

WHAT IS YOUR GAME PLAN TO HANDLE AMENDMENTS TO TEXAS' SEXUAL HARASSMENT LAWS?

"I have a plan of action, but the game is a game of adjustments." - Mike Krzyzewski

Amendments to the Texas Labor Code have increased the potential liability for all Texas employers and individuals acting on the company's behalf when sexual harassment claims are made.

Effective September 1, 2021, sexual harassment laws in Texas increased the liability of all Texas employers and any individual acting on its behalf. Here are the highlights:

Expanded Definition of Employer

Section 21.141 will be added to the Texas Labor Code and will expand liability to all Texas employers, regardless of the number of employees. "Employer" will be defined as "a person who: (A) employs one or more employees; or (B) acts directly in the interests of an employer in relation to an employee." Additionally, Senate Bill 45 opens the door to individual liability—specifically, liability for managers and others acting on the employer's behalf. Broadly, "employer" includes owners, operators, directors, officers, managers, non-managerial employees, and potentially even contractors, vendors, or any individual who appears to be acting for the employer.

New Definition for Sexual Harassment.

Texas Labor Code § 21.141 will add a detailed definition of "sexual harassment." It codifies the current state and federal case law sexual harassment definition. The amended language reads:

"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:

- A. submission or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;
- B. the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
- C. the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.



HEAD'S UP!

Employers need to revise handbooks and provide new training to all employees on sexual harassment.

Requirement to Take "Immediate and Appropriate Action"

Senate Bill 45 also requires employers to take "immediate and appropriate action" when an employee asserts a sexual harassment complaint. Texas Labor Code § 21.141 will provide that an "unlawful employment practice" occurs if:

1. there is sexual harassment of an employee and
2. the employer or employer's agents or supervisors:
 - A. know or should have known that the conduct constituting sexual harassment was occurring; and
 - B. fail to take immediate and appropriate corrective action.

What constitutes "immediate and appropriate corrective action" is undefined; therefore, courts will have to interpret the statute and tell us what "immediate and appropriate corrective action" is once these claims are litigated.

Extended Deadline to File Sexual Harassment Charge

House Bill 21 amends Texas Labor Code Section 21.201(g) to increase the charge filing period with the Texas Workforce Commission to 300 days (previously 180 days) from the date of the alleged sexual harassment. Again, this expanded time period only applies to sexual harassment claims; it does not apply to other forms of discrimination, namely discrimination based on sex (not constituting sexual harassment), race, color, disability, national origin, or religion.



HEAD'S UP!

Employers should re-evaluate their handling of sexual harassment investigations based on the requirement to take "immediate and appropriate action" once a claim is made.



Huddle with Stewart Law Group to discuss Texas' amended sexual harassment laws or to assist on other employment and labor issues. Contact us at info@stewartlawgrp.com.