

Blog Post

Texas Expands Employer Liability for Sexual Harassment

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Texas employers of ALL sizes should be aware that Texas has significantly expanded employee protection for sexual harassment claims with two new bills signed into law by Governor Abbott. The first opens the door for Texas employers of all sizes to be liable for sexual harassment. The second extends the statute of limitations for sexual harassment claims in Texas from 180 days to 300 days. Both are effective September 1, 2021.

Senate Bill 45: Expanded Definition of “Employer” for Sexual Harassment Claims & Heightened Response

Generally, Texas employers with fewer than 15 employees are not covered by most Texas Labor Code anti-discrimination laws. Senate Bill 45 changes that in a big way with respect to sexual harassment claims. Effective September 1, 2021, any person or entity who “employs one or more employees” or who “acts directly in the interests of an employer in relation to an employee” will be a covered “employer” for purposes of sexual harassment under the Texas Labor Code. This is both a significant and substantial expansion of who may be liable for sexual harassment of an employee, potentially including not just owners but also supervisors, HR personnel, perhaps even some co-

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workers, or others who either have or should have control over workplace conduct.

SB 45 also requires that employers be attentive to sex harassment in the workplace and act quickly to stop it. Specifically, it provides that an employer commits an “unlawful employment practice” if “sexual harassment of an employee occurs and the employer or employer’s agents or supervisors: (1) know or should have known that the conduct constituting sexual harassment was occurring; and (2) fail to take immediate and appropriate corrective action.” While the new law does not define “immediate and appropriate corrective action,” it likely sets a higher bar than the current standard developed through case law which requires that such corrective action be “prompt.”

House Bill 21: Longer Statute of Limitations for Sexual Harassment Claims

A separate new Texas law, House Bill 21, provides employees an additional 120 days to bring a claim under the Texas Labor Code with the Texas Workforce Commission Civil Rights Division. Specifically, HB 21 lengthens the statute of limitations for filing sexual harassment claims from 180 days to 300 days from the date of the alleged harassment. The new, longer limitations period only applies to sexual harassment claims based on conduct that occurs on or after September 21, 2021. Importantly, the new law does not apply to other forms of discrimination (such as race, disability, gender) which still have the shorter 180-day statute of limitations.

The Takeaway For Employers

Employers of all sizes should be mindful of their responsibilities and obligations under these new, expansive sexual harassment laws in Texas. The new laws make it especially important that employers of all sizes both a) have anti-harassment policies in place which clearly describe prohibited conduct, establish specific avenues for reporting concerns,

and include anti-retaliation provisions; and 2) train supervisors and others who may have control over workplace conduct in how to recognize and respond to sex harassment or claims of sex harassment.

For assistance with sex harassment policies or training, or other workplace issues, contact your Akerman employment lawyer.

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