STP Articles

Sexual Harassment: Texas Legislature Expands Employer Liability

STP Episode 12 - Risk Pool Human Resources Training: "Civility in the Workplace" and "Harassment Training for Supervisors" explains: (1) training provided by the Pool to address behaviors that cause unhealthy conflict in the workplace; and (2) the importance of harassment training for supervisors.

Sexual harassment claims can be made under federal or state law. Title VII of the federal Civil Rights Act of 1964, which applies to employers with 15 or more employees, is the federal law that protects employees from unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Federal law sexual harassment claims are nothing new, but the Texas Legislature recently amended *state law* in ways that could shift more harassment filings to state court.

Senate Bill 45 expands the definition of "employer" in the context of sexual harassment claims to "a person who employs one or more employees or acts directly in the interests of an employer in relation to an employee." The change from 15 employees to "one or more employees" subjects dozens of smaller cities to state law harassment claims. The bill also defines "sexual harassment" as:

> An unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:
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> - submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;
> - submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;
> - the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
> - the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

The bill also expands who can be liable for a claim. Supervisors and managers, as well as anyone acting "directly in the interests of an employer," may now be held individually liable for sexual harassment damages if they "know or should have known that the conduct was occurring" and "fail to take immediate and appropriate corrective action." A person acting directly in the interests of an employer could include vendors or other third parties. Immediate and appropriate corrective action isn't defined in the law, but a complaint need not be in writing to "start the clock." That's one reason a written policy detailing appropriate procedures is a must.

Another bill, H.B. 21, extends the time an employee must file a sexual harassment claim with the Texas Workforce Commission from 180 to 300 days. (An employee must file a sexual harassment complaint with the Commission prior to bringing a lawsuit in state court.) State law damages caps, ranging from $50,000 to $300,000 (depending on the number of employees), remain in place.

Every city should consult with local legal counsel to review its sexual harassment policy, educate employees on the policy and state and federal law, and train employees and supervisors on procedures for immediate action should a complaint arise. Smaller cities that may not have a policy should immediately develop and implement one. The Risk Pool provides live and online harassment training, and the Texas Municipal Human Resources Association (www.tmhra.org) provides example personnel policies for their members.

Questions? Contact the Risk Pool's Loss Prevention Department at 512-491-2300 or lossprevention@tmlirp.org.