



LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

PREVENTING SEXUAL HARASSMENT

Adopted June 22, 2023

Employees, officials, and visitors of the Louisiana Fifth Circuit Court of Appeal have a right to a workplace free from discrimination of any kind, including discrimination in the form of sexual harassment. In addition to other Court policies prohibiting other forms of workplace discrimination, this policy specifically seeks to eliminate discrimination in the form of sexual harassment from all offices of the Louisiana Fifth Circuit Court of Appeal.

POLICY STATEMENT¹

Sexual harassment is a form of sex discrimination that is prohibited by Title VII of the Civil Rights Act of 1964.² It is the policy of the Louisiana Fifth Circuit Court of Appeal that sexual harassment and all forms of sex discrimination are strictly prohibited and shall not be tolerated. Violations of this policy shall be subject to disciplinary action up to and including termination.

DEFINITION OF SEXUAL HARASSMENT

According to the U.S. Equal Employment Opportunity Commission,³ unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to or rejection

¹ This policy is adopted pursuant to La. R.S. 42:342.

² See 42 U.S.C. § 2000e, *et seq.* The United States Supreme Court has held that Title VII's proscription on sex discrimination includes discrimination on the basis of sexual orientation. See *Bostock v. Clayton Cnty., Georgia*, -- U.S. --, 140 S. Ct. 1731, 207 L.Ed.2d 218 (2020).

³ See also La. R.S. 42:342(B)(1).

of this conduct explicitly or implicitly affects an individual's employment or the holding of office; (2) this conduct unreasonably interferes with an individual's work performance; or (3) this conduct creates an intimidating, hostile, or offensive work environment.

EXAMPLES OF SEXUAL HARASSMENT

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim and the harasser may be a man or woman; and the victim and harasser may be of the same sex.
- The harasser/victim can be a supervisor, subordinate, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but can be anyone affected by the offensive conduct.
- Harassment does not have to occur on workplace premises, but can occur anywhere, including online.
- The harasser's conduct must be unwelcome.
- The harasser's intent is irrelevant.

Examples of sexual harassment in violation of this policy include, but are not limited to, the following:

- Verbal sexual harassment can include:
 - Sexual comments or innuendoes, lewd jokes or stories, sexual propositions or threats, and sexually suggestive sounds, such as whistling;
 - Unwelcome requests for sexual favors, including flirtations and repeated requests for dates;
 - Addressing others in derogatory or slang terms such as "hot," "macho," "babe," "sweetie," "honey," etc.;
 - Making sexual and/or derogatory comments about a person's dress, body image, or appearance, such as a person's weight, attire, jewelry, makeup, hairstyle, or body art (piercings and tattoos);
 - Comments referencing a part of the body, even if intended as a compliment.

- Nonverbal sexual harassment can include:
 - Sexual and/or derogatory letters, notes, emails, photographs, videos, drawings, text messages, social media posts, and music;
 - The distribution or display of any written or graphic material, such as calendars, posters, cartoons, or objects that are pornographic, sexually suggestive, or derogatory;
 - Leering, ogling, winking and other sexually suggestive or obscene facial expressions or gestures;
 - Unwelcome, unwanted physical contact, including invading personal space or cornering, touching, tickling, pinching, horseplay, patting, brushing up against, hugging, massaging, rubbing, kissing, etc.

COMPLAINT PROCEDURE

It is the duty of every employee and official who experiences or witnesses behavior which he/she believes may constitute sexual harassment to immediately report such conduct in accordance with the following procedure.

Although not required, it is suggested that complaints should be written and contain the following information:

- Specific description of harassment;
- Where, when, and how often the harassment occurred;
- The name(s) of the harassing person(s); and
- The name(s) of witness(es), if any.

Complaint against Employee

Complaints of sexual harassment against an employee must be reported to the employee's supervisor (if not the accused), the clerk of court (if not the accused), and the chief judge.

- When a complaint of sexual harassment is made against an employee, the chief judge shall appoint investigator(s) to promptly and thoroughly investigate all allegations/complaints of sexual harassment, which may include interviewing and gathering statements from the complainant, the accused, and all identified witnesses. Any party who refuses to cooperate with an internal investigation may be subject to disciplinary action.

Confidentiality shall be maintained to the extent possible and practicable throughout the investigative process.

- The investigator(s) shall submit findings to the chief judge and to the clerk of court (if not the investigator).
- As warranted, and in accordance with the Court's Progressive Discipline Policy, the chief judge shall refer the matter to the Bench, and make recommendations for further investigation, dismissal of the complaint, or disciplinary action up to and including termination, as well as lodging a complaint with the Louisiana Attorney Disciplinary Board, if warranted and applicable.
- Regardless of the outcome of the investigation, complainants maintain the right to pursue their claims in accordance with state and federal laws, including, but not limited to, La. R.S. 23:301, *et seq.* and 42 U.S.C. § 2000e, *et seq.*

Complaint against Judge

- When a complaint of sexual harassment is made against a judge, the chief judge (if not the accused), or the next most senior judge, shall be immediately notified, who shall then notify the Bench.
- Upon receipt of the complaint, the Bench, in its discretion, may appoint a third party or outside investigator to review the matter.
- Regardless of the decision to appoint a third party or outside investigator, complaints of judicial misconduct, including sexual harassment, shall be reported to the Judiciary Commission immediately by the chief judge or other judge(s) as appropriate. The report should include all documents, statements, and reports relevant to the allegations of misconduct or harassment and which are available at the time of making the report.
- Regardless of the outcome of the investigation, complainants maintain the right to lodge a complaint with the Judiciary Commission and to pursue their claims in accordance with state and federal laws, including, but not limited to, La. R.S. 23:301, *et seq.* and 42 U.S.C. § 2000e, *et seq.*

FALSE COMPLAINTS

Complaints found to have been intentionally dishonest or made maliciously without regard for the truth will subject the complainant to disciplinary action up to and including termination.

RETALIATION

Retaliation against any employee who makes a good faith complaint of sexual harassment, or who provides information during an investigation of a complaint, is strictly forbidden and shall be grounds for disciplinary action up to and including termination.

NOTICE OF POTENTIAL LIABILITY

Attached to this policy is a Notice of Potential Liability, promulgated in accordance with La. R.S. 42:354.

APPLICABILITY AND NOTICE OF POLICY

This policy applies to all officials, employees (full-time, part-time, contract), and interns/externs of the Louisiana Fifth Circuit Court of Appeal, and is disseminated as follows:

- This policy is transmitted to all Court officials and employees annually via email.
- This policy is available on the Intranet for all employees.
- This policy is issued to all newly-hired Court employees within ninety days of hire.
- This policy is located under the Court Policies tab on the Fifth Circuit's website at <https://fifthcircuit.org>.



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RE: NOTICE OF LA R.S. 42:354, SEXUAL HARASSMENT POTENTIAL LIABILITY LAW

Dear Judges and Employees of the Judicial Branch of Louisiana:

In accordance with La R.S. 42:354, on behalf of the Chief Justice, this notice is to be disseminated to every judge and employee in the judicial branch. Please be advised of potential liability if you are determined by an agency head or a court of competent jurisdiction to have committed sexual harassment. La R.S. 42:353 (emphasis added) states:

§353. Litigation and settlements

A. Notwithstanding any law to the contrary, including but not limited to R.S. 13:5108.1, when a claim of sexual harassment has been brought and the office of risk management, or the exempted institution of higher education, determines that sexual harassment did occur, **the sexual harasser shall be responsible for the payment of all or a portion of the amount of the settlement or judgment.** In determining the amount that the sexual harasser should contribute to any compromise of the claim, the following factors shall be considered:

- (1) Whether the sexual harasser was engaged in the performance of the duties of his office or employment with the state at the time the sexual harassment occurred.
- (2) The severity of the sexual harassment.
- (3) The stage of litigation.
- (4) The ability of the sexual harasser to pay.

B. When a claim is filed against the state due to a claim of sexual harassment which results in a final judgment or settlement against the state, the attorney general, on behalf of the state, may file suit against the sexual harasser to assert and enforce the state's right to reimbursement and indemnity from the sexual harasser. The attorney general is also entitled to recover from the alleged sexual harasser all costs and reasonable attorney fees incurred in asserting that right.

C. The attorney general shall receive as compensation an amount not to exceed twenty-five percent of the total monies recovered from the enforcement of the state's right to reimbursement from the sexual harasser, as set forth in this Chapter, to be deposited into the Department of Justice Debt Collection Fund. The attorney general, the office of risk management or the exempted institution, and the agency shall determine whether the interests of the state are best served by litigation or by the making of an offer or the acceptance of an offer to settle or compromise the claim or litigation.