

## **Illinois Department of Human Rights Issues New Guidance Regarding Employer Mandatory Sexual Harassment Training Requirements**

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Among the sweeping changes to Illinois' employment law framework, arguably none is as far-reaching or consequential to Illinois employers than the recently enacted amendments to the Illinois Human Rights Act, which now require every Illinois employer to provide annual mandatory sexual harassment prevention training for all employees, beginning this year.

For many employers, the new mandatory sexual harassment prevention training requirements have been a source of confusion and uncertainty. The statute lacks meaningful criteria or objective standards to inform employers as to what is necessary to provide satisfactory training or comply, other than the following list of four general topics that should be covered: (i) an explanation of sexual harassment, (ii) examples of unlawful sexual harassment, (iii) a summary of federal and state sexual harassment laws, and (iv) employer responsibilities regarding sexual harassment. Instead, the statute directs the Illinois Department of Human Rights to develop a model sexual harassment prevention training program, which employers may adopt and implement to comply with the statute.

Illinois employers have eagerly awaited the IDHR's model program for guidance and direction as to what employers must do to comply. Last week, the IDHR issued a preliminary FAQ answering some of the key unanswered questions regarding the training requirements, which are summarized below:

- Employers must provide mandatory sexual harassment prevention training to all employees, regardless of status, including, short-term, seasonal, or part-time employees, and interns.
- The law does not require employers to train independent contractors. However, the IDHR recommends that employers provide such training to independent contractors if they work onsite at the employer's place of business or interact with their employees.
- Employers are required to provide training to newly hired employees, unless the employee has already received training that satisfies the requirements of the statute in the same year. Employers are responsible for making sure that training received elsewhere complies with the IHRA's requirements and should require that newly hired employees provide documentation substantiating that the employee completed the requisite training. If a newly-hired employee cannot provide such documentation, the employer is required to provide training to the employee.

- Employers are required to provide training to any employee who works or will work in Illinois, regardless as whether the employer is located or based outside of Illinois.
- An Employee located outside of Illinois must be trained if the employee regularly interacts with employees located in Illinois, even if the out-of-state employee is not physically present in Illinois.
- Third-parties may be hired to conduct the training; however, employers are responsible for ensuring that the training satisfies the requirements of the statute and that all of its employees receive such training. The IDHR does not certify training programs provided by third-parties, or require that third-parties be certified in order to provide such training.
- Employers are responsible for and required to maintain a record that all employees have received the requisite training. The documentation should substantiate each employee's attendance, which may include a certificate, acknowledgment form or course sign-in sheet executed by each employee.
- The training must be provided annually to all employees prior to the end of each calendar year. A newly-hired employee who has not received the requisite training from a prior employer in the same calendar year should be trained as soon as possible after their date of hire, but no later than the end of the calendar year in which they are hired.
- Employers must ensure that the training is provided in a manner that is accessible to employees who are disabled. Employers should configure the training program to accommodate the needs of disabled employees.
- Employers are also required to ensure that the training is adapted for employees with limited proficiency in English, which may require the use of translators or training programs provided in a different language.
- If an employer requires that the training occur outside of an employee's regular hours, the employee must be compensated for their time.

The IDHR has not yet published its model sexual harassment prevention training program, but has announced that it will do so by the end of February, which will be available to download online free of cost at [www.illinois.gov/dhr/training](http://www.illinois.gov/dhr/training). In the meantime, Illinois employers should take note of the IDHR's preliminary guidance summarized above which clarifies many of the questions and issues regarding what is required of employers to comply.

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