

Senate File 221 - Introduced

SENATE FILE 221

BY PETERSEN

A BILL FOR

1 An Act relating to sexual harassment in employment and working
2 relationships, 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. As used in this section, "*sexual harassment*" means
4 persistent, repetitive, or highly egregious conduct directed
5 at a specific individual or group of individuals that a
6 reasonable person would interpret as 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 or otherwise
10 function normally within an institution responsible for a
11 person's care, rehabilitation, education, or training.

12 2. a. All employers, employment agencies, and labor
13 organizations have an obligation to ensure a workplace that is
14 free from sexual harassment.

15 b. All persons who engage a person to perform work or
16 services have an obligation to ensure a working relationship
17 with that person that is free from sexual harassment.

18 3. Every employer shall:

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

21 (1) A statement that sexual harassment in the workplace is
22 unlawful.

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

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

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

29 (5) If the employer has more than five employees, a
30 description of the process for filing internal complaints about
31 sexual harassment and the names, addresses, and telephone
32 numbers of the person or persons to whom complaints should be
33 made.

34 (6) The complaint process of the appropriate local, state,
35 and federal employment discrimination enforcement agencies, and

1 directions as to how to contact such agencies.

2 *b.* Post in a prominent and accessible location in the
3 workplace, a poster providing, at a minimum, the elements of
4 the employer's sexual harassment policy required by paragraph
5 "a".

6 *c.* Provide to all employees a written copy of the employer's
7 policy against sexual harassment in the employee's preferred,
8 first, or native language.

9 4. *a.* An employer shall provide a copy of the employer's
10 written policies to new employees when hired in the employee's
11 preferred, first, or native language.

12 *b.* If an employer makes changes to its policy against sexual
13 harassment, the employer shall provide to all employees a
14 written copy of the updated policy in the employee's preferred,
15 first, or native language.

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

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

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

32 *b.* Employers and labor organizations are encouraged to
33 conduct an annual education and training program for all
34 employees and members that includes at a minimum all the
35 information outlined in this section.

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

9 *d.* Employers, labor organizations, and appropriate state
10 agencies are encouraged to cooperate in making this training
11 available.

12 8. In addition to the conditions described in section
13 216.11, subsection 2, a person shall also receive the
14 protections against retaliation described in section 216.11,
15 subsection 2, if the person reported the harassment or was
16 involved in the discipline or termination of employment of the
17 employee accused of harassment, even if such person does not
18 participate in the investigation of the harassment.

19 9. *a.* An employer shall not require any employee or
20 prospective employee, as a condition of employment, to sign an
21 agreement or waiver that does any of the following:

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

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

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

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

35 (a) Lodging a complaint of sexual harassment committed by

1 any person with the commission, the federal equal employment
2 opportunity commission, or any other local, state, or federal
3 agency.

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

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

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

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

25 (ii) Pursuing a criminal complaint.

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

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

32 *d.* Nothing in subparagraph (2) of paragraph "*b*" shall be
33 construed to prevent an agreement to settle a sexual harassment
34 claim from waiving or releasing the claimant's right to seek
35 or obtain any remedies relating to sexual harassment of the

1 claimant by another party to the agreement that occurred before
2 the date on which the agreement is executed.

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

12 (ii) An employer may agree to waive or shorten the
13 forty-eight-hour notice period.

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

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

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

1 employer may be required, for a period of up to three years, to
2 provide an annual education and training program that satisfies
3 the provisions of subparagraph (4) of this paragraph "e" to all
4 employees or to conduct an annual, anonymous working-climate
5 survey, or both.

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

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

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

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

24 10. The commission shall adopt rules pursuant to chapter 17A
25 to administer this section.

26 Sec. 2. Section 19B.12, subsection 4, Code 2021, is amended
27 to read as follows:

28 4. The department of administrative services for all state
29 agencies, and the state board of regents for its institutions,
30 shall adopt rules and appropriate internal, confidential
31 grievance procedures to implement [this section](#), and shall
32 adopt procedures for determining violations of [this section](#)
33 and for ordering appropriate dispositions that may include,
34 but are not limited to, discharge, suspension, or reduction in
35 rank or grade as defined in [section 8A.413, subsection 19](#). An

1 accurate representation of all complaints of sexual harassment
2 shall be forwarded to the employee accused of harassment and
3 the supervisor of the complainant accompanied by a statement
4 indicating that retaliation is prohibited by section 216.11,
5 subsection 2.

6 Sec. 3. Section 216.2, subsection 15, Code 2021, is amended
7 to read as follows:

8 15. "*Unfair practice*" or "*discriminatory practice*" means
9 those practices specified as unfair or discriminatory in
10 sections 216.6, 216.6A, 216.6B, 216.7, 216.8, 216.8A, 216.8B,
11 216.9, 216.10, 216.11, and 216.11A.

12 Sec. 4. Section 216.15, subsection 1, Code 2021, is amended
13 to read as follows:

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

27 Sec. 5. Section 216.15, subsection 3, paragraph a, Code
28 2021, is amended to read as follows:

29 a. After the ~~filing~~ submission of a verified complaint, a
30 ~~true copy~~ an accurate representation thereof shall be served
31 within twenty days on the person against whom the complaint
32 is ~~filed~~ submitted, except as provided in subsection 4.
33 Additionally, with the complaint, a statement setting forth the
34 prohibition against retaliation pursuant to section 216.11,
35 subsection 2, shall be served. An authorized member of the

1 commission staff shall make a prompt investigation and shall
2 issue a recommendation to an administrative law judge employed
3 either by the commission or by the division of administrative
4 hearings created by [section 10A.801](#), who shall then issue a
5 determination of probable cause or no probable cause.

6 Sec. 6. ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL
7 HARASSMENT.

8 1. On or before December 15, 2021, the Iowa civil rights
9 commission shall develop and implement enhanced mechanisms for
10 employees and members of the public to submit complaints of
11 discrimination and sexual harassment in employment or in the
12 course of a working relationship.

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

19 3. The Iowa civil rights commission will refer employees
20 experiencing sexual harassment, including those who have
21 experienced sexual assault, to appropriate support services.

22 Sec. 7. PUBLIC EDUCATION AND OUTREACH.

23 1. On or before December 15, 2021, the commission on the
24 status of women, in consultation with the Iowa civil rights
25 commission, shall develop a public education and outreach
26 program that is designed to make Iowa employees, employers,
27 businesses, and members of the public aware of:

28 a. Methods for reporting employment and work-related
29 discrimination and sexual harassment.

30 b. Where to find information regarding the following:

31 (1) The laws related to employment and work-related
32 discrimination and sexual harassment.

33 (2) Best practices for preventing employment and
34 work-related discrimination and sexual harassment.

35 c. Methods for preventing and addressing sexual harassment

1 in the workplace.

2 2. The program may include the following:

3 a. Public service announcements.

4 b. Print and electronic advertisements.

5 c. Web-based and electronic training materials.

6 d. Printed information and training materials.

7 e. Model educational programs and curricula.

8 f. In-person seminars and workshops.

9 Sec. 8. REPORT BY THE IOWA CIVIL RIGHTS COMMISSION TO THE
10 GENERAL ASSEMBLY, THE GOVERNOR, AND THE LEGISLATIVE SERVICES
11 AGENCY. On or before January 15, 2022, the Iowa civil rights
12 commission shall submit to the general assembly, the governor,
13 and the legislative services agency a report. The report
14 shall include information regarding the implementation of the
15 enhanced reporting mechanisms for instances of employment and
16 work-related discrimination and sexual harassment, including
17 all of the following:

18 1. A detailed description of how any existing reporting
19 mechanisms were enhanced and any new reporting mechanisms that
20 were implemented.

21 2. A summary of changes, if any, in the annual number
22 of complaints of employment and work-related discrimination
23 and sexual harassment received and the number of complaints
24 resulting in an investigation, settlement, or actions in courts
25 in Iowa, including state and federal courts, during calendar
26 years 2021 and 2022 in comparison to calendar years 2019 and
27 2020.

28 3. The number of employees and other persons that reported
29 employment or work-related discrimination or sexual harassment
30 to their employer, supervisor, or the person for whom they were
31 working prior to making a complaint in comparison to the number
32 that did not, and the reasons that employees and other persons
33 gave for not reporting the discrimination or sexual harassment
34 to their employer, supervisor, or the person for whom they were
35 working prior to making a complaint.

1 4. Any suggestion for legislative action to enhance further
2 the reporting mechanisms or to reduce the amount of employment
3 and work-related discrimination and sexual harassment.

4 Sec. 9. MODEL POLICY AND POSTER BY THE IOWA CIVIL RIGHTS
5 COMMISSION. On or before September 15, 2021, the Iowa civil
6 rights commission shall create the model policy and model
7 poster required pursuant to section 216.6B, subsection 5, to
8 reflect the provisions of this Act.

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

11 Sec. 11. CONTINGENT EFFECTIVE DATE. The following take
12 effect one month after the Iowa civil rights commission creates
13 and makes the model policy and model poster publicly available
14 pursuant to section 216.6B, subsection 5:

15 The provisions of this Act enacting section 216.6B,
16 subsections 3 and 4.

17

EXPLANATION

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

20 This bill relates to sexual harassment in employment and
21 working relationships.

22 NEW CODE SECTION 216.6B. The bill creates new Code section
23 216.6B (additional unfair or discriminatory practice — sexual
24 harassment in employment) in the Iowa civil rights Act. The
25 bill defines sexual harassment similarly to Code section
26 19B.12, but does not include the enumerated circumstances that
27 are set forth as sexual harassment in that Code section.

28 The bill provides that all employers, employment agencies,
29 and labor organizations have an obligation to ensure a
30 workplace that is free from sexual harassment. Furthermore,
31 the bill provides that all persons who engage a person to
32 perform work or services have an obligation to ensure a
33 working relationship with that person that is free from sexual
34 harassment.

35 The bill requires that every employer adopt a written

1 policy against sexual harassment and prescribes what the
2 policy must include. The bill requires that the employer
3 post the policy in a prominent and accessible location in the
4 workplace and provide an individual written copy of the policy
5 to all employees in the employee's preferred, first, or native
6 language. The bill requires that employers provide copies of
7 the written policies to employees in the employee's preferred,
8 first, or native language upon hire and provides written
9 copies of updated policies to employees in the employee's
10 preferred, first, or native language when changes are made.
11 These provisions of the bill are not effective until one month
12 after the Iowa civil rights commission (commission) prepares
13 and makes publicly available a model policy and model poster
14 regarding sexual harassment, which is a requirement of the
15 bill.

16 The bill provides that an assertion that an individual did
17 not receive the information required to be provided by the bill
18 shall not result in the automatic liability of any employer
19 to any current or former employee or applicant in any action
20 alleging sexual harassment. The bill further provides that
21 an employer's compliance with the notice requirements of the
22 bill does not preclude the employer from liability for sexual
23 harassment of any current or former employee or applicant.

24 The bill encourages employers and labor organizations to
25 conduct annual education and training programs on the topic of
26 sexual harassment.

27 The bill provides that a person shall receive the
28 protections described in Code section 216.11(2) if the person
29 reported the harassment or was involved in the discipline
30 or termination of the employment of the employee accused of
31 harassment, even if the person does not participate in the
32 investigation of the harassment.

33 The bill provides that an employer shall not require any
34 employee or prospective employee, as a condition of employment,
35 to sign an agreement or waiver that does any of the following:

1 (1) prohibits, prevents, or otherwise restricts the employee or
2 prospective employee from opposing, disclosing, reporting, or
3 participating in an investigation of sexual harassment, or (2)
4 except as otherwise permitted by state or federal law, purports
5 to waive a substantive or procedural right to remedy available
6 to the employee with respect to a claim of sexual harassment.

7 The bill sets forth what an agreement to settle a sexual
8 harassment claim shall state, including that it does not
9 waive any rights or claims that may arise after the date the
10 settlement agreement is executed and that it does not prohibit,
11 prevent, or otherwise restrict the individual who made the
12 claim from exercising enumerated rights. The bill provides
13 that an agreement to settle a sexual harassment claim that
14 violates such provisions is void and unenforceable against the
15 person who made the claim.

16 The bill provides that the commission, in order to assess
17 compliance with the provisions of this new Code section,
18 shall be able to, with 48 hours' notice, at reasonable times
19 and without unduly disrupting business operations, enter and
20 inspect any place of employment, question any person who is
21 authorized by the employer to receive or investigate complaints
22 of sexual harassment, and examine an employer's records,
23 policies, procedures, and training materials related to the
24 prevention of sexual harassment and the requirements of the
25 Code section. The bill requires the employer to at reasonable
26 times and without unduly disrupting business operations make
27 any persons who are authorized by the employer to receive or
28 investigate complaints of sexual harassment and any records,
29 policies, procedures, and training materials related to
30 the prevention of sexual harassment and the requirements of
31 the bill available to the commission or designee. The bill
32 provides that following such an inspection and examination,
33 the commission shall notify the employer of the results
34 of the inspection and examination, including any issues or
35 deficiencies identified, provide resources regarding practices

1 and procedures for the prevention of sexual harassment that
2 the employer may wish to adopt or utilize, and identify
3 any technical assistance that the commission may be able to
4 provide to help the employer address any identified issues
5 or deficiencies. The bill provides that if the commission
6 determines that it is necessary to ensure the employer's
7 workplace is free from sexual harassment, the employer may be
8 required, for a period of up to three years, to provide an
9 annual education and training program that satisfies certain
10 requirements set forth in the bill to all employees or to
11 conduct an annual, anonymous working-climate survey, or both.

12 OTHER CODE SECTIONS. The bill amends Code section 19B.12 to
13 include a requirement that all complaints of sexual harassment
14 shall be forwarded to the employee accused of harassment and
15 the supervisor of the complainant accompanied by a statement
16 indicating that retaliation is prohibited by Code section
17 216.11(2).

18 The bill amends the definition in Code section 216.2(15) of
19 "unfair practice" or "discriminatory practice" to also include
20 practices specified as unfair or discriminatory in new Code
21 section 216.6B.

22 The bill amends Code section 216.15 to eliminate the
23 requirement that a complaint of discrimination with the
24 Iowa civil rights commission be written. The bill also
25 amends that Code section to state that if the commission,
26 a commissioner, or the attorney general files a complaint,
27 the complaint shall include a statement setting forth the
28 prohibition against retaliation pursuant to Code section
29 216.11(2). The bill provides that rather than serving a true
30 copy of a verified complaint, the commission shall serve an
31 accurate representation of a verified complaint. Finally,
32 the bill amends that Code section to provide that after the
33 submission of a verified complaint, a statement setting forth
34 the prohibition against retaliation pursuant to Code section
35 216.11(2) shall be served on the person against whom the

1 complaint is filed, along with the complaint.

2 SESSION LAW. The bill provides that on or before December
3 15, 2021, the Iowa civil rights commission shall develop and
4 implement enhanced mechanisms for employees and members of
5 the public to submit complaints of discrimination and sexual
6 harassment in employment and in the course of a working
7 relationship. The bill provides that the methods shall
8 include, at a minimum, an easy-to-use portal on the Iowa
9 civil rights commission's website and a telephone hotline.
10 Each method shall provide a clear statement that information
11 submitted may be referred to the federal equal employment
12 opportunity commission or a local agency that has jurisdiction
13 over the complaint.

14 The bill provides that on or before December 15, 2021,
15 the Iowa commission on the status of women, in consultation
16 with the Iowa civil rights commission, shall develop a public
17 education and outreach program that is designed to make Iowa
18 employees, employers, businesses, and members of the public
19 aware of methods for reporting employment and work-related
20 discrimination and sexual harassment and where to find
21 information regarding the laws related to employment and
22 work-related discrimination and sexual harassment, as well as
23 best practices for preventing employment discrimination and
24 sexual harassment, and methods for preventing employment and
25 work-related discrimination and sexual harassment. The bill
26 sets forth what the program may entail. The bill provides
27 that the Iowa civil rights commission will refer employees
28 experiencing sexual harassment, including those who have
29 experienced sexual assault, to appropriate support services.

30 The bill provides that on or before January 15, 2022, the
31 Iowa civil rights commission shall submit to the general
32 assembly, the governor, and the legislative services agency a
33 report. The report shall concern the implementation of the
34 enhanced reporting mechanisms for instances of employment and
35 work-related discrimination and sexual harassment. The bill

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1 provides specific instructions for the report.

2 The bill provides that on or before September 15, 2021, the
3 Iowa civil rights commission shall create the model policy and
4 model poster required pursuant to new Code section 216.6B(5) to
5 reflect the provisions of the bill.

6 The bill may include a state mandate as defined in Code
7 section 25B.3. The bill makes inapplicable Code section 25B.2,
8 subsection 3, which would relieve a political subdivision from
9 complying with a state mandate if funding for the cost of
10 the state mandate is not provided or specified. Therefore,
11 political subdivisions are required to comply with any state
12 mandate included in the bill.