

Chicago Adopts New Sexual Harassment Prevention Obligations for Employers

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Meet the Authors



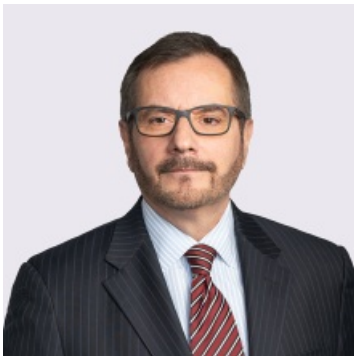
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The Chicago City Council has created new employer obligations to provide training to employees and supervisors on sexual harassment prevention and how bystanders should respond to sexual harassment.

The new ordinance also moves sections of the Human Rights Ordinance from Chapter 2-160 (“Human Rights”) of the Municipal Code to Article 6 (“Worker Protections”) and substantially revised former section 2-160-040 (“Sexual Harassment”), which is now part of section 6-10-040.

These amendments are effective on July 1, 2022.

Definitions

The ordinance retains the definition of “employer” in the Human Rights Ordinance (codified as 6-10-020). An employer is “any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that provides employment to one or more employees in the current or preceding calendar year and any agent of such an entity or person.”

The ordinance modifies the definition of employee. An employee is “an individual who is engaged to work within the geographical boundaries of the City of Chicago for or under the direction and control of another for monetary or other valuable consideration.”

The ordinance retains the current liability provision in the Human Rights Ordinance (codified as section 6-10-040(a)). The provision states: “No employer, employee, agent of an employer, employment agency, or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.”

The ordinance also modifies the definition of sexual orientation in the Human Rights Ordinance. Sexual orientation means “a person’s actual or perceived sexual and emotional attraction, or lack thereof, to another person.”

New Policy, Training Obligations

The revisions included in section 6-10-040 establish new policy and training obligations for employers licensed by or with work locations in the City. For example, every employer must have a written policy. The policy must be provided to employees in the employee’s primary language within the first calendar week of employment. The policy must include the following elements:

1. The definition of sexual harassment defined in section 6-10-020: “any (i) unwelcome sexual advances or unwelcome conduct of a sexual nature; or (ii)

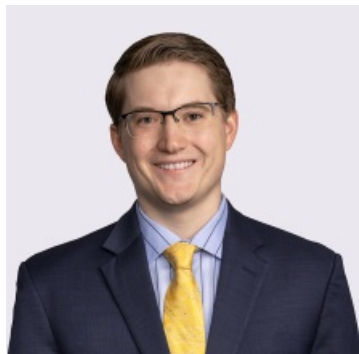
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requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the 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; or (iii) sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual's employment position."

2. A statement that sexual harassment is illegal in Chicago.
3. A requirement that employees participate in the following training annually:
 - a. A minimum of one hour of sexual harassment prevention training for all employees.
 - b. A minimum of two hours of sexual harassment prevention training for anyone who supervises or manages employees.
 - c. One hour of bystander training for all employees.
4. Examples of sexual harassment.
5. Details on how an employee can report an allegation of sexual harassment. The policy should include, as appropriate, instructions on how to make confidential reports, with an internal complaint form, to managers, corporate headquarters, human resources, or other internal reporting processes.
6. Information about legal services, including governmental agencies, that are available to employees who may be victims or sexual harassment.
7. A statement that retaliation for reporting sexual harassment is illegal in Chicago.

Every employer must require its employees to participate in the mandatory annual trainings for the required number of hours. For the sexual harassment prevention training, employers may use the model sexual harassment prevention training program prepared by the Illinois Department of Human Rights pursuant to the annual training requirements in the Illinois Human Rights Act (IHRA), or they may establish their own training that equals or exceeds the minimum requirements in the IHRA. The ordinance does not identify a similar standard for bystander training.

Poster, Records, Enforcement

Employers must display, in at least one location where employees commonly gather, posters designed by the Commission on sexual harassment prohibitions. The employer must display at least one poster in English and one in Spanish.

Employers also must retain written records of the policies and trainings given to each employee, as well as other records necessary to show compliance with the ordinance. The records must be retained for a period is at least five years or the duration of any claim, civil action, or investigation pending pursuant to the ordinance, whichever is longer. Failure to maintain the required records creates a presumption (rebuttable only by clear and convincing evidence) that the employer violated the ordinance.

A person who violates the sections of the ordinance prohibiting sexual harassment, defining the mandatory elements of the policy, and mandating annual training is subject to a fine ranging between \$500 and \$1,000 per day.

The ordinance also amends other sections of the Municipal Code. For example, the time in which a complaint must be filed with the Chicago Commission on Human Relations was increased from 300 to 365 days. The ordinance also provides that in cases of sexual harassment, the Commission may delay issuing a complaint to the respondent for up to 30 days after it is filed.

Jackson Lewis attorneys are available to assist employers with any questions related to compliance, harassment policies, training for management and employees, and other preventive practices.

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