

Sexual Harassment Training

OEIG

New Employees 2018

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I. WHAT IS SEXUAL HARASSMENT?

“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 said 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.

State Officials and Employees Ethics Act (“Ethics Act”), 5 ILCS 430/5-65(b); Illinois Human Rights Act (“IHRA”), 775 ILCS 5/2-101(E).

Types of sexual harassment include quid pro quo and hostile work environment

- **Quid pro quo** – “You do something for me, and I’ll do something for you.” This means that a manager or supervisor may not tell 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.** A hostile work environment may occur when sexually inappropriate words, behavior, gestures or materials are available for others to see or someone is offended by the nature of the words, behaviors, gestures or materials.

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, including 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,” “honey,” or other diminutive term
- Whistling at someone
- Sexual comments, sexual innuendos, or sexual stories
- Turning work discussions to sexual topics
- Asking about sexual fantasies, preferences, or history
- Sexual comments about a person’s clothing, anatomy, or looks
- Kissing sounds, howling, and smacking lips
- 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, or magazines displayed in the workplace or shown to someone
- Playing sexually suggestive or graphic videos or music
- Making sexual gestures with hands or through body movements

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
- Cyber stalking

II. SEXUAL HARASSMENT IS PROHIBITED

You are subject to the Ethics Act, 5 ILCS 430 et seq., which is intended to ensure that the functions of State government are conducted with fairness, honesty, and integrity. The Ethics Act prohibits sexual harassment:

All persons have a right to work in an environment free from sexual harassment. 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). A violation of that prohibition is a violation of the Ethics Act.

Further, the Illinois Human Rights Act prohibits sexual harassment in State employment, as well as in many private employment settings. Under the Illinois Human Rights Act, it is 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).

III. REPORTING AN ALLEGATION OF SEXUAL HARASSMENT

Any employee who witnesses, is subjected to, or becomes aware of such conduct should immediately report the incident. You can report sexual harassment to your supervisor, your agency Ethics Officer, the Office of Executive Inspector General (“OEIG”), and/or the Illinois Department of Human Rights (“IDHR”).¹

Reporting an Allegation of Sexual Harassment to Your Ethics Officer

Your Ethics Officer is an important resource. Your Ethics Officer is available to discuss any concerns about ethics violations you may have, including an allegation of sexual harassment. Ethics Officers can help interpret the Ethics Act for you as it relates to sexual harassment and how to report an allegation of sexual harassment. He or she will be knowledgeable about the sexual harassment reporting process conducted by the OEIG and by the IDHR, processes described below. Your Ethics Officer can assist you in making a report to these entities or to your supervisor.

Additionally, if an allegation of 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, the OEIG, or IDHR. Your agency Ethics Officer can also assist with directing your allegation to another supervisor or member of your agency’s management who can address it instead your supervisor.

David Morrison is the Ethics Officer for the OEIG. Mr. Morrison’s telephone number is 312-814-1932 and his email address is David.Morrison@illinois.gov.

¹ This training discusses reporting to State agencies. This training does not provide legal advice and does not prevent anyone from exercising other rights, including contacting a private attorney or law enforcement.

Reporting an Allegation of Sexual Harassment to the Office of Executive Inspector General

The Office of Executive Inspector General (“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. **It does not represent any party or agency in an investigation and does not 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. The OEIG investigates violations of the Ethics Act, which now contains a prohibition on sexual harassment.

A complaint may be filed with the OEIG in writing, preferably on an OEIG complaint form, or orally. A complaint may be filed with the OEIG by:

1. Completing a form online at <http://www.inspectorgeneral.illinois.gov>;
2. Calling the Office’s toll-free hotline at (866) 814-1113;
3. 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;
4. Faxing a completed complaint form to (312) 814-5479;
5. Contacting the Office by telecommunications device for the disabled (TTY) at (888) 261-2734;
or
6. Scheduling an appointment with the Office at its Springfield or Chicago locations.

The OEIG may accept complaints that are filed anonymously.

Anyone filing a complaint must provide sufficient detail about the allegation in order for an investigation to be initiated.

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 Executive Ethics Commission 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.

Reporting an Allegation of Sexual Harassment to the Illinois Department of Human Rights

The Illinois Department of Human Rights (IDHR) is a State agency that administers the Illinois Human Rights Act, 775 ILCS 5 et seq. The Illinois Human Rights Act prohibits sexual harassment in employment, and considers 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).

One of IDHR’s important roles is to investigate charges of discrimination, including allegations of sexual harassment in employment. After the investigation, IDHR prepares a written report with a recommendation on whether or not there is “substantial evidence” of a violation of the Illinois Human Rights Act. IDHR does not make a credibility determination when there is conflicting evidence.

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

After IDHR issues its finding, a complainant may file a lawsuit in civil court, or if a finding of “substantial evidence” is made, file a complaint with the IHRC. That forum (either the IHRC or the circuit court) will hear testimony, receive evidence, and determine whether unlawful discrimination or harassment occurred.

If a complainant succeeds in court or at the IHRC, the judge or IHRC can order remedies allowed by the Illinois 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. Punitive damages, or damages intended to punish the harasser or the employer, are not available under the Illinois Human Rights Act.

This process through IDHR and IHRC, or through IDHR and a court, may take several years. It is a public process – an employee who chooses to pursue this option may not do so anonymously – and it requires involvement by the person who filed the complaint. Some individuals who pursue their complaints through the IDHR process and IHRC, or a court, choose to seek the assistance of an attorney, while others proceed without an attorney.

The process begins by filing a “charge” (or a report of an allegation) to IDHR within 300 days of the alleged incident.² The first step in filing a charge is to submit information in person or in writing by mail or fax, using a Complainant Information Sheet that is available on the IDHR website at www.illinois.gov/dhr/FilingCharge/Pages/Intake.aspx. It requires detailed information, including contact information, employer information, and the most recent date of the alleged sexual harassment. A person filing a charge may also provide witness information and copies of relevant documents.

² Public Act 100-0588 signed by the Governor on June 8, 2018, extended the time to file a charge to 300 days of the alleged incident. However, if the incident occurred before June 8, 2018, the 180-day timeframe still remains.

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

IDHR offices:

Chicago

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

Springfield

222 South College St.
Room 101A
Springfield, IL 62704
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 Complainant Information Sheets, can be found on IDHR's website.

The Department of Human Rights Helpline

IDHR operates a helpline for reporting sexual harassment and discrimination. The helpline number is 1-877-236-7703 and there is also a website for reporting, <https://www2.illinois.gov/sites/sexualharassment/Pages/default.aspx>.

Through the helpline:

- IDHR will offer help with finding resources, including counseling services.
- IDHR will assist with filing sexual harassment complaints with IDHR or other agencies.
- People may anonymously report sexual harassment and discrimination in both State employment and private- sector employment.
- For people who are subject to the Ethics Act, which includes State employees required to take this training, IDHR will report the allegations to the OEIG for further investigation *if the person making the report gives permission for IDHR to do so.*

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

IV. INFORMATION ABOUT RETALIATION

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

Retaliatory action means reprimand, discharge, suspension, demotion, denial of promotion or transfer, or 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. These are examples of retaliatory conduct.

Under the Ethics Act, 5 ILCS 430/15-5 et seq., an officer, member, State employee, and/or State agency cannot take retaliatory action against a State employee who (1) reports allegations of sexual harassment, (2) provides information or testifies in connection with an investigation, hearing, or other inquiry, or (3) participates in a proceeding to enforce the Ethics Act. If retaliatory action occurs, the OEIG can investigate this matter and recommend discipline. An employee can also bring a lawsuit pursuant to the Ethics Act. Anyone who intentionally violates this prohibition on retaliation is guilty of a misdemeanor and is subject to discipline or discharge. 5 ILCS 430/50-5(a), (f).

Under the Illinois Human Rights Act, it is a civil rights violation to retaliate against someone who "has opposed that which he or she reasonably and in good faith believes to be unlawful . . . sexual harassment in employment . . ." 775 ILCS 5/6-101(A).

Under the Illinois Whistleblower Act, 740 ILCS 174 et seq., "[a]n 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).

Remedies available in a civil lawsuit if retaliation occurs *may* include:

- reinstatement of employment;
- two times back pay;
- interest on back pay;
- reinstatement of fringe benefits and seniority rights; and
- payment of reasonable costs and attorney's fees.

V. PENALTIES

State employees who engage in sexual harassment, who make false reports of sexual harassment, or who obstruct, interfere with, or fail to cooperate with investigations into alleged sexual harassment are subject to significant penalties, including fines, discipline up to and including discharge, and even misdemeanors.

Sexual harassment in violation of the Ethics Act. Any person who violates the prohibition on sexual harassment that is found in the Ethics Act:

- may be fined up to \$5,000 per offense;
- is subject to discipline or discharge; and
- may also have fines or penalties imposed by a State or federal agency or court (such as if a charge was filed with IDHR and the court or IHRC determined that unlawful harassment occurred).

See 5 ILCS 430/50-5(g).

False reports.

- The Executive Ethics Commission (“EEC”) may levy a fine of up to \$5,000 against any person who intentionally makes a false, frivolous, or bad faith allegation. 5 ILCS 430/50-5(e).
- 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. *See* 5 ILCS 430/50-5(d).

Obstructing, Interfering with, or Failing to Cooperate with an Investigation.

- The EEC may levy a fine of up to \$5,000 against any person who intentionally obstructs or interferes with an investigation conducted under the Ethics Act by the OEIG. 5 ILCS 430/50-5(e).
- Failure to cooperate with an investigation conducted under the Ethics Act by the OEIG, including intentional omissions and knowing false statements, is grounds for disciplinary action, including dismissal. 5 ILCS 430/20-70.