

Preventing Sexual Harassment in Clinical Settings

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Learning Objectives

Upon completion of this one-hour workshop, participants will be able to:

- ▶ Define sexual harassment including its forms and types
- ▶ Describe what people should do if they witness or experience unwelcome sexual contact
- ▶ Identify how to report sexual harassment within the workplace as well as to external entities including the Illinois Department of Human Rights
- ▶ Describe whistleblower protections

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History and Background

Sexual harassment is a significant issue in our culture which has far-reaching impact on individuals as well as workplace culture.

In 2019, the Illinois Generally Assembly took the bold step to amend the Illinois Administrative Code Section 1130 to require that effective January 1, 2020, all licensed professionals complete a one-hour course in sexual harassment training as a condition for licensure renewal.

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How This Applies to Mental Health Professionals

- ▶ As mental health professionals, this course will prepare us to ensure that our own workplaces are safe and free of harassment and also that we have the knowledge and skills to help clients know their rights and how they can advocate for themselves.
- ▶ If we are in a leadership role within an agency, group practice, etc., we also need to ensure that our workplaces provide training on the prevention of sexual harassment to all of our team members. This includes independent contractors, short-term employees, part-time employees and interns. The new law requires that workplaces deliver an annual training for staff on the prevention of sexual harassment. The training must comply with section 2-109 of the Illinois Human Rights Act (IHRA).

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Sexual Harassment is Prohibited in Illinois

- ▶ The Illinois Human Rights Act makes it a civil rights violation "for any employer, employee, agent of an employer, employment agency or labor organization to engage in sexual harassment." [775 ILCS 5/2-102 (D)].
- ▶ The Illinois General Assembly finds that tolerance of sexual harassment has a detrimental influence in workplaces by creating a hostile environment for employees, reducing productivity, and increasing legal liability.
- ▶ The State of Illinois further encourages employers to adopt and actively implement policies that ensure their workplaces are safe for employees to report concerns about sexual harassment without fear of retaliation, loss of status or loss of promotional opportunities.

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Defining Sexual Harassment

Under the Illinois Human Rights Act, Sexual Harassment is defined as any unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature when:

- ▶ Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- ▶ Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- ▶ Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

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Types of Unlawful Sexual Harassment

- ▶ Quid Pro Quo Sexual Harassment - *“You do something for me, and I’ll do something for you.”* The law prohibits a manager or supervisor from requiring or implying, that in order to receive a promotion, a raise, a preferred assignment, or other types of job related benefits, or to avoid something negative like discipline or an unpleasant assignment, an employee must do something sexual in return.
- ▶ Hostile Work Environment Sexual Harassment - *“The feeling at work that it is full of sexual references or sexual innuendo and it is negatively impacting me.”* A hostile work environment can occur when unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature has the effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.

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Unwelcome Behavior

- ▶ Sexual conduct becomes sexual harassment when the behavior is unwelcome. Behavior may be unwelcome in the sense that the receiver did not solicit it or invite it, or in the sense that the receiver regards the conduct as undesirable or offensive.
- ▶ Welcome behavior can quickly become unwelcome behavior. What starts off as welcome behavior (such as consensual joking) can cross a line and become unwelcome behavior.
- ▶ Also, consent can be revoked at any time. When someone experiencing sexual harassment behavior says “stop talking to me like this” it must stop. The perpetrator cannot use as a defense, “Well you started it” or “You were ok with it at first.”

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Defining the Working Environment

- ▶ An employee’s “working environment” is NOT limited to the physical location where the employee is assigned.
- ▶ The “working environment” extends to other work sites including off-site, mobile or moving work sites/locations.
- ▶ It also include staff events held at other locations such as staff holiday parties, team-building events, etc.

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Non-employees

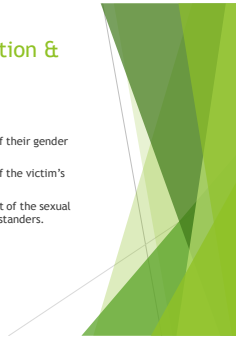
- ▶ The prohibition that supervisors and co-workers not engage in sexual harassment now applies to non-employees such as patrons, vendors, and service providers.
- ▶ Non-employees can be victims of sexual harassment and/or perpetrators of sexual harassment.



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Gender Identity, Sexual Orientation & Third Parties (Bystanders)

- ▶ Anyone can be the victim of sexual harassment regardless of their gender identity or the gender identity of the perpetrator.
- ▶ Anyone can be the victim of sexual harassment regardless of the victim's sexual orientation or the perpetrator's sexual orientation.
- ▶ Victims of sexual harassment can include not only the target of the sexual harassment, but also individuals that are third parties or bystanders.

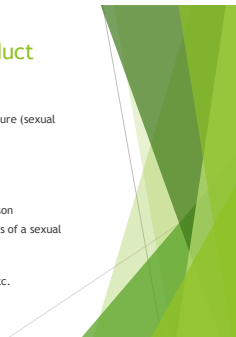


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Examples of Inappropriate Conduct

Sexual harassment includes unwelcome conduct of a sexual nature (sexual advances and requests for sexual favors). Examples include:

- ▶ Pressure to go out on a date
- ▶ Pressure for sexual favors or sexual acts
- ▶ Sexual looks, gestures or whistling at someone
- ▶ Deliberate touching, leaning over, or cornering another person
- ▶ Sending letters, emails, texts, phone calls or other materials of a sexual nature
- ▶ Sexual teasing, jokes, remarks, or questions
- ▶ Using terms like "honey," "babe," "girl," "thunk," "doll," etc.



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Examples of Inappropriate Conduct - Continued

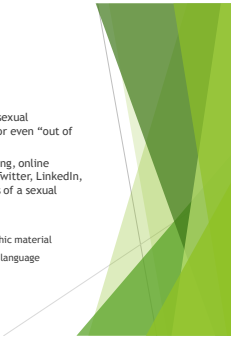
- ▶ Actual or attempted rape or sexual assault
- ▶ Turning work discussions to sexual topics
- ▶ Asking about sexual history, preferences or fantasies
- ▶ Sexual comments, sexual innuendos, or sexual stories
- ▶ Remarks about a person's clothing, body or looks
- ▶ Kissing sounds, smacking lips, howling, grunting or moaning
- ▶ Telling lies or spreading rumors about a person's sex life
- ▶ Massaging neck, shoulders, etc.
- ▶ Touching another employee such as their clothing, hair, or body



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Sexual Harassment in Online Environments

- ▶ Our conduct online and through social media can constitute sexual harassment even when it occurs "off the clock", "off-site", or even "out of state."
- ▶ Online harassment includes using email, texts, internet posting, online comments, blog posts, and social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, Snapchat, etc.) to send communications of a sexual nature. These can include:
 - ▶ Flirting and requests/demands to go on a date or have sex
 - ▶ Sending inappropriate pictures or videos including sexually graphic material
 - ▶ Using sexual language or comments including sexually offensive language
 - ▶ Cyber stalking

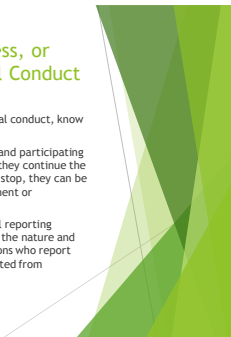


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What Can I Do If I Experience, Witness, or Become Aware of Unwelcome Sexual Conduct

If you experience, witness or become aware of unwelcome sexual conduct, know that:

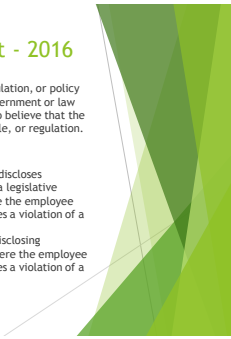
- ▶ You have the **right to tell the person to stop**. The initiating and participating persons must stop the unwelcome behavior upon request. If they continue the behavior or retaliate against you because you asked them to stop, they can be found to have violated the law by engaging in sexual harassment or retaliation.
- ▶ You have the **right to report the sexual harassment**. Several reporting options are available. The option you choose may depend on the nature and severity of the unwelcome conduct of a sexual nature. Persons who report sexual harassment or participate in investigations are protected from retaliation under the Whistleblowers Act.



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740 ILCS 174 - Whistleblower Act - 2016

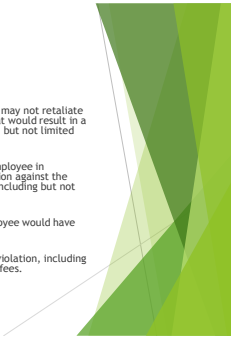
- ▶ An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.
- ▶ 740 ILCS 174(15)
Sec. 15. Retaliation for certain disclosures prohibited.
(a) An employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.
(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.



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Whistleblower Act - Continued

- ▶ (740 ILCS 174/20)
Sec. 20. Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act.
- ▶ 740 ILCS 174(30)
Sec. 30. Damages. If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate:
 - (1) reinstatement with the same seniority status that the employee would have had, but for the violation;
 - (2) back pay, with interest; and
 - (3) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

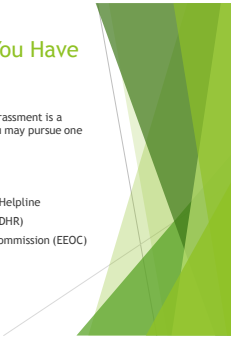


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Reporting Sexual Harassment - You Have Several Options

The choice of how to report to report an allegation of sexual harassment is a personal one, and these options are not mutually exclusive. You may pursue one or more of the following reporting options:

- ▶ Report the incident to your employer
- ▶ Call the State of Illinois Sexual Harassment & Discrimination Helpline
- ▶ File a charge with the Illinois Department of Human Rights (IDHR)
- ▶ File a charge with the U. S. Equal Employment Opportunity Commission (EEOC)

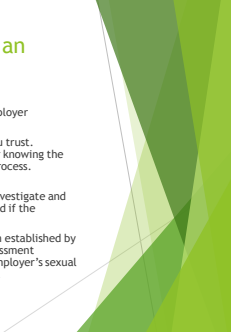


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Reporting Sexual Harassment to an Employer

You may report the incident to one or more of the following employer representatives:

- ▶ **Your Supervisor** or any member of the management that you trust. Supervisors and members of management are responsible for knowing the employer's internal complaint investigation and resolution process. Supervisors can help effect immediate positive change.
- ▶ **Human Resources Officers** can work with management to investigate and resolve harassment complaints. This option may be preferred if the perpetrator of the harassment is a supervisor or manager.
- ▶ **Designated Sexual Harassment Reporting Officers** are often established by employers to specifically receive and investigate sexual harassment complaints. Consult your employee handbook and/or your employer's sexual harassment policy for specific reporting contact information.



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Illinois Sexual Harassment & Discrimination Helpline

If you or someone you know has experienced or witnessed unwelcome conduct of a sexual nature in the workplace, you are invited to request assistance by calling the State of Illinois Sexual Harassment and Discrimination Helpline. Calls are confidential and can be made anonymously.

877-236-7703

www.Illinois.gov/SexualHarassment

Helpline representatives can help callers navigate their numerous reporting options and share additional information related to counseling, legal assistance, and frequently asked questions.



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Reporting to the Illinois Department of Human Rights (IDHR)

The Illinois Department of Human Rights (IDHR) is a state agency responsible for enforcing the Illinois Human Rights Act, the state law that makes it illegal to engage in sexual harassment or retaliation. They can be reached:

800-662-3942

www.Illinois.gov/DHR

- ▶ Victims of sexual harassment may file a charge at any time within 300 days of the incident(s).
- ▶ IDHR has the authority to investigate employers who have one or more employees.
- ▶ To start the process, submit a Complaint Information Sheet to IDHR.
- ▶ The Chicago office is located at 100 W. Randolph Street, Suite 10-100 Chicago, IL (312) 814-6200 or (866) 740-3953 (TTY).



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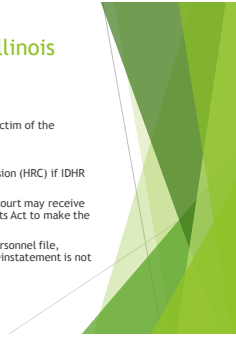
Remedies Available Under The Illinois Human Rights Act

After IDHR completes its investigation, the Complainant (the victim of the harassment):

- ▶ May choose to file a lawsuit in civil court, or
- ▶ May file a complaint with the Illinois Human Rights Commission (HRC) if IDHR found "substantial evidence" of a violation.

Complainants who prevail in the Human Rights Commission or court may receive an order awarding remedies allowed by the Illinois Human Rights Act to make the complainant "whole."

Remedies may include: back pay, lost benefits, clearing of a personnel file, damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, and attorney's fees and costs.



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Reporting Sexual Harassment to the U.S. Equal Employment Opportunity Commission

The United States Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, the federal law that makes it illegal to engage in sexual harassment or retaliation.

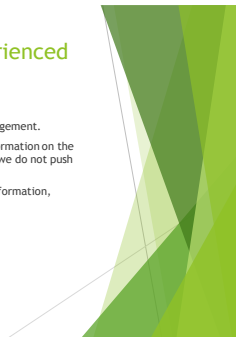
- ▶ Victims of sexual harassment may file a complaint at any time within 300 days of the incident(s).
- ▶ The EEOC has the authority to investigate employers who have 15 or more employees.
- ▶ To start the process, call the EEOC at (800) 669-4000 or visit www.EEOC.GOV.
- ▶ Their Chicago District office is located at the JCK Federal Building, 230 S. Dearborn Street, Chicago, IL 60604.
- ▶ Their TTY for Deaf/Hard of Hearing Callers is (800) 669-6820.



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Helping Clients Who Have Experienced Sexual Harassment

- ▶ It is important that we listen with empathy and without judgement.
- ▶ We can play an important role by providing clients with information on the laws and options they may want to consider. It is essential we do not push them into taking any particular action.
- ▶ It can be very helpful to provide clients with printouts of information, websites, phone numbers, etc.



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Sexual Exploitation of Patients/Clients by Care Providers

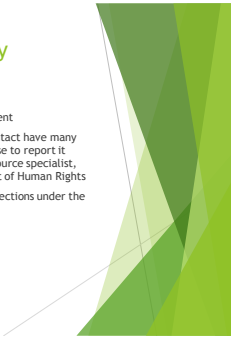
- ▶ Illinois has a specific law which explicitly prohibits sexual exploitation of patients and clients by healthcare providers, psychotherapists and other mental health professionals.
- ▶ 2019 Illinois Compiled Statutes
Chapter 740 - CIVIL LIABILITIES
740 ILCS 140/ - Sexual Exploitation in Psychotherapy, Professional Health Services, and Professional Mental Health Services Act.



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Recap of What we Learned Today

- ▶ There are many different forms and types of sexual harassment
- ▶ Individuals who witness or experience unwelcome sexual contact have many options in how to report sexual harassment. They may choose to report it within the workplace to a manager, supervisor or human resource specialist, or to go to external entities including the Illinois Department of Human Rights
- ▶ Individuals who do report sexual harassment have many protections under the Illinois Whistleblower Protection Act of 2016.



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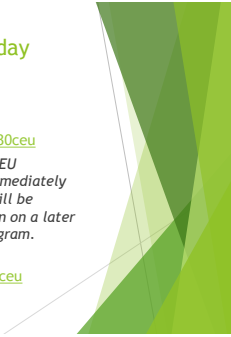
Q & A



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How to Access Your CEU's for Today

- ▶ Evaluation
Link: <https://www.surveymonkey.com/r/july30ceu>
- ▶ Please treat this as you would an in-person CEU presentation and complete the evaluation immediately following this webinar. The evaluation link will be disabled if you try to complete the evaluation on a later date so please complete it following this program.
- ▶ To receive your CEU certificate please go to: <https://www.surveymonkey.com/r/july30ceu>



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