

Texas Expands Sexual Harassment Protections for Employees, Exposure for Employers and Individuals

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Beginning September 1, 2021, Texas employers of any size may be sued for sexual harassment in the workplace under legislative changes (SB 45) passed by the Texas legislature. SB 45 also expands liability to include individuals and business entities.

Additional legislation (HB 21), also effective September 1, increases the time in which an employee must file a sexual harassment charge with the Texas Workforce Commission Civil Rights Division from 180 days to 300 days from the date the alleged conduct occurred.

The expanded definition of “employer” in SB 45 is a significant departure for Texas. Historically, when it comes to almost every type of statutory discrimination, the state, with rare exception, stays consistent with, or at least not more expansive than, federal law. Now, with the passage of SB 45, Texas offers greater protection than federal law for sexual harassment victims in the workplace. This may be an influence of the Me Too movement, which started in 2017 as a form of online activism intended to raise awareness of sexual assault.

Under the previous law, the Texas Labor Code limited potential liability for sexual harassment claims to employers with at least 15 employees and limited liability to businesses, not individuals, consistent with federal law. Now, employers of any size can be sued for sexual harassment in Texas, and the door has been opened to individual liability as well.

The revised Texas Labor Code calls for liability if there is a claim of sexual harassment and the employer:

1. Knows or should have known that the conduct was occurring; and
2. Fails to take “immediate and appropriate corrective action.”

With the newly expanded coverage, employers of every size need to ensure they are following best practices to prevent sexual harassment in the workplace and handle complaints promptly, thoroughly, and appropriately when they arise. Best practices include implementing policies that prohibit sexual harassment in the workplace, provide complaint mechanisms, and prohibit retaliation against employees who raise concerns or participate in workplace investigations in good faith. Employers should ensure robust complaint and investigation channels to address concerns promptly and appropriately when they arise.

Texas law does not require anti-harassment training, but regular workplace training for employers and managers to prohibit sexual harassment and other forms of discrimination and harassment in the workplace is an important part of risk management for employers.

Please contact a Jackson Lewis attorney with any questions related to the new law, harassment policies, training for management and employees, and other preventive practices.

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