

LITIGATING SEXUAL HARASSMENT CLAIMS IN COURT

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Who is a “Covered Employer”?

- ➔ Under Title VII, a covered employer is a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person
- ➔ The Illinois Human Rights Act only requires **one** employee for discrimination based on pregnancy or sexual harassment (or physical or mental disability)

Remedies Available Under Both Title VII and the Illinois Human Rights Act:

- ➔ Back pay
- ➔ Reinstatement
- ➔ Front pay
- ➔ Compensatory damages
- ➔ Attorneys' fees and costs

Remedies Distinct to Title VII and the Illinois Human Rights Act:

➔ Title VII

- Punitive damages (theoretically)
- Compensatory damages are progressively capped based in the employer's size

➔ IL Human Rights Act

- Punitive damages are not available
- Uncapped compensatory damages

Sexual Orientation: When is it Covered?

- ➔ Not by Title VII (but sex stereotyping is)
- ➔ Covered by Illinois Human Rights Act (also covers gender identity)

Individual Harasser Liability

- ➔ Illinois Human Rights Act provides that an individual can be liable in cases of sex harassment and retaliation. This applies to all employers, regardless of size.
- ➔ Title VII does not have individual liability.

Defenses Available to Employers

- ➔ Faragher / Ellerth defense only available in Title VII cases

Life of a Lawsuit

- ➔ IHRA – Initial charge must be filed within 180 days of alleged occurrence
- ➔ Title VII – Initial charge must be filed within 300 days of alleged occurrence
- ➔ Lawsuit must be filed within 90 days of the right to sue notice under both laws
- ➔ Once commenced, average life of a lawsuit is two years