

***Illinois Compliance Update: A guideline for the implementation of Illinois' new sexual harassment prevention training requirement.***



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If you haven't yet heard of the Workplace Transparency Act (WTA), get ready to hear it a lot... soon. Back in August 2019, Governor J.B. Pritzker signed into law the WTA (introduced as *Senate Bill 75, or SB 75*), which amended the existing Illinois Human Rights Act. Among major changes to Illinois harassment and discrimination laws, this new bill requires all employers in the state to train all of their supervisory and non-supervisory employees on sexual harassment prevention and response. This new training requirement created confusion among employers because Illinois did not immediately make the detailed requirements clear. You may access the entire bill using the link below. But, like most newly implemented state laws, you won't find much in the way of clear bearings – rather an overview and a general direction on what will be expected.

At the end of April 2020, the Illinois Department of Human Rights (IDHR) published its “model training program” for compliance with the new law. Our review of this set of PowerPoint slides revealed nothing surprising. The content parallels the model training programs and content checklists of several other states.

The national response to COVID-19 has changed the business landscape profoundly. Many businesses have adopted remote work practices in innovative ways. There are two broad implications. Employees are adapting to distributed work and learning methods. Yet, the legal and practical requirements for effective sexual harassment training remain.

Here is a quick summary of what you need to know if you are the professional charged with training your workforce. The following outlines information and best practices for taking a smart and effective approach to achieve full compliance.

1) **Timeline.** January 1, 2020 was the day that the training requirement started in Illinois. You have one year from that date to train all of your people. So by December 31, 2020, you must be able to prove to the state that everyone has completed an approved training program. The IDHR has not issued guidance that requires training before that deadline, such as within 90 days of hiring. However, businesses would be prudent to address it sooner rather than later. You are responsible to maintain records and to certify that each employee's training meets the new Illinois standard. IDHR cautions that certifying the compliance of harassment training received at a former employment may be problematic. So, you should plan to train all new hires even if they come with a training record.

Suggestion: Identify your training solution soon and implement it at a time that best serves your business. If you are planning on hiring anyone new, that might be a good time to roll out the training for your entire team, just to make sure everyone is covered.

2) **Content.** In addition to the model training program, IDHR published two “handouts” on the subject. Sexual Harassment Prevention: Minimum Training Standards for Employers (handout SHP-TR01) and Sexual Harassment Prevention: Minimum Training Standards for Restaurants and Bars (handout SHP-TR02). These documents restate the basic content of the WTA with little amplification. The handouts describe the minimum essential content as follows: an explanation of sexual harassment consistent with the Illinois Human Rights Act; examples of conduct that constitutes unlawful sexual harassment; a summary of relevant federal and Illinois statutory provisions concerning sexual harassment, including remedies available to victims of sexual harassment; and a summary of responsibilities of employers in the prevention and investigation of sexual harassment, and corrective actions when harassment has occurred. These topics parallel the requirements of other states with training mandates (CA, CT, DE, ME, and NY). So, nothing earth shattering here.

Suggestion: Whichever solution you choose, focus on differentiators in training methodology and delivery, not course content. Obviously, compliant course content is important. But almost every program available today has been created to be compliant with the same requirements – so when researching, you may assume the compliance box has already been checked. It is extremely rare that the core information provided in Program A is superior or more compliant than Program B. The biggest effectiveness differentiator will be *how* this same curriculum is presented to the learner. It’s about learning impact, engagement, and how your employees will respond to the presentation.

3) **Interactivity.** The WTA also requires “interactive” training. This requirement for interactivity exists in other states as well. This can be accomplished in a variety of ways, but you will not be able to merely assign a reading exercise – or implement an online training program in which learners just click the ‘next’ button. Obviously, your investment in training is wasted if learners can “click through” the content without being engaged by it. So, you will need – and want – something a little more interactive than “click next” to meet the Illinois requirement and to realize a real benefit from the training.

Suggestion: Look for solutions that offer something that stimulates the active engagement of learners. This can be a “check on learning” embedded in the presentation, story elements that engage interest, scenario-based questions and answers, pre- and post-learning evaluative questions, on-screen activities that require engagement with the mouse or smart phone screen, and more. There is no hard and fast standard for what constitutes “interactivity,” but you will not go wrong by choosing a solution that is entertaining and engaging, and one that elicits active involvement by the learner.

4) **What is the *Model IDHR Program*?** The Workplace Transparency Act instructed the Illinois Department of Human Rights to create a “model training program” aimed at the prevention of sexual harassment in the workplace. As in other states, this “model training program” is a PowerPoint file with page-turner content. Ironically, the IDHR model training program does not contain any interactive elements, so if you plan to use the model program for your organization, you will need a qualified facilitator. Asking employees to read through the IDHR PowerPoint file does not fulfill the law’s requirement for “interactivity.”

Suggestion: Remember, curriculum content is not going to be the primary discriminator in choosing a training program. Responsible, established vendors will adapt their course content to comply with minimum IDHR requirements. Look for the training that will positively shape your organization’s culture and provide business value while meeting state requirements.

5) **How long does the training course have to be? How often do we have to take it?** Other states have minimum course length requirements written into state law. The Workplace Transparency Act does not specify a course length, but it may be amended in the future. Additionally, the two handouts recently published by IDHR do not address course length. Here are some useful points of reference. The model training program consists of 32 screens of content but does not state a time requirement. A facilitated session based on this content, including audience interaction, would probably require at least 60 minutes. Other states have directed a minimum of one-hour of training for non-supervisory employees and two-hours for supervisors. The only exception to this is Connecticut, which requires two-hours for both. Digging deeper, IDHR currently offers two tuition-based sexual harassment prevention training programs. Each of these programs is 2.5 hours in length. Bottomline, an effective training program will require an hour or so for non-supervisory employees. Illinois does not have requirements for supervisors different from all employees. But think about it. The actions of your supervisors are your first line of defense against liability and, in the eyes of the law, the actions (or inactions) of your supervisors are the actions of the employer. In other words, you should think about what benefit you can gain from training you offer – you are paying for – and not just meeting minimum standards. It is reasonable to offer an additional hour of training tailored for supervisors to achieve this benefit. As for frequency, the WTA requires all employers train their employees annually on sexual harassment prevention and response.

Suggestion: You are going to have to set aside time for employees to complete the course and pay your staff for the hour or two they spend doing it. The next issue is how to administer it. Thousands of other companies in other states have found the most effective and easiest method is to designate a sexual harassment training month (or period). In this month, everyone takes the training program – from CEO to intern – whether they have been there for six months or 20 years. Companies have tried rolling training times over the entire year (for example, requiring training on the anniversary of each person’s hire date) but that becomes a logistical nightmare.

6) **Bars, Restaurants, Hotels, and Casinos.** While most states do not have distinct requirements for different types of businesses, Illinois does. Owners of restaurants and bars must present their harassment prevention policy to new employees during their *first week* on the job. In addition to the sexual harassment training content required for all other businesses, employees who work in restaurants and bars must receive training that includes an explanation of manager liability and responsibility in these types of facilities. And, an explanation of harassing conduct and activities in the context of the restaurant or bar industry. The training must also be available in both English and Spanish. The Illinois Hotel and Casino Employee Safety Act requires something unique. All hotels and casinos, regardless of size and broadly defined, must make panic buttons available to employees who may work in isolated environments. The effective date for the availability of panic buttons is July 1, 2020.

Suggestion: From a training standpoint, if your company is a bar, restaurant, hotel, or casino, assume that you are going to need a more tailored training course. While the IDHR model program does not address these additional requirements, it would be prudent to include additional detail on manager liability and responsibility, as well as examples, scenarios, and quiz questions that relate to the workplace environments found in these establishments.

7) **How to decide what is the best training option for you:** Companies generally approach this requirement in one of two ways: get through it as cheaply as possible, or try to make a positive impact on workplace culture. Illinois State Sen. Melinda Bush (D, Grayslake) said in a statement that the new protections are “not just good for workers, it’s good for business.... We’re not just changing the law with Senate Bill 75. We are working to change our culture, preventing abuse and discrimination from happening in the first place while empowering victims to come forward when it does.” It would be outstanding if the only consideration were how to improve the culture, but let’s be honest, budget is always an issue. Therefore, most individuals with purchasing authority find themselves in a push-and-pull somewhere in the middle.

Considerations/Suggestions: Stand up, facilitated training is a great option, but this is commonly more expensive, and it can be challenging to get all your employees together at a single point in time. And, what about training for new hires? Online eLearning programs will be less costly and more flexible to schedule, but you lose the open discussion and Q/A benefits of having a facilitator. You can try to do the training internally, which may be the least expensive *IF* you already have a designated corporate trainer or an HR professional on staff who can professionally handle it for you. If you are going to try the internal training route, your internal trainers could build their program on the IDHR Model Program, the IDHR pamphlet, and your organization’s sexual harassment prevention policy. But don’t forget the ‘shall be interactive’ mandate. Downloading the model training PowerPoint presentation and emailing it to your staff is not going to cut it. You will need an accomplished facilitator who makes the training interactive through back and forth

dialogue with the audience. If you cannot plan for a facilitated solution, consider the eLearning options discussed below.

8) **What if we don't do it?** The WTA establishes penalties for non-compliance that can be steep. Fines for first violations will be up to \$1,000, second violations up to \$3,000, and all subsequent violations up to \$5,000. Yikes! It's not clear in the statutes if these fines are per employee or per company violation, but you don't want to take that chance.

Suggestion: State regulators tend to be pretty hard-core when implementing new laws to establish precedent, so compliance from the get-go is your best course of action.

9) **Consider eLearning Options.** eLearning has a well-deserved negative reputation because of outdated instructional design practices that have been around since online learning became available to the masses. Many online programs today have not outgrown these practices. What immediately comes to mind when someone thinks of eLearning? A glorified click-through exercise consisting of huge amounts of text, some pictures, quizzes, and voiceover. Thank the titans of the eLearning industry for this by emphasizing process over engagement and flooding the market (names and logos withheld to protect the guilty). Today you can find some much higher quality and engaging online programs that your employees won't just attempt to click through as fast as they can. There are a select few that are fun, humorous, highly interactive, and of course, fully compliant for your training needs. These higher quality eLearning programs can help you meet requirements at lower cost, with on-demand availability (for ease of administration), while positively impacting your workplace culture. Web-based eLearning programs may be deployed in your own learning management system or hosted by a vendor. In either case, expect the eLearning provider to include a solution for maintenance of your training records.

Suggestion: If you are considering the eLearning route, don't let preconceived notions guide you to a traditional click-through type of solution. Save your employees from the pain. Sexual harassment prevention requirements mandated by states like Illinois require that instructional designers include certain information in written form. So, you won't be able to rid yourself of all text screens. But beyond displaying what the law requires, there are tons of different methodologies available, some of which use outstanding training mediums. Take for example a program that uses an interactive movie 'choose-your-own-adventure' format. It's witty, engaging, and fun. Plus, it encourages repeat play because users want to go back and make different choices to see the outcomes. You can try a demo of it [HERE](#). This program was brought to my attention because it is the program that has been used by J.B. Pritzker and his staff in the Governor's office. So, you can be sure it will cover everything you need for Illinois compliance.

10) **What should you be doing now?** We have the guidance handouts from IDHR and the model training program for all employees. We do not have an IDHR model training program for restaurants and bars. While many businesses have been severely disrupted by

COVID-19 response and it may be difficult to make deliberate plans, the December 2020 deadline will arrive quickly.

Suggestion: Start investigating learning solutions now. This is a good time to examine alternatives in learning delivery methods, and to make a choice that will be best received by your employees and have the most favorable impact on your organization's culture and mission.

11) **When to Roll Out and How to Implement?** The Workplace Transparency Act requires all employees have documented training by December 31, 2020 and annually thereafter.

Suggestion: Do not treat this as last-minute requirement. Approach this in a deliberate manner that best suits your business. Many companies have an annual ebb and flow of activities. Pick a time in the year that best suits your workflow and schedule a training month in which every employee will complete training. Keep it simple for administration and meet the requirement early. Consider adopting your chosen solution within your companies "on-boarding" practice. They can also participate in the company's annual training month. In my research, I've found that employees discuss their learning experience "at the water cooler" (face-to-face or virtually) if learning is scheduled, say, within a month. The banter and joking about the learning experience positively reinforce the learning value. It becomes a shared experience that fosters organizational culture by affirming shared vocabulary and compatible behaviors.

12) **Summary of Your Options.** Here's a distilled summary of your choices.

**Facilitated Training.** When you speak with companies or law firms that offer facilitated training, expect them to mention the negatives of eLearning and the importance of face-to-face interaction. However, they will be generally more expensive, and individual training sessions are a challenge for new hires, no shows, and companies with workforces that are not able to convene all at once. You may also consider how effective such facilitated events can be through the anonymity of a "Zoom" session. They can be expensive and difficult to administer to "stragglers."

**eLearning.** eLearning providers will promote their 24/7/365 availability, affordability, and ease of tracking and reporting, but they are not going to be able to add the open dialogue interaction with their audiences. Ensure they include a way for learners – your employees – to direct questions to an appropriate person within your organization. They are more economical and easier to administer. They also offer a solution for training record management. Look for a good quality solution that meets the interactivity requirement. This may be the best option in the current realities of distributed workforces.

**Webinars.** Webinars are sort of stuck in the middle, a little cheaper than having a facilitator on site, but interaction with the audience is kind of clunky and if you plan to use

a recording of the webinar for employees that didn't attend the original showing, you will not be meeting the required "interactive" standard.

**Linear Videos.** Speaking of not meeting the "interactive" standard, showing didactic videos should not be on your radar. States are adopting the "shall be interactive" mandate for training programs because they recognize that many "learners" simply hit play and then walk away. Linear video may support a stand-up facilitator but is insufficient without one.

**Training with Internal Resources.** If you have dedicated trainers or HR personnel on staff already, you may be able to complete the training requirement internally. When taking it all in house, make sure that whoever is designated as your trainer has legal and topical subject matter expertise in harassment and abusive conduct prevention and response (not just sexual but also harassment against any of the protected classes). They have to be prepared with facts and be able to answer tough questions appropriately on topics that can be highly sensitive and nuanced. From a cost standpoint, don't think you are getting off scot-free. Consider that time is money with internal personnel. So, the time they are preparing for and conducting training sessions is time that you are paying for, as well as hours lost that your designated trainer could have been spent on other responsibilities. Handling "stragglers" can also become a time-consuming headache for your in-house trainer.

**Blending Solutions.** Don't assume that you have to pick just one solution from the list above. Some companies have blended two solutions with success; for example, combining a facilitator to come in during their yearly training event, and using eLearning to reach employees who can't attend the in-person session and for new hires.

In conclusion, all companies and organizations are unique. Each has different types of workers, schedules, budgets, cultures, space, and employee competencies. Furthermore, 2020 will go down as one of the most challenging years in memory, which makes completing this training requirement even more challenging. Hopefully with the suggestions provided above, you can be fully prepared for the Workplace Transparency Act and pick the best training solution for your specific circumstances. Remember, better safe than sorry! Picking a solution that may cost a little more up front, but will lead to improvement in your workplace culture, can save you a ton of money and hassle down the road.

View the entire Illinois Workplace Transparency Act [HERE](#).

View IDHR Minimum Training Standards for Employees (SHP-TR01) [HERE](#).

View IDHR Minimum Training Standards for Restaurants and Bars (SHP-TR02) [HERE](#).

View IDHR Model Training Program [HERE](#).

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