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Nev. Gambling Regulators Mull Workplace Harassment Regs

By **Kristen Gallagher and Laura Jacobsen** (March 23, 2018, 11:23 AM EDT)

The past year has brought an increased awareness of the widespread problem of sexual harassment and gender inequality in the workplace. No industry is immune to the issue, including the gaming industry. In response, Nevada's Gaming Control Board has taken initial steps to address sexual misconduct in the workplace among its licensees. The board is currently considering whether to implement regulations or minimum internal control standards related to sexual harassment in the workplace. Toward that end, board Chairwoman Becky Harris issued a notice on March 1 to gaming licensees, declaring the board's inherent interest in licensees' sexual harassment policies and procedures. "An anti-sexual harassment policy is a key component to sexual harassment prevention," the notice reads, warning the industry that regulatory violations can result in discipline including fines or license suspensions or revocations.



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As part of that notice, the board included a 15-point checklist identifying certain elements that could be considered for implementation of future regulations or minimum internal control standards. One suggested element is the completion of an annual survey that asks employees if they are currently being harassed or know of the occurrence of any harassment. Further, the board included a sample standardized reporting form to be used for reporting all instances of harassment. While the notice makes it clear that the information is currently intended to be a guide for licensees and is subject to further input and discussion through a workshop, the board's direction and intent to issue regulations and further standards is clear. Licensees should take this opportunity to take stock of current sexual harassment and retaliation policies and consider improvements, if necessary.



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As for the proposed sexual harassment policy checklist accompanying the notice, gaming licensees should generally heed its suggestions not only because failure to do so could lead to fines and bad publicity, but because the checklist reads largely as a list of best practices for combating sexual harassment in the workplace. Indeed, even employers outside the gaming industry can use it as a guide. The 15-point checklist asks the following "yes" or "no" questions, asking whether each of the following items are part of a licensee's current sexual harassment policy:

- An unequivocal statement that sexual harassment will not be tolerated.

- An unequivocal statement that there is an organizational commitment to diversity, inclusion and respect.
- An easy-to-understand description of prohibited conduct, with examples given.
- A description of a reporting system available to employees who experience sexual harassment, as well as those who observe sexual harassment. Said reporting system must include the company's compliance committee should one exist.
- A statement that the reporting system will provide a prompt, thorough and impartial investigation.
- A statement that the identity of an individual who submits a report, a witness who provides information regarding a report, the target of the complaint, and any information gathered as part of the investigation will be kept confidential to the fullest extent possible.
- An assurance that the employer will take immediate and proportionate corrective action if it determines sexual harassment has occurred.
- A communication of the disposition of the investigation to all parties and, where appropriate, a communication of the sanction imposed if sexual harassment was substantiated.
- An assurance that any individual who submits a report or a witness who provides information will be protected from retaliation.
- A statement that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately.
- Regular compliance trainings for all employees.
- An annual review and assessment of internal sexual harassment policies and procedures to ensure effectiveness.
- A plan to remedy any deficiencies noted after the annual review and assessment, resulting in more effective policies and procedures.
- Good faith efforts to prevent or remedy repeated problems should they exist.
- Implementation of an annual survey that asks employees to report whether they are currently being harassed or know of any harassment taking place.

Any "no" response requires a specific and detailed written response.

While most of these items are fairly standard, a few of the items in the checklist are somewhat unorthodox. For example, the checklist suggests that licensees should consider implementing "an annual survey that asks employees to report whether they are currently being harassed or know of any harassment taking place." Such a practice that is not currently required or may not otherwise be commonly followed could serve to create a written record that could be particularly important in administrative or legal proceedings, whether in favor of a licensee or not. However, it is generally prudent for a licensee (and of course, better for employees) to prevent, discover, investigate and remedy harassment within the organization as promptly and resolutely as

possible. Indeed, an increase in internal reporting indicates that a policy is working and employees trust their employer to protect them and follow the law. An ineffective complaint procedure hurts both the employees who suffer harassment and the employers who suffer lost productivity and external litigation.

Also new and meriting special attention is proposed criteria that will require licensees to report to the board all instances of substantiated sexual harassment within the organization and all charges, settlement or judgments on record with state and federal anti-discrimination agencies. Nevada gaming licensees are no stranger to the board's broad authority and power to demand such confidential information. Licensees will also be familiar with confidentiality protections related to information provided to the board. Specifically, NRS 463.120(4)(a) and (e) provide that information furnished to the board pursuant to its regulatory authority or in connection with an investigation or audit is confidential. The board may only reveal the information: (1) as necessary to carry out the board's duties; (2) pursuant to valid legal process; or (3) to any local, state, federal, or foreign agency or government.

In addition, following its amendment during the 2017 legislative session, NRS 463.120(6)(a) specifically provides that such information is both confidential and privileged, and that confidentiality and privilege are not waived by the board disclosing the information to a federal, state or foreign government agency. In addition, the licensee has a privilege to refuse to disclose, and to prevent the board from disclosing, the privileged information.[1]

While reports of internal and external sexual harassment charges and settlements are somewhat protected, having an effective policy for internal reporting, investigation and remedy of sexual harassment allegations will gain new importance in the gaming industry should the board implement this disclosure requirement.[2]

Implicit in the notice is the board's recognition of the importance of company culture and leadership in combating workplace harassment. The notice seeks input regarding licensees' commitment to inclusion and diversity and was issued by the board's first woman chair in its history. Nevada's gaming industry should view the board's solicitation and upcoming public workshop as a chance to review, revise and implement best practices to combat workplace harassment and to shape the board's requirements for those policies. This is a unique and important opportunity for licensees to be involved in the creation of regulations and guidelines that will provide continued and seemingly greater protection for employees.

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[1] NRS 463.120(6)(b).

[2] NRS 463.120(4).

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