

Louisiana Legislative Auditor

BEST PRACTICES – SEXUAL HARASSMENT

The Louisiana Legislative Auditor (LLA) is providing the following best practices to help local government entities create their own written policies and procedures. Because this document may not include all legal provisions applicable to different types of local government entities, entities should consult with legal counsel when developing written policies and procedures. Also, many of the legal provisions referenced in this document may not apply to quasi-public organizations, such as non-profits. Quasi-public organizations should refer to the LLA’s legal FAQs for additional guidance.

Sources:

Louisiana Revised Statutes (R.S.) 42:341-344 (Act 270 of 2018)

<http://www.legis.la.gov/Legis/Law.aspx?d=99421>

Equal Employment Opportunity Commission (EEOC) website

https://www.eeoc.gov/laws/types/sexual_harassment.cfm

R.S. 42:341-344, or “Prevention of Sexual Harassment,” became effective January 1, 2019. The provisions of this law impact all public officers and employees, departments, offices, divisions, agencies, commissions, boards, committees, and other organizational units of the State of Louisiana or political subdivisions.

Mandatory Policy – R.S. 42:342

Requires each agency head to adopt a sexual harassment policy, containing, at a minimum, **ALL** of the following:

- A clear statement that unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature constitute sexual harassment when the conduct explicitly or implicitly affects an individual's employment or the holding of office, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment and shall not be tolerated;

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- A description of the behavior the agency defines as inappropriate conduct, including examples;
- An effective complaint or grievance process that includes taking immediate and appropriate action when a complaint of sexual harassment involving any public servant in the agency is received. The complaint process shall detail who may make a complaint, to whom a complaint may be made, and shall provide for alternative designees to receive complaints. Actions taken on the complaint shall be documented;
- A general description of the investigation process, including requiring the alleged sexual harasser and the alleged victim to participate in the investigation;
- A clear prohibition against retaliation against an individual for filing a complaint or testifying or participating in any way in an investigation or other proceeding involving a complaint of sexual harassment;
- A general description of the possible disciplinary actions which may occur after the conclusion of the investigation, including the possible disciplinary actions that may be taken against a complainant if it is determined that a claim of sexual harassment was intentionally false; and
- A statement apprising public servants of applicable federal and state law on sexual harassment, including the right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.

Mandatory Training Requirements – R.S. 42:343

- Each public servant shall receive a minimum of one hour of education and training on preventing sexual harassment during each full calendar year of his public employment or term of office, as the case may be.
- An agency head shall require supervisors and any persons designated by the agency to accept or investigate a complaint of sexual harassment in his agency to receive additional education and training.
- The education and training may be received either in person or via the internet through training and education materials approved by the public servant's agency head.

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- Each agency head shall ensure that each public servant in the agency is notified of the agency's policy against sexual harassment and the mandatory training requirement on preventing sexual harassment. The agency head, or his designee, shall be responsible for maintaining records of the compliance of each public servant in the agency with the mandatory training requirement. Each public servant's record of compliance shall be a public record and available to the public in accordance with the Public Records Law.
- Each agency head shall ensure that its policy against sexual harassment and its complaint procedure is prominently posted on its website or, if the agency does not have a website, that a notice on how to obtain the information is posted in a conspicuous location in each of the agency's offices.
- Local government entities may complete a training course request form on the State Civil Service website at:

<https://www.civilservice.louisiana.gov/Divisions/Training/PreventingSexualHarassment.aspx>

Mandatory Reports – R.S. 42:344:

Each agency head shall compile an annual report by February first of each year containing information from the previous calendar year regarding his agency's compliance, including:

- The number and percentage of public servants in his agency who have completed the training requirements;
- The number of sexual harassment complaints received by his agency;
- The number of complaints which resulted in a finding that sexual harassment occurred;
- The number of complaints in which the finding of sexual harassment resulted in discipline or corrective action; and
- The amount of time it took to resolve each complaint.

These reports shall be public record and available to the public in the manner provided by the Public Records Law.

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- Local government entities can find an example report on the Louisiana Municipal Association’s website at:

https://www.lma.org/LMA/Publications/Legal_Documents/LMA/Publications/Legal_Assistance.aspx?hkey=23fb60cf-1ce2-43c5-9abe-9f6a7738259b

EEOC Requirements:

- It is unlawful to harass an applicant or employee because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
- Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.
- Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).
- The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.
- Additional resources and guidance are available on the links on the EEOC’s website at:

https://www.eeoc.gov/laws/types/sexual_harassment.cfm