



SPONSOR: Rep. Keeley & Sen. Hansen
Reps. Bennett, Bolden, Brady, Heffernan, Kowalko,
Longhurst, Mulrooney, Paradee, K. Williams; Sens.
Henry, Marshall, Poore

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 360

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 711A Sexual Harassment.

4 (a) For the purposes of this section only:

5 (1) "Employee" means an individual employed by an employer and includes "state employee" as defined in
6 Title 29 § 5831 and an unpaid intern or volunteer and a person providing services pursuant to a contract.

7 (2) "Employer" means any person employing 4 or more employees within the State at the time of the alleged
8 violation and includes the State, "General Assembly" and "State agency" as defined in Title 29 § 5831 or any person
9 regularly receiving the services of 4 or more persons providing services pursuant to a contract, or any person acting as
10 an agent of an employer, directly or indirectly.

11 (3) "A person providing services pursuant to a contract" means a person who meets all of the following
12 criteria:

13 a. The person has the right to control the performance of the contract for services and discretion as to the
14 manner of performance;

15 b. The person is customarily engaged in an independently established business; and

16 c. The person has control over the time and place the work is performed, supplies the tools and
17 instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of
18 the employer's work.

19 (b) Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or
20 physical conduct of a sexual nature. Sexually harassing conduct does not need to be motivated by sexual desire.

21 (c) Sexual harassment of an employee is an unlawful employment practice when:

22 (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's
23 employment;

24 (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions
25 affecting such individual; or

26 (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance
27 or creating an intimidating, hostile or offensive working environment.

28 (d) An employer is responsible for acts of sexual harassment between fellow employees and by non-employees
29 where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate
30 and appropriate corrective action. In determining whether an employer is responsible for the acts of a non-employee, the
31 following factors shall be considered:

32 (1) The extent of the employer's control over the non-employee; and

33 (2) Any legal responsibility the employer has over the conduct of the non-employee.

34 (e) The Department of Labor shall create an information sheet on sexual harassment that the Department shall
35 make available to employers for reproduction and distribution to employees. The information sheets shall be available at
36 each office of the department, and shall be mailed if the request includes a self-address envelope with postage affixed. The
37 Department shall also make the information sheet available on its website. The information sheet must contain:

38 (1) The illegality of sexual harassment;

39 (2) The definition of sexual harassment under applicable state and federal law;

40 (3) A description of sexual harassment using examples;

41 (4) The legal remedies and complaint process available through the Department; and

42 (5) Directions on how to contact the Department.

43 (f) Each employer shall distribute the information sheet described in subsection (e) to its employees. It shall be
44 delivered in such a manner that ensures distribution to each employee.

45 (g) A claim that the information sheet required to be distributed pursuant to this section did not reach a particular
46 individual shall not in and of itself result in liability of any employer to any present or former employee in any action
47 alleging sexual harassment. An employer's compliance with this section does not insulate the employer from liability for
48 sexual harassment of any current or former employee or applicant.

49 (h) An employer having 50 or more employees shall provide at least 2 hours of classroom or other effective
50 interactive training and education regarding sexual harassment to all supervisory employees in Delaware within six months
51 of their assumption of a supervisory position. Such training shall:

- 52 (1) Be provided to each supervisory employee in Delaware every two years.
- 53 (2) Include information and practical guidance, prevention and correction of sexual harassment, and the
54 remedies available to victims of sexual harassment.
- 55 (3) Be presented by trainers or educators with knowledge and expertise in the prevention of harassment.
- 56 (i) The Department may seek an order requiring the employer to comply with subsections (g) and (h).

SYNOPSIS

“This bill seeks to offer broader protections for Delaware workers against sexual harassment than those found at the federal level by defining sexual harassment as an unlawful employment practice and clarifying the definition of employee to include state employees, persons providing services pursuant to a contract, or unpaid interns. This bill also includes a requirement that the Department of Labor create an information sheet pertaining to sexual harassment that employers must distribute to employees. Employers having more than 50 employees must provide sexual harassment training to their supervisory employees six months after they assume the supervisory role, and the training must be conducted every two years.”