

PUBLICATION

Texas Increases Protections for Employees Filing Sexual Harassment Claims

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Texas Governor Greg Abbott recently signed two new bills (Senate Bill 45 and House Bill 21) that increase protections for all employees who assert claims of sexual harassment under Chapter 21 of the Texas Labor Code (Chapter 21). Both laws will become effective on September 1, 2021. With the enactment of these new laws, Texas employers can expect significant changes related to claims for sexual harassment, including a broader definition of who is considered an "employer," a heightened standard for employers to respond to internal sexual harassment complaints, and the expansion of the statute of limitations to file with the state agency.

Who is Considered an "Employer?"

Prior to the enactment of Senate Bill 45, to be considered an employer under Chapter 21, a business was required to have 15 or more employees and only the entity could be held liable. However, Senate Bill 45 expands the definition of an employer to encompass any person or entity who employs *one or more employees*, or "acts directly in the interests of an employer in relation to an employee." By expanding the definition, businesses or persons who employ even one employee along with individual supervisors can be held liable for sexual harassment claims. Prior to this change, small businesses and individual bad actors could escape liability from sexual harassment lawsuits by arguing that they did not satisfy the "employer" definition. With this change, that defense will no longer be available.

How Should an Employer Respond to an Internal Complaint of Sexual Harassment?

Senate Bill 45 also provides that an employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or its 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." This new standard for all claims of sexual harassment mirrors the current standard for claims of sexual harassment made by unpaid interns under Chapter 21. Interestingly, what constitutes "immediate and appropriate corrective action" is not defined in the current or new law, so the exact meaning of this phrase will certainly be the subject of litigation. Yet, one can expect that the focus of state law sexual harassment claims will be on how quickly and effectively employers respond.

When Can an Employee File a Claim with the State Agency?

Prior to the enactment of House Bill 21, before an employee can bring a lawsuit under for an unlawful employment practice under Chapter 21, an employee must first file a charge of discrimination with the Texas Workforce Commission within 180 days of the alleged unlawful employment practice. Beginning September 1, 2021, employees will now have a longer period of time to file their charge of discrimination *alleging sexual harassment*. House Bill 21 will allow an employee to file their charge of discrimination within 300 days after the alleged sexual harassment occurred.

What Can Employers Do Now?

With less than a month before these laws go into effect, Texas employers should act to prepare for these changes. For those companies that do not have an employee handbook or specific policy detailing what constitutes harassment, prohibition on harassment, and reporting procedures, companies should create such policies. For those companies that already have such policies and reporting mechanisms in place, review the current policies to ensure compliance with the new laws. Lastly, all employers should conduct trainings for

employees and supervisors on sexual harassment and reporting. Employers should note that these changes do not apply to claims based on other protected characteristics under Chapter 21, such as race, color, disability, religion, sex, national origin, or age.

If you have any questions on these new laws or would like assistance with employee training, please contact the author or any member of Baker Donelson's [Labor & Employment Team](#) for more information.