



SEXUAL HARASSMENT (UPDATED 09.2018)

- HB 360
 - Definitions
 - Notices
 - Mandatory Training
-

GENERAL PROVISIONS & DEFINITIONS

On August 29th 2018 Gov. John Carney signed into law **HB 360**, which provides protections related to sexual harassment under the **Delaware Discrimination in Employment Act**.

Sexual harassment under HB 360 is identical to regulations from Title VII of the Civil Rights Act of 1964, and is defined as:

- **Unwelcome sexual advances, requests for sexual favors, and**
- **other verbal or physical conduct of a sexual nature** when:
 - submission to such conduct is made either explicitly implicitly a term or condition of an employee's employment;
 - submission to or rejection of such conduct is used as the basis for employment decisions affecting an employee; or
 - such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

An employer of four or more employees can be liable for sexual harassment of its employee, unpaid intern, applicant, joint employee, or apprentice.

The employer will be liable when the harassment:

- *Results in a negative employment action of an employee*
- *Was by a non-supervisory employee but the employer "knew or should have known" of the harassment and "failed to take appropriate corrective measures."* If the latter the employer can avoid liability by proving that it "exercised reasonable care to prevent and correct any harassment promptly" and that the "employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer
- *In addition, the employer will be liable for retaliation against an employee who engages in protected activity related to sexual harassment*

MANDATORY NOTICES TO EMPLOYEES

Per HB 360, The Delaware Department of Labor shall create an information sheet on sexual harassment that the Department shall make available to employers. The information sheet shall be available at each office of the Department, and shall be mailed if the request includes a self-addressed envelope with postage affixed. The Department shall make the information sheet available on its website.

Every employer shall distribute, physically or electronically, the information sheet to its employees as follows:

- To new employees at the commencement of employment;
- To existing employees within 6 months of the effective date of this Act.

Failure to provide the notice will not “in and of itself result in liability” in a sexual harassment action.

The notice requirement presumably applies not only to regular employees, but also to unpaid interns, joint employees, and apprentices.

MANDATED SEXUAL HARASSMENT TRAINING

HB360 shall take effect on January 1, 2019.

An employer shall provide interactive training and education to employees regarding the prevention of sexual harassment.

Such training shall be provided to employees & supervisors as follows:

- **To new employees & supervisors within 1 year of the commencement of employment and thereafter every 2 years**
- **To existing employees & supervisors within 1 year of the effective date of this Act and thereafter every 2 years.**

The training for employees shall include all of the following:

- The illegality of sexual harassment;
- The definition of sexual harassment using examples;
- The legal remedies and complaint process available to the employee.
- Directions on how to contact the Department.
- The legal prohibition against retaliation.

The training for supervisors shall include:

- The specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment;
- The legal prohibition against retaliation.

Numerosity and training requirements

- Employers do not count applicants or independent contractors towards the numerosity requirement
- *Employers are not required to provide training under this subsection to applicants, independent contractors, or employees employed less than 6 months continuously.*
- Employment agencies are the only employers required to count and provide training to employees placed by employment agency under this subsection.

The Delaware Restaurant Association has assembled this information as a service to our members. Before making any policy changes, please consider consulting a tax advisor, attorney, or payroll specialist to ensure state and federal compliance to all tax, wage and labor regulations and requirements. ©2018