

House File 110 - Introduced

HOUSE FILE 110

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A BILL FOR

1 An Act relating to sexual harassment in employment policies and
2 protections, and including effective date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 216.6B Additional unfair or
2 discriminatory practice — sexual harassment in employment.

3 1. a. As used in this section, "*sexual harassment*" means
4 persistent, repetitive, or highly egregious conduct directed at
5 a specific individual or group of individuals that a reasonable
6 person would interpret as intentional harassment of a sexual
7 nature, taking into consideration the full context in which the
8 conduct occurs, which conduct threatens to impair the ability
9 of a person to perform the duties of employment.

10 b. "*Sexual harassment*" may include but is not limited to the
11 following:

12 (1) Unsolicited sexual advances by a person toward another
13 person who has clearly communicated the other person's desire
14 not to be the subject of those advances.

15 (2) Sexual advances or propositions made by a person having
16 superior authority toward another person within the workplace.

17 (3) Instances of offensive sexual remarks or speech or
18 graphic sexual displays directed at a person in the workplace,
19 who has clearly communicated the person's objection to that
20 conduct, and where the person is not free to avoid that conduct
21 due to the requirements of the employment.

22 2. All employers, employment agencies, and labor
23 organizations have an obligation to ensure a workplace that is
24 free from sexual harassment.

25 3. Every employer shall:

26 a. Adopt a written policy against sexual harassment which
27 shall include all of the following:

28 (1) A statement that sexual harassment in the workplace is
29 unlawful.

30 (2) A statement that it is unlawful to retaliate against
31 an employee for filing a complaint of sexual harassment or for
32 cooperating in an investigation of sexual harassment.

33 (3) A description and examples of sexual harassment.

34 (4) A statement of the range of consequences for employees
35 who commit sexual harassment.

1 (5) If the employer has more than three employees, a
2 description of the process for filing internal complaints about
3 sexual harassment and the names, addresses, and telephone
4 numbers of the person or persons to whom complaints should be
5 made.

6 (6) The complaint process of the appropriate local, state,
7 and federal employment discrimination enforcement agencies, and
8 directions as to how to contact such agencies.

9 b. Post in a prominent and accessible location in the
10 workplace, a poster providing, at a minimum, the elements of
11 the employer's sexual harassment policy required by paragraph
12 "a".

13 c. Provide to all employees a written copy of the employer's
14 policy against sexual harassment.

15 4. a. An employer shall provide a copy of the employer's
16 written policies to new employees when hired.

17 b. If an employer makes changes to its policy against sexual
18 harassment, the employer shall provide to all employees a
19 written copy of the updated policy.

20 5. The commission shall prepare and provide to employers a
21 model policy and a model poster, which may be used by employers
22 for the purposes of this section.

23 6. An assertion that an employee did not receive the
24 information required to be provided by this section shall
25 not result in the automatic liability of any employer to any
26 current or former employee or applicant in any action alleging
27 sexual harassment. An employer's compliance with the notice
28 requirements of this section does not preclude the employer
29 from liability for sexual harassment of any current or former
30 employee or applicant.

31 7. a. Employers and labor organizations are encouraged to
32 conduct an education and training program for all new employees
33 and members that includes at a minimum all the information
34 outlined in this section within one year after commencement of
35 employment.

1 *b.* Employers and labor organizations are encouraged to
2 conduct an annual education and training program for all
3 employees and members that includes at a minimum all the
4 information outlined in this section.

5 *c.* Employers are encouraged to conduct additional training
6 for new supervisory and managerial employees and members within
7 one year after commencement of employment or membership, which
8 should include at a minimum the information outlined in this
9 section, the specific responsibilities of supervisory and
10 managerial employees, and the actions that these employees must
11 take to ensure immediate and appropriate corrective action in
12 addressing sexual harassment complaints.

13 *d.* Employers, labor organizations, and appropriate state
14 agencies are encouraged to cooperate in making this training
15 available.

16 8. *a.* An employer shall not require any employee or
17 prospective employee, as a condition of employment, to sign an
18 agreement or waiver that does any of the following:

19 (1) Prohibits, prevents, or otherwise restricts the
20 employee or prospective employee from opposing, disclosing,
21 reporting, or participating in an investigation of sexual
22 harassment.

23 (2) Except as otherwise permitted by state or federal law,
24 purports to waive a substantive or procedural right or remedy
25 available to the employee with respect to a claim of sexual
26 harassment.

27 *b.* An agreement to settle a sexual harassment claim shall
28 expressly state all of the following:

29 (1) That the agreement does not prohibit, prevent, or
30 otherwise restrict the individual who made the claim from doing
31 any of the following:

32 (a) Lodging a complaint of sexual harassment committed by
33 any person with the commission, the federal equal employment
34 opportunity commission, or any other local, state, or federal
35 agency.

1 (b) Testifying, assisting, or participating in any manner
2 with an investigation related to a claim of sexual harassment
3 conducted by the commission, the federal equal employment
4 opportunity commission, or any other local, state, or federal
5 agency.

6 (c) Complying with a valid request for discovery in relation
7 to civil litigation or testifying in a hearing or trial
8 related to a claim of sexual harassment that is conducted by a
9 court, pursuant to an arbitration agreement, or before another
10 appropriate tribunal.

11 (d) Exercising any right the individual may have pursuant to
12 state or federal labor relations laws to engage in concerted
13 activities with other employees for the purposes of collective
14 bargaining or mutual aid and protection.

15 (e) (i) For the purposes of this subparagraph division,
16 "*pursuing*" means taking steps to file a criminal complaint
17 including but not limited to speaking with a peace officer
18 as defined in section 801.4 or a county attorney regarding
19 criminal harassment, filing a criminal complaint, or assisting
20 a peace officer or county attorney in the prosecution of a
21 criminal complaint.

22 (ii) Pursuing a criminal harassment complaint pursuant to
23 section 708.7.

24 (2) That the agreement does not waive any rights or claims
25 that may arise after the date the settlement agreement is
26 executed.

27 *c.* Any provision of an agreement to settle a sexual
28 harassment claim that violates paragraph "*b*" shall be void and
29 unenforceable against the individual who made the claim.

30 *d.* Nothing in subparagraph (2) of paragraph "*b*" shall be
31 construed to prevent an agreement to settle a sexual harassment
32 claim from waiving or releasing the claimant's right to seek
33 or obtain any remedies relating to sexual harassment of the
34 claimant by another party to the agreement that occurred before
35 the date on which the agreement is executed.

1 e. (1) (a) (i) For the purpose of assessing compliance
2 with the provisions of this section, the commission may with
3 48 hours' notice, at reasonable times and without unduly
4 disrupting business operations, enter and inspect any place
5 of employment, question any person who is authorized by
6 the employer to receive or investigate complaints of sexual
7 harassment, and examine an employer's records, policies,
8 procedures, and training materials related to the prevention of
9 sexual harassment and the requirements of this section.

10 (ii) An employer may agree to waive or shorten the 48-hour
11 notice period.

12 (iii) As used in subparagraph subdivision (i), the term
13 "records" includes de-identified data regarding the number of
14 complaints of sexual harassment received and the resolution of
15 each complaint.

16 (b) The employer shall at reasonable times and without
17 unduly disrupting business operations make any persons who are
18 authorized by the employer to receive or investigate complaints
19 of sexual harassment and any records, policies, procedures,
20 and training materials related to the prevention of sexual
21 harassment and the requirements of this section available to
22 the commission or designee.

23 (2) Following an inspection and examination pursuant to
24 subparagraph division (a) of this paragraph "e", the commission
25 shall notify the employer of the results of the inspection and
26 examination, including any issues or deficiencies identified,
27 provide resources regarding practices and procedures for the
28 prevention of sexual harassment that the employer may wish
29 to adopt or utilize, and identify any technical assistance
30 that the commission may be able to provide to help the
31 employer address any identified issues or deficiencies. If
32 the commission determines that it is necessary to ensure the
33 employer's workplace is free from sexual harassment, the
34 employer may be required, for a period of up to three years, to
35 provide an annual education and training program that satisfies

1 the provisions of subparagraph (4) of this paragraph "e" to all
2 employees or to conduct an annual, anonymous working-climate
3 survey, or both.

4 (3) Pursuant to and consistent with section 216.15,
5 subsection 5, the commission shall keep the records, materials,
6 and information related to or obtained through an inspection
7 carried out through an investigation or effort to resolve a
8 discriminatory or unfair practice confidential.

9 (4) If required by the commission pursuant to subparagraph
10 (2) of this paragraph "e", an employer shall conduct all of the
11 following:

12 (a) An annual education and training program for all
13 employees that includes at a minimum all the information
14 outlined in this section.

15 (b) An annual education and training program for
16 supervisory and managerial employees that includes at a minimum
17 all the information outlined in subparagraph (2) of this
18 paragraph "e", the specific responsibilities of supervisory
19 and managerial employees, and the actions that these employees
20 must take to ensure immediate and appropriate corrective action
21 taken in addressing sexual harassment complaints.

22 9. Upon timely application to the court in which an action
23 involving an issue raised under this section is pending, the
24 attorney general may intervene as a party at any time or may be
25 heard at any time.

26 10. The commission shall adopt rules pursuant to chapter 17A
27 to administer this section.

28 Sec. 2. Section 19B.12, subsection 4, Code 2019, is amended
29 to read as follows:

30 4. The department of administrative services for all state
31 agencies, and the state board of regents for its institutions,
32 shall adopt rules and appropriate internal, confidential
33 grievance procedures to implement [this section](#), and shall
34 adopt procedures for determining violations of [this section](#)
35 and for ordering appropriate dispositions that may include,

1 but are not limited to, discharge, suspension, or reduction in
2 rank or grade as defined in [section 8A.413, subsection 19](#). An
3 accurate representation of all complaints of sexual harassment
4 shall be forwarded to the employee accused of harassment and
5 the supervisor of the complainant accompanied by a statement
6 indicating that retaliation is prohibited by section 216.11,
7 subsection 2.

8 Sec. 3. Section 216.2, subsection 15, Code 2019, is amended
9 to read as follows:

10 15. *“Unfair practice” or “discriminatory practice”* means
11 those practices specified as unfair or discriminatory in
12 sections 216.6, [216.6A](#), [216.6B](#), [216.7](#), [216.8](#), [216.8A](#), [216.9](#),
13 [216.10](#), [216.11](#), and [216.11A](#).

14 Sec. 4. Section 216.15, subsection 1, Code 2019, is amended
15 to read as follows:

16 1. Any person claiming to be aggrieved by a discriminatory
17 or unfair practice may, in person or by an attorney, ~~make,~~
18 ~~sign, and file with~~ send to the commission a verified, ~~written~~
19 complaint which shall state the name and address of the person,
20 employer, employment agency, or labor organization alleged
21 to have committed the discriminatory or unfair practice of
22 which complained, shall set forth the particulars thereof, and
23 shall contain such other information as may be required by the
24 commission. The commission, a commissioner, or the attorney
25 general may in like manner make, sign, and file such complaint.
26 The complaint of the commission, commissioner, or attorney
27 general shall include a statement setting forth the prohibition
28 against retaliation pursuant to section 216.11, subsection 2.

29 Sec. 5. Section 216.15, subsection 3, paragraph a, Code
30 2019, is amended to read as follows:

31 a. After the ~~filing~~ submission of a verified complaint, a
32 ~~true copy~~ an accurate representation thereof shall be served
33 within twenty days on the person against whom the complaint
34 is ~~filed~~ submitted, except as provided in [subsection 4](#).

35 Additionally, with the complaint, a statement setting forth the

1 prohibition against retaliation pursuant to section 216.11,
2 subsection 2, shall be served. An authorized member of the
3 commission staff shall make a prompt investigation and shall
4 issue a recommendation to an administrative law judge employed
5 either by the commission or by the division of administrative
6 hearings created by [section 10A.801](#), who shall then issue a
7 determination of probable cause or no probable cause.

8 Sec. 6. ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
9 HARASSMENT.

10 1. On or before December 15, 2019, the Iowa civil rights
11 commission shall develop and implement enhanced mechanisms for
12 employees to submit complaints of discrimination and sexual
13 harassment in employment.

14 2. The methods shall include, at a minimum, an easy-to-use
15 portal on the Iowa civil rights commission's website and a
16 telephone hotline. Each method shall provide a clear statement
17 that information submitted may be referred to the federal equal
18 employment opportunity commission or a local agency that has
19 jurisdiction over the complaint.

20 Sec. 7. PUBLIC EDUCATION AND OUTREACH.

21 1. On or before December 15, 2019, the Iowa civil rights
22 commission shall develop a public education and outreach
23 program that is designed to make Iowa employees and employers
24 aware of:

25 a. Methods for reporting employment discrimination and
26 sexual harassment.

27 b. Where to find information regarding the following:

28 (1) The laws related to employment discrimination and
29 sexual harassment.

30 (2) Best practices for preventing employment discrimination
31 and sexual harassment.

32 2. The program may include printed informational and
33 training materials and in-person seminars and workshops.

34 Sec. 8. REPORT BY THE IOWA CIVIL RIGHTS COMMISSION TO THE
35 GENERAL ASSEMBLY AND THE GOVERNOR. On or before January 15,

1 2020, the Iowa civil rights commission, in consultation with
2 the attorney general, shall submit to the general assembly and
3 the governor a report. The report shall include all of the
4 following:

5 1. Information regarding the implementation of the enhanced
6 reporting mechanisms for instances of employment discrimination
7 and sexual harassment, including all of the following:

8 a. A detailed description of how any existing reporting
9 mechanisms were enhanced and any new reporting mechanisms that
10 were implemented.

11 b. A summary of changes, if any, in the annual number
12 of complaints of employment discrimination and sexual
13 harassment received and the number of complaints resulting in
14 an investigation, settlement, or actions in courts in Iowa,
15 including state and federal courts, during calendar years 2019
16 and 2020 in comparison to calendar years 2017 and 2018.

17 c. The number of employees and other persons that reported
18 employment discrimination or sexual harassment to their
19 employer, supervisor, or the person for whom they were working
20 prior to making a complaint in comparison to the number that
21 did not, and the reasons that employees and other persons gave
22 for not reporting the discrimination or sexual harassment to
23 their employer, supervisor, or the person for whom they were
24 working prior to making a complaint.

25 d. Any suggestion for legislative action to enhance further
26 the reporting mechanisms or to reduce the amount of employment
27 discrimination and sexual harassment.

28 2. An examination of mechanisms to provide notice to the
29 Iowa civil rights commission of agreements to settle sexual
30 harassment claims that contain a nondisclosure provision and
31 mechanisms to render provisions of agreements to settle sexual
32 harassment claims that include nondisclosure agreements void
33 and nonenforceable if, in relation to a separate claim, the
34 alleged harasser is later found by a court or tribunal of
35 competent jurisdiction to have engaged in sexual harassment or

1 retaliation in relation to a claim of sexual harassment. The
2 report shall also identify mechanisms, including legal issues,
3 advantages, and disadvantages, to accomplish potential changes
4 described in subsection 2, and review and examine laws and
5 pending legislation in other states that are related to this
6 subsection 2.

7 Sec. 9. MODEL POLICY AND POSTER BY THE IOWA CIVIL RIGHTS
8 COMMISSION. On or before September 15, 2019, the Iowa civil
9 rights commission shall create the model policy and model
10 poster required pursuant to section 216.6B, subsection 5, to
11 reflect the provisions of this Act.

12 Sec. 10. IMPLEMENTATION OF ACT. Section 25B.2, subsection
13 3, shall not apply to this Act.

14 Sec. 11. CONTINGENT EFFECTIVE DATE. The following take
15 effect upon the Iowa civil rights commission's creation
16 pursuant to section 216.6B, subsection 5, of the model policy
17 and model poster:

18 1. The provisions of this Act enacting section 216.6B,
19 subsections 3 and 4.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill relates to sexual harassment in employment.

24 NEW CODE SECTION 216.6B. The bill creates new Code section
25 216.6B (additional unfair or discriminatory practice — sexual
26 harassment in employment) in the Iowa civil rights Act. The
27 bill defines sexual harassment similarly to Code chapter 19B.

28 The bill requires that every employer adopt a written policy
29 against sexual harassment and prescribes what the policy
30 must include. The bill requires that the employer post the
31 policy in a prominent and accessible location in the workplace
32 and provide an individual written copy of the policy to all
33 employees. The bill requires that employers provide copies
34 of the written policies to employees upon hire and provides
35 written copies of updated policies to employees when changes

1 are made. These provisions of the bill are not effective until
2 the Iowa civil rights commission (commission) prepares and
3 provides to employers a model policy and model poster regarding
4 sexual harassment, which is a requirement of the bill.

5 The bill provides that an assertion that an individual did
6 not receive the information required to be provided by the bill
7 shall not result in the automatic liability of any employer
8 to any current or former employee or applicant in any action
9 alleging sexual harassment. The bill further provides that
10 an employer's compliance with the notice requirements of the
11 bill does not preclude the employer from liability for sexual
12 harassment of any current or former employee or applicant.

13 The bill encourages employers and labor organizations to
14 conduct annual education and training programs on the topic of
15 sexual harassment.

16 The bill provides that an employer shall not require any
17 employee or prospective employee, as a condition of employment,
18 to sign an agreement or waiver that does any of the following:
19 (1) prohibits, prevents, or otherwise restricts the employee or
20 prospective employee from opposing, disclosing, reporting, or
21 participating in an investigation of sexual harassment, or (2)
22 except as otherwise permitted by state or federal law, purports
23 to waive a substantive or procedural right to remedy available
24 to the employee with respect to a claim of sexual harassment.

25 The bill sets forth what an agreement to settle a sexual
26 harassment claim shall state, including that it does not
27 waive any rights or claims that may arise after the date the
28 settlement agreement is executed and that it does not prohibit,
29 prevent, or otherwise restrict the individual who made the
30 claim from exercising enumerated rights. The bill provides
31 that an agreement to settle a sexual harassment claim that
32 violates such provisions is void and unenforceable against the
33 person who made the claim.

34 The bill provides that the commission, in order to assess
35 compliance with the provisions of this new Code section,

1 shall be able to, with 48 hours' notice, at reasonable times
2 and without unduly disrupting business operations, enter and
3 inspect any place of employment, question any person who is
4 authorized by the employer to receive or investigate complaints
5 of sexual harassment, and examine an employer's records,
6 policies, procedures, and training materials related to the
7 prevention of sexual harassment and the requirements of the
8 Code section. The bill requires the employer to at reasonable
9 times and without unduly disrupting business operations make
10 any persons who are authorized by the employer to receive or
11 investigate complaints of sexual harassment and any records,
12 policies, procedures, and training materials related to
13 the prevention of sexual harassment and the requirements of
14 the bill available to the commission or designee. The bill
15 provides that following such an inspection and examination,
16 the commission shall notify the employer of the results
17 of the inspection and examination, including any issues or
18 deficiencies identified, provide resources regarding practices
19 and procedures for the prevention of sexual harassment that
20 the employer may wish to adopt or utilize, and identify
21 any technical assistance that the commission may be able to
22 provide to help the employer address any identified issues
23 or deficiencies. The bill provides that if the commission
24 determines that it is necessary to ensure the employer's
25 workplace is free from sexual harassment, the employer may be
26 required, for a period of up to three years, to provide an
27 annual education and training program that satisfies certain
28 requirements set forth in the bill to all employees or to
29 conduct an annual, anonymous working-climate survey, or both.

30 The bill provides that upon timely application to the court
31 in which an action involving an issue raised under Code section
32 216.6B is pending, the attorney general may intervene as a
33 party at any time or may be heard at any time.

34 OTHER CODE SECTIONS. The bill amends Code section 19B.12 to
35 include a requirement that all complaints of sexual harassment

1 shall be forwarded to the employee accused of harassment and
2 the supervisor of the complainant accompanied by a statement
3 indicating that retaliation is prohibited by Code section
4 216.11(2).

5 The bill amends the definition in Code section 216.2(15) of
6 "unfair practice" or "discriminatory practice" to also include
7 practices specified as unfair or discriminatory in new Code
8 section 216.6B.

9 The bill amends Code section 216.15 to eliminate the
10 requirement that a complaint of discrimination with the
11 Iowa civil rights commission be written. The bill also
12 amends that Code section to state that if the commission,
13 a commissioner, or the attorney general files a complaint,
14 the complaint shall include a statement setting forth the
15 prohibition against retaliation pursuant to Code section
16 216.11(2). The bill provides that rather than serving a true
17 copy of a verified complaint, the commission shall serve an
18 accurate representation of a verified complaint. Finally,
19 the bill amends that Code section to provide that after the
20 submission of a verified complaint, a statement setting forth
21 the prohibition against retaliation pursuant to Code section
22 216.11(2) shall be served on the person against whom the
23 complaint is filed, along with the complaint.

24 SESSION LAW. The bill provides that on or before December
25 15, 2019, the Iowa civil rights commission shall develop
26 and implement enhanced mechanisms for employees to submit
27 complaints of discrimination and sexual harassment in
28 employment. The bill provides that the methods shall include,
29 at a minimum, an easy-to-use portal on the Iowa civil rights
30 commission's website and a telephone hotline. Each method
31 shall provide a clear statement that information submitted
32 may be referred to the federal equal employment opportunity
33 commission or a local agency that has jurisdiction over the
34 complaint.

35 The bill provides that on or before December 15, 2019,

1 the Iowa civil rights commission shall develop a public
2 education and outreach program that is designed to make
3 Iowa employees and employers aware of methods for reporting
4 employment discrimination and sexual harassment and where to
5 find information regarding the laws related to employment
6 discrimination and sexual harassment as well as best practices
7 for preventing employment discrimination and sexual harassment.
8 The bill provides that the program may include printed
9 informational and training materials and in-person seminars and
10 workshops.

11 The bill provides that on or before January 15, 2020,
12 the Iowa civil rights commission, in consultation with the
13 attorney general, shall submit to the general assembly and the
14 governor a report. The report shall contain two parts. The
15 first part of the report shall concern the implementation of
16 the enhanced reporting mechanisms for instances of employment
17 discrimination and sexual harassment. The bill provides
18 specific instructions for the report. The second part of
19 the report shall examine mechanisms to provide notice to the
20 Iowa civil rights commission of agreements to settle sexual
21 harassment claims that contain a nondisclosure provision and
22 examine mechanisms to render provisions of agreements to settle
23 sexual harassment claims that include nondisclosure agreements
24 void and nonenforceable if, in relation to a separate claim,
25 the alleged harasser is later found by a court or tribunal of
26 competent jurisdiction to have engaged in sexual harassment or
27 retaliation in relation to a claim of sexual harassment. The
28 bill provides instructions for the second part of the report.

29 The bill provides that on or before September 15, 2019, the
30 Iowa civil rights commission shall create the model policy and
31 model poster required pursuant to new Code section 216.6B(5) to
32 reflect the provisions of the bill.

33 The bill may include a state mandate as defined in Code
34 section 25B.3. The bill makes inapplicable Code section 25B.2,
35 subsection 3, which would relieve a political subdivision from

1 complying with a state mandate if funding for the cost of
2 the state mandate is not provided or specified. Therefore,
3 political subdivisions are required to comply with any state
4 mandate included in the bill.