

1 **§351. Declaration of public policy**

2 The state of Louisiana is committed to providing a workplace that is free
3 from sexual harassment. Sexual harassment in the workplace is strictly
4 prohibited under the Equal Employment Opportunity Act, 42 U.S.C. 2000e-2;
5 the Louisiana Employment Discrimination Law, R.S. 23:301 through 303 and
6 332; and the Louisiana laws on the prevention of sexual harassment, R.S. 42:341
7 through 345. The Legislature of Louisiana has enacted laws requiring each
8 agency of a governmental entity to develop and institute a policy to prevent
9 sexual harassment, which is applicable to all public servants, public employees,
10 and elected officials. The agency policy is to contain an effective complaint or
11 grievance process that includes taking immediate and appropriate action when
12 a complaint of sexual harassment involving any public servant in the agency is
13 received. The policy shall also contain a clear prohibition against retaliation
14 against an individual for filing a complaint or testifying or participating in any
15 way in an investigation or other proceeding involving a complaint of sexual
16 harassment.

17 It is hereby declared that in order to reduce the impact of sexual
18 harassment judgements and settlements on the taxpayers of the state, it is the
19 public policy of this state that as sexual harassment is against state and federal
20 law, and state agencies have adopted policies and required training to prevent
21 sexual harassment, when there has been a determination that sexual harassment
22 has occurred and a lawsuit has been initiated by the complainant and the state
23 is cast in judgement or settles the litigation, the state, through the attorney
24 general, shall by civil suit seek to recover from the sexual harasser the amounts
25 paid by the state to the complainant, the costs and reasonable attorney fees
26 incurred by the state in the sexual harassment litigation, and all costs and
27 reasonable attorney fees incurred by the attorney general in the civil suit
28 seeking recovery.

29 **§352. Definitions**

1 **Unless the context clearly indicates otherwise, the following words and**
2 **terms, when used in this Chapter, shall have the following meanings:**

3 **(1) "Agency" means a department, office, division, agency, commission,**
4 **board, committee, or other organizational unit of a governmental entity.**

5 **(2) "Agency head" means the chief executive, administrative officer of**
6 **an agency, or the chairman of a board or commission.**

7 **(3) "Complainant" means the person who files a complaint alleging that**
8 **they have been the victim of sexual harassment as described in this Chapter.**

9 **(4) "Elected official" means any person holding an office in a**
10 **governmental entity which is filled by the vote of the electorate. The term**
11 **includes any person appointed to fill a vacancy in that office.**

12 **(5) "Governmental entity" means the state.**

13 **(6) "Public employee" means anyone who is:**

14 **(a) An administrative officer or official of a governmental entity who is**
15 **not holding an elective office.**

16 **(b) Appointed to a post or position created by rule, law, resolution, or**
17 **executive order.**

18 **(c) Employed by an agency, officer, or official of a governmental entity.**

19 **(7) "Public funds" means monies of the state, including but not limited**
20 **to the Risk Management Fund, the state general fund, dedicated funds, fees and**
21 **self-generated revenues, or any other source of public funds.**

22 **(8) "Public servant" means a public employee or an elected official.**

23 **§353. Procedures**

24 **A. The provisions of this Chapter shall be limited to claims that allege**
25 **the following:**

26 **(1) Sexual harassment, which shall include unwelcome sexual advances,**
27 **requests for sexual favors, and other verbal, physical, or inappropriate conduct**
28 **of a sexual nature which explicitly or implicitly affects an individual's**
29 **employment or the holding of office, unreasonably interferes with an**

1 individual's work performance, or creates an intimidating, hostile, or offensive
2 work environment, by a public servant of the state.

3 (2) Intimidation, reprisal, retaliation, or discrimination that is unlawful
4 under state or federal law and is taken against a public servant of the state
5 because of a claim of sexual harassment in violation of state or federal law.

6 B. In addition to the requirements of R.S. 42:342 relative to the
7 development and institution of the state's mandatory policy to prevent sexual
8 harassment, each agency policy shall include provisions relative to the following
9 items:

10 (1) Reporting complaints.

11 (2) Investigating complaints.

12 (3) Resolution of complaints.

13 (4) The right of the complainant to pursue a claim under state or federal
14 law, regardless of the outcome of the investigation.

15 (5) If a lawsuit is filed under state or federal law, and the state is cast in
16 judgment or enters into a settlement of the litigation, the state, through the
17 attorney general, shall by civil suit seek restitution from the sexual harasser of
18 the amounts paid by the state to the complainant, the costs and reasonable
19 attorney fees incurred by the state in the litigation, and all costs and reasonable
20 attorney fees incurred by the attorney general in the civil suit seeking
21 restitution.

22 C. After an investigation is conducted in accordance with the agency
23 policy and completed, if it is determined that sexual harassment did occur, the
24 agency head shall determine the discipline to be taken against the individual
25 who was found to have committed sexual harassment.

26 D. For public servants in the classified civil service of the state, the
27 discipline shall be in accordance with the rules and regulations of the
28 appropriate Louisiana civil service system. For unclassified public employees,
29 the discipline shall be in accordance with the policies of the employing agency.

1 For nonlegislative elected officials, the discipline shall be in accordance with
2 state law. For legislative elected officials, the discipline shall be in accordance
3 with the Rules of Order of the Senate, or the Rules of the House of
4 Representatives, as applicable.

5 E. If, after an investigation is conducted and completed, it is determined
6 that sexual harassment did not occur, the agency head shall determine the
7 discipline to be taken against the complainant, if any.

8 §354. Mandating reimbursement of amounts paid by the state for sexual
9 harassment litigation

10 A. If a lawsuit is filed against the state by the complainant, the agency
11 head or the human resources department of the agency shall immediately notify
12 the alleged sexual harasser of the claim, and advise the alleged sexual harasser
13 of the possibility that such individual may be required to reimburse the state the
14 amount of any judgement, settlement, costs of litigation, and attorney fees paid
15 by the state and the costs and attorney fees in connection with any litigation for
16 recovery, and the right of that individual to intervene in any mediation, hearing,
17 or civil action brought with respect to the claim.

18 B. Nothing in this Section shall be construed to limit the authority of the
19 alleged sexual harasser to retain counsel to protect the interests of the individual
20 at any point during any of the procedures or proceedings authorized under this
21 Chapter.

22 C. Notwithstanding any other provision of law to the contrary, if that
23 litigation is filed due to a claim of sexual harassment and the state is cast in
24 judgment or settles the litigation, the state, through the attorney general, shall
25 by civil suit seek to recover from the sexual harasser the amounts paid by the
26 state to the complainant, the costs and reasonable attorney fees incurred by the
27 state in the sexual harassment litigation, and all costs and reasonable attorney
28 fees incurred by the attorney general in the civil suit seeking recovery.

29 D. Notwithstanding any other provision of law to the contrary, including

1 the provisions of Title III of Book III of the Louisiana Civil Code, the state, the
2 agency, and the sexual harasser shall not be deemed to be solidary obligors.

3 §355. Dissemination of information to all elected officials, public employees,
4 and public servants

5 The commissioner of administration shall prepare a notice to be
6 furnished to each agency head for annual dissemination to each public servant
7 advising them of their potential liability if they are determined by an agency
8 head or a court of competent jurisdiction to have committed sexual harassment.
9 Notice shall also be disseminated to any newly elected, appointed, or employed
10 public servant.

11 §356. Public record; exception

12 Any settlement executed in connection with a lawsuit filed pursuant to
13 this Chapter shall be a public record, with the exception of the name of the
14 victim of the sexual harassment.

15 §357. Nondisclosure agreements prohibited

16 No state agency shall execute a nondisclosure agreement with any person
17 to settle a claim that the person was the victim of sexual harassment by a public
18 servant, either prior to the filing of a lawsuit by that person or at any time after
19 a lawsuit is filed.

20 Section 2. R.S. 44:4.1(B)(28) is hereby amended and reenacted to read as follows:

21 §4.1. Exceptions

22 * * *

23 B. The legislature further recognizes that there exist exceptions, exemptions,
24 and limitations to the laws pertaining to public records throughout the revised
25 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
26 limitations are hereby continued in effect by incorporation into this Chapter by
27 citation:

28 * * *

29 (28) R.S. 42:17, 57, **356**, 1111, 1141.4, 1158, 1161, 1193, 1194

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha S. Hess.

DIGEST

SB 182 Original 2019 Regular Session Hewitt

Present law prohibits sexual harassment in the workplace. Present law further provides for each agency of a governmental entity to develop and institute a policy to prevent sexual harassment, which is applicable to all public servants, public employees, and elected officials.

Proposed law declares the public policy of the state, in order to reduce the impact of sexual harassment judgements and settlements on the taxpayers of the state, when there has been a determination that sexual harassment has occurred and a lawsuit has been initiated by the complainant and the state is cast in judgment or settles the litigation, the state, through the attorney general, shall by civil suit seek to recover from the sexual harasser the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state that while the victim of sexual harassment may be entitled to compensation by the state, the person who committed the sexual harassment should be ultimately held responsible for the amounts paid by the state to the victim, including any costs incurred by the state in connection therewith, and not the taxpayers of the state.

Proposed law provides for the definitions of "agency", "agency head", "complainant", "elected official", "governmental entity", "public employee", "public funds", and "public servant".

Proposed law is limited to claims alleging:

- (1) Sexual harassment, which shall include unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature which explicitly or implicitly affects an individual's employment or the holding of office, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, by a public servant of the state.
- (2) Intimidation, reprisal, retaliation, or discrimination that is unlawful under state or federal law and is taken against a public servant of the state because of a claim of sexual harassment in violation of state or federal law.

Proposed law provides that in addition to the requirements of present law relative to the development and institution of the state's mandatory policy to prevent sexual harassment, each agency policy shall include provisions relative to:

- (1) Reporting complaints.
- (2) Investigating complaints.
- (3) Resolution of complaints.
- (4) The right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.
- (5) In the event a lawsuit is filed under state or federal law, and the state is cast in judgment or enters into a settlement of the litigation, the state, through the attorney general, shall by civil suit seek restitution from the sexual harasser of the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred

by the state in the litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking restitution.

Proposed law provides that if, after an investigation is conducted in accordance with the agency policy and completed, it is determined that sexual harassment did occur, the agency head shall determine the discipline to be taken against the individual who was found to have committed sexual harassment. Proposed law further provides that for public servants in the classified civil service of the state, the discipline shall be in accordance with the rules and regulations of the Louisiana civil service system. For unclassified public employees, the discipline shall be in accordance with the policies of the employing agency. For non-legislative elected officials, the discipline shall be in accordance with state law. For legislative elected officials, the discipline shall be in accordance with the Rules of Order of the Senate, or the Rules of the House of Representatives, as applicable.

Proposed law provides that if, after an investigation is conducted and completed, it is determined that sexual harassment did not occur, the agency head shall determine the discipline to be taken against the complainant, if any.

Proposed law provides that if a lawsuit is filed against the state by the complainant, the agency head or the human resources department of the agency shall immediately notify the alleged sexual harasser of the claim, and advise the alleged sexual harasser of the possibility that such individual may be required to reimburse the state the amount of any judgement, settlement, costs of litigation, and attorneys fees paid by the state and the costs and attorney fees in connection with any litigation for recovery, and the right of that individual to intervene in any mediation, hearing, or civil action brought with respect to the claim.

Proposed law is not to be construed to limit the authority of the individual or individuals who are alleged to have personally committed an act of sexual harassment to retain counsel to protect the interests of the individual at any point during any of the procedures provided under proposed law.

Proposed law provides that notwithstanding any law to the contrary, in the event that litigation is filed due to a claim of sexual harassment and the state is cast in judgment or settles the litigation, the state, through the attorney general, shall by civil suit seek to recover from the sexual harasser the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state in the sexual harassment litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking recovery.

Proposed law provides that notwithstanding any law to the contrary, the state, the agency, and the sexual harasser shall not be deemed to be solidary obligors.

Proposed law provides that the commissioner of administration shall prepare a notice to be furnished to each agency head for annual dissemination to each public servant advising them of their potential liability if they are determined by an agency head or a court of competent jurisdiction to have committed sexual harassment. Requires that this notice be disseminated to any newly elected, appointed, or employed public servant.

Proposed law provides that any settlement executed in connection with a claim filed pursuant to proposed law is a public record, with the exception of the name of the victim of the sexual harassment.

Proposed law prohibits a state agency from entering into a nondisclosure agreement with any person to settle a claim that the person was the victim of sexual harassment by an elected official, public employee, or public servant, either prior to the filing of a lawsuit by that person or at any time after a lawsuit is filed.

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ORIGINAL
SB NO. 182

Effective August 1, 2019.

(Amends R.S. 44:4.1(B)(28); adds R.S. 42:351-357)