

Prohibition of Sexual Harassment

PRESCRIBED TRAINING UNDER THE
LOBBYIST REGISTRATION ACT (25 ILCS 170/4.7)

The Law's Intent & Purpose

- All persons have the right to work in an environment free from sexual harassment.
- All lobbyists MUST REFRAIN from sexual harassment of ANY person.
- Lobbyists must complete anti-sexual harassment training no later than 30 days after each yearly registration or renewal.

Required Deterrence

- Prevention and prohibition are the best tools to eliminate sexual harassment in the workplace.
- The law and required annual training clearly communicate to lobbyists that sexual harassment in any capacity will not be tolerated.
- The Office of the Inspector General (OIG) will take immediate and appropriate action upon receipt of a complaint alleging sexual harassment.

Definition

“Sexual Harassment” means any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
OR
- iii. 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.

Significant Provision

In the definition of sexual harassment — when reviewing the alleged creation of an *intimidating, a hostile or an offensive working environment* — the term 'working environment':

- i. Is NOT limited to a physical location, office setting or workstation where a lobbyist or an alleged victim is generally assigned to perform his or her duties; **AND**
- ii. Does NOT require an 'employment' relationship between the lobbyist and the reported victim.

Why is the Law's Definition of "Work Environment" Important?

Because sexual harassment can occur **outside** of the regular workplace or **outside** of normal work hours between a lobbyist and a person who doesn't have the same employer or career field.

Example:

A lobbyist repeatedly attempts to kiss a legislative staffer at an evening news conference — even after the staffer has told the lobbyist to stop this behavior. The legislative staffer reports the lobbyist for sexual harassment because this unwelcome conduct creates a hostile work environment for the staffer, who is now uncomfortable of seeing the lobbyist at other work-related settings.

Quid Pro Quo Harassment

“*Quid pro quo*” (*this in exchange for that*) harassment includes conditions placed on a person’s career or terms of employment in return for sexual favors. This harassment includes: (i) implicit or explicit threats of employment-related adverse action if the person does not submit to the sexual favors; and (ii) promises of favorable actions if the person does submit to the sexual-related conditions of employment.

- Examples include demanding sexual favors in exchange for a promotion, award or favorable assignment; disciplining a subordinate who refuses sexual advances; and threatening to give a poor job evaluation for refusing sexual advances.
- Incidents of “quid pro quo” may also have a harassing effect on third persons if the results of sexual favoritism cause a colleague to feel unfairly deprived of recognition, advancement or career opportunities because of favoritism shown to the person engaged in an alleged inappropriate, sexual relationship.

Intimidating, Hostile or Offensive Working Environment

“Intimidating, hostile or offensive working environment” occurs when individuals are subjected to offensive, unwanted and unsolicited comments or behavior of a sexual nature. If this behavior unreasonably interferes with the victim’s work performance, **regardless of whether the alleged harasser and the victim have the same workplace or employer**, then the environment can be classified as “hostile.”

- An intimidating, a hostile or an offensive working environment inappropriately brings topics of sex or sexual differences into the work setting, including nonviolent, sexual behavior such as verbal, nonverbal or physical sexual harassment.
- The following examples illustrate how the work environment can become unprofessional and disrespectful to the point of becoming sexual harassment: unsolicited flirting, use of derogatory gender-biased terms, comments about body parts, suggestive pictures, explicit jokes, repeated ogling or unwanted touching.

Sexual Harassment Includes:

“Sexual harassment” first and foremost includes all unwelcome sexual advances or requests for sexual favors; but be advised that sexual harassment may ALSO include other offensive, unwelcome verbal, nonverbal or physical harassment of a sexual nature:

- Examples of prohibited **verbal sexual harassment**, may include, but are not limited to: telling sexual jokes; using sexually explicit profanity, threats or comments; inappropriate flirting; whistling in a sexually suggestive manner; or using inappropriate terms of endearment.
- Examples of prohibited **nonverbal sexual harassment**, may include, but are not limited to: inappropriate sexual gestures, lengthy staring, blowing kisses or licking one’s lips in a sexually suggestive manner. Nonverbal sexual harassment also includes displaying or sending sexually-themed pictures or cartoons; using sexually-themed screen savers on one’s computer; or sending sexually-themed notes, letters, faxes, texts, social messaging or email.
- Examples of prohibited **physical sexual harassment**, may include, but are not limited to: non-consensual kissing, touching, patting, pinching, bumping, grabbing, rubbing, massaging, cornering or hugging, as well as blocking a hallway, doorway or other exit.

Please Note

- Both the victim and the harasser can be either a woman or a man, and the victim and harasser can be of the same gender or gender identity.
- The harasser can be the victim's supervisor, a supervisor in another area, a co-worker OR someone who is NOT an employee of the employer, **such as a lobbyist or client.**
- Although the law may not strictly prohibit simple teasing, offhand comments or isolated incidents that are impolite, harassment is illegal when it is unwelcome, frequent or severe — such that it creates a hostile, an intimidating or an offensive work environment for the alleged victim to include *quid pro quo* conditions.

Additional Advisories

- Unlawful sexual harassment may occur even without economic injury to or discharge of the alleged victim.
- If an individual tells you that your harassing conduct is unwelcome and to stop it, then you must STOP immediately; and even if you stop at that point, you may be subject to a sexual harassment complaint.
- The reporting victim or witness should use any complaint mechanism available, and intervention may be appropriate if you are a witness to this type of unsolicited, harassing misbehavior.
- When investigating allegations of sexual harassment, the OIG looks at the whole record: the circumstances, such as the nature of the harassment; sexual advances; and the context in which the alleged incidents occurred. A review of the allegations is made from the facts on a case-by-case basis to include the incorporation of the reported victim's perception under the applicable reasonable-person standard according to the law.

No Intent Required

- Because this is not a criminal investigation, the alleged perpetrator's intent during the reported conduct does not determine the result of investigation.
- Instead, case law dictates that the victim's perspective under the reasonable person standard governs the review.

No Retaliation

- It is unlawful to retaliate against any individual for reporting sexual harassment or to seek to violate the complainant's whistleblower protections.

Example: After being reported for sexual harassment, the lobbyist asks the supervisor of the legislative staffer to place the complainant on unpaid leave effective immediately.

*This retaliatory action seeks to not only silence the staffer, but also intimidate and impoverish the employee. Thus, the lobbyist now may be subject to additional penalties for retaliation.

Required Written Policy

- No later than January 1 of each year, each person required to be registered under the Lobbyist Registration Act shall have a written anti-sexual harassment policy.
- The policy shall include, at a minimum:
 - (i) A prohibition on sexual harassment;
 - (ii) Details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, SOS Inspector General, the Department of Human Rights and the authorized agent of the registrant;
 - (iii) A prohibition on retaliation for reporting sexual harassment allegations, including availability of whistleblower protections under the State Officials and Employee Ethics Act, the Whistleblower Act, and the Illinois Human Rights Act; and
 - (iv) The consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report.

*The policy must be made available to ANY individual **within two business days** upon written request (including electronic requests).

Further Duties of the Lobbyist

- In addition to the required policy, the **lobbyist** must acknowledge to the OIG, as part of the annual registration, the following provisions:
 - ANY person may contact the authorized agent of the registrant to report allegations of sexual harassment. Allegations must be investigated and penalties imposed, according to the registrant's written policy.
 - The SOS Inspector General has jurisdiction to review any allegations of sexual harassment alleged against the registrant or lobbyists hired by the registrant.

Secretary of State OIG Review

- The Inspector General has authority to review allegations:
 - That the lobbyist has engaged in one or more acts of sexual harassment.
 - That the lobbyist has engaged in retaliation against the complainant or victim of the reported sexual harassment.
 - To submit all summarized reviews to the Executive Ethics Commission.

EEC Purview

- The **Executive Ethics Commission's** duties include:
 - Authority over allegations that a lobbyist has committed an act of sexual harassment or retaliation, as set forth in any summaries of reviews of such allegations by the OIG.
 - Conducting administrative hearings and ruling on matters brought before the commission upon the receipt of summaries of reviews by the OIG, regarding allegations of sexual harassment or retaliation.
 - To make rulings, issue recommendations and impose administrative fines.

Consequences

- If found in violation of the anti-sexual harassment provisions of the Lobbyist Registration Act, the person is:
 - Guilty of a business offense;
 - Subject to a fine of up to \$5,000 per incident; and
 - Prohibited from lobbying for the next three years.
- Penalties may also be imposed by the OIG & EEC.
- Offender remains subject to rulings by courts of law or other applicable agencies, including, but not limited to, criminal action or civil suit as well as no contact and protective orders.

Report Sexual Harassment

(*to include anonymous complaints)

- Secretary of State Inspector General's Office
(217) 785-2012 or (630) 424-2564
<http://www.reportitnow.net/>
324 W. Monroe St., Springfield, IL 62704
- Department of Human Rights Hotline
1-877-236-7703
- Lobbyist or Lobbying Entity's Authorized Agent

Criminal Conduct

- Sexual Harassment is NOT investigated in the same manner as conduct criminalized as 'Sexual Assault.'
- Instead, immediately report allegations of sexual assault, rape or other crimes to law enforcement. These offenses are defined in the Criminal Code of 2012, 720 ILCS 5/Art.11
<http://www.ilga.gov/>
- The OIG or your private employer does NOT have the authority to investigate or internalize this type of criminal misconduct.