

# CLIENT ALERT

## Chicago Expands Sexual Harassment Prevention Obligations for Employers

June 28, 2022

On April 27, 2022, the Chicago City Council passed amendments (“Amendments”) to its Human Rights Ordinance (“Ordinance”) adding significant sexual harassment prevention requirements for employers, including new employer policy, notice, and training obligations, expanded recordkeeping requirements, and stricter penalties for violations. The Amendments also expand the definition of “sexual harassment” and “sexual orientation.” The Amendments, which apply to all employers with at least one employee working within the geographical boundaries of the city of Chicago, took effect on June 4, 2022. Chicago employers, however, have until July 1, 2022 to implement the amended sexual harassment prevention requirements.

**Who is Covered?** The Ordinance defines employers as “any individual, partnership, association, corporation, limited liability company, business trust, or any person or group or persons that provides employment to one or more employees in the current or preceding calendar year and any agent of such an entity or person[,]” that are subject to Chicago licensing requirements or maintain a business facility within city limits.

Employee is defined as “an individual who is engaged to work within the geographical boundaries of the City of Chicago for or under the direction and control of another for monetary or other valuable consideration.”

**Enhanced Definition of Sexual Harassment.** The Ordinance’s definition of “sexual harassment” now explicitly includes “sexual misconduct.” “Sexual harassment” is defined as any

- (i) unwelcome sexual advances or unwelcome conduct of a sexual nature;
- (ii) requests for sexual favors or conduct of a sexual nature when
  - (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
  - (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or
  - (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment; or
- (iii) sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual’s employment position.

In addition, the Amendments modify the definition of “sexual orientation” to mean a “person’s actual or perceived sexual and emotional attraction, or lack thereof, to another person.”

**Written Policy & Written Notice Requirements.** As of July 1, 2022, all employers in the city of Chicago must have a written policy on sexual harassment. The written policy document shall include at least the following:

- A statement that sexual harassment is illegal in Chicago.
- The definition of sexual harassment stated above.
- A requirement that all employees participate in sexual harassment prevention training annually.
  - Employees shall participate in a minimum of one (1) hour of sexual harassment prevention training annually.
  - Anyone who supervises or manages employees shall participate in a minimum of two (2) hours of sexual harassment prevention training annually.
  - All employees must participate in one (1) hour of bystander training annually.
- Examples of prohibited conduct that constitute sexual harassment.
- Details regarding:
  - how an individual can report an allegation of sexual harassment, including, as appropriate, instructions on how to make confidential report, with an internal complaint form, to a manager, employer’s corporate headquarters or human resources department, or other internal reporting mechanism; and
  - legal services, including governmental, available to employees who may be victims of sexual harassment.
- A statement that retaliation for reporting sexual harassment is illegal in Chicago.

The written policy must be available in the employee’s primary language within the first calendar week of starting employment. Additionally, employers will be required to display a poster advising of the prohibition on sexual harassment where employees can see it. The Chicago Commission on Human Rights (“CCHR”), which monitors and enforces the Ordinance, has published a [model policy](#) and [model poster](#), both in English.

**New Training Requirements.** As of July 1, all employers must provide the following training annually:

- Sexual Harassment Prevention Training
  - For supervisors/manager – two (2) hours (minimum) annually
  - For all other employees – one (1) hour (minimum) annually
- Bystander Intervention Training
  - For all employees – one (1) hour (minimum) annually

The [Illinois State training module](#), which provides one (1) hour of training, is sufficient for the sexual harassment prevention training for non-supervisory/managerial employees mandated under the Ordinance. The Chicago Training modules for the additional hour of training and for the bystander training will be made available to employers by July 1, 2022 on the CCHR's [website](#).

Employers must conduct the foregoing training between July 1, 2022 and June 30, 2023, and thereafter annually.

**Record Retention.** Employers must retain written records to show compliance with the Ordinance, including records of the policies and trainings provided to employees, for the longer of five (5) years or the duration of any claim, civil action, or investigation pursuant to the Ordinance.

**Statute of Limitations Extended.** Victims will now have 365 days, instead of 300 days, to report *all* forms of discrimination, including sexual harassment, to the CCHR.

**Complaint Process.** In cases of sexual harassment, the Amendments allow CCHR to delay notification to a respondent of a complaint from ten (10) days to up to thirty (30) days. This is intended to help to mitigate any retaliation, such as a denial of a reasonable accommodation request, under the Illinois Victim's Economic and Security Act.

**Penalties.** The Amendments increase penalties for all forms of discrimination from \$500–\$1,000 per violation, to \$5,000–\$10,000 per violation.

Employers are only liable for sexual harassment by non-supervisory/managerial employees if the employer knew of the conduct and failed to take reasonable corrective measures. The Amendments also maintain the CCHR's authority to impose fines on complainants who make "clearly frivolous, clearly vexatious" claims.

**The Ordinance v. the Illinois Human Rights Act.** While the Illinois Human Rights Act ("IHRA") has required that employers with employees in the State of Illinois provide annual sexual harassment prevention training to employees since 2020, the Amendments expand Chicago employers' obligation beyond what is required under the IHRA in the following ways:

- The IHRA does not impose a duration requirement for sexual harassment prevention training, unlike the Ordinance, which mandates at least two (2) hours of training for managers/supervisors, and one (1) hour of training for all other employees.
- The IHRA does not impose a separate bystander intervention training, while the Ordinance imposes one (1) hour of bystander intervention training for all employees.
- The IHRA does not impose any notice or recordkeeping requirements, unlike the Ordinance, which requires both and penalizes employers for non-compliance.
- The IHRA only requires restaurants and bars to have written policies on sexual harassment prevention, whereas the Ordinance imposes such policies for *all* employers.
- Under the Ordinance, employees have an additional 65 days to file a complaint with the CCHR, as compared with IHRA's (and the EEOC's) 300-day statute of limitations.

**Preparation for Compliance.** Chicago employers are urged to take the following immediate steps to ensure compliance with the Amendments:

- Review and revise existing sexual harassment prevention policies to ensure that they are compliant with the expanded requirements under the Ordinance.
- Prepare to provide the requisite training to employees between July 1, 2022 and June 30, 2023, which will be available on the CCHR's [website](#) by July 1, 2022.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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