

Alert | Labor & Employment



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What Every Texas Employer Needs to Know About the State's New Sexual Harassment Law

Included in the over 650 new laws that went into effect in Texas Sept. 1 was a little-publicized but important set of amendments to the Texas Commission on Human Rights Act (TCHRA), the state version of Title VII of the Civil Rights Act, which protects individuals from discrimination, harassment, and retaliation based on their protected characteristics, including age, sex, race, national origin, color, disability, and religion.

Here are the highlights:

- 1. All Texas employers are now subject to the TCHRA with respect to sexual harassment claims.**

Prior to the amendments, the TCHRA only applied to employers with 15 or more employees. Now, and with respect to sex harassment claims, employers with even one employee are subject to liability for sex harassment. This change makes Texas state law stronger than Title VII with respect to sex harassment claims.

2. Liability for sexual harassment is now extended to individual managers and/or supervisors.

Pre-amendment and consistent with Title VII, the TCHRA did not allow claims for sex harassment to be brought against managers or supervisors on an individual basis. Now, an employee can sue both the employer and his or her supervisor and/or manager, individually, for sex harassment. This change also makes Texas state law stronger than federal law on this issue.

3. The new sexual harassment standard creates uncertainty.

Included in the revised statute is language that defines an “unlawful employment practice” as one in which the employer, the employer’s agent, or supervisors: (a) know or should have known that the conduct constituting sexual harassment was occurring; and (b) fail to take “immediate and appropriate corrective action.” The phrase “immediate and appropriate corrective action” is undefined and could be left to jury interpretation.

4. Employees have more time to file a charge of discrimination for sexual harassment.

Employees alleging sex harassment will now have 300 days, instead of 180 days, to file a claim with the Texas Workforce Commission.

How can employers prepare for a likely new wave of sex harassment claims by employees? Here are some considerations, regardless of workforce size:

A. Implement a comprehensive, written anti-harassment policy.

Consider rolling out a written anti-harassment policy that addresses discrimination and retaliation, and requiring every employee to read and acknowledge such policy in writing. Employers with 15 or more employees may wish to update their handbook policies related to harassment and require all employees to acknowledge the changes.

B. Conduct yearly anti-harassment policy training.

Educate and re-educate your employees at all levels on the anti-harassment policy, make attendance at training sessions mandatory (and remember you will need to pay for mandatory training time for non-exempt employees), and require all employees to sign and date a training attendance sheet.

C. Train supervisors and managers regarding their obligations to identify potential issues.

Managers and supervisors should also receive separate training regarding how to document and handle employee complaints of sex harassment, and they should understand their obligations to work with Human Resources where applicable.

D. Update your job descriptions.

Accurate, written job descriptions serve a number of useful purposes for employers. If you use them, consider updating those related to supervisory/management positions to identify timely and efficiently handling complaints of sex harassment as an essential job function.

E. Consult your insurance broker.

If you carry Employment Practices Liability Insurance or have other coverage that could apply to sexual harassment claims, consult your broker about whether claims against your individual managers and/or supervisors are covered under your policy.

F. Ensure you create/maintain accurate documentation of complaints.

Two common mistakes by managers are the failure to document oral complaints of sexually harassing behavior and the tendency to ignore certain complaints. All complaints of sexually harassing behavior should be accurately documented in writing, dated, and maintained for future use, if necessary.

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