BCLP. Client Intelligent

BCLPatWork.com

SEXUAL HARASSMENT PREVENTION TRAINING NOW REQUIRED FOR ILLINOIS EMPLOYEES – IS YOUR TRAINING COMPLIANT?

May 26, 2020

Employers in recent months have understandably been laser-focused on COVID-19. However, Illinois employers – including employers who are largely based outside of Illinois but have even one employee who works in Illinois – should be mindful of their new obligation to provide annual sexual harassment prevention training before the end of the year (and yearly thereafter) under the Illinois Workplace Transparency Act ("WTA") and its amendments to the Illinois Human Rights Act ("IHRA"). Recently, the Illinois Department of Human Rights ("IDHR") published its Model Sexual Harassment Prevention Training Program (the "Model Training"), which should be used as a guideline for ensuring employers' own training programs comply with the WTA.

ADMINISTRATION OF THE TRAINING

All Illinois employers must implement a sexual harassment prevention training program by the end of 2020 and subsequently provide the training on an annual basis. Unlike in some other states, there are no length or format requirements for the training, except that the training must be "interactive," must be accessible to employees with disabilities, and must be accessible to employees who speak languages other than English.

The minimum content requirements for all employees are:

1. An explanation of sexual harassment consistent with the definition provided in the IHRA;

2. Examples of conduct that constitutes unlawful sexual harassment;

3. A summary of federal and Illinois law concerning sexual harassment, including remedies available to victims of sexual harassment; and

4. A summary of responsibilities of employers in the prevention, investigation and corrective measures of sexual harassment.

On April 28, 2020, IDHR released a Model Training. The Model Training was released as a PowerPoint presentation, but is not required to be presented to employees in that format. Employers have the option of using the Model Training, developing their own training programs and materials tailored to suit their workforce, or continuing to use their existing training materials, so long as those training materials meet the minimum requirements set forth in the WTA. Employers who develop their own program and materials should treat the IHDR's Model Training as a guidepost—it need not be followed word-for-word.

That said, employers who have existing sexual harassment training programs in place – including multi-state employers with training programs that are "generalized" so that they may be used in multiple locations – should ensure that such programs include the necessary Illinois-specific concepts (e.g., express references to the IHRA).

BCLP RECOMMENDATIONS

- At a minimum, sexual harassment training should be provided live (using the Model Training PowerPoint provided or pre-existing training incorporating its content) or through an interactive web-based presentation, requiring that employees actively participate in the training (e.g., answer multiple choice questions related to the materials and information presented).
- If providing live or in-person training, consider providing training on multiple dates during a calendar year to ensure that all employees have multiple opportunities to attend and complete training. For example, the employer can provide training on April 1, July 1, and October 1 to ensure that all employees (including employees who may miss a scheduled training due to travel or being on leave) have multiple opportunities to attend training.
- Employers implementing a staggered training structure should task a human resources employee with ensuring that, prior to the last scheduled training of the year, all employees have either completed the training or are scheduled to attend the final session.
- If applicable, employers should confirm with their online training provider that the training content will include the necessary Illinois-specific concepts.
- Employers should reference and discuss their own harassment policy in the training, with a specific emphasis on the reporting avenues and the investigation protocols so that employees are aware of how to report harassment and what to expect regarding the investigation process.

MANDATORY PARTICIPANTS

Training must be administered to **all** Illinois employees, including short-term and part-time employees, as well as interns. Additionally, even out-of-state employees and supervisors must be trained if they regularly interact with an employer's Illinois staff. For example, a supervisor who works in another state but supervises one or more Illinois employees must be trained. Similarly, an

employee who works in another state but who regularly works with Illinois employees even on a temporary basis must be trained. The IDHR also strongly encourages training be provided to independent contractors if they work on-site or frequently interact with an employer's staff.

BCLP RECOMMENDATIONS

- Ensure that not only your Illinois-based workforce, but all employees who perform any work in Illinois, who work with Illinois-based employees, or who manage Illinois-based employees, receive WTA-compliant training.
- To reduce the risk of joint employment concerns, consider including in third-party contracts a requirement that the contractor will ensure that any contracted staff receive WTA-compliant training.

NEW HIRES

For new hires who join the employer's workforce after the required training has occurred in 2020 (or any given calendar year), employers have several options:

1. An employer can administer a new training to each new hire when that employee is hired, as part of the onboarding process.
2. An employer may obtain documentation indicating that the new hire received sexual harassment prevention training while working for his or her previous employer during that calendar year. Then, the employee can join the new employer's harassment prevention training with the rest of the workforce in the next calendar year. The only – but significant – caveat to this option is that the employer must be certain that the prior training complies with Illinois law. Further, the burden of ensuring compliance cannot be placed on the employee. Thus, the IDHR recommends that if employers have any question as to whether prior training satisfied the necessary requirements under Illinois law, the new hire should be re-trained.
3. An employer that implements a "staggered" training schedule, as referenced above, can require a new hire to attend the next regularly scheduled training program.

BCLP RECOMMENDATION

- Regardless of when sexual harassment training will occur, newly-hired employees should always receive a copy of the sexual harassment policy upon hire.

RECORD RETENTION

Employers must retain records of employees' attendance at the sexual harassment prevention training. Such records must be made available for IDHR inspection upon request. This record may

be a paper certificate, signed employee acknowledgement, or written sign-in sheet for those attending training in person. Alternatively, employers providing online training may use an electronic "course acknowledgment."

BCLP RECOMMENDATION

- Employers should diligently track training attendance information, as these records could, among other things, become part of an IDHR records request in connection with a sexual harassment charge.

ADDITIONAL REQUIREMENTS FOR RESTAURANTS AND BARS

Restaurants and bars must provide supplemental training beyond the minimum standards discussed above. A model supplemental training program has not yet been released by the IDHR, but one is expected in the coming weeks. According to the IHRA, this supplemental training must include:

1. Specific examples of conduct, activities, or videos related to the restaurant or bar industry; and

2. An explanation of manager liability and responsibility under the law.

The supplemental training must also be accessible to employees who speak languages other than English.

PENALTIES FOR NON-COMPLIANCE

Failure to comply with the WTA's sexual harassment training requirement could result in the issuance of a show cause notice by the IDHR giving the employer 30 days to comply. If the employer does not comply within 30 days, the Illinois Human Rights Commission may enter an order imposing a civil penalty against the employer. The monetary value of the penalty depends on the number of employees, the good faith efforts of the employer to comply, and the severity of the offense. Employers with fewer than four employees will be subject to penalties of up to $500 for the first offense, $1,000 for the second offense, and $3,000 for the third and subsequent offenses. Employers with more than four employees will be subject to penalties of up to $1,000 for the first offense, $3,000 for the second offense, and $5,000 for the third and subsequent offenses.

CONCLUSION

Despite the current challenges presented by the global pandemic, the IDHR has not provided any indication that the December 31, 2020 training deadline will be extended, and the recent issuance of the Model Training suggests otherwise. Accordingly, Illinois employers should be mindful of their training obligation and take steps to comply. **The Model Training should not be considered one size fits all, as workplaces vary widely.** BCLP employment lawyers are available to assist in preparing or

reviewing training materials or to ensure compliance with the WTA and identify ways to ensure the training is tailored to work best for your workplace.

RELATED PRACTICE AREAS

- Employment & Labor

MEET THE TEAM

Patrick DePoy

Chicago

patrick.depoy@bclplaw.com
+1 312 602 5040
