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Chicago Cos. Must Prepare For New Sex Harassment Law

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The #MeToo movement led to legislative action on the federal, state and local levels, as lawmakers imposed new and varied requirements on employers in an effort to prevent sexual harassment in the workplace.

Such measures included, for example, workplace training requirements, limits on the use of nondisclosure restrictions and limits on arbitration agreements covering claims of workplace sexual harassment. But it didn't stop there, as we saw a proliferation of more detailed and creative requirements spring up in various states and localities.

While the legislatures in California and New York have led the way in developing creative methods of attempting to stamp out sexual harassment during the #MeToo movement and after the movement hit its peak, employers should recognize that Illinois and the city of Chicago have been at the forefront of those efforts as well.[1]

Recently, the Chicago City Council passed ordinance SO2022-665 that broadens the Chicago Human Rights Ordinance and imposes new requirements on Chicago employers with respect to preventing sexual harassment in the workplace.[2]

Effective July 1, and enforced by the Chicago Commission on Human Relations, the ordinance includes:

- A modified definition of sexual harassment;
- A new written policy requirement for employers;
- Expanded sexual harassment prevention training requirements, including a new requirement for bystander training;
- Stricter record-keeping requirements;
- An extended statute of limitations; and
- Heightened penalties for violations.

Here, we provide an overview of the ordinance and highlight steps in-house employment counsel and human resources professionals in companies that employ individuals in Chicago should take as the effective date of the ordinance approaches.

Updated Definition of Sexual Harassment

The ordinance broadens the definition of sexual harassment in the Chicago Human Rights Ordinance to include unwelcome sexual advances or unwelcome conduct of a sexual nature.

Notably, the definition also now explicitly includes sexual misconduct, which is defined as "any behavior of a sexual nature that also involves coercion, abuse of authority, or misuse of an individual's employment position."[3]

New Written Policy Requirements

Affected employers must now implement a comprehensive written anti-harassment policy and provide it to employees in their primary language within the first calendar week of employment.

The policy must include:

- The definition of sexual harassment as defined in the ordinance;
- A statement that sexual harassment and retaliation for reporting sexual harassment is illegal in Chicago;
- A requirement that all employees participate in sexual harassment prevention training and bystander training annually;
- A list of prohibited conduct that qualifies as sexual harassment;
- An explanation of how an employee can report a sexual harassment allegation including, as appropriate, instructions on how an employee can make a confidential report with an internal complaint form to a manager, corporate headquarters or human resources, or other internal reporting mechanisms; and
- Information about the legal and governmental services available to employees who may be victims of sexual harassment.

Training Requirements

Affected employers are now required to provide a minimum of one hour of sexual harassment prevention training annually to employees, while managers and supervisors must participate in a minimum of two hours of sexual harassment prevention training annually.

Notably, this follows Illinois' sexual harassment prevention training requirement implemented in 2020 that requires that every employer in Illinois provide employees with annual sexual harassment prevention training that complies with Section 2-109 of the Illinois Human Rights Act.[4]

To satisfy this one-hour requirement, employers may adopt the model sexual harassment prevention training program prepared by the state of Illinois.[5] Alternatively, employers may develop their own sexual harassment prevention training program that equals or exceeds the minimum training requirements detailed in the IHRA.[6]

The commission is set to publish a template training model on its website for the extra hour of annual training for managers and supervisors before the July 1 deadline.

Also, it is noteworthy that the ordinance makes Chicago one of the first jurisdictions to require employers to provide bystander training to employees. Employees in Chicago must now participate in at least one hour of bystander training annually.

But curiously, the ordinance does not define bystander training or detail the requirements for such training. However, employers should soon receive guidance as the commission is set to publish a template bystander training module on its website before the July 1 deadline.

Posting and Record-Keeping Requirements

Affected employers are also required to display sexual harassment prohibition posters created by the commission in at least one location where employees commonly gather.[7] There must be at least one poster in English and one in Spanish.

Affected employers must maintain written records of the policies and trainings given to each employee, as well as any other records necessary to show compliance with the ordinance, for at least five years or the duration of any claim, civil action or investigation pending pursuant to the ordinance — whichever is longer.

The foregoing is no mere passing suggestion: Failure to maintain the required records creates a presumption — rebuttable only by clear and convincing evidence — that an employer violated the ordinance.

Changes to Statute of Limitations and Potential Penalties

The statute of limitations for filing a complaint under the ordinance has been extended by 65 days. Employees now have 365 days after the date of an alleged violation to file a complaint with the commission.

In cases involving allegations of sexual harassment, the commission may delay issuing a complaint to the respondent for up to 30 days after the complaint is filed.

This provision is likely included to help mitigate the risk of retaliation for filing a complaint, such as a denial of a reasonable accommodation request under the Illinois Victims' Economic Security and Safety Act.

VESSA prohibits the discrimination of employees who are victims of domestic violence, sexual violence, gender violence or any other crime of violence, or who have family or household members who are victims of such violence. Under VESSA, employees are entitled to unpaid leave in order to, among other things, seek medical attention, receive services, obtain counseling and seek legal assistance.[8]

Previous violations of the Chicago Human Rights Ordinance cost employers $500 to $1,000 per offense. But beginning July 1, employers will now face much steeper penalties of $5,000 to $10,000 per offense.

Conclusion

In sum, in-house employment counsel and human resources professionals in companies with operations in Chicago should review this checklist in order to heighten compliance with the ordinance:

- Prepare or update a written anti-harassment policy, and provide it to employees in their primary language during their first week of
- Deliver on an annual basis: (1) a one-hour sexual harassment prevention training for nonmanagerial employees; (2) a two-hour sexual harassment prevention training for managerial employees; and (3) a one-hour bystander

- Display required sexual harassment prohibition posters created by the commission in both English and Spanish in at least one location where employees commonly
- Review record-keeping policies to ensure the training attendance forms, policy acknowledgements and other relevant records are being properly
- Monitor the commission's website for updated training materials and other
- Monitor federal, state and local government sexual harassment laws.

At the same time, Chicago employers should invest in efforts to foster respectful workplaces and facilitate a workplace culture where employees are encouraged to promptly lodge complaints when they believe they have been sexually harassed — without fear of retaliation.

Indeed, the financial and reputational risks, as well as the risk of lower morale and productivity and heightened attrition, remain high for employers who neglect to prioritize efforts to preclude sexual harassment.

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[1] For example, under the Illinois Workplace Transparency Act ("IWTA"), which took effect on January 1, 2020, employers are prohibited from including non-disclosure or non-disparagement clauses covering allegations of sexual harassment in separation agreements unless certain conditions are met. 820 ILCS § 96. The IWTA also requires Illinois employers to report all adverse judgments or administrative rulings from the prior year related to sexual harassment to the Illinois Department of Human Rights. Id.

[2] Chicago, Ill., Substitute Ordinance Amending Municipal Code Titles 2, 3, 4, 5, 6, 8 and 9 by Modifying and Expanding Sexual Harassment Prohibitions (Apr. 27, 2022), https://chicago.legistar.com/LegislationDetail.aspx?ID=5464552&GUID=D04D1690-70D0-43BB-8B6B-F11EB85C2288&Options=Advanced&Search=&FullText=1.

[3] Id. § 7 (amending § 2-156-010(z) of the Municipal Code of Chicago).

[4] Ill. Pub. Act 101-0221, art. 2, Sec. 2-15, https://www.ilga.gov/legislation/publicacts/101/101-0221.htm.

[5] Sexual harassment prevention training, 775 ILCS 5/2-109; Ill. Dep't of Hum. Rts., State of Illinois Model Sexual Harassment Prevention Training

Program, https://www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment- Prevention-Training-Model.aspx.

[6] 775 ILCS 5/2-109(B).

[7] Ill. Dep't of Hum. Rts., Publications – Compliance Posting for Employers, https://www2.illinois.gov/dhr/Publications/Pages/default.aspx.

[8] Illinois Victims' Economic Security and Safety Act, 820 ILCS § 180.

Related Professionals

- **Steven J. Pearlman**
  Partner
- **Edward C. Young**
  Senior Counsel