

Gray Reed Legal Alert

Texas Significantly Expands Employer and Employee Liability for Sexual Harassment

The number **15** has significant meaning for employers in Texas. As a general rule, Texas employers who have fewer than 15 employees are not covered by the Texas Labor Code's prohibitions against sexual harassment (and other forms of discrimination). Senate Bill 45, signed by Governor Greg Abbott on May 30, 2021, changes that.

Changes to the Texas Labor Code

Effective September 1, 2021, any person or entity who "employs one or more employees" or who "acts directly in the interests of an employer in relation to an employee" will be a covered "employer" for purposes of sexual harassment under the Texas Labor Code. This is a significant expansion of the persons who may be liable for sexual harassment of an employee, potentially including HR personnel, managers, owners, policy-makers or others who either have or should have control over workplace conduct.

The new law defines "sexual harassment" as follows:

- "Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:
 - 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.

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Senate Bill 45 then identifies a heightened standard for employer remediation of sexual harassment, providing that it is an unlawful employment practice:

- “[I]f sexual harassment of an employee occurs and the employer or the employer’s agents or supervisors:
 - Know or should have known that the conduct constituting sexual harassment was occurring; and
 - Fail to take immediate and appropriate corrective action.”

Further, Senate Bill 45 expands the limitations period from 180 to 300 days. An employee will now have an additional 120 days to bring a claim under the Texas Labor Code with the Texas Workforce Commission Civil Rights Division.

Practical Implications for Employers

So what are some practical things that employers can do now to prepare for this expanded law?

- Publish a clearly written, robust anti-harassment policy that provides multiple avenues for employees to make a complaint and describes what will be done in response.
- Train employees and management on the policy and emphasize the need and obligation to report harassing conduct in the workplace, making sure to note the broad range of individuals who may now be liable for such conduct.
- Educate managers and supervisors on the importance of taking immediate and appropriate actions to recognize and address potential harassing conduct.
- Assure that you have the appropriate processes and personnel in place to rapidly react to complaints, including conducting a thorough investigation, making appropriate recommendations and taking necessary remedial action.

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