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Contact Hours: **1**

Sexual Harassment Training for Illinois Healthcare Professionals

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LEARNING OUTCOME AND OBJECTIVES: Upon completion of this continuing education course, you will demonstrate an understanding of sexual harassment and appropriate responses in the workplace. Specific learning objectives to address potential knowledge gaps include:

- Define sexual harassment according to the Illinois Human Rights Act.
- Identify examples of the types and forms of unlawful sexual harassment.
- Describe appropriate actions that a victim or witness to sexual harassment in the workplace may take.
- Explain how to report sexual harassment within one's place of employment and to outside entities.
- Discuss whistleblower protection laws for employees who report sexual harassment.
- Summarize the responsibilities of employers to prevent, investigate, and correct sexual harassment.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment of employees is a form of sexual discrimination that may occur in the workplace or with work-related individuals outside of the work environment. Sexual harassment is linked to power structures and positions the victim to either submit to the exploitation or to endure adverse conditions (Legal Voice, 2022).

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Such harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general (EEOC, n.d.-e).

Both victim and harasser can be any gender. Although the majority of cases of sexual harassment are reported by female victims, in fiscal year 2021, the Equal Employment Opportunity Commission (EEOC, 2022) reported that 16.3% of sexual harassment charges were filed by males. The harasser can be the victim's supervisor, a supervisor in another area, a coworker, or someone who is not an employee of the employer, such as a client or customer.

Illinois Definition of Sexual Harassment

The State of Illinois definition of sexual harassment is found in the Illinois Human Rights Act, as follows:

“Sexual harassment” means any unwelcome sexual advances or requests for sexual favors or any 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 employment decisions affecting such 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.

The code defines “working environment” as not limited to a physical location that an employee is assigned to perform their duties, and does not require an employment relationship (Illinois General Assembly, 2020).

Illinois Definition Versus Federal Definition

Under federal law, sexual harassment is considered a form of employment discrimination under Title VII of the Civil Rights Act of 1964, which states that it is unlawful to discriminate against a person because of that person's sex (including sexual orientation, gender identity, and pregnancy). Title VII applies to employers of 15 or more workers; labor unions and organizations; employment agencies; and state, federal, and local government agencies.

Sexual harassment is conduct that is so frequent or severe that it creates a hostile or offensive work environment, interferes with performance at work, or results in an adverse employment decision. The law also protects job applicants, employees, and former employees from discrimination and from retaliation if they file a complaint about discrimination (Civil Rights Act, 1964).

The federal and the Illinois definitions are similar, but key distinctions are that the Illinois definition:



- Does **not** limit the working environment to the office building or institution
- Requires that all employers comply with sexual harassment laws regardless of the number of employees
- Includes nonemployees such as independent contractors and consultants

SEX DISCRIMINATION

The Supreme Court ruled on June 15, 2020, on a case involving the EEOC that sex discrimination includes discrimination based on sexual orientation or gender identity. The court's ruling addresses Title VII, which states that an employer may not discriminate against an employee on the basis of sex, and interprets this law to include people who identify as homosexual or transgender (*Bostock V. Clayton County, Georgia, 2020*).

FORMS OF SEXUAL HARASSMENT IN THE WORKPLACE

It is important to be able to identify the different types and forms of sexual harassment.

Primary Types of Sexual Harassment

The two primary types of sexual harassment are 1) quid pro quo and 2) hostile work environment.

QUID PRO QUO

The Latin phrase *quid pro quo* literally means “this for that.” In a quid pro quo situation, a perpetrator requires sexual favors in exchange for conditions of employment. This generally involves an abuse of power. This type of sexual harassment frequently occurs between a supervisor/boss and subordinate and is the most commonly recognized form of sexual harassment (Lonsway & Patrick, 2020).

CASE

Quid Pro Quo

The CEO of a hospital asks a nursing manager to go out for dinner to discuss work. At the restaurant, the CEO describes being in an unhappy marriage and suggests that the nurse might be interested in spending more time together outside work. The nurse responds, “No, I am not interested in that sort of relationship.” The CEO then suggests that the nurse might like to reconsider the offer and that it could even involve a job promotion. While speaking, the CEO touches the nurse's thigh under the table. The nurse immediately gets up and leaves the restaurant.



At work the following week, the nurse is called into the CEO's office for a "meeting," but the CEO does not discuss work business and instead tries to kiss the nurse. The nurse rebuffs the CEO and quickly leaves the office. The following day the director of nursing calls the nurse into their office and states, "I have to inform you that you're being reassigned to a position as a floor nurse. Your management role is being phased out."

Discussion

This type of sexual harassment meets the definition of quid pro quo. The CEO implied that the nurse's positive response to unwanted sexual advances was a condition for a promotion. The nurse's continued refusal can also be reasonably tied to the nurse's subsequent demotion.

HOSTILE WORK ENVIRONMENT

A hostile work environment is created by unwelcome sexual conversation, requests for sexual favors, unwanted touch, or offensive remarks that would be perceived as offensive by a reasonable person. A hostile work environment can affect the health and well-being of the healthcare professional and can also impact patient care indirectly.

A hostile work environment exists in cases of:

- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical harassment of a sexual nature
- Offensive general remarks about a gender
- Other direct or indirect conduct toward the victim that is perceived as offensive (RAINN, 2023)

CASE

Hostile Work Environment

A physical therapist who works in a rehabilitation facility tells a coworker that she is unable to concentrate on her patients because one of the facility's maintenance workers is giving her unwanted personal attention. She adds that she is not sleeping well and having headaches and that she is anxious about coming to work out of fear of this other employee. She describes this worker's behavior as including comments on "how good" she is looking and standing too close for comfort. The coworker has also told her that she looks like she needs a massage and begun to rub her neck even after she has said that she feels "fine" and said directly that she doesn't want a massage.

Discussion

This maintenance employee's behavior constitutes sexual harassment because it is creating a hostile work environment for the physical therapist. The harassment includes making



unwelcome sexual advances and verbally and physically harassing the physical therapist by making unwanted comments about her looks and by touching her without her permission. These actions are substantially interfering with the physical therapist's work performance as well as affecting her physical and mental health.

Forms of Sexual Harassment

Sexual harassment of either type (quid pro quo or hostile work environment) may appear in various forms, such as sexual coercion; unwanted sexual attention; being subjected to sexual conversation or images; or being subjected to sexual or gender-related insults.

Examples of sexual harassment in the workplace include:

- Implicit or explicit conditions of employment linked to sexual favors (e.g., offering rewards for sexual favors or threatening adverse consequences if they are not received)
- Physical acts of sexual assault or battery
- Verbal or nonverbal requests for sexual favors
- Verbal harassment, including conversation that refers to sexual acts or sexual orientation
- Unwanted touch or physical contact
- Undesired and unwelcome sexual advances
- Discussion of sexual situations or stories in the workplace or with coworkers
- Sexual coercion or pressure for sexual interaction
- Exposure of genitals or touching the genitals
- Displaying or sending unwanted photos, emails, or text messages that are sexual in nature (RAINN, 2023)

Adverse Effects of Sexual Harassment

Sexual harassment in the workplace can lead to a variety of adverse consequences. Sexual harassment is harmful to employees at many levels, including psychological trauma, negative impact on family life, and detrimental effects to the employee's health and well-being.

It is not only the primary victims who are affected by this form of abuse. Coworkers who observe harassment (bystanders) may also be adversely affected and experience more emotional and psychological consequences than coworkers who do not observe harassment (Acquadro Maran et al., 2022).



IMPACTS OF SEXUAL HARASSMENT		
Emotional	Mental Health	Physical Health
<ul style="list-style-type: none"> • Anger • Fear • Humiliation • Shame • Guilt • Powerlessness 	<ul style="list-style-type: none"> • Anxiety • Depression • Panic attacks • PTSD • Difficulty concentrating • Substance abuse • Suicidal ideation 	<ul style="list-style-type: none"> • Headache • Fatigue • Eating disturbance • Sleeping disturbance
(RAINN, 2023)		

RESPONDING TO SEXUAL HARASSMENT IN THE WORKPLACE

It is important for employees to know their rights and how to respond to harassment in the workplace so that they can protect themselves as well as become change agents to address this systemic problem. Employees have a legal right to report harassment, participate in a harassment investigation or lawsuit, or oppose harassment without being retaliated against for doing so (EEOC, n.d.-b).

Steps to Address Sexual Harassment

First, the harasser should be directly informed that their conduct is unwelcome. This may include:

- Telling the person that their actions are offensive
- Refusing all invitations for personal interactions outside of work
- Not engaging in any sexual banter or flirting in response

Next, an employer also must know or have reason to know about the harassment in order to be held legally responsible. It is best to submit a written description to the employer, including what response is being sought from the employer and harasser. This creates a written record of the complaint (Workplace Fairness, 2023).

The EEOC (n.d.-f) recommends that employees who are being harassed take these actions:

1. Let the harasser know directly that their conduct is unwelcome and must stop. However, not all victims feel that they can do this, and it may be difficult for them if there is a perceived or actual imbalance of power.
2. If the employee does not feel comfortable confronting the harasser directly, or if the behavior does not stop, they may:



- a. Check to see if the employer has an antiharassment policy by looking on the employer's website or in an employee handbook or by asking any supervisor or someone in the human resources department whether there is an antiharassment policy and if so, to provide a copy.
- b. If there is a policy, follow the steps in the policy. The policy should offer various options for reporting the harassment, including the option of filing a complaint.
- c. If there is no policy, talk with a supervisor, either their own supervisor, the supervisor of the person who is the harasser, or any supervisor in the organization. Explain what has happened and ask for that person's help in getting the behavior to stop.
- d. File a charge of sex discrimination with the EEOC (or the appropriate Illinois state agency, as discussed below) to complain about the harassment. There are specific time limits for filing a charge with the EEOC (180 or 300 days, depending on the work), so the employee must act promptly.

(See also "Reporting Employee Sexual Harassment" later in this course.)

Bystander/Witness Intervention

It is sometimes helpful for coworkers, witnesses, or other bystanders to intervene when they observe harassment taking place, using a variety of strategies. For example, a witness to sexual harassment may assist the victim to leave the situation or get to safety by implementing the **CARE strategy**.

- **Create** a distraction. A bystander can create a distraction in order to interrupt the harassment. However, if the situation is becoming violent, this is not a good intervention.
- **Ask** directly. A bystander can speak directly to the victim and ask whether they would like to be accompanied away from the situation.
- **Refer** to an authority. A bystander can speak to a manager or security officer. This is the safest way to intervene.
- **Enlist** others. A bystander may ask other bystanders or coworkers to help. (RAINN, 2023)

Employer Grievance Mechanisms

Whether or not an employee has confronted the harasser directly, it is important that they follow the grievance mechanism that has been established by their employer in order to protect their rights. All employees should become aware of their employer's grievance mechanism, and employers should explain the process during regular employment-based sexual harassment trainings.



REPORTING EMPLOYEE SEXUAL HARASSMENT TO AN OUTSIDE ENTITY

While it is recommended that all employers have in place policies and a mechanism for reporting sexual harassment to outside entities, it is not always the case that they do. Employees who believe they have been the victim of sexual harassment at the workplace have the right to file a charge of sex discrimination with the Equal Opportunity Employment Commission (EEOC) and/or the appropriate Illinois state agency to complain about the harassment.

Employees who work for a **private business** that employs fewer than 15 people must file their charge with the Illinois Department of Human Rights (IDHR). IDHR will investigate charges of sexual harassment if there is a single employee. If the workplace has 15 or more employees, the employee may file claims with either the IDHR or the EEOC.

(For **public sector** employees, see “Public Sector Employment” below.)

Reporting to the EEOC

The EEOC receives charges of discrimination (sexual harassment) from employees whose workplace consists of 15 or more workers; labor unions and organizations; employment agencies; and state, federal, and local government agencies, as described in Title VII of the Civil Rights Act of 1964.

A charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination. In general, a charge must be filed within 180 calendar days from the day the discrimination took place (or 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis). It is best to file as soon as possible.

A charge of discrimination can be completed online, in person, or by mail:

- **Online.** The EEOC’s Public Portal asks a few questions to help determine whether the EEOC is the right federal agency to handle a complaint and to begin the filing process.
- **In person** at an EEOC Office. Appointments can be scheduled online or by walk-in. An in-person interview with an EEOC staff member is recommended as the best way to assess any sex discrimination and determine whether filing a charge of discrimination is the appropriate path. It is helpful to bring any information that will help EEOC staff understand the case as well as names and contact information for other people who know about what happened.
- **By mail.** A charge can be filed by sending a letter that includes information on the person filing, their contact information, a description of the harassment, when it took place, and other details. The EEOC will review the letter and respond as needed for more information.



EEOC does not take charges over the phone, but an individual can call 800-669-4000 to discuss their situation and for an explanation on how to file a charge.

Federal employees and applicants for federal jobs have a different complaint process and generally must contact an agency EEOC counselor within 45 days (EEOC, n.d.-d).

(For more details on reporting sexual harassment to the EEOC, see also “Resources” at the end of this course.)

SUING AN EMPLOYER OR HARASSER

The Civil Rights Act of 1964 also allows victims and witnesses of sexual harassment in the workplace to file a lawsuit against the employer and/or harasser. The victims can request a *right to sue* letter from the EEOC and then file a lawsuit in the state and federal courts with this letter (U.S. EEOC, n.d.-a).

Reporting in Illinois

The Illinois Department of Human Rights (IDHR) is the state agency responsible for enforcing the Illinois Human Rights Act and addressing instances of sexual harassment (IDHR, 2023).

PRIVATE SECTOR EMPLOYMENT

Individuals who have been sexually harassed may contact the Illinois Department of Human Rights and initiate a discrimination charge by phone, fax, email, mail, or in person within 300 days of the date of the offense. All IDHR investigations are confidential during the investigation, and the identity of witnesses may also be kept confidential upon request per the Human Rights Act (775 ILCS 5/1 et seq.).

In response to a revision of the Human Rights Act in 2018, the State of Illinois set up a helpline to simplify reporting sexual harassment. The **Sexual Harassment and Discrimination Helpline** (877-236-7703) is open Monday through Friday from 8:30 a.m. to 5:00 p.m. Callers are given options of how to report, including requesting a call-back from the agency or filing a report anonymously. The caller is also offered resources, including legal assistance and counseling, and any information given to the call center is confidential and protected by the Freedom of Information Act (IL SHDH, 2023).

PUBLIC SECTOR EMPLOYMENT

Persons who work in the public sector must pursue an investigation by an Ethics Officer in addition to that of the IDHR because these investigations are conducted separately. To file a report, the victim should contact the IDHR and also report the incident in at least one of the following ways:



- Contact their agency's Ethics Officer (EO). All state agencies in Illinois have a designated EO who can assist the employee with making a report as part of an internal process.
- Contact the Office of the Executive Inspector General (OEIG). The OEIG has the authority to conduct an investigation as an external process outside of the agency where the harassment occurred. The OEIG maintains the confidentiality of anyone who reports sexual harassment under the State Officials and Employees Ethics Act (5 ILCS 430/1 et seq.).
- Contact the Office of the Legislative Inspector General (OLIG). The OLIG investigates reports of sexual harassment that occur within entities of the Illinois legislature. Like the OEIG, it is an external process and maintains confidentiality under the State Officials and Employees Ethics Act (5 ILCS 430/1 et seq.).
(IL SHDH, 2023)

(See also "Resources" at the end of this course.)

VICTIM RELUCTANCE TO REPORTING

Many victims of sexual harassment delay reporting or choose not to report at all, and sexual harassment is thought to be underreported among clinicians, with multiple factors contributing to the reluctance to report. These include:

- Lack of knowledge of how to report and what situations may be reported
- Lack of trust in the authorities
- Lack of proof of the incident
- Minimization of the incident by the employee
- Fear of negative repercussions, including damage to one's reputation

In addition, human response to trauma includes fight, flight, freeze, and fawn. When this response is applied to sexual harassment in the workplace, an employee who "fights" is the employee who shares the situation and files a complaint. The employee whose response is "flight" may change jobs, transfer, or resign. The "freeze" response includes someone who does nothing and suffers in silence. Appeasement of the perpetrator, assuming the role of a silent bystander, or maintaining a relationship with the harasser are examples of "fawning."

(Women in Global Health, 2022)



“WHISTLEBLOWER” PROTECTIONS

Under both federal and Illinois state law, employees who report or complain about sexual harassment (whistleblowers) are protected from retaliation.

Federal Laws Protecting Reporters

Under Title VII of the Civil Rights Act of 1964, anyone who reports sexual harassment or opposes practices by their employer that are discriminatory on the basis of sex, who files a discrimination charge, or who testifies or participates in an investigation or litigatory process is protected from retaliation (EEOC, n.d.-f).

Illegal retaliation by employers includes:

- Discrimination against the claiming individual
- Firing the claiming individual
- Demotion or stripping title, duties, or responsibilities
- Threats against the claiming individual
- Harassment

Illinois Laws Protecting Reporters

In Illinois, filing a report or complaint of sexual harassment is protected from retaliation under the Ethics Act (5 ILCS 430/50). The whistleblower law protects all employees, including at-will employees whose jobs can be terminated without cause.

Retaliation may consist of actions that deter persons from reporting wrongdoings in the workplace. Prohibited **forms of retaliation** include:

- Demotion or termination of employment
- Writing poor work performance evaluations that are undeserved
- Requiring an undesirable transfer
- Verbal or physical abuse
- Spreading false rumors
- Making work difficult for the employee

If an employer in Illinois is determined to have retaliated against an employee, the law requires that the employer reinstate the employee to their original or equivalent position, pay double their



back pay with interest, reinstate all of their benefits and seniority, and pay all of their reasonable costs and attorney fees.

EMPLOYER RESPONSIBILITIES REGARDING SEXUAL HARASSMENT

The most powerful way to eradicate workplace sexual harassment is through prevention. The law in Illinois requires certain employers to have in place policies to prevent sexual harassment and to provide annual trainings about sexual harassment and how to file a grievance.

Sexual Harassment Policy Requirements

The Illinois Human Rights Act requires “all parties to a public contract and all eligible bidders” to provide a sexual harassment policy in writing in both English and Spanish that protects employees and job applicants. Unlike the federal law that only applies to employers of 15 or more persons, the Illinois law requires employers to have a written sexual harassment policy regardless of the number of persons employed. Section 2-105(A) (4) of the Act states that a sexual harassment policy must contain the following elements:

- A statement that sexual harassment is illegal
- The definition of sexual harassment under the Illinois Human Rights Act
- A description of the acts that constitute sexual harassment, with examples
- The employer’s internal complaint procedure, including penalties
- The legal recourse, investigative, and complaint process available through the Illinois Department of Human Rights (IDHR) and the Illinois Human Rights Commission (IHRC)
- Information as to how a person can contact IDHR and IHRC
- Information regarding protection against retaliation under Section 6-101 of the Illinois Human Rights Act
(Illinois General Assembly, 2020)

Training

The State of Illinois requires that all employers provide mandatory training each year to employees on the topic of sexual harassment. The training program (such as this course) must include at minimum:

- An explanation of sexual harassment, including its forms and types
- Actions to be taken by employees who experience or witness sexual harassment



- Reporting options within the workplace and to outside entities such as the Illinois Department of Human Rights
- Whistleblower protections (Illinois General Assembly, 2020)

EMPLOYER RESPONSIBILITIES

Employers are liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can be held liable if they **do not** reasonably try to prevent and promptly correct the harassing behavior and the employee unreasonably fails to take advantage of any preventive or corrective opportunities provided by the employer.

Employers can also be held liable for harassment by nonsupervisory employees or nonemployees over whom they have control (such as independent contractors or customers) if they knew or should have known about the harassment and failed to take prompt and appropriate corrective action (EEOC, n.d.-c).

CONCLUSION

Sexual harassment is prevalent in employment settings but often goes unreported. Illinois has put in place state laws to educate, protect, and assist employees with reporting sexual harassment. Effective prevention requires comprehensive policies and practices. Freedom from sexual harassment on the job is a human right, and employers have an ethical as well as a legal obligation to protect their employees from this form of abuse (Ross et al., 2019).



RESOURCES

Bystander intervention (Caltech)

<https://givingvoice.caltech.edu/raise-awareness/bystander-intervention>

Complaint form (Illinois Office of the Legislative Inspector General)

<https://ilga.gov/commission/lig/CaselnitiationForm.asp>

Complaint process (Illinois Office of the Executive Inspector General)

<https://oeig.illinois.gov/complaints/process.html>



Filing a charge (Illinois Department of Human Rights)
<https://dhr.illinois.gov/filing-a-charge.html>

How to file a charge of employment discrimination (EEOC)
<https://www.eeoc.gov/employees/howtofile.cfm>
800-669-4000

Illinois Sexual Harassment and Discrimination Helpline
877-236-7703 / 7-1-1 (TTY)
<https://shdh.illinois.gov/>

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TEST

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1. Which statement does **not** describe sexual harassment as defined by Illinois law?
 - a. Conduct of a sexual nature that creates an offensive working environment
 - b. Welcome sexual advances from a coworker made at a physical work location
 - c. A request for sexual favors as a condition of employment
 - d. Unwelcome sexual conduct that interferes with one's work performance

2. Which form of sexual harassment is the second primary type after "quid pro quo"?
 - a. Primary victimization
 - b. Abuse of power
 - c. Gender-related insults
 - d. Hostile work environment

3. Which action does the EEOC recommend an employee take if sexual harassment continues after the employee directly confronts the harasser?
 - a. After a few minutes, ask the harasser if their working relationship has been damaged
 - b. Follow the steps in the employer's antiharassment policy
 - c. Contact local law enforcement to report a case of workplace violence
 - d. Begin looking for a job with another employer

4. Which statement is **correct** regarding reporting sexual harassment for an employee of a private-sector employer in Illinois?
 - a. The report must be initiated within 30 days of the date of the offense.
 - b. The identity of accusers and witnesses cannot remain confidential once charges have been filed.
 - c. A confidential report can be made by calling the Sexual Harassment and Discrimination helpline.
 - d. Employees who work in the private sector must report to the Illinois Office of the Legislative Inspector General (OLIG).

5. Which statement is **correct** about whistleblower protections for those who file a report of sexual harassment in Illinois?
 - a. The law protects all employees, including at-will employees.
 - b. The law does not protect at-will employees whose job can be terminated without cause.
 - c. Protections do not provide for any lost pay for an employee who was retaliated against for reporting harassment.
 - d. Transferring an employee who reports sexual harassment to a less desirable position is allowed.



6. Which statement describes an employer responsibility regarding sexual harassment according to Illinois law?
- a. Employers bidding for a public contract must provide a written sexual harassment policy in both English and Spanish.
 - b. Employers must provide employees with sexual harassment training once every 3 years.
 - c. Employers with fewer than 15 employees must report sexual harassment to the Equal Employment Opportunity Commission (EEOC).
 - d. Employers must terminate the employment of individuals who are the subject of a sexual harassment report.

