

# Key Developments in Illinois Employment Law: Chicago Ordinance on Sexual Harassment and more

August 4, 2022



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# Topics

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- Chicago Ordinance on Sexual Harassment
- Illinois Equal Pay Act
- One Day Rest in Seven Act
- Family Bereavement Leave Act
- Illinois CROWN Act
- Significant Decisions

# Chicago Ordinance on Sexual Harassment





# Chicago Ordinance on Sexual Harassment

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- Effective July 1, 2022, the Ordinance amends the Chicago Municipal Code to expand the City's prohibitions on sexual harassment in the workplace.
- The Ordinance is enforced by the Chicago Commission on Human Relations.

# Requirements

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- I. Written Policy;
- II. Annual Trainings;
- III. Notice; and
- IV. Recordkeeping

# Employers and Employees

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- “Employer” is broadly defined to mean “any individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that provides employment for one or more employees in the current or preceding calendar year, and any agent of such an entity or person.”
  - The definition does not have a geographical component – *i.e.*, it does not require the “employer” to have a physical office in Chicago.
- “Employee” is broadly defined to mean “an individual who is engaged to work in **within the geographical boundaries of the City of Chicago** for or under the direction and control of another for monetary or other valuable consideration.”

# Written Policy Requirements

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- The Ordinance requires employers to have a written policy that is distributed to employees in their primary language within their first week of employment. It must include:
  - **A modified definition of sexual harassment.**
    - The definition of sexual harassment is updated to include unwelcome sexual advances or unwelcome conduct of a sexual nature, and sexual misconduct.
  - **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 and bystander intervention training annually.**

# Written Policy Requirements

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- **A list of prohibited conduct that qualifies as sexual harassment.**
  - The City of Chicago's model policy includes this example language:

- Touching an individual by massaging their back, neck or shoulders, hugging, kissing, patting, pinching, fondling, or touching/pulling an individual's clothing or hair.
- Physical gestures that imply a sexual act or sexual anatomy, touching oneself in a sexual manner.
- Brushing up against another person, standing too close, or lingering.



# Model Sexual Harassment Policy

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However, sexually harassing behavior does not always involve physical contact. The following is a non-exhaustive list of examples of verbal and non-verbal/visual behavior that may be considered offensive:

- Suggestive behavior such as “elevator eyes” (looking a person up and down), leering, staring, sexual gestures, whistling, catcalls, winking, throwing kisses, making kissing sounds, howling, groaning, or smacking/licking lips.
- Sexual comments or innuendoes about clothing, anatomy, appearance, or sexual jokes or stories, or playing or singing sexually suggestive songs.
- Discussions or inquiries about sexual fantasy, preferences, history, or sex life about self or others.
- Displaying pictures, objects, reading materials, or other materials that are sexually suggestive or demeaning. This includes any sexual materials on personal devices including a smart phone or tablet, or company-owned computers or devices shared in the workplace.

# Written Policy Requirements

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- **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.**

# Written Policy Requirements

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- **Information about the legal and governmental services available to employees who may be victims of sexual harassment.**
  - The City's model policy includes the following:

**Chicago Commission on Human Relations**

740 N. Sedgwick, 4<sup>th</sup> Floor

Chicago, IL 60654

312-744-4111

[cchr@cityofchicago.org](mailto:cchr@cityofchicago.org)

**U.S. Equal Employment Opportunity Commission (EEOC)**

Chicago District Office

230 South Dearborn St., Suite 1866

Chicago, Illinois 60604

321-872-9744

866-740-3953 (TTY)

<https://publicportal.eeoc.gov/Portal/Login.aspx>

**Illinois Department of Human Rights**

555 W. Monroe Street, Suite 700

Chicago, IL 60601

312-814-6200

312-740-3953 (TTY)

# Training Requirements

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- Employers are required to provide the following training annually:
  - A minimum of one hour of sexual harassment prevention training to non-managerial employees;
  - A minimum of two hours of sexual harassment prevention training to managers and supervisors; and
  - A minimum of one hour of bystander intervention training to all employees.

# Sexual Harassment Prevention Training – Non-Managerial Employees

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- The Ordinance provides that for the annual required sexual harassment prevention training, an employer “may use the model sexual harassment prevention training program prepared by the State of Illinois required under 775 ILCS 5/2-109...”
- The State of Illinois created a model sexual harassment prevention training in response to the Illinois Human Rights Act’s requirement that employers provide annual sexual harassment prevention training to employees.
- The State of Illinois’ model training can be found on the Illinois Department of Human Rights’ website.
  - [www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment-Prevention-Training-Model.aspx](http://www2.illinois.gov/dhr/Training/Pages/State-of-Illinois-Sexual-Harassment-Prevention-Training-Model.aspx)
- Employers may also use the model sexual harassment prevention training found on the City of Chicago’s website.
  - [www.chicago.gov/city/en/depts/cchr/supp\\_info/SexualHarassmentTrainingMaterials.html](http://www.chicago.gov/city/en/depts/cchr/supp_info/SexualHarassmentTrainingMaterials.html)



# Sexual Harassment Prevention Training – Managers/Supervisors

- Under the Ordinance, anyone who supervises or manages employees must participate in a minimum of **two** hours of sexual harassment prevention training annually.
- Employers may use either the model sexual harassment prevention training created by the State of Illinois or the one created by the City of Chicago.

# Model Trainings

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- The sexual harassment prevention trainings provided by the State of Illinois and the City of Chicago are similar in content and length. They cover:
  - an explanation/definition of sexual harassment;
  - examples of conduct that may constitute sexual harassment; and
  - a summary of federal and state laws prohibiting sexual harassment.

# Bystander Intervention Training

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- Chicago is the **first** jurisdiction to require employers to provide a **stand-alone** bystander intervention training to employees.
- The City's website states, "Bystander intervention involves safe and positive actions that may be carried out by a person, or a group of people to prevent harm or intervene where there is a risk or perceived risk of sexual harassment to another."
- The City's website includes a model bystander intervention training.

# Model Bystander Intervention Training

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- The model bystander intervention training includes:
  - **Definition of a bystander;**
    - A bystander is someone who observes some incident but chooses not to get involved.
  - **When to intervene as a bystander;**
    - Notice the event: Ask yourself: Does this person seem uncomfortable?
    - Recognize the situation as problematic: Ask yourself: What about the situation isn't right, or doesn't sit well with you?
    - Assume personal responsibility: Ask yourself: What are the potential barriers/consequences of intervening?
  - **The 4 D's: delegate, distract, direct, and delay; and**
  - **Instructive scenarios**

# Bystander Intervention Training

## What is a bystander?

*A bystander is someone who observes some incident but chooses not to get involved.*

## What is the bystander effect?

The bystander effect occurs when the presence of others discourages intervening in an emergency situation, against a person bully, or during an assault or other crime. For our purposes today, during an incident of sexual harassment. The greater the number of bystanders, the less likely it is for any one of them to provide help to a person in distress.



Bystander Intervention Training | City of Chicago

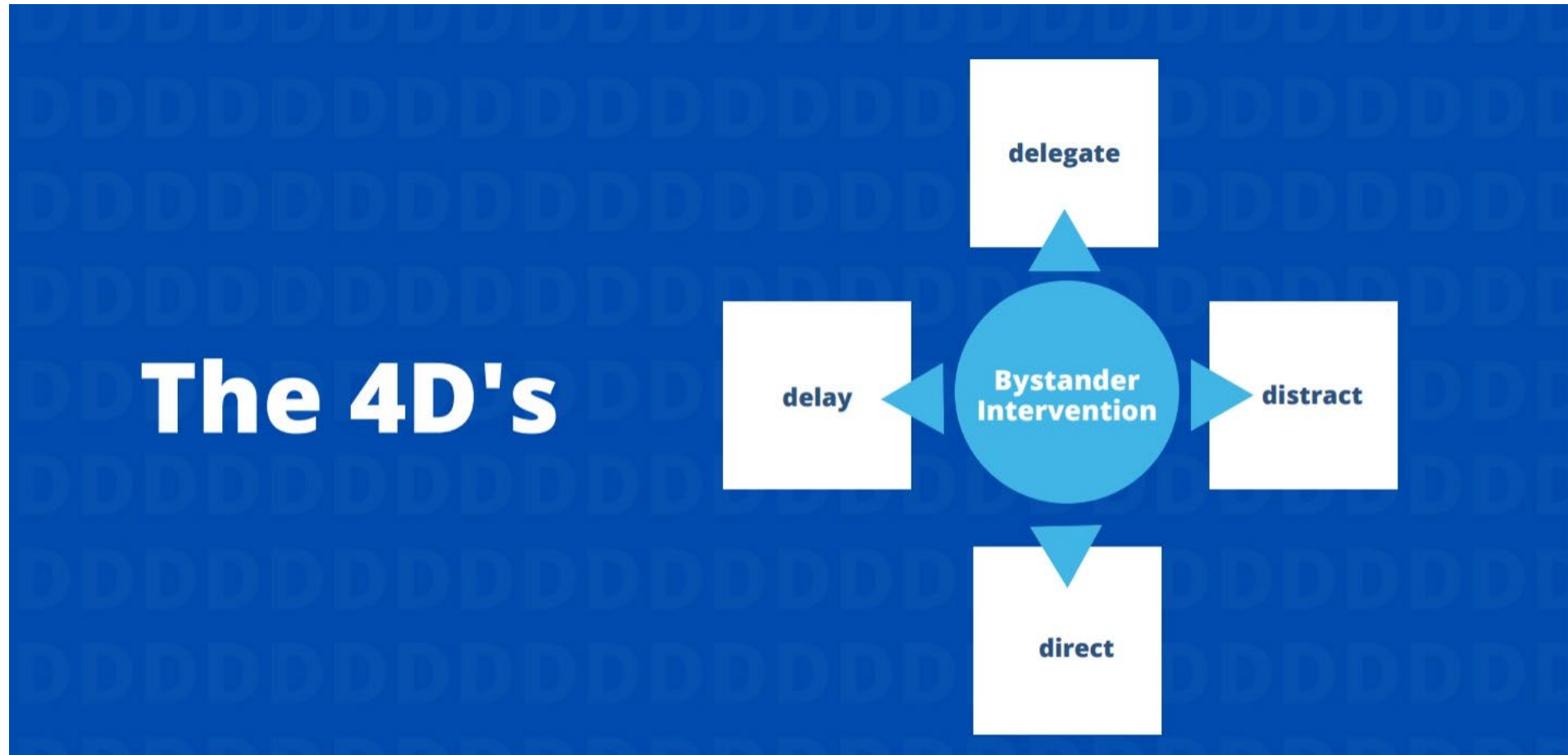


# Bystander Intervention Training




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# Model Bystander Intervention Training



Bystander Intervention Training | City of Chicago

# Model Bystander Intervention Training





**delegate**

**Delegate Responsibility**

● **What does this look like?**

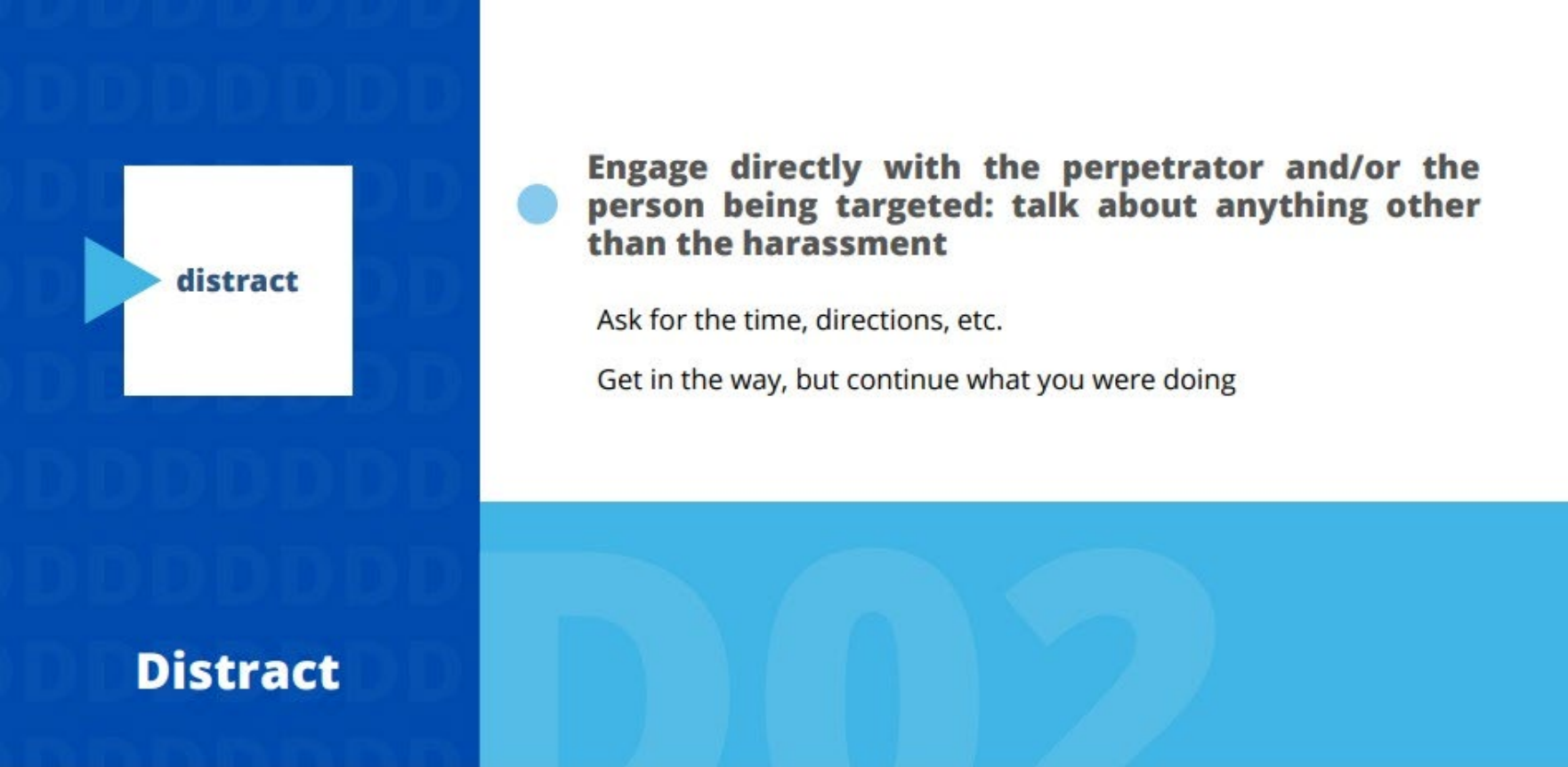
Ask for help from a third party  
(i.e. supervisor, manager, human resources, etc.)

Ask people around you to get help while  
you monitor the situation

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# Model Bystander Intervention Training

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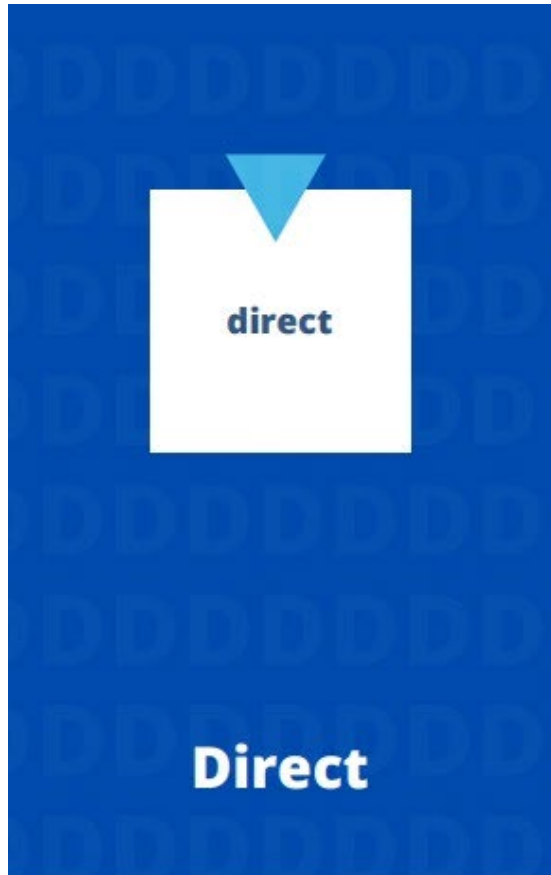


- **Engage directly with the perpetrator and/or the person being targeted: talk about anything other than the harassment**
  - Ask for the time, directions, etc.
  - Get in the way, but continue what you were doing



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# Model Bystander Intervention Training

A graphic for the 'Direct' intervention strategy. It features a dark blue background with a repeating pattern of the word 'DO3' in a lighter blue. In the center, there is a white square with a blue downward-pointing triangle above it. Inside the white square, the word 'direct' is written in blue. Below the white square, the word 'Direct' is written in white.

**direct**

**Direct**

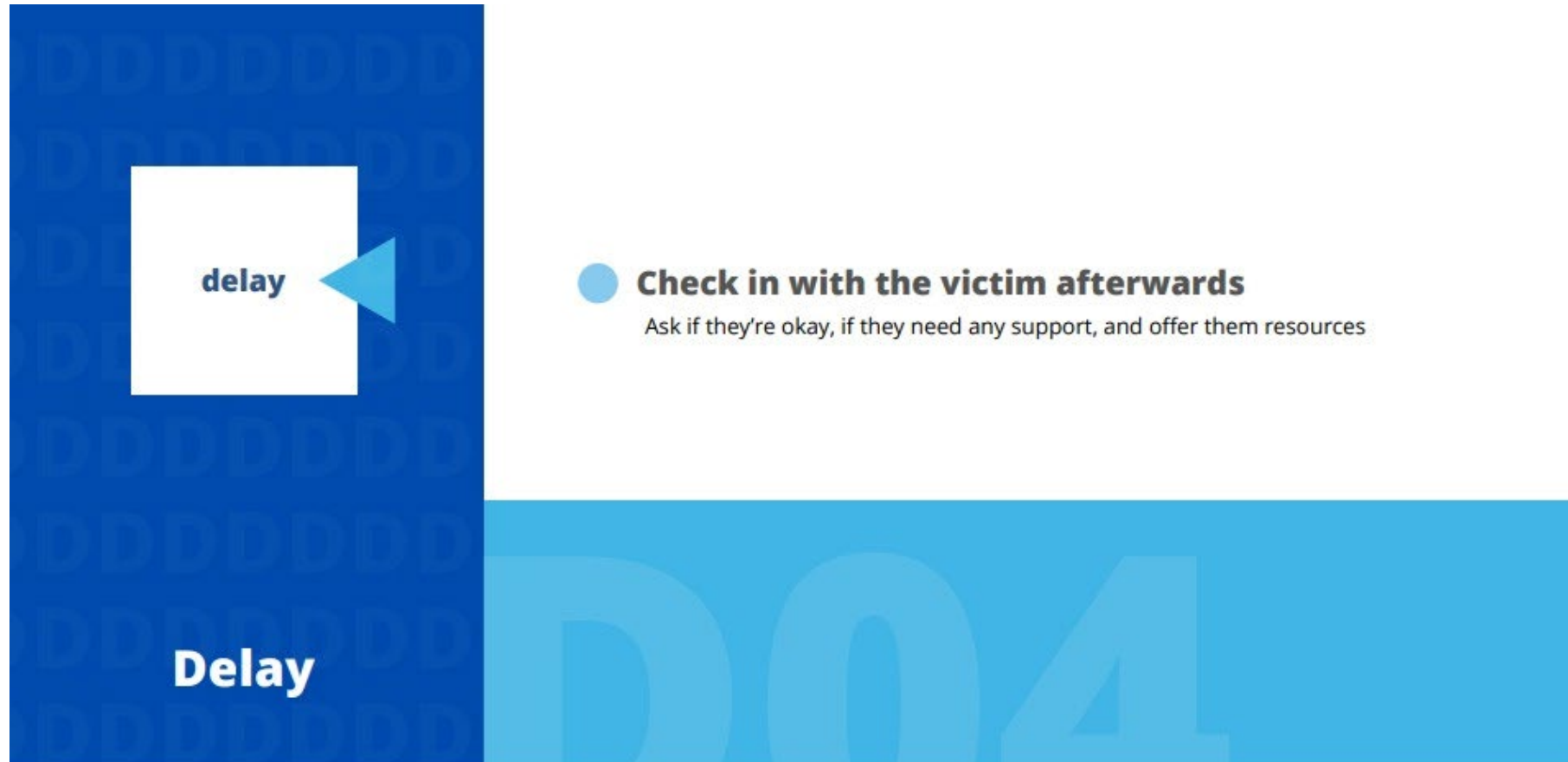
- **Before choosing to do this, assess your safety. Will direct confrontation make the situation better or worse?**
- **Directly respond to the harasser. You can say things like:**
  - "Leave them alone"
  - "This is inappropriate, disrespectful, etc."
- **Ask the person if they need help**



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# Model Bystander Intervention Training



Bystander Intervention Training | City of Chicago

# Model Bystander Intervention Training

## Scenario #1

One morning you walk into the office to find the new intern, Susan sitting at her desk looking uncomfortable as the manager, Bob stands behind her with his hands on her shoulders talking to her about the assignment he gave her.

**What do you do?**



Bystander Intervention Training | City of Chicago

# Model Bystander Intervention Training

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## Scenario #1: Try these Remember the 4Ds

- Delegate: Tell Bob's supervisor or the Human Resources manager what's happening
- Distract: Ask the intern, "Hey, Susan would you like to grab a cup of coffee?"
- Direct: Tell the manager, "Hey Bob, give Susan some space."
- Delay: As soon as Bob walks away, go and ask Susan, "You looked uncomfortable, are you ok? I saw what happened. Do you need to talk to someone in Human Resources about this? I'll go with you."



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# Model Bystander Intervention Training

## Scenario #2

In a meeting of your project group, your manager Sarah welcomes David, a new member to the team. Sarah jokingly tells David, "It's going to be fun having a new young stud in the office," as she grabs hold of his hand with a smile. David looks clearly embarrassed.

**What do you do?**



Bystander Intervention Training | City of Chicago

# Model Bystander Intervention Training

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## Scenario #2: A few more ideas

- Delegate: Tell Sarah's supervisor or the Human Resources manager what happened.
- Distract: Knock over your cup of coffee. Do something to cause a commotion (safely).
- Direct: Tell the Sarah, "Take it easy on the new guy, it's only his first day."
- Delay: After the meeting, tell David, "I saw what just happened. Are you ok? We can report this you know."



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# Model Bystander Intervention Training

## Scenario #3

Bill is excited to have recently been promoted into a position he had previously applied for, but was not selected.

After a couple of weeks in the position, his boss Steve tells him, "I really like you Steve. You know I pushed for you to get this promotion. I think we're going to make a great team." He then leans over in Bill's ear and says, "I expect that you will show your gratitude at the appropriate time," while squeezing Bill's bicep. Bill tells you about the encounter at lunch.

**What do you do?**



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# Model Bystander Intervention Training

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## Scenario #3: Other options

- Delegate: Tell Steve's supervisor or the Human Resources manager what happened.
- Distract: This wouldn't be an option this time since the event is over.
- Direct: Tell Steve, "Bill told me about how you welcomed him to the team. I don't think that was appropriate."
- Delay: Inform Bill that he should report the incident to Steve's boss or the Human Resources manager, and offer to go with him.



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# Posting and Recordkeeping Requirements

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- Chicago employers must display sexual harassment prohibition posters created by the Chicago Human Rights Commission in at least one location where employees commonly gather.
  - There must be at least one poster in English and one in Spanish. Posters can be found on the City's website.
- Employers must maintain written records of the policies and trainings.
  - These must be maintained for 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 an employer violated the ordinance.

# Penalties

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- The statute of limitations for filing a complaint under the Ordinance has been extended to 365 days after the date of an alleged violation.
  - In cases involving allegations of sexual harassment, the Chicago Commission on Human Rights may delay issuing a complaint to the respondent for up to 30 days after the complaint is filed.
- Employers found in violation of the Ordinance will now face penalties of \$5,000 to \$10,000 per offense.

# Frequently Asked Questions

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- **Does the Ordinance apply to employers that are not located in Chicago but have employees who work remotely in Chicago?**
  - **Probably.** While there is some ambiguity in the law on this point, “employer” is broadly defined under the Ordinance and lacks a geographical component – *i.e.*, it does not require the “employer” to have a physical office in Chicago. And again, “employee” is also broadly defined to mean “an individual who is engaged to work in within the geographical boundaries of the City of Chicago...”
  - The Ordinance states that it is to be “liberally construed for the accomplishment of the purpose hereof,” and that it is the “policy of the City of Chicago to assure that all persons within its jurisdiction shall ... be protected in the enjoyment of civil rights.”

# Frequently Asked Questions

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- **Under the Ordinance, do managers/supervisors have a 3 hour total annual training requirement?**
  - **Yes.** Managers/supervisors are required to receive 2 hours of sexual harassment prevention training *plus* an additional 1 hour of bystander intervention training.
- **The City of Chicago's model trainings are short – if an employer chooses to use these model trainings as is and the trainings do not meet the one hour time requirement, would the employer be expected to add more material to meet the one hour requirement?**
  - **Probably.** Employers would likely need to supplement the model trainings if they are unable to fulfill the one hour minimum time requirement. For example, employers could add more instructive scenarios.



# Frequently Asked Questions

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- **Is there an increase in required bystander intervention trainings across states?**
  - Chicago is the first jurisdiction to require the *stand-alone* training, whereas New York City requires that information concerning intervention be included in an employer's annual sexual harassment prevention training. There is likely to be an uptick in bystander intervention training across the country.
- **Has the City of Chicago published regulations or FAQs relating to the Ordinance?**
  - **No.** Not yet.

# Illinois Equal Pay Act



## Recently Released Regulations

# Illinois Equal Pay Act

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- Illinois employers with more than 100 employees in the State are now required to apply for and obtain an Equal Pay Registration Certificate.
- To apply for the certificate, the employer must submit: (i) a filing fee; (ii) a statement affirmatively verifying compliance with certain state and federal laws; (iii) a copy of the employer's most recent EEO-1 report; and (iv) a pay report disclosing the total wages paid to each employee during the past calendar year.

# Illinois Equal Pay Act

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- Employers are required to obtain an Equal Pay Registration Certificate (“EPRC”) by March 23, 2024, and must renew that certificate every two years thereafter.
- A business can receive a penalty of up to \$10,000 if it does not obtain an EPRC.
- An EPRC may be suspended or revoked when the business fails to make a good faith effort to comply with the requirements under the Act.

# Recent Regulations

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- The Illinois Department of Labor recently issued proposed regulations to accompany the Equal Pay Registration Certificate.
  - There will be a 1 hour public hearing (via Webex) on August 9, 2022 at 10 am CT to take public comment on the proposed regulations.
  - **Equal Pay Compliance Statement:** A corporate officer, authorized agent, or legal counsel must sign an Equal Pay Compliance Statement certifying, among other things, that the business does not restrict employees of one sex to certain job classifications, and makes retention and promotion decisions without regard to sex.
  - **Enrollment Form:** Businesses were to submit a web-based enrollment form with contact information via the Department's submission portal by March 31, 2022. After the form is submitted, the Department assigns the business a due date for its EPRC.

# Recent Regulations (continued)

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- **Employee Data Requests:** Current employees may request anonymized data regarding their job classification or title and the pay for that title or classification. The requests must include the following:
  - Employee's name;
  - Date of hire;
  - Job title or classification;
  - The dates for which the data is being requested;
  - A signed affidavit swearing that the employee currently holds the specified position at the business; and
  - Any other evidence that proves the employee currently holds the specified position (such evidence includes work schedules, ID cards, business cards, etc.).



# One Day Rest in Seven Act



## Recent Changes

# One Day Rest in Seven Act

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- The One Day Rest in Seven Act (“ODRISA”) requires employers to provide non-exempt employees with one day of rest within each calendar week (Sunday through Saturday).
- Under ODRISA, employees are entitled to a 20-minute unpaid meal break for every 7.5 hours worked, to be provided within the first five hours of the 7.5 hour working period.
- ODRISA violations are considered petty offenses, punishable by fine of up to \$100 per offense.

# Recent Changes

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- Illinois Governor J.B. Pritzker signed into law Senate Bill 3146, amending ODRISA.
- The Amendment takes effect on January 1, 2023 and makes the following changes to the law:
  - **Rest Days:** A non-exempt employee must now receive a day off within each consecutive seven-day period, regardless of where these days fall within the calendar week. As the law is currently written, an employer could schedule an employee to work the Monday of Week One through the Friday of Week Two (twelve consecutive days), and still comply with the law.

# Recent Changes

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- **Meal Periods:** After the first 7.5 hours of work, employees are entitled to an additional 20-minute unpaid meal break for each additional 4.5 hours worked.
  - This means employees who work 12 hours (7.5 hours plus 4.5 hours) will be entitled to two 20-minute meal periods, whereas prior to the Amendment, employees would not be eligible for a second meal break unless they worked 15 hours (7.5 hours plus 7.5 hours).
  - This section of the law does not apply to unionized employees.
- **Penalties:** ODRISA violations will now be considered civil offenses, with fines up to \$250 per offense for employers with less than 25 employees, and fines up to \$500 per offense for employers with 25 employees or more.
  - An “offense” is determined on an individual basis for each employee whose rights are violated, and include each week an employee is not allowed 24 hours of rest within a seven-day period, and each day that an employee is not provided a required meal period.



# Family Bereavement Leave Act



## Recent Changes

# Family Bereavement Leave Act

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- Adopted in 2016, the Child Bereavement Leave Act requires Illinois employers to grant employees 10 workdays of unpaid leave annually to grieve the death of a child.
- Illinois recently enacted an Amendment expanding the scope of the Act and renaming it the “Family Bereavement Leave Act”.
- The Amendment takes effect on January 1, 2023.



# Family Bereavement Leave Act

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- The Amendment does the following:
  - Expands unpaid bereavement leave to the employee’s “covered family members” whereas previously the law was limited to the employee’s “child”.
  - Adds the following events entitling employees to use unpaid bereavement leave:
    - **(a)** a miscarriage;
    - **(b)** an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure;
    - **(c)** a failed adoption match or an adoption that is not finalized because it is contested by another party;
    - **(d)** a failed surrogacy agreement;
    - **(e)** a diagnosis that negatively impacts pregnancy or fertility; or
    - **(f)** a stillbirth.

# Family Bereavement Leave Act

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- An employer may, **but is not required to**, require reasonable documentation.
- If an employee chooses to take leave for one of the added events in the Amendment, an employer may not require that the employee identify which category of event the leave pertains to.
- The Amendment's replacement of "child" to "covered family member" may result in employees taking more than two weeks (10 work days) of unpaid bereavement leave in a 12-month period. The Amendment still caps an employee's total unpaid bereavement leave to 6 weeks during the 12-month period.

# Illinois CROWN Act



# Illinois CROWN Act

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- The Illinois CROWN Act was signed into law on June 29, 2022. CROWN stands for “Create a Respectful and Open Workplace for Natural Hair.”
- The Act expands the definition of "race" in the Illinois Human Rights Act to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists."
- As a result, employers cannot discriminate against employees based on hair texture or styles—i.e., requiring or prohibiting certain hair textures or styles in the workplace may violate the Act.

# Illinois CROWN Act

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- The Act applies to all areas covered by the IHRA, including employment, housing, financial transactions, and public accommodations.
- The Act takes effect on January 1, 2023.
- Similar laws banning race-related hair bias are sweeping the nation. States and localities have enacted laws protecting employees from discrimination based on their hairstyle and/or texture, and the federal CROWN Act has been passed by the House and now awaits Senate action.



# Significant Decisions





## ***Ziccarelli v. Thomas J. Dart, et al.***

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- On June 1, 2022, the Seventh Circuit held that an actual denial of an employee's Family and Medical Leave Act ("FMLA") leave request is not necessary to constitute an FMLA violation. Rather, the FMLA may be violated where an employer discourages an employee from taking FMLA leave.
- The court explained that the statutory text of § 2615(a)(1) of the FMLA undermines any requirement that an actual denial of leave must occur by explicitly prohibiting an employer from "interfering with, restraining, or denying" an employee's rights under the FMLA.
- Thus, discouraging an employee from taking FMLA leave may be sufficient to constitute a violation under the FMLA.

# Practical Pointers for Employers



# Key Takeaways: Checklist for Employers

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1. Prepare or update a written anti-harassment policy, and provide it to employees in their primary language during their first week of employment.
2. Develop and deliver sexual harassment prevention trainings and bystander intervention trainings.
3. Display required sexual harassment prohibition posters created by the commission in both English and Spanish in at least one location where employees commonly gather.
4. Plan for Equal Pay Certification process.
5. ODRISA – are your meal and rest policies compliant?
6. Crown Act – are your dress code policies compliant?
7. Review and update leave policies to comply with the Family Bereavement Leave Act.



# Chicago Ordinance on Sexual Harassment — Bystander Intervention Training

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