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New Workplace Transparency Act Requires Mandatory Sexual Harassment Training for All Illinois Employers

The Illinois Human Rights Act (the "Act") has been amended to expand workplace mandates to prevent and respond to sexual harassment. An "employer" is now defined as any person employing one or more employees within Illinois during twenty or more calendar weeks within a calendar year. Effective January 1, 2020, all Illinois employers will have to provide annual sexual harassment training and written policies for their employees. The new law is called the Illinois Workplace Transparency Act.

The Act extends the protections to non-employees, including contractors and consultants. Employers can be held liable for harassing conduct that substantially interferes with work performed by a contractor or creates an intimidating, hostile or offensive working environment.

Sugar Felsenthal Grais and Helsinger, LLP can assist in creating or revising employer policies to comply with the Act, conduct the required annual training, and assist if an investigation becomes necessary.

Sexual Harassment Training

All employees must receive sexual harassment training at least once a year that meets newly specified minimum standards. The Illinois Department of Human Rights ("IDHR") is tasked with developing a model training program. All training must include:

- a definition of sexual harassment consistent with the definition in the Act;
- examples of actions that constitute unlawful sexual harassment;
- a summary of the state and federal laws on sexual harassment and remedies for victims; and
- information about employer responsibilities to prevent, investigate, and correct issues of sexual harassment.

There are additional training requirements for restaurants and bars including:

- specific conduct, activities, and videos related to the restaurant, catering, or bar (hospitality) industry;
- an explanation of individual manager liability and responsibility under the law; and
- English and Spanish language versions.

Sexual Harassment Policy

Every employer must provide a written sexual harassment policy to all employees. Restaurants and bars have additional requirements, including detailed information on how to report sexual harassment within the organization and an explanation on how to file a charge with the IDHR and the U.S. Equal Opportunity Commission ("EEOC").

Confidentiality, Separation and Settlement Agreements

The Act prohibits employers from including nondisclosure or non-disparagement clauses for claims of sexual harassment in employment contracts or handbooks. This prohibition also includes forms of harassment based on a variety of other protected categories including race, color, religion, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, and unfavorable discharge from military service.

However, Illinois employers can enter into separation or settlement agreements with nondisclosure and/or non-disparagement clauses if all the following conditions are present:

- the claim at issue arose before the settlement/separation agreement was executed;
- the parties both agree on the nondisclosure and/or non-disparagement clause;

- the employee/applicant has twenty-one (21) days to consider the agreement prior to signing it; and
- the employee/applicant has seven (7) days after signing the agreement to revoke it.

Arbitration Clause Prohibited

Arbitration agreements cannot be used to bar employees from filing harassment or discrimination claims. While Illinois employers are still permitted to enter into agreements with their employees that require arbitration of employment claims, they may only do so if the arbitration clause excludes discrimination and harassment claims.

Employer-drafted agreements may not shorten the applicable limitation periods for claims or limit an employee's right to assert any claims or remedies available under Illinois or federal law.

Mandatory Annual Disclosures

Beginning July 1, 2020, Illinois employers are required to report all adverse judgments or administrative rulings from the prior year related to discrimination or harassment to IDHR. The report must include:

- the nature or basis of discrimination;
- the total number of settlements entered into during the previous year by the employer that relate to any alleged act of sexual harassment or unlawful discrimination;
- the breakdown of settlements based on protected characteristics;
- the total number of adverse judgments or administrative rulings in the preceding year; and
- whether any equitable relief was ordered against the employer.

These disclosures are not subject to the Freedom of Information Act, and employers will not be identified in public reports of this data. However, this

information can be used by the IDHR to begin an investigation and possibly bring a pattern and practice discrimination charge. During an investigation, IDHR may require employers to disclose the total number of settlements entered into during the preceding five years related to any alleged sexual harassment or unlawful discrimination.

Penalties

Any employer who does not comply with the Act's requirements for annual sexual harassment training and reporting will face a $5,000 fine per occurrence. For repeat offenders, the fine increases with every subsequent offense.

Here is the good news…

Putting these new sexual harassment training and policy requirements into action protects you as the employer and your supervisors who have personal liability. Providing your employees with an effective mechanism for learning about and reporting sexual harassment in the workplace provides a defense in lawsuits. It also creates a more positive and productive work environment.

For more information about any of the new requirements for Illinois employers, contact Sugar Felsenthal Grais and Helsinger, LLP.