

HARASSMENT PREVENTION - THE CHICAGO WAY: WINDY CITY EMPLOYERS FACE NEW SEXUAL HARASSMENT POSTING, POLICY, TRAINING, AND DOCUMENT RETENTION REQUIREMENTS

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The Chicago City Council recently amended the Chicago Municipal Code with respect to sexual harassment in the workplace. Failure to comply with these amendments, which take effect on July 1, 2022, could result in daily penalties of \$5,000 to \$10,000.

To avoid such fines, employers that maintain a business facility within the boundaries of Chicago or are subject to Chicago license requirements, and that have one or more employees who work within the boundaries of Chicago, should take steps now to: (a) update and distribute their sexual harassment policies; (b) prepare to post the required “written notice” in the workplace; (c) plan for and implement required sexual harassment and bystander training; and (d) establish a document retention plan concerning the policies and training.

Employers may be wondering:

We already post the Chicago Commission on Human Relations (CCHR) Poster – is that enough “written notice” to employees?

No – A new model “written notice” will be published by the CCHR on or before the July 1, 2022 effective date of the amendments. Employers must post this new written notice in both English and Spanish. In addition, the Code specifically requires a written policy on sexual harassment, which must be provided to new hires within the first week of employment, in their primary language, so the new posting alone is not sufficient.

Our handbook already includes a sexual harassment policy – is that enough?

Likely no – The Code requires that the sexual harassment policy include specific language, including: (a) a statement that sexual harassment is illegal in Chicago; (b) the definition of “sexual harassment” provided in the Code (which is broader than the definition under federal and Illinois law, in that it specifically prohibits “sexual misconduct”); (c) a reference to the annually required sexual harassment training; (d) examples of prohibited

conduct; (e) information about reporting procedures (including the option to confidentially report); and (f) a statement that retaliation for reporting sexual harassment is prohibited in Chicago. While many existing policies address requirement (e), existing policies may not adequately address the remaining requirements.

We have implemented the sexual harassment training required by Illinois law – is that enough?

In large part, yes, but probably not entirely– The Code requires that employees undergo one hour of annual sexual harassment training (two hours for supervisors/managers) and one hour of annual bystander intervention training. The Code expressly states that, for the sexual harassment training, employers may use the “model” sexual harassment prevention training prepared by the State of Illinois, or a training program that meets or exceeds the requirements of Illinois law. Accordingly, employers with Illinois-compliant training programs may continue to use such programs. However, the additional hour of training for supervisors/managers, and the separate hour of bystander intervention training, must be added.

Are there other significant changes?

Yes – In addition to the significantly increased penalties mentioned above, the Code requires the retention of documents relating to sexual harassment policies and trainings (generally for a period of at least five years), in order to demonstrate compliance with the Code.

In addition, the Code broadened the scope of sexual orientation discrimination, which is now expansively defined as, “a person’s actual or perceived sexual and emotional attraction, or lack thereof, to another person.”

For assistance with updating policies, postings, and trainings, please reach out to your Bryan Cave Leighton Paisner attorney contact.

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