

# 2020 Harassment and Discrimination Prevention Training for Agencies of the Illinois Governor

# In this training, you will learn...

- Information about what unlawful discrimination, harassment, and sexual harassment are;
- Where and how to report allegations of unlawful discrimination, harassment, and sexual harassment;
- Information about retaliation, also known as “whistleblower” protections; and
- Penalties for engaging in this conduct or making a false report.

These topics can be overwhelming, but keep in mind that the State has various resources to assist you if you are not sure if the conduct you are experiencing or witnessing is prohibited.

Remember, even if conduct does not rise to the level of unlawful discrimination, harassment, or sexual harassment, that does not mean that it is appropriate for the workplace.

# Discrimination and Harassment are Prohibited

State employees, officials, and appointees are prohibited from engaging in unlawful discrimination, harassment, and sexual harassment.

Unlawful discrimination, harassment, and sexual harassment are each violations of the Illinois Human Rights Act (“Human Rights Act,” [775 ILCS 5](#)). Additionally, unlawful discrimination is a violation of the Illinois Civil Rights Act of 2003 (“Civil Rights Act,” [740 ILCS 23](#)) and sexual harassment is a violation of the State Officials and Employees Ethics Act (“Ethics Act,” [5 ILCS 430](#)). Finally, unlawful discrimination, harassment, and sexual harassment are often violations of agency personnel policies. It is your responsibility to become familiar with and abide by your agency’s policies.

# The Ethics Act

State employees, officials, and appointees are subject to the State Officials and Employees Ethics Act, or “Ethics Act” ([5 ILCS 430](#)).

The Ethics Act requires that:

- You be aware that you are prohibited from engaging in unlawful discrimination or harassment as defined by the Human Rights Act ([775 ILCS 5](#));
- “All persons have a right to work in an environment free from sexual harassment.” [5 ILCS 430/5-65\(a\)](#);
- “All persons subject to this Act are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.” [5 ILCS 430/5-65\(a\)](#);
- Each agency must conduct a harassment and discrimination prevention training; and
- A report be made to the Executive Ethics Commission (“EEC”) including the names of individuals who failed to complete this required training.

The report of individuals who did not complete this training will be made publicly available on the EEC website.

# The Illinois Human Rights Act

The Human Rights Act ([775 ILCS 5](#)) makes it a “civil rights violation” to engage in unlawful discrimination, harassment, sexual harassment, and retaliation. This training will discuss each of these prohibited actions and methods for reporting such conduct.

# The Illinois Civil Rights Act of 2003

Under the Civil Rights Act, no unit of state, county, or local government may:

- Exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity based on that person's race, color, national origin, or gender; or
- Use criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender (commonly referred to as "disparate impact" or "adverse effect").

[740 ILCS 23/5\(a\)](#).

A policy, practice, or action that appears neutral but has a discriminatory effect on a protected group is prohibited. For example, written application questions that all applicants must answer may have a disparate impact and could be deemed discriminatory if applicants of a protected class are eliminated more frequently as a result of a specific question.

# Unlawful Discrimination

# Unlawful Discrimination

Unlawful discrimination is defined by the Human Rights Act.

**Unlawful discrimination** is “discrimination against a person because of his or her actual or perceived: *race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service...*” (emphasis added) [775 ILCS 5/1-103\(Q\)](#).

Each of the categories listed above is a protected class defined by the Human Rights Act.

Unlawful discrimination occurs when an employer takes an employment action because of an applicant’s or employee’s actual or perceived membership in one of the protected classes listed above. However, it does not prevent an employer from taking employment action for another reason unrelated to an applicant’s or employee’s membership in a protected class.

# Protected Classes

The following are definitions of protected classes as they appear in the Human Rights Act:

- **Age.** The chronological age of a person who is at least 40 years old. In the case of training and apprenticeship programs, age means a person who is 18 but not yet 40 years old.
- **Citizenship Status.** The status of being: (1) a born U.S. citizen; (2) a naturalized U.S. citizen; (3) a U.S. national; or (4) a person born outside the U.S. and not a U.S. citizen who is not an unauthorized alien and who is protected from discrimination under a federal law.
- **Disability.** A determinable physical or mental characteristic of a person, including one that necessitates the person's use of a guide, hearing, or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth, or functional disorder and which characteristic is unrelated to the person's ability to perform the duties of a particular job or position.
- **Marital Status.** The legal status of being married, single, separated, divorced, or widowed.
- **Military Status.** A person's status on active duty in or status as a veteran of the armed forces of the U.S., status as a current member or veteran of any reserve component of the armed forces of the U.S., or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard.
- **National Origin.** The place in which a person or one of his or her ancestors was born.

# Protected Classes (continued)

The following are definitions of protected classes as they appear in the Human Rights Act:

- **Order of Protection Status.** A person's status as being a person protected under an order of protection issued pursuant to certain statutes, or an order of protection issued by a court of another state.
- **Pregnancy.** Pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth.
- **Religion.** All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he or she is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- **Sex.** The status of being male or female.
- **Sexual Orientation.** The actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth.
- **Unfavorable Military Discharge.** Discharges from the Armed Forces of the U.S, their Reserve components, or any National Guard or Naval Militia which are classified as RE-3 or the equivalent, but does not include those characterized as RE-4 or "Dishonorable".

# Protected Classes (continued)

Ancestry, race, and color are not defined by the Human Rights Act; however, the U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance on the definition of color and race.

- **Color.** The EEOC guidance states that “color” is “commonly understood [to mean] pigmentation, complexion, or skin shade or skin tone.” *EEOC Compliance Manual*, Doc. No. 915.003, at 15 (2006).
- **Race.** The EEOC guidance states that race includes physical characteristics associated with race, “such as a person’s color, hair, facial features, height and weight,” race-linked illnesses, and cultural characteristics related to race or ethnicity. *EEOC Compliance Manual*, Doc. No. 915.003, at 15 (2006).

Black’s Law Dictionary defines “**ancestry**” as “a line of descent; collectively, a person’s forebears; lineage.” *Black’s Law Dictionary* (11th ed. 2019).

# Civil Rights Violations

It is a civil rights violation for “any employer to refuse to hire, to segregate, to engage in harassment [], or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.” [775 ILCS 5/2-102\(A\)](#). Employment agencies and labor organizations are also prohibited from certain conduct on the basis of unlawful discrimination or citizenship status. [775 ILCS 5/2-102\(B\) and \(C\)](#).

In addition, the Human Rights Act outlines several practices that are civil rights violations, including provisions related to:

- language,
- immigration-related practices,
- religious discrimination,
- reasonable accommodations for pregnancy,
- training and apprenticeship programs, and
- arrest records.

# Language

It is unlawful for employers to prohibit employees from speaking their native language in communications that are unrelated to their work duties. [775 ILCS 5/2-102\(A-5\)](#). “Language” refers to a person's native tongue, such as Polish, Spanish, or Chinese, but does not include slang, jargon, profanity, or vulgarity.

For example, employees cannot be prohibited from speaking their native language when discussing their vacation plans during their lunch break.

# Immigration-Related Practices

Certain immigration-related practices can be unlawful.

- It is unlawful for an employer to use more or different documents than are required under certain federal laws or to refuse to honor documents that on their face appear to be genuine.
- If the employer is participating in the E-Verify program, it cannot take adverse employment actions without following the procedures under that program. [775 ILCS 5/2-102\(G\)](#).

# Religious Discrimination

It is unlawful “for any employer to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement, or transfer, any terms or conditions that would require such person to violate or forgo a sincerely held practice of his or her religion including, but not limited to, the wearing of any attire, clothing, or facial hair in accordance with the requirements of his or her religion,” unless the employer cannot reasonably accommodate the prospective employee or employee without undue hardship on the employer’s business. [775 ILCS 5/2-102\(E-5\)](#).

An employer is permitted to enact a dress code or grooming policy in order to maintain workplace safety or food sanitation. [775 ILCS 5/2-102\(E-5\)](#).

Further, it is a civil rights violation for a public employer, consistent with operational needs, to refuse to permit a public employee, who takes time off work to practice religion, from performing his or her work during the employee’s non-scheduled hours in order to compensate for work time lost for such religious reasons. [775 ILCS 5/2-102\(E\)](#).

# Reasonable Accommodation for Pregnancy

It is unlawful for an employer to deny employees reasonable accommodations related to pregnancy or childbirth.

- It is unlawful for an employer not to make a reasonable accommodation for any medical or common condition of a job applicant or employee related to pregnancy or childbirth, unless the employer can demonstrate that it would impose an undue hardship on the ordinary operation of the business.
- It is also unlawful for an employer to require a job applicant or employee to accept an accommodation when that individual did not request one.
- An employer may not require an employee to take leave, if another reasonable accommodation can be provided.
- An employer shall reinstate the employee to her original job or equivalent position upon her signifying her intent to return or when the need for the reasonable accommodation ends, unless the employer demonstrates that the accommodation would impose an undue hardship on the ordinary operation of the business.
- Further, an employer may not deny employment opportunities or benefits or take adverse action because an individual needs a reasonable accommodation.

[775 ILCS 5/2-102\(I\) and \(J\)](#)

# Training and Apprenticeship Programs

Discrimination based on age in training and apprenticeship programs is prohibited.

It is unlawful “for any employer, employment agency or labor organization to discriminate against a person on the basis of age in the selection, referral for or conduct of apprenticeship or training programs.” [775 ILCS 5/2-102\(F\)](#).

For purposes of this prohibition, “age” means between 18 and 39 years old.

# Arrest Record

It is unlawful “for any employer, employment agency or labor organization to inquire into or to use the fact of an arrest record . . . as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment.” [775 ILCS 5/2-103](#).

“Arrest record” is defined by the Human Rights Act to include “(1) an arrest not leading to a conviction; (2) a juvenile record; or (3) criminal history record information ordered expunged, sealed, or impounded under Section 5.2 of the Criminal Identification Act.” [775 ILCS 5/1-103\(B-5\)](#).

The Human Rights Act does not prohibit State agencies from “requesting or utilizing sealed felony conviction information obtained from the Department of State Police under the provisions of Section 3 of the Criminal Identification Act or under other State or federal laws or regulations that require criminal background checks in evaluating the qualifications and character of an employee or a prospective employee.” [775 ILCS 5/2-103](#).

# Examples of Unlawful Discrimination

Conduct may amount to unlawful discrimination if, based on a person's actual or perceived membership in one or more protected classes, an employer takes action involving:

- recruitment;
- hiring;
- promotion;
- demotion;
- renewal of employment;
- selection for training or apprenticeship;
- discharge;
- discipline;
- tenure of terms;
- privileges; and/or
- other conditions of employment.

# Example 1

## Question:

Employee A is a pregnant woman who recently told her employer, Employer B, that she was expecting a child and her due date was seven months away. The following week, Employee A asked for time off to attend a doctor's appointment. Three weeks later, Employee A had another doctor's appointment and requested time off work. Two weeks later, Employer B had a meeting with Employee A and told her that the agency had decided to make her position part-time because of Employee A's "condition." Employer B said this would be good for Employee A because now she could focus on her doctor's appointments and her health and not have to worry about working as many hours. Employee A is very upset by this because she wants a full-time position, and never told Employer B she wanted or needed to work fewer hours because of her pregnancy.

Is Employer B unlawfully discriminating against Employee A?

Yes.

No.

# Example 1

## **Answer:**

The correct answer is Yes, Employer B is unlawfully discriminating against Employee A. This is an example of unlawful discrimination because Employer B changed the conditions of Employee A's employment on the basis of her pregnancy.

# Example 2

## Question:

Employee A, who is a 50-year-old Muslim woman, has been late to work for several months. Employee A's supervisor, Employer B, knows Employee A is a 50-year-old Muslim woman. Last week, Employer B told Employee A she was being put on a corrective action plan because of her tardiness, and if she did not improve her employment would be terminated. In fact, a month earlier Employer B terminated Employee C, a 30-year-old Christian male because of his repetitive tardiness. Employee A continued to be late, in some cases over two hours late. Employer B terminated Employee A and informed her it was because her chronic tardiness was against office policy and prevented her from completing the required work on time.

Is Employer B unlawfully discriminating against Employee A?

Yes.

No.

# Example 2

## Answer:

The correct answer is No, Employer B is not unlawfully discriminating against Employee A. Although Employee A is a member of several protected classes because she is over 40 years old, Muslim, and a woman, on these facts Employer B did not unlawfully discriminate against her. She was not discriminated against because she was terminated for violating office policy and not fulfilling the job duties, and not because of her age, religion, or sex. Furthermore, Employer B applied the same standard to another employee outside of Employee A's protected classes, who engaged in similar behavior.

# Harassment

# Harassment

Harassment in the workplace is prohibited.

**Harassment** means “any unwelcome conduct on the basis of an individual’s actual or perceived race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, unfavorable discharge from military service, or citizenship status that has the purpose or effect of substantially interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.” [775 ILCS 5/2-101 \(E-1\)](#).

For purposes of this definition, the phrase “working environment” is not limited to a physical location an employee is assigned to perform his or her duties. [775 ILCS/2-101\(E-1\)](#).

# Examples of Harassment

Examples of verbal or physical conduct that could amount to harassment if based on a person's actual or perceived membership in one or more protected classes include:

- offensive jokes;
- slurs;
- epithets or name calling;
- physical assault(s);
- threats;
- intimidation, ridicule or mockery;
- insults or put-downs;
- offensive objects or pictures;
- deliberate touching, leaning over, or cornering;
- offensive looks or gestures; and/or
- letters, telephone calls, personal e-mails, texts, or other materials of an offensive nature.

# Example 3

## Question:

Employee A, a woman whose national origin is Japanese, recently started working at a State agency. During her first week on the job, her coworkers start asking her questions about her “slanting eyes” and performing karate chops in the air. The coworker in the cubicle next to her mispronounces her name every day and then laughs. Employee A has been working at this agency for a month now and the conduct of her coworkers has only gotten worse. She feels very uncomfortable at work and dreads interacting with her coworkers.

Is Employee A being harassed?

Yes.

No.

# Example 3

## **Answer:**

The correct answer is Yes, Employee A is being harassed. This is an example of harassment based on race and national origin because the unwelcome conduct is on the basis of Employee A's race and national origin and has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

# Example 4

## Question:

Employee A is a man who recently married his male partner. Employee A was very excited about his wedding and put up pictures in his office of him and his spouse on their wedding day. Later that day, his supervisor, Employer B, came to Employee A's office. Employer B saw the photos and exclaimed – “I didn't know you were gay!” Employer B then left Employee A's office. The next day when Employee A arrived at work, he saw that his wedding photos had been drawn on with offensive markings and a sign was posted on his door that read: “Marriage is Between a Man and a Woman” in Employer B's handwriting. Employee A was very upset and left work, telling Employer B he didn't feel well. When Employee A came back to work two days later, there was another sign on his door with quotes about marriage being sacred and not between two men. Employee A tried to work that day but, from his office, he could hear Employer B making derogatory remarks about him.

Is Employee A being harassed?

Yes.

No.

# Example 4

## **Answer:**

The correct answer is Yes, Employee A is being harassed. This is an example of harassment because it is unwelcome conduct on the basis of Employee A's sexual orientation that has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

# Sexual Harassment

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Sexual harassment is defined by the Ethics Act and the Human Rights Act.

**Sexual harassment** means any unwelcome sexual advances, 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.

For purposes of this definition, the phrase "working environment" is not limited to a physical location an employee is assigned to perform his or her duties and does not require an employment relationship.

[5 ILCS 430/5-65\(b\)](#); [775 ILCS 5/2-101\(E\)](#).

# Types of Sexual Harassment

- ***Quid pro quo.*** “*Something for something.*” This type of harassment occurs when a manager or supervisor communicates to a subordinate that in order for them 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 subordinate must do something sexual in return.
- ***Hostile work environment.*** Hostile work environment sexual harassment occurs 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. To constitute hostile work environment sexual harassment, the conduct must be severe or pervasive.

# Examples of Sexual Harassment

Sexual advances and requests for sexual favors are not the only types of conduct that can be sexual harassment. Other conduct of a sexual nature can be part of quid pro quo sexual harassment or contribute to a hostile work environment. This may include unwelcome physical acts, verbal conduct, or visuals like:

- actual or attempted rape or sexual assault;
- pressure for sexual favors;
- deliberate touching, leaning over, or cornering;
- sexual looks or gestures;
- letters, telephone calls, personal e-mails, texts, or other materials of a sexual nature;
- pressure for dates;
- sexual teasing, jokes, remarks, or questions;
- referring to an adult as a “girl,” “hunk,” “doll,” “babe,” or “honey”;
- whistling at someone;
- sexual comments, innuendos, or stories;
- turning work discussions to sexual topics;

# Examples of Sexual Harassment (continued)

- asking about sexual fantasies, preferences, or history;
- sexual comments about a person's clothing, anatomy, or looks;
- kissing sounds, howling, and smacking lips;
- talking about, telling lies, or spreading rumors about a person's personal sex life;
- neck and/or shoulder massage;
- touching an employee's clothing, hair, or body;
- hanging around a person uninvited;
- hugging or kissing;
- patting, stroking, or pinching;
- touching or rubbing oneself sexually in the presence of another person;
- standing close to or brushing up against a person;
- looking a person up and down;
- sexually suggestive posters, cartoons, websites, or magazines displayed in the workplace or shown to someone;
- playing sexually suggestive or graphic videos or music; and
- making sexual gestures with hands or through body movements.

# Understanding Sexual Harassment

**Gender is irrelevant.** Any person can be a victim of sexual harassment. The harassing behavior may be by someone of a different gender or by someone of the same gender. Men can sexually harass other men, and women can sexually harass other women.

**Sexual harassment and third parties.** The victim of sexual harassment does not have to be the person the behavior is directed towards. Anyone affected by the offensive conduct can be a victim, like someone who overhears or witnesses the offensive conduct.

**The behavior is unwelcome.** Sexual harassment is conduct that is unwelcome, including conduct the victim regards as undesirable or offensive.

**Working environment.** An employee's "working environment" is not just the physical location where the employee is assigned. An employee's "working environment" may extend to other office locations and remote, off-site, or moving work locations.

# Non-State Employees

**Sexual harassment is not just limited to co-workers and supervisors.** People who are not State employees, such as patrons, vendors, and delivery people, may come into the work place or interact with employees. These individuals can violate sexual harassment laws, rules, and policies, and they can also be victims of sexual harassment.

The Human Rights Act defines “nonemployee” as “a person who is not otherwise an employee of the employer and is directly performing services for the employer pursuant to a contract with that employer.” This includes contractors and consultants. [775 ILCS 5/2-102\(A-10\) and \(D-5\)](#).

If a nonemployee, nonmanagerial employee, or nonsupervisory employee sexually harasses or harasses an employee or nonemployee, the employer will be responsible only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. [775 ILCS 5/2-102\(A\), \(A-10\), \(D\), and \(D-5\)](#).

# Sexual Harassment Doesn't Have to be in Person

Sexual harassment can involve activities online or through electronic media, even when off site or “off the clock.”

Examples of behaviors that can constitute unwelcome sexual conduct through email, cell phone or text, Internet or Intranet posting, online comments, blog posts, social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, and Snapchat), or other electronic media include:

- requests/demands for sex;
- sexually graphic or inappropriate pictures;
- sexually graphic or inappropriate videos;
- sexually offensive language or comments;
- unwanted flirting;
- unwanted requests for dates; and
- cyber stalking.

# Example 5

## Question:

Employer A supervises Employee B. Employer A tells Employee B that Employee B could get a higher evaluation score if Employee B agrees to sleep with Employer A. Employee B declined the request and later received a poor performance evaluation.

Did Employer A sexually harass Employee B?

Yes, this is an example of quid pro quo sexual harassment.

Yes, this is an example of hostile work environment sexual harassment.

No, this is not an example of sexual harassment.

# Example 5

## **Answer:**

The correct answer is Yes, this is an example of quid pro quo sexual harassment. This is an example of quid pro quo sexual harassment because Employer A offered Employee B a job-related benefit in exchange for a sexual favor.

# Example 6

## Question:

Employee A is recently married and two months ago got back from the honeymoon. Since returning, Coworker B and Coworker C have been making sexual remarks about the honeymoon and asking personal questions. These comments occur almost on a daily basis and over time have gotten more graphic, and now Coworkers B and C are sending offensive pictures to Employee A's work email account. Employee A has started calling in sick and is missing deadlines because the comments and pictures are so upsetting.

Is Employee A being sexually harassed?

Yes, this is an example of quid pro quo sexual harassment.

Yes, this is an example of hostile work environment sexual harassment.

No, this is not an example of sexual harassment because Coworkers B and C are not managers or supervisors of Employee A.

# Example 6

## **Answer:**

The correct answer is Yes, this is an example of hostile work environment sexual harassment. Here, the coworkers' unwelcome conduct of a sexual nature is interfering with Employee A's work performance and creating an intimidating, hostile, or offensive working environment. The employer is responsible for harassment or sexual harassment by nonmanagerial or nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. As discussed later in this training, nonmanagerial or nonsupervisory employees face serious consequences for engaging in sexual harassment, including discipline, administrative fines, or termination.

# Example 7

## Question:

Vendor A is a State vendor that makes daily deliveries at a State agency that Employee B works at. When making deliveries, Vendor A always flirts with Employee B by complimenting Employee B's body and asking for dates. Employee B always declines and has told Vendor A that Employee B is not interested. This has been going on for over a month and has caused Employee B to avoid Employee B's cubicle during Vendor A's delivery time. Last week, Employee B missed an important call because Vendor A was making a delivery at that same time.

Is Vendor A sexually harassing Employee B?

Yes, because Vendor A's sexual advances are unwelcome and pervasive and substantially interfering with Employee B's work performance.

No, because a vendor cannot harass a State employee.

No, because Employee B has told Vendor A that they are not interested.

# Example 7

## Answer:

The correct answer is Yes, because Vendor A's sexual advances are unwelcome and pervasive and substantially interfering with Employee B's work performance. This is an example of hostile work environment sexual harassment. Employee B is being subjected to frequent unwelcome advances of a sexual nature and those advances are creating an intimidating and hostile work environment such that Employee B is uncomfortable being in the same area as Vendor A. State vendors can engage in improper sexual harassment just like State employees.

# What to do?

There are many different variations of unwelcome sexual conduct.

Some types of conduct are clearly sexual harassment, such as if a supervisor threatens that an employee's job is on the line if they do not engage in sexual conduct.

Other types of conduct may feel like more of a "gray zone," where you or a coworker feel uncomfortable or do not welcome the behavior, but you are not sure whether it is sexual harassment or what to do about it. **Even if sexual conduct is not sexual harassment, that doesn't mean it belongs in the workplace.**

*If you are a witness to sexual harassment or unwelcome conduct of a sexual nature:*

1. You can tell the person to stop the unwelcome behavior.
2. You must report it (more on the options for reporting unlawful discrimination, harassment, and sexual harassment will be provided in the next section of the training).

# What to do?

If conduct of a sexual nature is happening around you, but not directed toward you, that can create a hostile work environment. You should speak up if it is unwelcome, or if you think the conduct could interfere with another individual's work performance or could create an intimidating, hostile, or offensive working environment. For instance, if a group of colleagues gathers at a nearby co-worker's desk and share sexual stories that others can overhear, you can tell the colleagues that others can hear their conversations and that the sexual commentary should stop.

If conduct is directed toward someone else, but it makes you or another person uncomfortable, you can speak up. For instance, if you've noticed that a colleague's "compliments" make others uncomfortable, you can bring it to their attention.

It is a good idea to report the incident or conduct to your supervisor, who should know your agency's complaint process if you wish to file a formal complaint through your agency. Your supervisor also may be positioned to address problematic conduct, even if that conduct is not yet at the level of creating a hostile work environment.

# Reporting

# Reporting Allegations of Discrimination, Harassment, and/or Sexual Harassment

Any employee who witnesses, is subjected to, or becomes aware of unlawful discrimination, harassment, and/or sexual harassment must immediately report the incident.

## **There are three main avenues for reporting:**

1. Within your Agency – Supervisor, Ethics Officer, Human Resources, or EEO Officer
2. Illinois Department of Human Rights (“IDHR”)
3. Office of Executive Inspector General (“OEIG”)

Executive Order 16-04 requires State employees to report alleged misconduct to their Ethics Officer and/or the OEIG.

Sometimes it is difficult to know whether the conduct that makes you feel uncomfortable is unlawful discrimination, harassment, or sexual harassment. Employees are encouraged to report inappropriate conduct so that it can be addressed.

The reporting options above are not mutually exclusive, and more than one may be pursued. Please be advised that these various options trigger different procedures and offer different rights and remedies to a State employee who makes an allegation.

# Reporting an Allegation within Your Agency

You can report an allegation of discrimination, harassment, and/or sexual harassment to a supervisor.

Supervisors:

- Are required to take appropriate action upon being notified of sexual harassment, whether or not a formal complaint is made.
- Will know the internal practices of your agency and will be in a position to effect change and help you navigate your agency's internal complaint process.
- May seek assistance from or report the allegation to the agency Ethics Officer, EEO Officer, or Human Resources.
- Should only share information as required by law or in order to effect necessary management action to address your allegation.

You can report an allegation to any supervisor, not just your own supervisor.

# Reporting an Allegation within Your Agency

You may choose to report to a supervisor because you are seeking a solution from your agency's management to swiftly resolve your allegation.

For instance, a hostile work environment generally involves a series of events rather than a single event. If you are aware of conduct that, if it continues, may interfere with your or others' work performance or may create an intimidating, hostile, or offensive working environment, a supervisor can be an important resource in addressing it.

You also may choose to discuss your allegation with a supervisor for help determining how to pursue the other reporting options available.

If you are not comfortable going to a supervisor and would like to have your allegation addressed through management action, you can also report an allegation to your agency Ethics Officer, Human Resources, or an EEO Officer (if applicable). EEO Officers are required to immediately report all allegations of sexual harassment received, either directly or indirectly, to the agency's Ethics Officer.

# Reporting an Allegation within Your Agency

You must report allegations of sexual harassment, harassment, and/or discrimination. You can fulfill this duty by reporting to your Ethics Officer, or by reporting to the OEIG as described later in this training.

Your Ethics Officer:

- Is available to discuss any concerns about ethics violations you may have.
- Can help interpret the Ethics Act for you as well as your agency policies that prohibit discrimination, harassment, and sexual harassment.
- Will be knowledgeable about the reporting process for the OEIG and IDHR, and can assist you in making a report to these entities or to your supervisor or another manager.
- Has an obligation to promptly notify the OEIG of any allegations of misconduct after receiving such information.

Additionally, if an allegation of discrimination, harassment, and/or sexual harassment involves your supervisor, or if you are uncomfortable with your supervisor or are concerned that the allegation may not be handled appropriately, you can report the allegation directly to your Ethics Officer, IDHR, or the OEIG.

# Reporting an Allegation to the Department of Human Rights

IDHR is a State agency that administers the Human Rights Act.

One of IDHR's important roles is to investigate "charges" – or formal complaints – of discrimination in employment, including allegations of harassment and sexual harassment.

Individuals can report an allegation to IDHR by filing a charge **within 300 days of the alleged violation.**

The IDHR process:

- is public – an employee who chooses to pursue this option may not do so anonymously;
- requires involvement by the person who filed the complaint; and
- depending on the allegation, some individuals may choose to pursue their complaints with help from an attorney.

# The IDHR Process

The first step in the IDHR process is to file a charge with IDHR. It requires detailed information, including contact information, employer information, and the most recent date of the alleged conduct. A person filing a charge may also provide witness information and copies of relevant documents. The person who files the charge is called the “complainant.”

IDHR will then investigate the charge and prepare a written report with a recommendation on whether or not there is “substantial evidence” of a violation of the Illinois Human Rights Act.

A finding of “**substantial evidence**” by IDHR means that there is enough evidence to take the case before an administrative law judge at the Illinois Human Rights Commission (“HRC”), a separate State agency that conducts public hearings. During this process, IDHR facilitates opportunities to resolve the allegation through settlement, such as in mediation.

# The IDHR Process (continued)

After IDHR issues its finding:

- a complainant may file a lawsuit in civil court, or
- if IDHR found “substantial evidence” the complainant may file a complaint with the HRC.

If a complainant files a lawsuit or complaint, either the court or the HRC will hear testimony, receive evidence, and determine whether unlawful discrimination or harassment occurred.

If a complainant prevails in court or at the HRC, the judge or the HRC can order remedies allowed by the Human Rights Act to make the complainant “whole.” These 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. This process, through IDHR and the HRC, or through IDHR and a court, may take several years.

# Contacting IDHR

The IDHR website is [www.illinois.gov/dhr](http://www.illinois.gov/dhr). It provides additional information about discrimination and harassment, filing a charge, the process for investigating and resolving an allegation, and other frequently asked questions.

The IDHR has the following offices:

## Chicago

100 W. Randolph St.  
Suite 10-100  
Chicago, IL 60601  
312-814-6200  
866-740-3953 (TTY)

## Springfield

535 W. Jefferson, 1<sup>st</sup> Floor  
Springfield, IL 62702  
217-785-5100  
866-740-3953 (TTY)

## Marion

2309 W. Main St.  
Marion, IL 62959  
618-993-7463  
866-740-3953 (TTY)

Hours for these offices, including hours when the offices conduct intake interviews for new reports, can be found on IDHR's website.

# The IDHR Helpline

IDHR operates a helpline for reporting sexual harassment and discrimination.

Through the helpline:

- individuals can receive help with finding resources, including counseling services;
- individuals can receive assistance with filing sexual harassment and discrimination complaints with the IDHR or other agencies;
- individuals may anonymously report sexual harassment and discrimination in both State employment and private-sector employment; and
- for individuals who are subject to the Ethics Act, the IDHR will report the allegations to the OEIG for further investigation if the person making the report gives IDHR permission.

The helpline number is 1-877-236-7703.

There is also a website for reporting:

<https://www2.illinois.gov/sites/sexualharassment/Pages/default.aspx>

All communication submitted through the helpline, including by internet, will be confidential and exempt from disclosure under the Freedom of Information Act.

# Reporting an Allegation to the Office of Executive Inspector General

The OEIG is an independent executive branch State agency that works to ensure accountability in State government. The OEIG's jurisdiction includes executive branch agencies, officers, and employees (other than those under the Attorney General, Secretary of State, Comptroller, or Treasurer), the four regional transit boards, the State public universities, and approximately 300 boards and commissions, plus vendors doing business with those agencies and entities.

**The OEIG does not represent any party or agency in an investigation nor does it investigate on behalf of any individual or agency.**

The primary role of the OEIG is to investigate allegations of misconduct and to make reports of its findings to the affected agencies and officials.

The OEIG investigates, when appropriate, alleged violations of law, rule, or regulation committed by any employee of, or those doing business with, an entity under its jurisdiction. For example, the OEIG investigates:

- allegations of waste, fraud, abuse of authority, or corruption;
- violations of the Ethics Act, including the prohibition on sexual harassment;
- allegations of unlawful discrimination and harassment; and
- violations of other laws or rules.

# Filing a Complaint with the OEIG

A complaint may be filed with the OEIG by:

- completing a form online at <http://www.inspectorgeneral.illinois.gov>;
- calling the OEIG's toll-free hotline at (866) 814-1113;
- mailing a completed complaint form to: Office of Executive Inspector General for the Agencies of the Illinois Governor, Attention Complaint Division, 69 West Washington Street, Suite 3400, Chicago, Illinois 60602;
- faxing a completed complaint form to (312) 814-5479;
- contacting the OEIG by telecommunications device for the disabled (TTY) at (888) 261-2734;  
or
- scheduling an appointment at its Springfield or Chicago locations.

# Filing a Complaint with the OEIG

The OEIG may accept complaints that are filed anonymously.

If filing a complaint with the OEIG:

- You must provide sufficient detail about the allegation in order for an investigation to be initiated.
- The complaint must be filed within a year of the events at issue.
- You should have a reasonable belief that the allegation is true.
- The complaint must relate to conduct of an employee or officer of an entity under the OEIG's jurisdiction, or conduct of a person or entity that does business with an entity under the OEIG's jurisdiction.

Pursuant to the Ethics Act, “[t]he identity of any individual providing information or reporting any possible or alleged misconduct to an Executive Inspector General or the [EEC] shall be kept confidential and may not be disclosed without the consent of that individual, unless the individual consents to disclosure of his or her name or disclosure of the individual's identity is otherwise required by law.” [5 ILCS 430/20-90](#).

# The OEIG Process

After filing a complaint with the OEIG:

- You will typically receive a letter that identifies a file ID number for your complaint.
- The complaint will be reviewed by the OEIG.
- The OEIG may investigate, refer the matter to another agency to investigate, or decline to investigate the complaint.
- If the OEIG conducts an investigation and determines there was a reasonable basis to believe that wrongdoing occurred, the OEIG issues a “founded summary report.”
- The founded summary report is then sent to the appropriate ultimate jurisdictional authority and to the head of each State agency affected by or involved in the investigation. The ultimate jurisdictional authority or agency head has 20 days to respond to the OEIG with a description of any corrective or disciplinary action to be taken.

# The OEIG Process (continued)

- The EEC is required to publish OEIG founded summary reports and responses if the investigation resulted in a suspension of at least three days or termination, and may choose to publish other OEIG founded summary reports.
- If the OEIG has reasonable cause to believe that a violation of the Ethics Act has occurred, the OEIG also may ask the Illinois Attorney General to file a complaint with the EEC.
- If a complaint is filed with the EEC and it decides that a violation of the Ethics Act occurred, the EEC may impose an administrative fine or take other action to stop the unlawful activity.

# Cooperation with Investigations

**All employees are expected to cooperate with OEIG investigations.**

Under the Ethics Act, it is the duty of every State employee and officer under the jurisdiction of the OEIG to cooperate with the OEIG in any investigation, including investigations into discrimination, harassment, and sexual harassment.

Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements.

# Example 8

## Question:

Employee A believes that Employee B is harassing Employee A on the basis of Employee A's race. Employee A meets with their Ethics Officer to discuss options for reporting the harassment.

Employee A would like to keep their complaint confidential. Employee A wants an investigation to be conducted and hopes that Employee B will be disciplined if the investigation finds that harassment did occur. Employee A is also concerned that Employee B may harass other employees and wants to quickly ensure that no other employees face the same harassment Employee A has experienced.

Where else, besides the Ethics Officer, could Employee A report their allegation to meet these goals?

Employee A's supervisor

Office of Executive Inspector General (OEIG)

Illinois Department of Human Rights

Both Employee A's supervisor and the OEIG

# Example 8

## **Answer:**

The correct answer is both Employee A's supervisor and the OEIG.

Employee A's supervisor can immediately work with agency management to ensure a harassment-free workplace, and should do so respecting Employee A's request for confidentiality. Employee A's supervisor should disclose no more than is needed to investigate and to address the problem. Further, Employee A could also report this to another supervisor if they are uncomfortable reporting the allegation to their own supervisor.

The OEIG operates outside the agency and conducts investigations in a confidential manner, to the extent possible under law. Ethics Officers have an obligation to promptly notify the OEIG of any allegations of misconduct after receiving such information. Even if Employee A does not choose to report the allegation to the OEIG directly, the Ethics Officer is obligated to do so. If the OEIG determines that the allegations are founded, it will issue a founded report that recommends discipline or other agency action. The OEIG's investigative process will take additional time, and may not immediately address workplace conditions. If an immediate resolution is Employee A's most important goal, it may make most sense for Employee A to report their allegation to a supervisor.

Complaints filed with IDHR are not confidential.

# Retaliation and Consequences

# Information About Retaliation

Retaliation against individuals who report discrimination, harassment, and/or sexual harassment, or who participate in investigations and other proceedings regarding those matters, is strictly prohibited by the Ethics Act, the Human Rights Act, and the Illinois Whistleblower Act.

Retaliatory action includes reprimand, discharge, suspension, demotion, denial of promotion or transfer, or any other change in the terms or conditions of employment of any State employee that occurs in retaliation for an employee's involvement in these protected activities.

In addition, if you or another employee experiences retaliation after reporting discrimination, harassment, or sexual harassment, the retaliatory conduct can be reported to a supervisor, Ethics Officer, IDHR, and the OEIG in the same manner that discrimination, harassment, and sexual harassment are reported.

# Retaliation Under the Ethics Act

Under the Ethics Act, an officer, member, State employee, and/or State agency cannot take retaliatory action against a State employee who:

- reports allegations of sexual harassment, harassment, or unlawful discrimination as well as any conduct that employee reasonably believes is in violation of a law, rule, or regulation;
- provides information or testifies in connection with an investigation, hearing, or other inquiry; or
- participates in a proceeding to enforce the Ethics Act.

The OEIG can investigate allegations of retaliation and recommend discipline, up to and including termination. An employee can also bring a lawsuit under the Ethics Act. Anyone who intentionally violates this prohibition on retaliation is guilty of a misdemeanor and is subject to discipline or discharge.

# Retaliation Under the Human Rights Act

Under the Human Rights Act, it is a civil rights violation to retaliate against a person who opposes that which they reasonably and in good faith believe to be unlawful discrimination or sexual harassment. [775 ILCS 5/6-101\(A\)](#).

For example, it is unlawful for someone to retaliate against a person who filed a complaint, participated in an investigation, or testified regarding a matter under the Human Rights Act.

# Retaliation Under the Whistleblower Act

Under the Whistleblower Act, an employer may not retaliate against an employee “for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.” [740 ILCS 174/15\(b\)](#).

Further, an employer shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation.

If an employer retaliates against an employee in violation of the Whistleblower Act, and the employee succeeds in a civil suit, the employee may receive relief necessary to make the employee whole, including reinstatement into their position, back pay with interest, and compensation for damages.

# Consequences Under the Ethics Act

It is a violation of the Ethics Act to engage in sexual harassment as defined by the Act. As an Ethics Act violation, there are specific penalties for the violation.

Any person who violates the Ethics Act's prohibition on sexual harassment:

- may be fined up to \$5,000 per offense;
- is subject to discipline or discharge; and
- may also have finances or penalties imposed by a State or federal agency or court.

Although “harassment” and “unlawful discrimination” are not specific violations of the Ethics Act, the OEIG does investigate allegations of unlawful discrimination and harassment. The results of these investigations can lead to discipline or discharge for violating the law or your agency's policies.

Also note that failure to cooperate with an OEIG investigation conducted pursuant to the Ethics Act, including intentional omissions and knowing false statements, is grounds for disciplinary action, including dismissal.

# Consequences for False Reports

False reports are prohibited.

The EEC may levy a fine of up to \$5,000 against any person who intentionally makes a false, frivolous, or bad faith allegation, or who intentionally obstructs or interferes in an OEIG investigation.

Any person who intentionally makes a false report alleging **sexual harassment** to the OEIG, EEC, or to certain law enforcement agencies or officials is guilty of a misdemeanor.

# Additional Consequences

There are serious consequences for engaging in unlawful discrimination, harassment, and sexual harassment, which may include being disciplined or having your employment terminated for violating the law or your agency's policies.

Engaging in unlawful discrimination, harassment, sexual harassment, and/or retaliation can also subject you to proceedings before the HRC or state or federal courts. Individuals can file a state or federal charge against the person or entity that engaged in misconduct, and if they prevail may be entitled to one or more of the following remedies:

- Actual damages for injury or loss, including emotional damages
- Attorneys' fees and costs
- Prejudgment interest
- Backpay
- Obtaining a cease and desist order
- Fringe benefits
- Hiring
- Reinstatement
- Promotion

# Reminder About the Use of State Resources

Personal business should not be conducted using State resources. Employees have no expectation of privacy when using State resources, such as State-administered e-mail accounts, State phones, State computers, or State networks.

State employees are provided with State-administered email accounts where only matters related to official State business should be discussed. Matters of a personal nature, or other matters not related to official State business, should generally not be discussed using an official State e-mail account.

State resources, such as State-provided cell phones and computers, should not be used to access non-State e-mail accounts and social media accounts. State resources should not be used to access, view, or download images, video, or other content of a sexual nature.

*State resources include, but are not limited to, State-administered e-mail accounts, State-owned computers, State wireless networks, and State provided phones and cell phones.*

# Acknowledgement of Participation in 2020 Harassment and Discrimination Prevention Training

I certify that I have carefully read and reviewed the content of, and completed, the 2020 Harassment and Discrimination Prevention Training pursuant to 5 ILCS 430/1 et seq. Furthermore, I certify that I understand my failure to comply with the laws, rules, policies, and procedures referred to within this training course may result in disciplinary action up to and including termination of State employment, administrative fines, and possible criminal prosecution, depending on the nature of the violation.

Signature

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Printed Name

(first, middle initial, last)

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Month and Day of Birth

(for example, July 15)

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Date

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State Agency Name / Work Location