

“Harassment” Redefined, Expanded, and Codified under the DC Human Rights Act

OHR Enforcement Guidance No. 23-02



Date: December 9, 2022

Background

On July 25, 2022, the Mayor signed the *Human Rights Enhancement Act of 2022* (the “Act”) (D.C. Law No. 24-172), which, among other things, amended the DC Human Rights Act (DCHRA) to redefine and codify what “harassment” is and how it should be interpreted by adjudicators reviewing complaints of harassment.¹

What is this new amendment to the Human Rights Act about?

Prior to passage of the Act, “harassment,” otherwise known as a hostile work environment, was interpreted based on a court-made “severe or pervasive” standard, which required a showing that an employee was subjected to unwelcome conduct based on one or more of the employee’s protected traits and which was severe or pervasive enough to affect a term, condition, or privilege of employment.

The newly codified section in the DCHRA expands employee protections by doing the following:

- 1) Including a specific prohibition of workplace harassment;²
- 2) Defining harassment and sexual harassment;³ and
- 3) Creating a broader legal standard, which fact finders must use in determining whether an alleged conduct constitutes unlawful, workplace harassment.⁴

When do these new provisions apply?

On October 1, 2022, OHR began applying these new provisions to harassment claims, where the hostile conduct is alleged to have occurred on or after October 1, 2022.

Prohibition of Workplace Harassment and the New Definitions

Harassment in the workplace is now defined in the statute as “conduct, whether direct or indirect, verbal or nonverbal, that unreasonably alters an individual’s terms, conditions, or privileges of employment or has the purpose or effect of creating an intimidating, hostile, or offensive work environment.”⁵

Harassment, as defined above, is considered an unlawful discriminatory practice in the workplace under the DCHRA, when the alleged conduct is based, either wholly or partially, on one of more of the following **protected characteristics**:

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|--------------------|-----------------------------------|--|
| 1. Race | 8. Personal Appearance | 15. Political Affiliation |
| 2. Color | 9. Sexual Orientation | 16. Status as a Victim of Domestic Violence, a Sexual Offense, or Stalking (“DVSOS”) |
| 3. Religion | 10. Gender Identity or Expression | 17. Credit Information |
| 4. National Origin | 11. Family Responsibilities | 18. Homeless Status ⁶ |
| 5. Sex | 12. Genetic Information | |
| 6. Age | 13. Disability | |
| 7. Marital Status | 14. Matriculation | |

¹ This document is a factsheet provided by the D.C. Office of Human Rights (“OHR”) regarding a legislative addition of the definition of “harassment” to the D.C. Human Rights Act of 1977 (“DCHRA”). This document may be used for educational purposes only and not as legal advice to apply to a particular situation. Any person or entity in need of legal advice should contact an attorney.

² D.C. Code § 2-1402.11 (c-2)(1)

³ D.C. Code § 2-1402.11 (c-2)(2)

⁴ D.C. Code § 2-1402.11(c-2)(3-4)

⁵ D.C. Code § 2-1402.11(c-2)(2)(A)

⁶ The DCHRA was also amended to include homeless status as a protected trait as of October 1, 2022. Further information about this amendment can be found on OHR’s Homeless Status Fact Sheet: <https://ohr.dc.gov/page/office-human-rights-fact-sheets>.

Sexual Harassment is specifically defined as: (i) any conduct of a sexual nature that would be considered harassment under the new expanded definition in the Act (ii) sexual advances, requests for sexual favors, or other conduct of a sexual nature where submission to the conduct is made either explicitly or implicitly a term or condition of employment or where submission or rejection of the conduct is the basis for an employment decision affecting the individual's employment.⁷

Broader Legal Standard

The Act abandons the courts' previous reliance on the "severe or pervasive" element, and instead explicitly states that "no specific number of incidents or specific level of egregiousness is required" to legally constitute a hostile work environment.⁸ Additionally, when determining whether an alleged conduct constitutes legal harassment under the DCHRA, fact finders are now required to weigh the "totality of the circumstances." The statute again explicitly requires that, when considering the totality of the circumstances, fact finders must consider various factors, including but not limited to, the following enumerated factors:

- The frequency of the conduct;
- The duration of the conduct;
- The location where the conduct occurred;
- Whether the conduct involved threats, slurs, epithets, stereotypes, or humiliating or degrading conduct; and
- Whether any party to the conduct held a position of formal authority over or informal power relative to another party.

Finally, these new provisions note that the fact finder may find that conduct constitutes unlawful harassment regardless of the following circumstances:

- The conduct consisted of a single incident;
- The conduct was directed toward a person other than the complainant;
- The complainant submitted to or participated in the conduct;
- The complainant was able to complete employment responsibilities despite the conduct;
- The conduct did not cause tangible physical or psychological injury;
- The conduct occurred outside the workplace; or
- The conduct was not overtly directed toward a protected characteristic.⁹

What do I do if I believe I have been subjected to a Hostile Work Environment?

You can submit an Intake Questionnaire to OHR if you believe you have been subject to a hostile work environment based on any of the eighteen protected traits recognized for employment claims.

The Intake Questionnaire must be filed within one year of the alleged discriminatory conduct or discovery thereof, except that allegations of employment discrimination claims against the District of Columbia government must be reported first to a certified EEO Counselor within 180 days of the alleged discriminatory conduct or discovery thereof.

Intake Questionnaires can be filed:

- **Online:** ohr.dc.gov
- **In-Person/Mail:** 441 4th Street NW, Suite 570N, Washington, DC 20010
- **Email:** intake@ohr.dc.gov
- **Fax:** (202) 727-9589

⁷ D.C. Code § 2-1402.11 (c-2)(2)(B)

⁸ D.C. Code § 2-1402.11(c-2)(3)

⁹ D.C. Code § 2-1402.11(c-2)(4)