

SEXUAL HARASSMENT IN THE WORKPLACE:

GUIDELINES AND LEGAL REQUIREMENTS FOR RHODE ISLAND EMPLOYERS



**Rhode Island Commission for Human Rights
180 Westminster Street, Third Floor
Providence, RI 02903
222-2661 (Voice) 222-2664 (TDD)
www.richr.ri.gov**

GUIDELINES ON SEXUAL HARASSMENT

The following guidelines of the Rhode Island Commission for Human Rights were adopted in accordance with the Administrative Procedures Act, Title 42, Chapter 35 of the General Laws of Rhode Island. They were originally filed on October 19, 1988. They were refiled in compliance with Section 42-35-4.1 of the General Laws of Rhode Island. Every Rhode Island employer is encouraged to utilize these guidelines in order to foster a workplace free of sexual harassment.

3000. SEX DISCRIMINATION

3001. Sexual Harassment

3001(A) Harassment on the basis of sex is a violation of the Fair Employment Practices Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3001(B) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

3001(C) Applying general Fair Employment Practices Act principles, an employer, employment agency, employee-referring source or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

3001(D) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

3001(E) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

3001(F) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under the Fair Employment Practices Act, and developing methods to sensitize all concerned.

3001(G) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for other unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

WHAT THE LAW REQUIRES

The General Laws of Rhode Island place specific requirements on Rhode Island employers above and beyond the general prohibition of sexual harassment in the workplace contained in the Fair Employment Practices Act.

Required Policy on Sexual Harassment

Every Rhode Island employer that employs fifty (50) or more employees must adopt and disseminate a policy against sexual harassment. Section 28-51-2 of the General Laws of Rhode Island entitled "Adoption of workplace policy and statement", provides as follows:

(a) All employers and employment agencies shall promote a workplace free of sexual harassment.

(b) Every employer shall:

(1) Adopt a policy against sexual harassment which includes:

(i) A statement that sexual harassment in the workplace is unlawful;

(ii) A statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;

(iii) A description and examples of sexual harassment;

(iv) A statement of the range of consequences for employees who are found to have committed sexual harassment;

(v) A description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and

(vi) The identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact those agencies.

(2) Provide to all employees a written copy of the employer's policy against sexual harassment; provided, that a new employee shall be provided such a copy at the time of his or her employment.

(c) Employers are encouraged to conduct an education and training program for new employees and members, within one year of commencement of employment or membership, which includes at a minimum the information set forth in this section. Employers are encouraged to conduct additional training for new supervisory and managerial employees within one year of commencement of employment which shall include at a minimum the information set forth in subsection (b), the specific responsibilities of supervisory and managerial employees and the methods that these employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Employers and appropriate state agencies are encouraged to cooperate in making education and training available.

(d) Employers shall provide copies of their written policies on sexual harassment to all employees upon their request on or before September 1, 1997.

(e) Employers shall be required to maintain copies of their written policies on sexual harassment at their business premises, and copies of the policies shall be made available to any state or federal employment discrimination enforcement agency upon request.

Required Notice of Disposition of Complaint

In 2003, the Rhode Island General Assembly amended the Fair Employment Practices Act to require that employers who receive internal complaints of workplace harassment from employees, including, but not limited to, complaints of sexual harassment, must, upon request, provide the employee with a written statement on the disposition of the complaint including a description of any action taken in resolution of the complaint. Failure to notify the employee of the disposition of their complaint is a violation of the Fair Employment Practices Act.