

RECENT DEVELOPMENTS IN SEXUAL HARASSMENT LITIGATION IN TEXAS

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NEW STATE STATUTES

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EXPANSION OF STATUTE OF LIMITATIONS

- House Bill 21 (effective September 1, 2021) extended the statute of limitations to file a sexual harassment complaint with the Texas Workforce Commission from 180 days of the alleged sexual harassment to 300 days. Tex. Lab. Code Ann. § 21.202(a-1).
- It applies only to complaints which contain allegations of sexual harassment that occurred on or after September 1, 2021.
- HB 21 does not affect the statute of limitations for other forms of harassment or discrimination, including other forms of sex discrimination



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EXPANSION OF LIABILITY

- Senate Bill 45 (effective September 1, 2021) changed the definition of “employer” for sexual harassment claims to:
- “Employer” means a person who:
 - (A) employs one or more employees; or
 - (B) acts directly in the interests of an employer in relation to an employee.

Tex. Lab. Code Ann. § 21.141(1).

This new definition opens agents, supervisors, and managers to liability for both sexual harassment itself and for not taking immediate and appropriate corrective action in response to sexual harassment.



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CODIFIED “SEXUAL HARASSMENT”

Codified the definition of “sexual harassment” (which was developed through case law interpreting both federal and state cases) as:

“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:

- A) submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;
- B) 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;
- C) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
- D) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment. Tex. Lab. Code. § 21.141(2).



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CHANGED THE STANDARD FOR EMPLOYER’S ACTION

- Previously, employers were obligated to take prompt and effective remedial action in response to sexual harassment.
- SB 45 changed the standard to “immediate and appropriate corrective action.” Id. at § 21.142(2).
- SB 45 applies only to complaints which contain allegations of sexual harassment that occurred on or after September 1, 2021.



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