

# Illinois Department of Human Rights

## Process for Charges Alleging Sexual Harassment



# Agenda

1. IDHR Overview
2. Sexual Harassment under the IL Human Rights Act
3. IDHR Enforcement
4. Legislative Updates
5. Training Institute

**Disclaimer:** *This presentation is intended for educational and informational purposes only, and is not to be considered as legal advice.*



# IDHR

- The Department of Human Rights (IDHR):
  - an investigatory agency that administers the Illinois Human Rights Act (IHRA), which prohibits discrimination in the workplace, housing, places of public accommodations, and financial credit institutions.
- IDHR conducts neutral, fair and impartial investigations.



# IDHR

## Charge Process:



1. Intake: Charge allegations are filed with IDHR and perfected charge is served on Respondent(s).
2. Mediation: Parties may voluntarily agree to mediate.
3. Investigation: IDHR obtains evidence (documents and testimony) from parties.
4. Findings: IDHR issues determination to parties.
5. Legal Review: IDHR's charge may go before the Illinois Human Rights Commission or circuit court.



# IDHR

Complainant's legal recourses will vary depending on IDHR's findings:

- 1) If IDHR finds **Substantial Evidence** (SE) of discrimination, Complainant may file a complaint with either:
  - a) The Illinois Human Rights Commission (IHRC) (or request IDHR do so on their behalf); or
  - b) The appropriate circuit court.
  
- 2) If IDHR **dismisses** the charge, Complainant may:
  - a) File a request for review (appeal) with the IHRC; or
  - b) File a complaint with the appropriate circuit court.



# IDHR

IDHR does not make credibility determinations in processing charges alleging unlawful discrimination or sexual harassment.

So, if a case determination hinges on conflicting evidence, IDHR will find “substantial evidence” so that a trier of fact can resolve the issue of credibility.



# IHRA

The IHRA specifically prohibits sexual harassment in the areas of employment, housing and education.

In employment, sexual harassment may be either:

- Quid pro quo; or
- Hostile work environment

1. Quid pro quo:

- submission is made (explicitly or implicitly) a term or condition of employment; or
- submission/rejection used as basis for employment decision



# IHRA

## 2. Hostile work environment:

- the conduct has the purpose/effect of substantially interfering with work performance or creating intimidating/hostile work environment.
- must be sufficiently severe or pervasive:
  - subjectively offensive as perceived by the victim; and
  - objectively hostile or abusive to a reasonable person
- conduct complained of cannot be occasional, isolated or trivial.





# IHRA

Under the IHRA, liability for an employer charged with sexual harassment depends in part on the identity of the alleged harasser:

## **Non-Managerial Employees:**

An employer is responsible for sexual harassment by employees who are non-managerial/supervisory only if the employer became aware of the conduct and failed to take reasonable corrective measures.

## **Managerial Employees:**

Employers are strictly liable for sexual harassment of employees by supervisory personnel regardless of whether the employer knew of such conduct.



# IHRA

For sexual harassment, the IHRA also:

1. Covers employers with one (1) or more employees.
2. Prohibits an individual employee or agent of an employer from engaging in sexual harassment.
3. Protects both men and women from sexual harassment by the opposite sex or the same sex.
4. Prohibits Retaliation against a person who:
  - complains of or opposes unlawful discrimination,
  - Files a discrimination charge with IDHR, or
  - Participates in an IDHR investigation.



# Enforcement Trends

All State-wide Discrimination Charges filed with IDHR over the past four years across all areas.

Charges Docketed by Area	FY 2017	FY 2016	FY 2015	FY 2014
Employment	2748	2909	3163	3028
Housing	282	289	353	389
Financial Credit	3	6	6	3
Public Accommodations	165	214	197	165
S.H. in Education	3	3	1	4
<b>TOTAL</b>	<b>3201</b>	<b>3421</b>	<b>3720</b>	<b>3589</b>



# Enforcement Trends

All State-wide Sexual Harassment Charges filed with IDHR in the Employment area.

Charges Docketed	FY 2017	FY 2016	FY 2015	FY 2014
Sexual Harassment	403	397	469	334



# Enforcement Trends

## Outcome of All Sexual Harassment Charges in Employment

Finding	FY 2017	FY 2016	FY 2015	FY 2014
Substantial Evidence (SE or Default)	35	95	134	89
Dismissal (FTP/LOJ/ LSE)	66	117	150	111
Administrative Closure (withdrawn or settled)	123	170	184	133
Pending/No Outcome	179	15	1	1
<b>TOTAL:</b>	<b>403</b>	<b>397</b>	<b>469</b>	<b>334</b>



# Enforcement Trends

## Employment Allegations by Basis (Top 8)

FY 2017	FY 2016	FY 2015	FY 2014
<b>Retaliation: 948</b>	<b>Retaliation: 1022</b>	<b>Sex: 1078</b>	<b>Retaliation: 1019</b>
Race: 768	Race: 867	Retaliation: 1032	Sex: 913
Disability: 714	Disability: 714	Race: 902	Disability: 867
Age: 628	Sex: 645	Disability: 847	Race: 851
Sex: 539	Age: 635	Age: 731	Age: 726
Sexual Har: 410	Sexual Har.: 421	Sexual Har.: 405	Nat. Origin: 428
Nat. Origin: 382	Nat. Origin: 375	Nat. Origin: 385	Sexual Har.: 296
Sexual Or.: 77	Sexual Or.: 82	Sexual Or.: 94	Sexual Or.: 96



# Enforcement Trends

## Employment Charges by Respondent (Top 8)

FY 2017	FY 2016	FY 2015	FY 2014
<b>Private: 2095</b>	<b>Private: 2203</b>	<b>Private: 2364</b>	<b>Private: 2309</b>
Individuals: 189	Local Gov.: 205	Individuals: 209	Local Gov: 207
Local Gov: 169	Individuals: 205	Local Gov: 188	Individuals: 135
State Gov: 96	State Gov: 108	State Gov: 135	Schools: 134
Schools: 72	Schools: 78	Schools: 132	State Gov: 118
Universities: 58	Universities: 56	Universities: 62	Universities: 59
Unions: 36	Unions: 46	E. Agencies: 41	Unions: 36
E. Agencies: 33	E. Agencies: 32	Unions: 32	E. Agencies: 30



# Recent Legislation Impacting Sexual Harassment

## Sexual Harassment in Education

### ***Posting Requirement.***

Public Act 96-0574 (eff. August 18, 2009)

Required institutions of higher education to post information regarding sexual harassment prohibition in common areas or to include in online registration process.

### ***Expanded from Higher Education to All Education Levels***

Public Act 96-1319 (eff. July 27, 2010)

“Sexual Harassment in Higher Education” expanded to cover elementary, secondary and higher education levels.





# Recent Legislation Impacting Sexual Harassment

## Employment

**Unpaid Interns:** Public Act 98-1037 (eff. January 1, 2015)

**Amends the definition of “Employee”** under Section 2-101(A)(1) Illinois Human Rights Act to include unpaid interns for purposes of charges of discrimination alleging sexual harassment (*Section 2-102(D)*)



# Recent Legislation Impacting Sexual Harassment

## Who is an Unpaid Intern?

- Someone who performs work for an employer who is not committed to hiring the person at the end of the internship;
- has entered into an agreement with the employer that the person is not entitled to wages for the work performed;
- performs work that supplements training given in an educational environment that may enhance the employability of the intern and provides experience to the person; and
- does not displace regular employees, works under close supervision of existing staff, and provides no immediate advantage to the employer and may occasionally impede the operations of the employer



# Recent Legislation Impacting Sexual Harassment

## **Sexual Harassment Prevention in Government:**

Public Act 100-0554 (eff. November 16, 2017)

**Amends the Employment section of the IHRA** to require IDHR to establish and maintain a sexual harassment hotline.  
*(Adds Section 2-107)*

Also amends other statutes to require training and to allow for reporting of sexual harassment allegations:

- IL Administrative Procedures Act.
- State Officials and Employees Ethics Act
- Secretary of State Act,
- Lobbyist Registration Act



# The IDHR Training Institute

IDHR offers free and paid training opportunities for employers and employees via its Institute for Training and Development

Beneficial for preventing forms of discrimination and keeping up to date with current changes to laws

Topics:

- Sexual Harassment Prevention
- State and federal disability laws
- Conflict Resolution
- Diversity Awareness
- And more.



## Contact Information:

### **ILLINOIS DEPARTMENT OF HUMAN RIGHTS**

100 West Randolph St., Suite 10-100

Chicago, IL 60601

Chicago: (312) 814-6200

Springfield: (217) 785-5100

Marion: (618) 993-7463

Toll free: (800) 662-3942

TTY: (866) 740-3953

Email: [IDHR.Webmail@illinois.gov](mailto:IDHR.Webmail@illinois.gov)

Website: [www.illinois.gov/dhr](http://www.illinois.gov/dhr)

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