

# **DCFS Guidelines for Responding to Sexual Harassment in the Workplace**



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## Sexual Harassment in State Agencies

WHEREAS, in 1980 Executive Order No. 1 entitled "Sexual Harassment" declared that all state employees have the right to work in an environment free of sexual harassment, provided a descriptive definition of sexual harassment and directed various actions by agencies to provide training, disseminate information and prevent sexual harassment from occurring, and;

WHEREAS, in the intervening years, court decisions and changes in rules and laws, especially enactment of the Civil Rights Act of 1991, have resulted in definitions of sexual harassment becoming more precise, the potential liability of employers greatly increasing and the point of view for determining sexual harassment becoming more victim-oriented, and;

WHEREAS, despite an increased awareness of sexual harassment in the workplace and gains made by women in managerial and professional ranks, surveys indicate widespread occurrences of sexual harassment in all types of environments, and;

WHEREAS, even if there is no litigation as a result of sexual harassment, ignoring workplace harassment leads to very significant hidden costs, including personal loss of dignity, respect for others, absenteeism, declining productivity, and loss of valuable employees, and;

WHEREAS, two distinct types of sexual harassment have been defined by the courts; (a) Hostile environment harassment- situations where the unwelcome sexual conduct of co-workers or supervisors interferes with an individual's ability to work or creates an intimidating or offensive atmosphere, and (b) Quid pro quo harassment – situations where a workplace superior or co-worker demands some degree of sexual favor (ranging from a date to actual sex) and threatens to or actually does retaliate in a way that has a tangible effect on the working conditions of the harassment victim if he or she refuses to acquiesce.

Therefore, in order to provide insofar as possible a work environment free of sexual harassment and to assure that a clear, consistent, firm and up-to-date policy dealing with sexual harassment is applied throughout the agencies of state government; I hereby order pursuant to the authority vested in me by Article V, Section of the Illinois Constitution as follows:

1. The head of each department, agency, board or commission under the jurisdiction of the Governor shall adopt and implement a Policy on Sexual Harassment. Among other provisions the policy describes the state and federal laws which make sexual harassment illegal and the consequences of violating those laws; defines sexual harassment using examples; and sets forth options available to an employee for bringing a complaint within the agency and with outside agencies; and, finally, provides for measures to prevent retaliation against an employee for making a complaint.
2. Each such head of a department, agency, board or commission shall assure that the Policy is disseminated to each employee under its jurisdiction
3. The Department of Human Rights and Central Management Services shall review the Policy on Sexual Harassment at least annually and make recommendations for changes to the Governor as needed to reflect the continuing evolution of sexual harassment laws, rules and caselaw as well as to increase the effectiveness of the Policy.
4. The Department of Human Rights and Central Management Services shall establish comprehensive training programs for EEO Officers, supervisors and new employees which will (a) explain the Policy and the recourse available to employees who feel they have been subject to harassment, and (b) address the need for a speedy and thorough response to any complaint, report or observation relating to sexual harassment in the workplace including sensitivity, investigative methods, confidentiality and ranges of disciplinary action.
5. The Department of Central Management Services shall make itself available on an ongoing basis to assist and advise departments, agencies, boards and commissions in internal investigations of alleged instances of sexual harassment and in matters of disciplinary actions.

This order shall not be construed to abridge or expand the rights of any person under the constitutions or statutes of the United States or of this State.

Executive Order Number 1 (1990) is hereby repealed.

This Order shall be effective immediately

May 12, 2009

Pat Quinn  
Governor



## **A Message from the Director of the Illinois Department of Children and Family Services**

It is the policy of the Department of Children and Family Services that all employees be permitted to work free from all types of discrimination including sexual harassment by Department employees of any level, and of the same or opposite sex.

Because sexual harassment creates intolerable working conditions and hinders job performance, I am directing all managers to take prompt and firm action to end any sexual harassment in the DCFS workplace.

## What is sexual harassment?

Sexual harassment is a form of sex discrimination and is illegal. Sex discrimination is prohibited by Title VII of the Civil Rights Act of 1964, as amended in 1991, which also outlaws discrimination in employment on the basis of race, creed, color, or natural origin.

According to guidelines issued by the federal Equal Employment Opportunity Commission (EEOC) in 1980, engaging in and or permitting sexual harassment constitutes a discriminatory employment practice that violates federal equal employment opportunity laws. The EEOC definition of sexual harassment is “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

According to the Illinois Human Rights Act, sexual harassment is defined as 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 implicitly or explicitly a term or condition of employment,
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual, or
3. Such conduct has the purpose or effect of unreasonably interfering with the individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment has too often remained hidden, been treated as inevitable or blamed on the victim. The long history of silence has added to the embarrassment of victims, making them reluctant to discuss harassment they have endured. Some victims have not made a report because they fear retaliation or believe nothing can be done.

Courts have held that it is the impact of the behavior on the victims that determines whether sexual harassment has occurred, not the intent of the person carrying out the act(s).

## **Types of sexual harassment**

Charges of sexual harassment, can be in response to unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature, including sexual remarks, touching/grabbing/brushing, repeated unwelcome requests for dates, sexual propositions and sexual relations.

### ***Job benefit***

Demanding sexual favors in return for some tangible job benefit is known as quid pro quo harassment and is perhaps the most widely recognized type of sexual harassment.

The message can be explicit (“your acceptance or rejection of this behavior will result in my giving or withholding that benefit”) or implicit (a noticeable change in attitude, performance evaluation, work assignment, etc., following an employee’s negative reaction to a sexual suggestion).

The quid pro quo situation often depends on the people involved having unequal power at the working place. Rank or supervisory relationship may constitute the power differential, or the power difference may be one employee’s control over conditions with a direct effect on another’s ability to perform his/her job.

### ***Work environment***

Establishment of a hostile environment in terms of sexual harassment involves repeated actions of a sexual nature which make the work environment embarrassing, offensive, or intimidating – hence discriminatory – to the victim.

Examples: Constant subjection to lewd remarks, sexual jokes, suggestive comments or sexually stereotyped insults.

Included in this category are sexually oriented visuals, which can be used as evidence in court cases where sexual harassment has been charged. Such visuals, which portray males and females more as sexual objects than as professionals, can contribute toward creating an offensive, intimidating, and hostile work environment.

## What the victim of sexual harassment should do

You have several options if you feel you have been victimized. It is not necessary that the person making the complaint be the one toward whom the sexual harassment is directed. You may choose any or all of the following alternatives, in any order.

### *Informal responses*

- Immediate, or oral reaction during an occurrence: “Please stop that,” or “I don’t like that,” etc.
- Oral statement with a witness present: Approach the alleged harasser at a time when you can talk to him or her, saying something like “I want you to understand that I object to what you have been doing...”
- Written statement to the alleged harasser (be sure to keep a copy).

**Note** that establishing the unwelcome nature of the behavior will also be useful if you decide to pursue a formal complaint.

You **may** go to your supervisor (or, if it seems more appropriate to his or her supervisor) and ask him/her to resolve the situation.

You **may** consult informally, by telephone or in person, with the Equal Employment Opportunity officer on the matter. According to personnel rules you have the right to take Department time to consult with the EEO officer as long as you give your supervisor advance notice.

It may also be helpful to collect documents that support your work record.

## ***Formal complaints***

You may make a formal complaint without using any informal methods, or if harassment continues after informal methods have been tried. Your choices for making a formal complaint are:

**Equal Employment Opportunity Officer  
Office of Affirmative Action  
Department of Children and Family Services**

1911 South Indiana Avenue  
4th Floor  
Chicago, Illinois 60616  
(312) 328-2495

406 East Monroe Street  
Station #55  
Springfield, Illinois 62701  
(217) 524-1248

Note that if you choose the EEO Officer, the Department's fact finding/investigation and disposition of the complaint shall not exceed 180 days after the alleged harassment occurred. This permits you to attempt resolution of a complaint within the Department before reaching the deadline for filing a complaint outside the Department.

**Department of Human Rights**

222 College Street  
Springfield, Illinois 62701  
(217) 785-5100

or

100 West Randolph, Suite 10-100  
Chicago, Illinois 60601  
(312) 814-6200

**Equal Employment Opportunity Commission**

500 West Madison, 28th Floor  
Chicago, Illinois 60661  
(312) 353-2713

or

1222 Spruce Street, Room 8-100  
St. Louis, Missouri 63103  
(314) 539-7800

## **Managers' responsibilities**

Sexual harassment is a prohibited form of sex-based discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991. This activity subjects its victims to physical and emotional stress which can easily lead to health problems, with an increase in work absences and lower job performance. Court proceedings are expensive – in defense costs, awards, loss of time, and cost to personal reputations.

Federal courts have found employers liable for damages whether the offender is a manager, a non-supervisory employee, or a third party, and legal liability usually applies even if the manager has no direct knowledge of the incidents.

A manager's interpretation of an incident as a personality conflict or misunderstanding does not protect the manager or the Department against liability. When interpreting such an incident, the manager should be aware that federal courts have recognized sexually stereotypical insults as well as demeaning propositions to be cause for action under Title VII.

The existence of any prior relationship between the complainant and the alleged harasser also does not protect the manager or the Department against liability.

It is every manager's responsibility to enforce this Department's policy against prohibited discrimination, including sexual harassment. All complaints of sexual harassment shall be received as notice of alleged violations of Department policy.

### **Reporting**

The first step for a manager is to immediately notify the DCFS Equal Employment Opportunity Officer that an informal complaint of sexual harassment is being investigated. The manager shall be sure that the victim understands his/her right to file a formal complaint through the Department's Affirmative Action Office or outside the Department through the Illinois Department of Human Rights or the EOC (federal).

## ***Investigating informal and formal complaints***

Within three to five days, the manager shall try to find as many facts, witnesses and relevant documents related to the incident as possible. All phases of the investigatory process are to be thoroughly documented. The fact finding shall be handled in a manner that protects the confidentiality of the victim and the alleged harasser. The victim should be instructed to report immediately any additional incidents of harassment or attempts at retaliation.

In the attempt to find witnesses, a manager may find additional victims. Current studies show that harassment is usually not an isolated phenomenon, but rather a general pattern of behavior. Also, one of the criteria for defining harassment and determining appropriate disciplinary action is the historical pattern of behavior of the offender.

The accused harasser should also be interviewed to obtain his or her side of the story. This person should be informed of the sexual harassment policy and possible disciplinary actions. The accused harasser should be told that no act of retaliation will be tolerated.

If the manager in charge of investigating an informal complaint decides that no sexual harassment has occurred, he or she should inform the appropriate supervisor and the EEO officer in the Department's Office of Affirmative Action of his or her decision to close the informal investigation. The complainant should be reminded of his or her right to seek a formal investigation through the Office of Affirmative Action.

## ***Discipline***

If the manager handling an informal complaint decides that sexual harassment has occurred, he or she should consult with the appropriate superior and the EEO officer about appropriate disciplinary action. If the Affirmative Action Office makes a sexual harassment finding as a result of a formal complaint, appropriate disciplinary action (ranging from warning or suspension up to dismissal) will be determined in consultation with the Office of Labor Relations and shall be implemented by the Department.

Progressive discipline equivalent to that used to correct other

violations of Department policy shall be used, with the assistance of Labor Relations staff and in conformance with personnel rules. (See “Corrective Action” section on the next page.)

If a formal complaint is filed outside the Department and upheld by the state Human Rights Commission or the federal Equal Employment Opportunity Commission, the complainant may be entitled to various forms of relief. Under the Illinois Human Rights Act, for example, a complainant may be:

- Hired, reinstated or upgraded;
- Granted actual damages, back pay, and interest;
- Granted previously denied fringe benefits;
- Admitted to programs or memberships;
- Paid reasonable attorney fees and expert witness fees incurred in maintaining the legal action.

## ***Monitoring***

After disciplinary action is taken, the manager should monitor the relationship between the offender and the victim closely to make sure that harassment has ceased and no retaliation is attempted. All these actions should be thoroughly documented in case of further official action such as administrative review by EEOC or civil court suit.

## ***Prevention***

Letting employees under your supervision know that you support the policy prohibiting sexual harassment, taking appropriate action when you see behavior that may constitute sexual harassment (even before a complaint is made) and handling all complaints seriously will have the effect of deterring sexual harassment in the workplace.

## **The Department's responsibilities**

### ***Corrective action***

The Department shall ensure that the offender employee receives appropriate assistance in breaking the patterns of behavior which directly contributed to sexual harassment. In many cases this assistance will consist of referrals to counseling services through the Department's Employee Assistance Program. This assistance will be in addition to any disciplinary action deemed necessary by the Department.

If, in spite of disciplinary action and assistance to an offender, he or she continues to sexually harass others, further disciplinary action shall be taken, to the extent of the discharge where appropriate.

### ***Affirmative Action Officer's role***

The Affirmative Action Office is available at any time to consult with managers on the proper procedures to follow. These may vary from case to case because of the wide range of offenses that make up sexual harassment. The administrator of OAA has the option of taking charge of the fact-finding process and/or seeking the help of the Office of Labor Relations when that office's involvement is needed.

Duties of the OAA include attempts to mediate in any sexual harassment situation. The OAA normally tries to resolve sexual harassment complaints within 30 days. The internal fact-finding/investigation and disposition of the report must be completed well before 180 days of the alleged incident, so as to stay within the filing deadline of the state Department of Human Rights.

### **False Reporting**

A false report of sexual harassment, made knowingly and maliciously, will result in formal disciplinary action by the Department. (Lack of visible evidence of change after a decision and/or disposition of a report of sexual harassment shall not necessarily indicate that the report was false.)

DCFS is an equal opportunity employer,  
and prohibits unlawful discrimination  
in all of its programs and/or services.