

Sexual Harassment -- IL

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Every employee in the United States is entitled to a working environment free from sexual harassment. A workplace is supposed to be a respectful and cohesive environment where employees can be free to perform their job without harassment. Both employers and employees should work to prevent sexual harassment in the workplace before it begins through education about appropriate workplace behaviors and about the employer's policies for handling inappropriate situations in the event they do occur.

Illinois Sexual Harassment and Discrimination Helpline is contained at the end.

Updated 5/20/20 to include content to match IDHR recommended model.

Slide 1: Introduction

Every employee in the United States is entitled to a working environment free from sexual harassment. A workplace is supposed to be a respectful and cohesive environment where employees can be free to perform their job without harassment. Both employers and employees should work to prevent sexual harassment in the workplace before it begins through education about appropriate workplace behaviors and about the employer's policies for handling inappropriate situations in the event they do occur.

Slide 2: Objectives - Part I

On the next two slides we will look at what information will be provided in this tutorial. -What is Sexual Harassment -Examples of Sexual Harassment -When is the Employer Liable for Sexual Harassment? -Retaliation is Unlawful -What is Retaliation?

Slide 3: Objectives - Part II

We will also look at the following: -Having an Effective Sexual Harassment Policy - Recommended Content of Employer Sexual Harassment Policy -Investigations and Corrective Actions -Additional Protections and Remedies

Slide 4: What is Sexual Harassment? - Part I

Sexual harassment is a form of sex discrimination and is unlawful. It includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Slide 5: What is Sexual Harassment? - Part II

Sexual harassment also includes any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Slide 6: What is Sexual Harassment? - Part III

Sexual harassment in the form of a "hostile environment" consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex.

Slide 7: What is Sexual Harassment? - "Quid Pro Quo" -- Part IV

A type of sexual harassment known as "quid pro quo" harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. Only

supervisors and managers are deemed to engage in this kind of harassment because co-workers do not have the authority to grant and withhold benefits.

Slide 8: What is Sexual Harassment? - Part V

Sexual harassment can occur between any individuals, males and females, or between persons of the same sex. Sexual harassment that occurs because the victim is transgender is also unlawful. The law protects employees, paid or unpaid interns, and non-employees who work in the workplace.

Slide 9: What is Sexual Harassment? - Part VI

The courts have held that a single incident could be considered sexual harassment depending on the circumstances. A single incident of inappropriate sexual behavior can now be enough to rise to the level of sexual harassment, depending on the circumstances. The Human Rights Law now protects victims of harassment, including sexual harassment, in important new ways such as ensuring that harassment does not need to be severe or pervasive to be against the law. The conduct which simply must be worse than "petty slights or trivial inconveniences." is all the law requires now. This change in standard significantly lowers a plaintiff's burden when proving a hostile work environment.

Slide 10: What is Sexual Harassment? -- VII

Sexual harassment includes unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: -Such conduct is made either explicitly or implicitly a term or condition of employment -Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or -Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Slide 11: What is Sexual Harassment? - Examples - I

Some of the types of acts that may be unlawful sexual harassment include: -Physical assaults of a sexual nature such as; Rape, sexual battery, molestation, or attempts to commit these assaults. This can include intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.

Slide 12: What is Sexual Harassment? - Examples - II

Unwanted sexual advances, propositions or other sexual comments such as: Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments; subtle or obvious pressure for unwelcomed sexual activities; sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which are worse than "petty slights" or trivial inconveniences

Slide 13: What is Sexual Harassment? - Examples - III

More examples of conduct that may constitute sexual harassment include:-Turning work discussions to sexual topics -Asking about sexual fantasies, preferences, or history-Sexual comments, sexual innuendos, or sexual stories-Sexual comments about a person's clothing, body, or looks-Kissing sounds, howling and smacking lips-Telling lies or spreading rumors about a person's sex life-Massaging neck, shoulders, etc. -Touching another employee such as their clothing, hair, or body

Slide 14: What is Sexual Harassment? - Examples - IV

Sexual or discriminatory displays or publications anywhere in the workplace such as: Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading

materials, or other materials that are sexually demeaning, pornographic.

Slide 15: What is Sexual Harassment? - Examples - V

Sex stereotyping is a type of sexual harassment and is often seen and done by others because that person does not conform to gender stereotypes. Harassment because someone is performing a job that is usually or was previously performed mostly by persons of a different sex is sex discrimination.

Slide 16: Scenario 1

Jon and Bob, both in the same sales department, sometimes make comments about what type of women they like. One day Jon says to Bob, "I like women with big round butts" in front of Sharon, a woman who works in their office. Bob laughed as usual. Sharon told them that she found such comments disgusting and asked them to stop. Both Jon and Bob apologized to Sharon. The next day, Sharon once again overheard Jon in a loud voice tell Bob a similar comment. Jon and Bob continued to ignore Sharon's confrontations. Sharon began to feel helpless and upset. She found it very difficult to concentrate at work and do her job. Is this sexual harassment? Yes, No or Maybe? ANSWER: Yes. Jon and Bob are guilty of sexual harassment. Even though the comments may not be offensive to every person, they are offensive to Sharon. Therefore, Jon and Bob are creating a "hostile work environment" for Sharon. A hostile environment is when a person makes a situation very difficult for someone else to concentrate and do their work.

Slide 17: Scenario 2

A group of four women frequently whistle "wolf calls" at Gerrod when they see him at work. Initially, Gerrod thought it was kind of neat and enjoyed the special attention. After a while, when the women didn't stop, Gerrod began to feel embarrassed and uncomfortable. He no longer considered the attention special and began to also feel upset. He told them to please stop it and they would just laugh and continue. Gerrod didn't really know what to do. Gerrod just wanted to be left alone. Is the sexual harassment? Yes, No, or Maybe? ANSWER: Yes. At first Gerrod enjoyed the wolf calls and probably wanted the women to continue. However, there came a time when it was no longer neat or comfortable and he asked them to stop. At the point he no longer liked or consented to the wolf calls, and they continued, is when it became sexual harassment.

Slide 18: Scenario 3

Barbara recently hired Phillip as her personal secretary. Phillip was attractive, young and qualified for the job. In a recent meeting in Barbara's office with Phillip, she sat on the arm of the chair Phillip was sitting in and leaned over and whispered to him she would like to meet with him outside of work to further discuss the party. Phillip told her he felt they could discuss it in the office as they were already in a meeting for the work party. Barbara told Phillip she felt it should be a more personal setting especially since he was not married. This made Phillip very uncomfortable. Barbara then touched Phillip on his hand and told him it would benefit both of them if he agreed to meet with her at the bar, and Barbara winked at him when she said this to him. Is this sexual harassment? Yes, No, or Maybe? ANSWER: Yes. This is sexual harassment in the form of a hostile work environment. Certain gestures in the workplace are unmistakably offensive and sexual. By joking, gestures, pictures, or offensive touching it becomes a hostile and abusive work environment, even if the conduct is not directed at the person who is offended.

Slide 19: Scenario 4

Sue's boss asks to sleep with her in exchange for a promotion and explains that if she does not, she will be overlooked whenever any position becomes available that she is qualified to apply for. Sue sleeps with her boss and gets the promotion. Is this sexual harassment? Yes, No or Maybe? ANSWER: Yes. Because sex was a condition of the promotion, this is still sexual harassment regardless of whether Sue gave into the demands or refused.

Slide 20: Who Can be the Perpetrator?

A perpetrator in the workplace can be anyone in the workplace including: -A coworker -A supervisor or manager -Any third-party (non-employee, intern, vendor, customer, etc.)

Slide 21: Where Can Workplace Sexual Harassment Occur?

Workplace sexual harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including: -Employer-sponsored activities -Conferences -Office parties -Off-site or during non-work hours

Slide 22: Sexual Harassment in Online Environments

Our conduct online and through social media can constitute sexual harassment even when it occurs "off the clock", "off-site", or even "out of state". Online sexual harassment includes using e-mail, cell phone texts, internet posting, online comments, blog posts, and social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, and Snapchat) to send communications of a sexual nature. Examples include: -Flirting and requests or demands to go on a date or have sex -Sending inappropriate pictures or videos including sexually graphic material -Using sexual language or comments including sexually offensive language -Cyber stalking

Slide 23: What You Should Do if You Are Harassed

You can make reports verbally or you can fill out the complaint form to report harassment and file complaints. Please check with your employer, Human Resources office or your state to determine what their reporting process is and where you can get the sexual harassment complaint form.

Slide 24: What Do I Do If I "Witness" Sexual Harassment? -- Part I

If you legitimately believe you have witnessed an incident of sexual harassment, you are encouraged to report the incident immediately to your supervisor, to human resources, or other persons identified in your employer's sexual harassment policy. As previously stated, no retaliation is allowed against you because you filed a complaint, participated in an investigation, or otherwise opposed unlawful harassment.

Slide 25: What Do I Do If I "Witness" Sexual Harassment? -- Part II

A supervisor that witnesses sexual harassment or receives a complaint of sexual harassment, must report that immediately to the following: Contact your Human Resources Department or other officials identified by your employer. Failure to do this may cause a situation that could have been remedied easily to grow into a very serious situation. Failure of a supervisor to report this type of complaint may lead to greater liability on the part of the employer and may also result in disciplinary action for the supervisor, including possible termination of employment.

Slide 26: When is the Employer Liable for Sexual Harassment? - Part I

Employers are strictly liable for harassment of an employee by an owner or high-level manager. This means if one owner or manager harasses an employee, even without the knowledge of the other owners or managers, the employer is nevertheless legally responsible.

Slide 27: When is the Employer Liable for Sexual Harassment? - Part II

Employers may be strictly liable for harassment by a lower-level manager, or by a supervisor if that supervisor has a sufficient degree of control over the working conditions of the victim. This means the employer may be legally responsible for such harassment, even if no owner or manager knew about it. By having a sexual harassment policy in place and used effectively, the liability may be avoided.

Slide 28: When is the Employer Liable for Sexual Harassment? - Part III

Employers may be liable for the harassment of an employee's coworkers, if the employer knew or should have known about the harassment. This means the employer will be liable if the employer was negligent about preventing or stopping the harassment.

Slide 29: When is the Employer Liable for Sexual Harassment? - Part IV

If an employee complains of harassment to any supervisor or manager, the knowledge of the supervisor or manager will be considered to be the knowledge of the employer. Therefore, it is very important that the employer have a sexual harassment policy that requires supervisors and managers to report any complaint of sexual harassment, and any possible harassment that comes to their attention for any reason.

Slide 30: Employer Responsibilities

We will now discuss employer responsibilities and liabilities concerning incidents of sexual harassment in workplaces including their responsibilities to: -Prevent the incidence of sexual harassment in their workplaces;-Investigate incidents of sexual harassment in their workplaces; and -Correct the incidence of sexual harassment in their workplaces.

Slide 31: Employer Responsibility -- Prevention -- Part I

The Employer's Responsibility includes the following: -Develop, implement and regularly communicate the employer's sexual harassment policy. -Provide training for managers and employees on sexual harassment prevention. -Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature.- Managers and supervisors should monitor their work environment to ensure the workplace is free of sexual harassment -- supervisors should be aware of the conduct within their supervision.

Slide 32: Employer Responsibility -- Prevention -- Part II

Managers and supervisors must lead by example and model appropriate conduct -- refrain from engaging in conduct of a sexual nature. - Managers and supervisors should conduct a sexual harassment climate check throughout the year -discuss the topic at a team or staff meeting, in-service day or as part of structured communication such as division/unit newsletters.

Slide 33: Employer Responsibility -- Investigation

Immediately respond to a complaint of sexual harassment and initiate an inquiry or investigation. - Interview the complainant (victim) and take reasonable action to protect the victim from retaliation or experiencing further sexual harassment during the investigation. - Interview all relevant witnesses. -Interview the alleged perpetrator of the sexual harassment. -Document the investigation results and maintain the file as an employment record. -take corrective action as appropriate.

Slide 34: Employer Responsibility -- Corrective Measures □

Take appropriate corrective disciplinary action up to and including termination of employment where organizational policy has been violated.-In situations where the conduct in question did not rise to the level of sexual harassment or a violation of policy, but is concerning or may be considered grooming behavior, consider counseling, training and closer supervision of the employee. Take reasonable action within the organization to reduce the likelihood of future sexual harassment incidents by updating policies and communicating them to the workforce; providing supplemental or tailored sexual harassment training; or restructuring the working environment or reporting relationships. - Follow up with the complainant (victim) at regular intervals to ensure they and the workplace remains free from sexual harassment.

Slide 35: Retaliation is Unlawful - Part I

It is unlawful for any employer, or any agent or employee of the employer, to retaliate against an employee who has complained of sexual harassment. The Human Rights Law

protects any individual who has engaged in "protected activity." Protected activity occurs when a person has: -Filed a formal written complaint of sexual harassment, either internally with management or human resources, or with any anti-discrimination agency.

Slide 36: Retaliation is Unlawful - Part II

The Human Rights Law also protects: -Any individual who has testified or assisted in a proceeding involving sexual harassment under the Human Rights Law -Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment -Complained that another employee has been sexually harassed, or -Encouraged a fellow employee to report harassment

Slide 37: Retaliation is Unlawful - Part III

(For employers with four or more employees, retaliation also applies to opposition to any other actions forbidden by the Human Rights Law.) If the employee has participated in a proceeding before the Division of Human Rights (DHR), or in a court of law, that complainant or witness is absolutely protected against retaliation for any oral or written statements made to the Division or a court in the course of the proceedings, regardless of the merits or disposition of the underlying complaint.

Slide 38: Retaliation is Unlawful - Part IV

Even if the alleged harassment does not turn out to rise to the level of a violation of the Human Rights Law, the individual is protected if he or she had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Slide 39: What is Retaliation? - Part I

Retaliation consists of an adverse action or actions taken against the employee by the employer under Section 6-101 of the Illinois Human Rights Act. The action need not be job-related or occur in the workplace. Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable worker from making or supporting a charge of harassment or any other practices forbidden by the Law. Actionable retaliation by an employer can occur after the individual is no longer employed by that employer. This can include giving an unwarranted negative reference for a former employee.

Slide 40: What is Retaliation? - Part II

A negative employment action is not retaliatory merely because it occurs after the employee engaged in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to make a claim of retaliation, the individual must be able to substantiate the claim that the adverse action was retaliatory.

Slide 41: Investigation and Corrective Action - Part I

Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action. An investigation of any complaint should be commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. Any employee may be required to cooperate as needed in an investigation.

Slide 42: Investigation and Corrective Action - Part II

During the investigative process: -The assigned person or office designated person will conduct an immediate review of the allegations and take any interim actions. -Relevant documents, emails or phone records will be requested, preserved and obtained. -Interviews will be conducted -The individual who complained and the individual(s) accused of sexual harassment are notified of the final determination and that appropriate administrative actions have been taken.

Slide 43: Additional Protections and Remedies - Part I

Illinois has a Division of Human Rights (DHR) and Human Rights Commission (HRC) in Springfield and Chicago. A complaint alleging violation of the Human Rights Law may be with DHR any time within one year of the alleged sexual harassment -You do not need to have an attorney to file. Forms are available on the Illinois DHR website
https://www2.illinois.gov/dhr/AboutUs/Pages/contact_IDHR.aspx
https://www2.illinois.gov/dhr/AboutUs/Pages/contact_IDHR.aspx

Slide 44: Additional Protections and Remedies - Part II

United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 Federal Civil Rights Act. An individual can file a complaint with the EEOC anytime within 300 days from the alleged sexual harassment. -You do not need to have an attorney to file -A complaint must be filed with the EEOC before you can file in federal court. -More information is available: www.EEOC.gov

Slide 45: Additional Protections and Remedies - Part III

The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820). You can also visit their site listed above or email them at info@eeoc.gov

Slide 46: Additional Protections and Remedies - Part IV

Many localities enforce laws protecting individuals from sexual harassment and discrimination. You can contact your county, city or town to find out if laws exist. Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement or coerced sex acts. If any of the above occurs, contact your local police department immediately.

Slide 47: Policies

While the GCN tutorial uses a legal definition for what sexual harassment is, your district's or organization's policy may be more stringent. It is your responsibility to review your organization's policies on harassment and to adhere to those policies. Additionally, A copy of the employer's policy must be submitted to the Department or to a contracting agency upon request

Slide 48: Remedies Available Under the Illinois Human Rights Act

After IDHR completes its investigation, the Complainant (the employee): May file a lawsuit in civil court, or 2. May file a complaint with the Illinois Human Rights Commission (HRC) if IDHR found "substantial evidence" of a violation. Complainants who prevail in the HRC or Court may receive an order awarding remedies allowed by the Illinois Human Rights Act to make the Complainant "whole." Remedies may include: -back pay, -lost benefits, -clearing of a personnel file, -damages, -hiring, -promotion, -reinstatement, -front pay where reinstatement is not possible, and -attorney's fees and costs.

Slide 49: Illinois Sexual Harassment and Discrimination Helpline

Call the State of Illinois Sexual Harassment and Discrimination Helpline at 877-236-7703* Monday through Friday, 8:30 a.m. to 5:00 p.m. Contact a Human Resources Department, Manager or Supervisor. Many employers and agencies have specific policies and processes in place to complain about and report sexual harassment and discriminatory treatment. Contact the Illinois Department of Human Rights (IDHR). Reports (charges) of sexual harassment and discrimination can be made to the Illinois Department of Human Rights. IDHR has jurisdiction over complaints of sexual harassment and discrimination in employment, housing, public accommodations and education.

Slide 50: Question 1

Every employee is entitled to a working environment free from sexual harassment.

TRUE

FALSE (incorrect)

The answer is: True. Every employee is entitled to a working environment free from sexual harassment.

Slide 51: Question 2

Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

TRUE

FALSE (incorrect)

The answer is: True. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Slide 52: Question 3

A type of sexual harassment known as "quid pro quo" harassment occurs when a boss wants to give an employee a new elevated position based on their leadership skills.

FALSE

TRUE (incorrect)

False. "Quid pro quo" harassment is a type of sexual harassment that occurs when a person in authority tries to trade job benefits for sexual favors.

Slide 53: Question 4

Workplace sexual harassment can only occur when you are in your office or cubicle.

FALSE

TRUE (incorrect)

The answer is: False. Workplace sexual harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including: Employer-sponsored activities, Conferences, Office parties or off-site or during non-work hours

Slide 54: Question 5

If an employee complains of harassment to any supervisor or manager, the knowledge of the supervisor or manager will be considered to be the knowledge of the employer.

TRUE

FALSE (incorrect)

The answer is: True. If an employee complains of harassment to any supervisor or manager, the knowledge of the supervisor or manager will be considered to be the knowledge of the employer.

Slide 55: Question 6

Retaliation is an acceptable way of handling someone who has made a report of sexual harassment in the workplace.

FALSE

TRUE (incorrect)

The answer is: False. It is unlawful for any employer, or any agent or employee of the employer, to retaliate against an employee who has complained of sexual harassment.

Slide 56: Question 7

Having a policy that recognizes that sexual harassment is unlawful signals to all persons in the organization that sexual harassment will not be tolerated, and is an important step in limiting the employer's liability.

TRUE

FALSE (incorrect)

The answer is: True. Having a policy that recognizes that sexual harassment is unlawful signals to all persons in the organization that sexual harassment will not be tolerated and is an important step in limiting the employer's liability.

Slide 57: Question 8

You can make reports verbally or you can fill out the complaint form to report harassment and file complaints.

TRUE

FALSE (incorrect)

The answer is: True. You can make reports verbally or you can fill out the complaint form to report harassment and file complaints.

Slide 58: Question 9

An investigation of any complaint should be commenced immediately and completed as soon as possible.

TRUE

FALSE (incorrect)

The answer is: True. An investigation of any complaint should be commenced immediately and completed as soon as possible.