



**ILLINOIS DEPARTMENT OF HUMAN RIGHTS  
INSTITUTE FOR TRAINING AND DEVELOPMENT**

**PRESENTS**

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**SEXUAL HARASSMENT  
PREVENTION**



# What is Sexual Harassment?

“any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) 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))**

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# DEFINITIONS

## QUID PRO QUO

“you do something for me and I’ll do something for you.”

A manager or supervisor may not tell a subordinate that in order for them to receive some job consideration (promotion, raise) that they must do something sexual in return for that job consideration.

***(Can be either explicit or implicit)***

## HOSTILE WORK ENVIRONMENT

Inappropriate words, behaviors, gestures, emails, text messages or pictures are available for all to see or someone is offended by the nature of the words, behaviors, gestures, emails, text messages or pictures.

***(The words, behaviors, gestures or materials have to be severe or pervasive to be actionable.)***



# SEXUAL HARASSMENT

Includes Unwelcome:

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- Physical
- Verbal
- Non-verbal
  - Visual
  - Digital



# DIGITAL HARASSMENT

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- Sexual harassment has migrated to the digital domain.
- Social media sites have blurred the line between private and professional lives.
- An individual that may not make a sexually inappropriate comment at work or in a workplace setting may make the comment in an email, text message or social media site with the touch of a button.
- Somehow individuals are reassured by a false sense of privacy or perhaps a feeling that they can engage in this type of behavior after work hours.
- **This behavior has increased the potential for sexual harassment claims in the workplace.**



# IMPORTANT INFORMATION

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- **Intent** of the alleged harasser is irrelevant. What is relevant is the **impact** the conduct had on the victim.
- In reviewing cases of sexual harassment, courts use a **reasonable person** standard.
- Behavior has to be **unwelcome**.
- **Gender** is irrelevant.
- Sexual harassment is **not limited** to behavior strictly between men and women.
- **Anyone** impacted by offensive conduct can be the victim of sexual harassment.
- Employers can be held liable for **non-employee** sexual harassment.



- SPEAK UP!
- Tell the person to STOP!
- Report the issue to a supervisor, EEO/AA Officer or designated person.

# Reporting Sexual Harassment



Another option is to make a **confidential report** to a:

- SUPERVISOR
- ETHICS OFFICER
- INSPECTOR GENERAL
- ILLINOIS DEPARTMENT OF HUMAN RIGHTS



# PERTINENT LAWS

## TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- Enforced by the Equal Employment Opportunity Commission (“EEOC”)
- Employer must have at least 15 employees
- Employee has 300 days to file a charge

## SECTION 2-102(D) OF THE ILLINOIS HUMAN RIGHTS ACT

- Enforced by the Illinois Department of Human Rights (“IDHR”)
- Employer must have at least 1 employee
- Individuals may be named as Respondents
- Employee has 180 days to file a charge (300 days for harms on/after 6/8/2018)



# ADDITIONAL LAWS

## STATE OFFICIALS AND EMPLOYEES ETHICS ACT (5 ILCS 430/)

- Applies to state entities and Regional Transit Boards (e.g. METRA)
- Created Executive Ethics Commission, Legislative Ethics Commission, Offices of the Executive Inspector General for the Governor and executive constitutional officers
- Prohibits sexual harassment and other unethical behavior; requires annual ethics and sexual harassment prevention training
- Requires a policy prohibiting sexual harassment for all government entities

## ILLINOIS WHISTLEBLOWER ACT (740 ILCS 174/)

- Enforced by the Circuit Courts
- Protects employees who report wrongdoing to government or law enforcement agencies
- Prohibits retaliation against employees who report wrongdoing
- Violations are a Class A Misdemeanor



# POLICY REQUIREMENTS FOR STATE AGENCIES

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State agencies in Illinois must have a policy prohibiting sexual harassment that, at a minimum:

- prohibits sexual harassment;
- states the consequences for violating the prohibition on sexual harassment and for knowingly making a false report;
- states how to report sexual harassment, including options for confidential reporting to a supervisor, ethics officer, inspector general, or the Department of Human Rights; and
- prohibits retaliation for reporting sexual harassment allegations, including the availability of whistleblower protections under the Ethics Act, Whistleblower Act, and the Illinois Human Rights Act **(Ethics Act, 5 ILCS 430/5-5)**



# CONSEQUENCES FOR SEXUAL HARASSMENT

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Any person subject to the Ethics Act who violates its prohibition on sexual harassment:

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

(5 ILCS 430/50)

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# KNOWINGLY MAKING A FALSE REPORT

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Under the State Officials and Employees Ethics Act:

- Any person who intentionally makes a false, frivolous or bad faith allegation of sexual harassment is subject to a fine of up to \$5,000.
- Any person who intentionally makes a false report alleging a violation of the sexual harassment provision of this act to an ethics commission, an inspector general, the State Police, a State's Attorney, or any other law enforcement official is guilty of a class A misdemeanor. (5 ILCS 430/50)

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# RETALIATION IS ILLEGAL

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Retaliation against state employees in relation to sexual harassment complaints and investigations is prohibited:

- State Officials and Employees Ethics Act (“Ethics Act”)
- Illinois Human Rights Act
- Illinois Whistleblower Act



# WHAT IS RETALIATION?

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- Retaliation is NOT the same as harassment or hostile work environment.
- Retaliation is about making people afraid to complain or to assert their rights.
- Person engages in a protected activity (*filing a complaint/blowing a whistle*)
- Their job is changed in some material adverse way, e.g. demotion
- Link exists between their complaint and the material adverse action



# RETALIATION

The following acts could also be considered retaliatory:

- reprimanding the employee or giving a performance evaluation that is lower than it should be;
- transferring the employee to a less desirable position;
- engaging in verbal or physical abuse;
- Increased scrutiny;
- spreading false rumors, treating a family member negatively (for example, cancel a contract with the person's spouse);
- making the person's work more difficult (for example, punishing an employee for an EEO complaint by purposefully changing his work schedule to conflict with family responsibilities); or
- terminating the employee.



# ETHICS ACT PROHIBITS RETALIATION

“An officer, a member, a State employee, or a State agency shall not take any retaliatory action against a State employee because the State employee does any of the following:

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- (1) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation.
- (2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency, or other State employee.
- (3) Assists or participates in a proceeding to enforce the provisions of this Act.”

**(5 ILCS 430/15-10) 17**



# ETHICS ACT - RETALIATION REMEDIES

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Remedies imposed by the circuit court to enforce this article may include, but are not limited to, all of the following:

- (1) reinstatement of the employee to either the same position held before the retaliatory action or to an equivalent position;
- (2) 2 times the amount of back pay;
- (3) interest on the back pay;
- (4) the reinstatement of full fringe benefits and seniority rights; and
- (5) the payment of reasonable costs and attorneys' fees.

**(5 ILCS 430/15-25)**



# ILLINOIS WHISTLEBLOWER ACT PROHIBITS RETALIATION

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- Where an employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation, and where the employee discloses information in a court or administrative hearing or proceeding, or to a government or law enforcement agency **(740 ILCS 174/15)**
- Where an employee refuses to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including FOIA **(740 ILCS 174/20)**
- Other retaliation “if the act or omission would be materially adverse to a reasonable employee and is because of the employee disclosing or attempting to disclose public corruption or wrongdoing.” **(740 ILCS 174/20.1)**



# ILLINOIS HUMAN RIGHTS ACT PROHIBITS RETALIATION

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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...” or “because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act...”

**775 ILCS 5/6-101(A)**



## ***THE STATE OF ILLINOIS SEXUAL HARASSMENT AND DISCRIMINATION HELPLINE***

can be reached Monday through Friday (except state holidays) between the hours of 8:30 a.m. and 5:00 p.m. at  
**877-236-7703.**

By statute, all communications received by IDHR via the Helpline or accompanying Website are confidential and exempt from disclosure under the Freedom of Information Act (FOIA). For more information, please visit

<https://www.illinois.gov/sexualharassment>

