual harassment, provided a descriptive definition of sexual harassment and directed various actions by agencies to provide training, disseminate information and prevent sexual harassment from occurring; and

WHEREAS, in 1992 Executive Order No. 7, entitled "Sexual Harassment in State Agencies," recognized the continuing impact and cost of sexual harassment in the workplace, streamlined the definition of harassment and promulgated a detailed and comprehensive policy for all state Departments, Agencies, Boards and Commissions to adopt; and

WHEREAS, in the years following the issuance of these Executive Orders, court decisions and changes in rules and laws, especially a series of United States Supreme Court rulings, have resulted in an expansion of the laws to protect both men and women from sexual harassment; further clarification of what constitutes sexual harassment, and a significant redefinition of the standards for employer liability for sexual harassment by supervisors; and

WHEREAS, these recent decisions impose near absolute or strict liability upon an employer when sexual harassment by a supervisor is established and results in a tangible adverse employment action (a significant change in employment status such as demotion, significant change in benefits, failure to promote or termination) and also make it clear that an employer may be liable for sexual harassment by a supervisor that results in a hostile work environment, regardless of whether the employer had knowledge or should have had knowledge of the harassment; and

WHEREAS, in hostile work environment claims that result from harassment by a supervisor but do not result in a tangible adverse employment action, employers may rely upon a fair, effective and vigorously implemented sexual harassment policy as an affirmative defense where a person making such allegations has not taken advantage of remedies afforded by readily accessible procedures for reporting, investigating and remediating such charges; and

WHEREAS, in the absence of a well defined, readily accessible and effective policy for dealing with sexual harassment charges, an employer's exposure to liability is greatly increased; and

WHEREAS, these recent developments in the law further reinforce the need for employers to undertake all reasonable efforts to prevent and promptly respond to and remedy sexual harassment by co-workers; and

WHEREAS, regardless of liability issues, it is essential that agency directors and senior managers clearly indicate to all levels of supervisors and employees that sexual harassment results in the costly and harmful loss of efficiency and productivity and does serious damage to the morale and well being of the agency's workforce and will not be tolerated;

THEREFORE, in order to assure, insofar as possible, the provisions of a work environment free of sexual harassment and that a clear, consistent, firm and up-to-date policy

dealing with sexual harassment is applied throughout the agencies of state government, I hereby order pursuant to the authority vested in me by Article V, Section 8 of the Illinois Constitution the following:

1. The head of each department, agency, board or commission under the jurisdiction of the Governor shall adopt and implement the attached Model Policy on Sexual Harassment. Among other provisions the policy describes the state and federal laws which make sexual harassment illegal and the consequences of violating those laws; defines sexual harassment using examples; and sets forth options available to an employee for bringing a complaint within the agency and with outside agencies; and finally, provides for measures to prevent retaliation against an employee for making a complaint.
2. Each such head of a department, agency, board or commission shall assure that the Policy is disseminated to each employee under its jurisdiction.
3. The Departments of Human Rights and Central Management Services shall review the Model Policy on Sexual Harassment at least annually and make recommendations for changes to the Governor as needed to reflect the continuing evolution of sexual harassment laws, rules and case law as well as to increase the effectiveness of the Policy.
4. The Departments of Human Rights and Central Management Services shall establish comprehensive training programs for EEO Officers, supervisors and new employees which will (a) explain the Policy and the recourse available to employees who feel they have been subject to harassment, and (b) address the need for a speedy and thorough response to any complaint, report or observation relating to sexual harassment in the workplace including sensitivity training, investigative methods, confidentiality and ranges of disciplinary action.
5. The Department of Central Management Services shall make itself available on an ongoing basis to assist and advise departments, agencies, boards and commissions in internal investigations of alleged instances of sexual harassment and in matters of disciplinary actions.

This Order shall not be construed to abridge or expand the rights of any person under the constitutions or statutes of the United States or of this State.

Executive Order Number 7 (1992) is hereby repealed.

This Order shall be effective immediately.

GEORGE H. RYAN
Governor

November 5, 1999

POLICY STATEMENT

As Governor, I am committed to providing a workplace that is free from all forms of discrimination, including sexual harassment. Any employee's behavior that fits the definition of sexual harassment is a form of misconduct which may result in disciplinary action up to and including dismissal. Sexual harassment could also subject an agency and, in some cases, an individual to substantial civil penalties.

The State's policy on sexual harassment is part of its overall affirmative action efforts pursuant to federal and state laws prohibiting discrimination based on age, race, color, religion, national origin, citizenship status, unfavorable discharge from the military, marital status, disability and gender. Specifically, sexual harassment is prohibited by Title VII of the Civil Rights Act of 1964 and the Illinois Human Rights Act. Sexual harassment is also prohibited by Executive Order Number 16, which I am issuing today. This order replaces Executive Order No 7 (1992), and establishes a Model Policy to be adopted by each Department, Agency, Board and Commission under the jurisdiction of the Governor.

As is made clear in the accompanying Model Policy, it is the responsibility of each individual employee to refrain from sexual harassment in the workplace. No employee - male or female - should be subjected to unsolicited or unwelcome sexual overtures or conduct in the workplace. Furthermore, it is the responsibility of all supervisors to make sure that the work environment is free from sexual harassment. All forms of discrimination and conduct which can be considered harassing, coercive or disruptive, or which create a hostile or offensive environment must be eliminated. Instances of sexual harassment must be investigated in a prompt and aggressive manner.

The accompanying Model Policy defines sexual harassment, summarizes the rights and responsibilities of individual employees, describes the responsibility of supervisors in enforcing the policy, and outlines procedures for filing a complaint.

As reflected in Executive Order Number 16, I hereby direct all Departments, Agencies, Boards and Commissions under my jurisdiction to ensure that this Model Policy is adopted, implemented, and circulated to all employees.

GEORGE H. RYAN
Governor

November 5, 1999

MODEL POLICY SEXUAL HARASSMENT

It is the responsibility of each individual employee to refrain from sexual harassment, and, it is the right of each individual employee to work in an environment free from sexual harassment.

DEFINITION OF SEXUAL HARASSMENT

According to the Illinois Human Rights Act, sexual harassment is defined as:

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 courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991.

One such example is a case where an individual is terminated by a supervisor or is denied employment opportunities and benefits after rejecting the supervisor's sexual advances or request(s) for sexual favors. Another example is where an individual is subjected to conduct by co-workers because of his or her gender which makes it difficult for the employee to perform his or her job.

Other conduct, which may constitute sexual harassment, includes:

- **Verbal:** Sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- **Non-Verbal:** Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- **Visual:** Posters, signs, pin-ups or slogans of a sexual nature.
- **Physical:** Touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act, or actual assault.

While the most commonly recognized forms of sexual harassment involve the types of conduct described above, non-sexual conduct can also constitute a violation of the applicable laws when that conduct is directed at the victim because of his or her gender (for example, a female employee who reports to work every day and finds her tools stolen, her work station filled with

trash and her equipment disabled by her male co-workers because they resent having to work with a woman).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

For this reason, every supervisor and employee must remember that seemingly “harmless” and subtle actions may lead to sexual harassment complaints. The use of terms such as “honey”, “darling” and “sweetheart” is objectionable to many women who believe that these terms undermine their authority and their ability to deal with men on an equal and professional level. And while use of these terms by an individual with authority over a female employee will rarely constitute an adverse employment action, it may lead to the creation of a hostile work environment.

Another example is the use of a compliment that could potentially be interpreted as sexual in nature. Below are three statements that might be made about the appearance of a woman in the workplace:

“That’s an attractive dress you have on.”
“That’s an attractive dress. It really looks good on you.”
“That’s an attractive dress. You really fill it out well.”

The first statement appears to be simply a compliment. The last is the most likely to be perceived as sexual harassment, depending on individual perceptions and values. To avoid the possibility of offending an employee, it is best to follow a course of conduct above reproach, or to err on the side of caution.

Sexual harassment is unacceptable misconduct, which affects both genders. Sexual harassment will often involve a man’s conduct directed at a woman. However, it can also involve a woman harassing a man or harassment between members of the same gender.

RESPONSIBILITY OF INDIVIDUAL EMPLOYEES

Each individual employee has the responsibility to refrain from sexual harassment in the workplace.

An individual employee who sexually harasses a fellow worker is, of course, liable for his or her individual conduct.

The harassing employee will be subject to disciplinary action up to and including discharge in accordance with departmental policy or a collective bargaining agreement, as appropriate.

RESPONSIBILITY OF SUPERVISORY PERSONNEL

Each supervisor is responsible for maintaining the workplace free of sexual harassment. This is accomplished by promoting a professional environment and by dealing with sexual harassment as with all other forms of employee misconduct. It must be remembered that supervisors are the first line of defense against sexual harassment. By setting the right example, a supervisor may

discourage his or her employees from acting inappropriately. In addition, supervisors will often be the first to spot objectionable conduct or the first to receive a complaint about conduct which he or she did not observe.

The courts and the Illinois Human Rights Commission have found that organizations as well as supervisors can be held liable for damages related to sexual harassment by a manager, supervisor, employee, or third party (an individual who is not an employee but does business with an organization, such as a contractor, customer, sales, representative, or repair person).

Liability is either based on an organization's responsibility to maintain a certain level of order and discipline among employees, or on the supervisor, acting as an agent of the organization. It should be noted that recent United States Supreme Court cases involving sexual harassment claims against supervisors have made the employer's liability for supervisors' actions even more strict. Therefore, supervisors must understand that their adherence to this policy is vitally important, both with regard to their responsibility to maintain a work environment free of harassment and, even more importantly, with regard to their own individual conduct. The law continues to require employers to remain vigilant and effectively remedy sexually harassing conduct perpetrated by individual(s) on their co-workers. Supervisors must act quickly and responsibly not only to minimize their own liability but also that of the agency.

Specifically, a supervisor must address an observed incident of sexual harassment or a complaint, with equal seriousness, report it, take prompt action to investigate it, implement appropriate disciplinary action, take all necessary steps to eliminate the harassment and observe strict confidentiality. This also applies to cases where an employee tells the supervisor about behavior considered sexual harassment but does not want to make a formal complaint.

In addition, supervisors must ensure that no retaliation will result against an employee making a sexual harassment complaint.

An agency's Equal Employment Opportunity (EEO) Officer is available to consult with supervisors on the proper procedures to follow.

PROCEDURES FOR FILING A COMPLAINT

An employee who either observes or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the offending employee, her/his supervisor and the agency EEO Officer. It is not necessary for sexual harassment to be directed at the person making a complaint.

The following steps may also be taken: document or record each incident (what was said or done, the date, the time, and the place). Documentation can be strengthened by written records such as letters, notes, memos, and telephone messages.

All charges, including anonymous complaints, will be accepted and investigated regardless of how the matter comes to the attention of the agency. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

No one making a complaint will be retaliated against even if a complaint made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

Proper responses to conduct which is believed to be sexual harassment may include the following:

Direct Communication. If there is sexual harassing behavior in the workplace, the harassed employee should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.

Contact With Supervisory Personnel. At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor or the EEO Officer. If the harasser is the immediate supervisor, the problem should be reported to the next level of supervision or the EEO Officer. However, the employee experiencing what he or she believes to be sexual harassment must not assume that the employer is aware of this conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, it is likely the employer will be presumed not to have knowledge of the harassment.

Formal Written Complaint. An employee may also report incidents of sexual harassment directly to the EEO Officer. The EEO Officer will counsel the reporting employee and be available to assist with filing a formal complaint. The Department will fully investigate the complaint, and advise the complainant and the alleged harasser of the results of the investigation.

Resolution Outside Department. Every department, agency, board and commission has adopted a comprehensive anti-harassment policy. The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every complaint and incident so that problems can be identified and remedied internally. However, an employee has the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) about filing a formal complaint. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days. Where the employing entity has an effective sexual harassment policy in place and the complaining employee fails to take advantage of that policy and allow the employer an opportunity to address the problem, such an employee may, in certain cases, lose the right to further pursue the claim against the employer.

An employee who is suddenly transferred to a lower paying job or passed over for promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge, also due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

An employee who has been physically harassed or threatened while on the job may also have grounds for criminal charges, such as assault or battery.

FALSE AND FRIVOLOUS COMPLAINTS

False and frivolous charges refer to cases where the accuser is using a sexual harassment complaint to accomplish some end other than stopping sexual harassment. It does not refer to charges made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false and frivolous charge is a severe offense that can itself result in disciplinary action.

ADMINISTRATIVE CONTACTS

Illinois Department of Human Rights
217/785-5100 Springfield
217/785-5119 TDD Springfield
312/814-6200 Chicago
312/263-1579 TDD Chicago

Illinois Human Rights Commission
217/785-4350 Springfield
217/785-5119 TDD Springfield
312/814-6269 Chicago
312/263-1579 TDD Chicago

Equal Employment Opportunity Commission
312/353-2713 Chicago
800/669-3362
800/800-3302 TDD