



COMPLIANCE BULLETIN

HIGHLIGHTS

- A new Delaware law prohibits workplace sexual harassment and imposes new requirements on employers in the state.
- The new law applies to all Delaware employers with four or more employees.
- Delaware employers with 50 or more employees must provide annual training on sexual harassment prevention.

IMPORTANT DATES

July 1, 2019

Deadline for employers with four or more employees to provide information to existing employees.

Jan. 1, 2020

Deadline for employers with 50 or more employees to provide the initial sexual harassment prevention training to existing employees.

Provided By:

Prospero Benefits & Insurance
Services, Inc.

Delaware Mandates Sexual Harassment Training

OVERVIEW

Effective **Jan. 1, 2019**, a new [Delaware law](#) specifies that it is illegal for employers in the state to commit or allow sexual harassment in their employees' workplaces. Enacted on Aug. 29, 2018, the law clarifies existing employee protections under the Delaware Discrimination in Employment Act (DDEA) and imposes the following new requirements:

- ✓ Employers with **four or more employees** must provide an [information sheet](#) about sexual harassment to each of their employees upon hire (and to each existing employee **by July 1, 2019**); and
- ✓ Employers with **50 or more employees** must provide sexual harassment prevention **training** to each of their employees within one year after hire (and to each existing employee **by Jan. 1, 2020**).

ACTION STEPS

All Delaware employers with four or more employees should become familiar with the new law and ensure that they meet all applicable new deadlines.



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Background

The DDEA prohibits employers with **four or more employees** in the state from discriminating against employees and applicants based on any of the traits listed in the table below.

DDEA-Protected Traits		
Race	Disability	Sex (including pregnancy)
Color	Genetic information	Sexual orientation
Religion	Marital status	Gender identity
National origin	Age (40 and older)	

Because harassment is generally considered a form of prohibited discrimination, employers may be held liable for workplace harassment based on any of the DDEA-protected traits, including sex. Before Jan. 1, 2019, however, the DDEA did not specifically address workplace sexual harassment. The state enacted new DDEA provisions, as described below, to help ensure that sexual harassment complaints are taken seriously and that employers are held accountable for sexual harassment in the workplace.

Overview of Changes Effective Jan. 1, 2019

Under changes that went into effect on Jan. 1, 2019, workplace sexual harassment is now explicitly prohibited under the DDEA. The law's newly defined protections against workplace sexual harassment extend to all employees, unpaid interns, job applicants, joint employees and apprentices. In addition, the new law:

- ✓ Outlines the circumstances under which an employer may be held liable for workplace sexual harassment and creates an affirmative defense to certain claims;
- ✓ Requires all covered employers to provide an **information sheet** to each of their employees; and
- ✓ Requires employers with 50 or more employees to provide **training** to each of their employees.

Prohibited Sexual Harassment Defined

Effective Jan. 1, 2019, workplace sexual harassment is an unlawful employment practice when an employee is subjected to unwelcome conduct—such as sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature—and:

- ✗ Submission to the conduct is explicitly or implicitly made a term or condition of employment;
- ✗ Submission to or rejection of the conduct is used as the basis for employment decisions affecting an employee; or
- ✗ The conduct has the purpose or effect of either unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

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Employer Liability

As of Jan. 1, 2019, an employer may be held liable for sexual harassment against an employee if:

- ✘ A supervisor commits the harassment and a negative employment action is taken against an employee as a result;
- ✘ A non-supervisory employee commits the harassment and the employer both knows (or should know) of it and fails to take appropriate corrective measures; or
- ✘ Any adverse employment action is taken against an employee in retaliation for filing a discrimination charge, participating in an investigation or testifying in any proceeding or lawsuit about sexual harassment of an employee.

Under the law, a “supervisor” is an individual who either directs an employee’s daily work activities or has the power to change an employee’s employment status.

Affirmative Defense

For sexual harassment committed by a **non-supervisory employee**, an employer may avoid liability if it can prove that:

- ✓ It exercised reasonable care to prevent and correct any harassment promptly; and
- ✓ The employee unreasonably failed to take advantage of any preventive or corrective opportunities that the employer provided.

Information Sheet Requirement

The new law requires all covered employers to provide the Delaware Department of Labor’s (DDOL) [information sheet](#) on sexual harassment to:

- ✓ Each of their existing employees by **July 1, 2019**; and
- ✓ Each new employee at the start of his or her employment.

The required information sheet may be given to employees in hard copy form or electronically. Employers may obtain hard copies from any DDOL office.

Training Requirements

The new law requires employers with **50 or more employees** in Delaware to provide interactive training and education regarding the prevention of sexual harassment to all employees. For this purpose, the term “employee” does **not** include job applicants or independent contractors. In addition, employees placed by an employment agency are **not** counted (or required to be trained) by any employer other than the employment agency.

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Training Deadlines

The table below provides an overview of the deadlines for employers to provide the initial sexual harassment prevention training.

For:	Initial training must be completed:
<i>Existing employees (including supervisors)</i>	By Jan. 1, 2020 . However, those who had already received training that meets the new law's requirements before Jan. 1, 2019, do not need to be trained again until on or after Jan. 1, 2020.
<i>New supervisors</i>	Within one year after starting the supervisory position. This requirement applies once an individual has been employed as a supervisor for six months continuously.
<i>New non-supervisory employees</i>	Within one year after starting the employment. This requirement applies once an individual has been employed for six months continuously.

After any employee has received the initial sexual harassment prevention training, he or she must be retrained again once **every two years**.

Training Content Requirements

The law's minimum requirements for an employer's sexual harassment prevention training program are that it must be **interactive** and include:

- ✓ Information about the illegality of sexual harassment;
- ✓ The definition of sexual harassment, using examples;
- ✓ The legal remedies and complaint processes available to employees;
- ✓ Directions on how to contact the DDOL; and
- ✓ Information about the legal prohibition against retaliation.

The training for **supervisors** must also include information about the specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment and the legal prohibition against retaliation.

More Information

For more information about the protections against workplace sexual harassment under Delaware law, please contact Prospero Benefits & Insurance Services, Inc. or visit the DDOL's [website](#).