

# Impactful Sexual Harassment Bill Passes Illinois Senate

**Law and the Workplace** on April 16, 2019

On April 11, 2019, the Illinois state Senate voted to pass [Senate Bill 1829](#), also known as the Workplace Transparency Act (the “Act”). If passed by the House of Representatives, the Act would impose new requirements and limitations on Illinois employers with respect to harassment and discrimination claims. The following are the Act’s key features.

## **Limitations on Nondisclosure, Non-disparagement and Arbitration clauses**

The Act would prevent employers from including in employment contracts nondisclosure and non-disparagement clauses which cover claims of sexual harassment. In addition, employers that wish to include arbitration clauses in employment contracts would no longer be able to enforce them with respect to harassment or discrimination claims under the Illinois Human Rights Act (“IHRA”). The Act would require arbitration clauses to include written exceptions for harassment and discrimination claims or otherwise be rendered unenforceable.

Though the Act still permits the use of nondisclosure and non-disparagement clauses within settlement agreements, certain limitations would be imposed with respect to harassment and discrimination claims. Employers would only be able to include such clauses if: the claim arose prior to the execution of the agreement; the clauses are mutually agreed upon and operate to the benefit of both parties; the employee or applicant is given 21 days to review the terms of the agreement prior to its execution; and the employee or applicant must be afforded 7 days to revoke the agreement following execution, and the agreement would not be enforceable until that 7-day period had passed.

## **Mandatory Annual Disclosures**

Any private or public employer, labor organization or party to a public contract that entered into a settlement or had an adverse judgment or administrative ruling entered against it with respect to a discrimination or harassment claim in the preceding year would be required to report those settlements or judgments to the Illinois Department of Human Rights (“IDHR”). Required disclosures would include the total number of settlements or judgments, the number of settlements or judgments based on each protected characteristic under the IHRA, and any equitable relief that was ordered against the employer.

The IDHR then would aggregate this data and publish an annual report without identifying any individual employer. Nor would employers’ annual disclosures be subject to production in response to FOIA requests. If an employer’s disclosures suggest a pattern and practice of unlawful discrimination, the IDHR may open a preliminary investigation, and could initiate a civil rights charge against that employer.

Failure to comply with these reporting requirements would result in financial penalties ranging from \$500 to \$5,000 per offense, depending on the size of the employer and whether it is the first violation or the latest in a string of violations.

### **Sexual Harassment Training**

Employers would be required to provide sexual harassment prevention training on an annual basis. These trainings would need to meet certain minimum criteria, including (but not limited to) an explanation of sexual harassment, examples of prohibited conduct, a summary of state and federal laws regarding sexual harassment, a summary of rights and remedies available to employees and a summary of the employer’s responsibilities with respect to preventing and investigating allegations of sexual harassment. Failure to provide this required training would result in financial penalties.

### **Protections for Non-employees**

The Act would extend IHRA protections to non-employees such as independent contractors, consultants and other contract workers. Under this provision, employers could be held liable for harassing conduct that substantially interferes with a contractor’s work performance or creates an intimidating, hostile or offensive working environment based on a protected class.

### **Unpaid Leave for Treatment Following Sexual Harassment**

The Act would amend the Victims' Economic Security and Safety Act, which allows employees to take up to 12 weeks of unpaid leave for purposes of receiving medical, psychological or other services after experiencing domestic or sexual violence. The Act would add sexual harassment to the list of bases for taking protected leave.

We will closely monitor the status of this bill and provide updates as they become available.

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