

When the Complaint Becomes the Case

Retaliation in Sexual Harassment Litigation

Illinois Human Rights Commission
Lunch & Learn

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Sexual Harassment

Title VII of the Civil Rights Act of 1964

- ▶ It unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex”
 - ▶ *Quid Pro Quo*
 - ▶ *Hostile Work Environment*

Retaliation under Title VII

- ▶ To state a claim for retaliation, a plaintiff must allege the following: “(i) that she engaged in a statutorily protected activity, (ii) she suffered an adverse action at the hands of the defendant, and (iii) there was a causal link between the protected activity and the adverse action.”

Burlington Northern & Santa Fe Ry. v. White

- ▶ (1) Anti-retaliation provision, unlike the substantive provision, was not limited to discriminatory actions that affected the terms and conditions of employment
- ▶ (2) the employee needs to show that a reasonable employee would have found the challenged action materially adverse.

Faragher/Ellerth Defense

- ▶ Applies in cases where a supervisor sexually harasses an employee.
- ▶ Employer can avoid liability by showing that “it exercised reasonable care to prevent and correct promptly any sexually harassing behavior” and “the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by her employer or to avoid harm otherwise.”
 - ▶ *Burlington Indus., v. Ellerth*, 524 U.S. 742 (1998)
 - ▶ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998)

Sexual Harassment

Illinois Human Rights Act

775 ILCS 5/2-102(D)

- ▶ It is a civil rights violation: for any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment; provided, that an employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

775 ICLS 5/2-102(D-5)

- ▶ For any employer, employee agent of any employer, employment agency, or labor organization to engage in sexual harassment of nonemployees in the workplace. An employer is responsible for sexual harassment of nonemployees by the employer's nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. For the purposes of this subdivision (D-5), "nonemployee" means a person who is not otherwise an employee of the employer and is directly performing services for the employer pursuant to a contract with that employer. "Nonemployee" includes contractors and consultants. This subdivision applies to sexual harassment occurring on or after January 1, 2020 (the effective date of Public Act 101-221).

Definition of Sexual Harassment - IHRA

775 ILCS 5/2-101(E) Sexual Harassment. "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature 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 substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Retaliation under IHRA

- ▶ “[i]t is unlawful for an employer to retaliate against a person because she has opposed or reported conduct that she reasonably and in good faith believed to be sexual harassment.” 775 ILCS 5/6-101(A).

Gender Violence Act- Retaliation

- ▶ Proposed amendment to the Code of Civil Procedure
- ▶ HB3311: Protect Survivors Reporting Act
- ▶ Rules Committee as of 4/11/2025

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

- ▶ Prohibits mandatory pre-dispute arbitration of sexual harassment and assault claims.
- ▶ Retaliation claims that relate to sexual harassment are also exempt from arbitration.
- ▶ *Thomas v. Pooh Bah Enters.* 2025 WL 2084159