



# PREVENTION OF SEXUAL HARASSMENT LAW

[R.S. 42:341-345](#)

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## INTRODUCTION

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This White Paper discusses the requirements under the Prevention of Sexual Harassment Law, R.S. 42:341-345, including mandatory policy provisions, sexual harassment training, and reporting.

### A. Important Definitions and Applicability

[R.S. 42:341](#)

The Prevention of Sexual Harassment Law defines certain terms for the purpose of its provisions. Some of these terms are similar to how these terms are defined for the purpose of the Code of Governmental Ethics, while others are notably different in their scope.

The following definitions set forth the scope of the Law and to whom its provisions apply:

**Governmental Entity** – means the State or any political subdivision.

**Agency** – means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity.

**Agency Head** – means the chief executive or administrative officer of any agency or the chairman of a board or commission.

**Public Servant** – means a public employee or an elected official.

**Public Employee** – means anyone who is:

- An administrative officer or official of a governmental entity who is not filling an elected office;
- Appointed to a post or position created by rule, law, resolution, ordinance, charter, or executive order; or
- Employed by an agency, officer, or official of a governmental entity.

**Elected Official** – means any person holding an office in a governmental entity which is filled by the vote of the appropriate electorate. It shall also include any person appointed to fill a vacancy in such office.

By its terms, the Prevention of Sexual Harassment Law is applicable to all public entities at the State or local level. The Law generally does not apply to private entities, including any private non-profits that are deemed quasi-public and made subject to the Audit Law due to the receipt of public funds. However, compliance with the provisions of the Law could likely be established as a condition for the receipt of public funds through agreements established by the public entity.

## **B. Sexual Harassment Policy**

[R.S. 42:342](#)

### **Sexual Harassment Policy Mandated**

[R.S. 42:342\(A\)](#)

The Prevention of Sexual Harassment Law mandates that agency heads shall develop and institute a written policy to prevent sexual harassment which is applicable to all public servants in the agency.

### **Mandated Policy Provisions**

[R.S. 42:342\(B\)](#)

The Law further prescribes specific minimum elements that all public entities' Sexual Harassment policies shall contain **all** of the following:

#### **1. Statement that Harassment Shall Not Be Tolerated**

All public entities' Sexual Harassment policies shall have a clear statement that unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature constitutes sexual harassment when 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.

#### **2. Description of Inappropriate Conduct**

Public entities shall include within their Sexual Harassment policy a description of the behavior that the agency defines as inappropriate conduct, including examples.

#### **3. Detailed Complaint Process**

Public entities shall provide 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 policy shall detail out the complaint process, including:

- Who may make a complaint;
- To whom a complaint may be made; and
- Provide alternative designees to receive complaints.

The Policy shall also provide that actions taken on a complaint shall be documented.

**4. Description of the Investigation Process**

The policy shall provide a general description of the investigation process, including requiring the alleged sexual harasser and the alleged victim to participate in the investigation.

**5. Retaliation Prohibition**

The policy shall provide a clear prohibition against retaliation against an individual for filing a complaint, testifying, or participating in any way in an investigation or other proceeding involving a complaint of sexual harassment.

**6. Disciplinary Actions**

The policy shall provide 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.

**7. Statement on Applicable Federal and State Laws/ Right to Pursue Claim**

The policy shall include 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.

**C. Sexual Harassment Training**

[R.S. 42:343](#)

**Annual Hour of Sexual Harassment Training Required**

[R.S. 42:343\(A\)\(1\)](#)

Each public servant shall receive a minimum of one (1) hour of education and training on preventing sexual harassment during each full **calendar year** of their public employment or term of office. This means that the one hour of mandated sexual harassment training, as with annual ethics training, must be completed by December 31<sup>st</sup> of each year.

**Additional Annual Training Required for Supervisors**

[R.S. 42:343\(A\)\(2\)](#)

Agency heads shall require supervisors and any persons designated by the agency to accept or investigate complaints of sexual harassment in their agency to receive additional education and training.

**Training May be Completed In-Person or Virtually Online**

[R.S. 42:343\(B\)](#)

Sexual Harassment training may be completed through in-person training or virtually through the internet.

The law does not prescribe specific training or training materials to be utilized and leaves it to the Agency Head to determine and approve the materials that will be used by the agency in completing the mandated sexual harassment training.

The Department of State Civil Service, pursuant to R.S.42:345, is mandated to develop and make available sexual harassment education and training material at no cost to assist State agency heads and State employees in complying with the requirements of the Prevention of Sexual Harassment Law. State Civil Service currently provides annual sexual harassment training modules for State employees and supervisors in LEO. Completion of this training will satisfy the annual training requirements under the Law.

Local Agency Heads may pick whatever education and training materials they believe are appropriate for the public servants of their agency.

**Training Records to be Maintained**

[R.S. 42:343\(C\)](#)

The agency head of each agency shall ensure that each public servant is notified of the agency's policy against sexual harassment and the mandatory training requirement on preventing sexual harassment.

The agency head or their 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.**

**D. Posting of Sexual Harassment Policy and Complaint Procedure**

[R.S. 42:343\(D\)](#)

Each agency head shall ensure that its agency's policy against sexual harassment and its complaint procedure is prominently posted on its website. If the agency does not have a website, a notice on how to obtain the information shall be posted in a conspicuous location in each of the agency's offices.

## **E. Mandatory Annual Reports**

[R.S. 42:344\(A\)](#)

### **Annual Report to be Completed by February 1<sup>st</sup>**

Every agency head shall compile an annual report by February 1<sup>st</sup> of each year detailing their agency's compliance for the previous year with the requirements of the Prevention of Sexual Harassment Law.

### **Contents of the Report**

The Law does not prescribe a certain form for the annual report; however, it mandates that the report shall contain the following information regarding the agency's previous year compliance with the Prevention of Sexual Harassment Law:

#### **1. Number and Percentage of Public Servants Completing Sexual Harassment Training Requirements.**

The Report shall indicate the number of public servants (Public employees and Elected Officials, if any) of the agency that complied with the mandatory annual sexual harassment training. The Report shall also indicate what percentage of the agency this number constitutes.

For example, the Report might state:

During 2020, our agency had 145 employees and officials complete the mandatory sexual harassment training, which correlates to 100% participation.

#### **2. Number of Sexual Harassment Complaints Received by the Agency**

The report shall indicate the number of complaints that the agency received in the prior year, regardless of the ultimate determination.

#### **3. Number of Complaints Resulting in a Finding of Sexual Harassment**

The Report shall indicate the number of complaints that the agency determined that sexual harassment occurred.

#### **4. Number of Complaints Resulting in Discipline or Corrective Action**

The Report shall indicate the number of complaints that ultimately resulted in disciplinary or corrective action being taken.

#### **5. The Amount of Time Taken to Resolve Complaints**

The Report shall indicate the amount of time taken to resolve each complaint.

A template, satisfying these reporting requirements, is included at the end of this document. Public entities may utilize this template, but are not required to do so.

### **Reports are Public Record**

The annual report shall be a public record and available to the public in the manner provided by the Public Records Law.

Public entities, with websites, may want to consider placing a link to their latest report on their website; however, the Law does not mandate such posting.

### **F. Submission of Annual Reports by State Agencies**

[R.S. 42:344\(B\)](#)

The Prevention of Sexual Harassment Law mandates that agency heads in State government shall submit their completed annual reports by February 15<sup>th</sup> to various entities or individuals.

**Local government entities are not mandated to submit their reports to anyone else** and need only provide inspection or copies of their reports as mandated under the Public Records Law.

State agency heads are mandated to submit their annual reports by February 15<sup>th</sup> as follows:

1. Agency heads in the twenty principal departments of the Executive branch, the Office of the Governor, and the Office of the Lieutenant Governor shall submit their reports to the Division of Administration;
2. Agency heads in the Legislative Branch of State government shall submit their reports to the Legislative Budgetary Control Council; and
3. Agency heads in the Judicial Branch of State government, including the Supreme Court, courts of appeal, district courts, and other courts authorized by Article VI of the Constitution of Louisiana, shall submit their reports to the Chief Justice of the Supreme Court.

### **G. Submission of Annual Report by Office of Risk Management**

[R.S. 42:344\(C\)](#)

The Prevention of Sexual Harassment Law mandates an annual reporting by the Office of Risk Management (ORM) to the Speaker of the House of Representatives and the President of the Senate, related to complaints of sexual harassment which are filed with ORM for adjustment.

### **Contents of ORM Report**

The Report submitted by ORM shall contain the following:

1. The total number of sexual harassment cases filed with ORM;
2. The number of cases which are settled and the total monetary amount paid in settlements;
3. The number of cases for which a lawsuit is filed and the disposition of each case; and
4. The monetary amount paid for attorneys' fees, court costs, expert witness fees and any other litigation costs to defend each sexual harassment complaint.

### **H. Reporting Template**

See next page.



**[Agency Name]**

**Annual Report on Compliance with  
Prevention of Sexual Harassment Law, R.S. 42:341, et seq.**

**[Date of Report]**

This report, as required by R.S. 42:344(A), contains information concerning [Agency Name]'s compliance with the provisions of the Prevention of Sexual Harassment Law, R.S. 42:341, et seq, for the calendar year [year].

1. [Agency Name] had [Number] public servants complete the mandatory education and training on the prevention of sexual harassment as required by R.S. 42:343(A). This constitutes [Percentage]% participation of the public servants of [Agency Name].
2. [Agency Name] received [Number] complaints of alleged sexual harassment for the calendar year [Year].
3. Of these complaints and upon completion of an investigation, [Number] resulted in a finding that sexual harassment actually occurred.
4. Of these complaints which resulted in a finding that sexual harassment occurred, [Number] resulted in disciplinary or corrective action being taken.
5. The amount of time required to resolve these complaints were as follows:

Complaint 1: [hours/days]

Complaint 2: [hours/days]

The average time required to resolve all complaints totaled [hours/days].

This report is a public record and is available for public review in accordance with the Public Records Law, R.S. 44:1, et seq.

Sincerely,

[Agency Head Name]

[Title]