Don’t Let COVID-19 Distract You From Implementing Illinois’ Required Annual Sexual Harassment Prevention Training by December 31, 2020

By Carol A. Poplawski

Last year the Illinois Human Rights Act ("IHRA") was amended to require employers to provide sexual harassment prevention training before December 31, 2020, and each calendar year after that. With the pandemic dominating the news and businesses facing unprecedented challenges in responding to it, this requirement could easily be overlooked, but doing so can be a costly mistake in an otherwise tough financial business climate. Here is what contractors need to know and do in order to comply.

Who Must Provide Annual Harassment Prevention Training
All employers with one or more employees working in Illinois must provide training.

Who Must Receive Training
Employers must train all employees, including part-time employees, temporary employees, and interns who work or will work in Illinois. But according to the Illinois Department of Human Rights’ ("IDHR") frequently asked questions, the law also applies to employers and employees outside Illinois. Employers both in Illinois and out of state are required to:

- Train employees who work or will work in Illinois.
- Train employees who do not work in Illinois but regularly interact with other employees in Illinois—for example, a supervisor located out of state who supervises employees in Illinois.

The IDHR states that training independent contractors is not required. Yet, the agency said it is “strongly advised” that independent contractors receive training if they work on-site or interact with employees.

What the Training Must Include
Training must be accessible to employees with disabilities and non-English speakers. Additionally, employers must provide training that meets the IDHR’s minimum training requirements for all employers. These minimum training requirements must:

- Explain and provide examples of sexual harassment,
- Summarize federal and state law and remedies for victims of sexual harassment, and
- Summarize employers’ obligations to prevent and investigate sexual harassment and take prompt corrective action.

Employer Recordkeeping Requirements
Lastly, employers are required to maintain internal paper or electronic records of training compliance and make them available for IDHR inspection upon request.

Employers may include one of the following records to reflect training compliance:

- Certificate of participation;
- Signed employee acknowledgement; or
- Training sign-in sheet.

Employers are required to include the following information in their training records:

- Name of employee;
- Date of training;
- Any of the above issued records of compliance; and
- A copy of all written or recorded materials that include the training and training provider.
When the Training Must Be Provided
The deadline for providing the training is December 31, 2020, and annually by December 31. But the IDHR encourages employers to:

- Train new employees as soon as possible after hire; and
- Retrain employees who have received training from a prior employer. Each employer is responsible for ensuring that training received elsewhere is compliant with the law.

Fortunately, it is now easier for employers to comply with this training requirement because on April 30, 2020, the IDHR released its model sexual harassment prevention training (available on the IDHR website). The model training provides the minimum training standards that employers must provide to their employees. To comply with the IHRA, employers may use the model training at no cost, or modify existing training to meet or exceed these minimum standards. Here are the highlights of that training:

Model Sexual Harassment Prevention Training
The IDHR’s model sexual harassment training guidance provides:

- An explanation of sexual harassment consistent with the Illinois Human Rights Act;
- Examples of conduct that may constitute sexual harassment;
- A summary of Federal and State statutory laws concerning sexual harassment, including remedies available to victims; and
- A summary of employer responsibilities in the prevention, investigation and corrective measures of sexual harassment.

Additionally, the IDHR answered a list of frequently asked questions, FAQs for Sexual Harassment Prevention Training, addressing the new requirements and standards for training. The FAQs are available on the IDHR website.

Penalties for Noncompliance
Under the IHRA, any employer that does not comply will be issued a notice to show cause, which will give the employer 30 days to comply. Failure to comply within 30 days will result in the IDHR petitioning the Illinois Human Rights Commission for entry of an order imposing a civil penalty against the employer as follows:

For employer with < 4 employees:
- $500 for a first offense
- $1,000 for a second offense
- $3,000 for a third or subsequent offense

For an employer with 4 or more employees:
- $1,000 for a first offense
- $3,000 for a second offense
- $5,000 for a third or subsequent offense

If existing training does not meet the minimum standards from the model training, employers may want to consider modifying training quickly or using the IDHR model training.

Employers are not required to utilize the model program, but if they choose not to do so, the training they provide must meet the minimum standards of the model program.

Key Takeaways

- Consider whether existing training programs already comply with the minimum requirement published by the IDHR.
- If existing training does not meet minimum standards, consider using the IDHR’s model sexual harassment prevention training program as a stand-alone training program or to supplement your existing training programs.
- Consider proactively identifying which personnel should receive training, including individuals who are independent contractors or who do not work in Illinois but regularly interact with employees in Illinois.
- Determine how you will train your workforce—Group classroom, Individualized, Web based, Third Party Provider, etc.
- Provide compliant training no later than December 31, 2020, and annually thereafter by December 31, and keep accurate training attendance records.

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Poplawski has been lead counsel in hundreds of cases in state and federal courts, covering the full range of employment litigation under laws like the Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Family and Medical Leave Act, and the Illinois Human Rights Act. Her litigation experience has given her a keen insight into the employment relationship which she shares with her clients when counseling, advising and training them on workplace issues.

She is a frequent speaker on workplace issues facing today’s employers. Ogletree Deakins has developed a compliant employee training program called It’s All About RESPECT. The program consists of on-demand supervisor and employee training that is interactive and easy to use. Trainees utilize learning management software, which makes it possible to train on mobile devices including smart phones and traditional workplace computers. For more information on this product, contact Carol at carol.poplawski@ogletree.com or (312) 558-1244.