

INSIGHTS

## Texas Makes Big Changes to Sexual Harassment Law

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By: [Amy Karff Halevy](#) and [Caroline Melo](#)

As a result of two new Texas laws ([SB 45](#) and [HB 21](#)), sexual harassment claims will now be treated differently than any other type of discrimination or harassment claim filed under state law. The new laws went into effect September 1, 2021, and will likely have a significant effect on sexual harassment claims in Texas.

### How Long do Employees Have to File Charge?

Although employees used to have 180 days (from the date of the alleged harassment) to file a charge of sexual harassment in Texas, employees now have 300 days to file a charge of sexual harassment with the Texas Workforce Commission. The 300-day time period is consistent with federal law; employees have 300 days to file a charge of sexual harassment with the Equal Employment Opportunity Commission when the charge also is covered by a state or local anti-discrimination law. Interestingly, the 180-day deadline still applies for all other types of discrimination and harassment claims filed with the Texas Workforce Commission.

### Who Can be Liable for Sexual Harassment?

There are two important aspects regarding who can be held liable for sexual harassment under the new law. First, unlike federal law, which only applies to employers with 15 or more employees, Texas law expanded the definition of “employer” in the context of sexual harassment claims, to “a person who (A) employs one or more employees; or (B) acts directly in the interests of an employer in relation to an employee.” The change from 15 to “one or more employees” means that the large number of small businesses in Texas can now be held liable for sexual harassment. Expanding the definition of an employer beyond the employing entity is as significant. Supervisors and managers, as well as others acting “directly in the interests of an employer,” may now be named individually in a sexual harassment complaint and be held individually liable for damages for sexual harassment. One concern employers may have is whether an employee can be awarded compensatory damages (up to the legislative cap) for each defendant. Because the Texas Labor Code provides that compensatory damages are awarded for “each complainant,” rather than each respondent, naming additional defendants should not impact the cap on compensatory damages.

### How Should Employers Respond to Sexual Harassment?

The standard of liability has also changed. Under the new standard, an employer commits an “unlawful employment practice,” if sexual harassment has taken place and “the employer or the 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.” Previously, an employer was entitled to a defense if the employer took “prompt remedial action” in response to the sexual harassment complaint. While the meaning of “immediate and appropriate corrective action” will need to be determined by Texas courts, employers will likely be held to a higher standard.

**What Should Employers do Now?**

Employers should review their sexual harassment policies to ensure they are consistent with the new Texas laws. Equally as important, employers should train supervisors and managers on their new level of responsibility for these claims. For example, supervisors and managers need to know that they may now be held individually liable for sexual harassment claims. In addition, supervisors and managers should be trained on their role in fulfilling the employer’s obligation to take “immediate and appropriate corrective action.”

Finally, given the changes to the Texas laws, employers should review their complaint and investigation procedures. Documentation of the employer’s response to sexual harassment complaints should include how and when the employer became aware of the alleged sexual harassment, actions the employer took to investigate the complaint, and any corrective action, if any, in response to the complaint.