
The Illinois Gender Violence Act Now Covers Illinois Employers

By Paul E. Starkman, Amelia S. Newton / Nov 17, 2020

Until recently, the Illinois Gender Violence Act, 740 ILCS 82/1 *et seq.* ("IGVA" or "Act"), did not provide a private cause of action against corporate employers whose employees may have committed gender-related violence. This was because such corporations were not considered to be "persons" who could "personally" commit, encourage, or assist in acts of gender-related violence, as was required by the IGVA's text.

All that may have changed in 2019 with a very short, split decision made by the Illinois Appellate Court for the Third District in *Gasic v. Marquette Mgt., Inc.*, 2019 IL App (3d) 170756 (May 17, 2019)(2-1 decision). *Gasic* held that, under certain circumstances, corporations can be liable under the IGVA. Since *Gasic*, in 2020, a growing number of courts in Illinois have agreed that corporate employers can be liable for their employees' gender-related violence under the IGVA.

Gasic and the decisions following it are significant. They recognize for the first time that the IGVA now covers corporate employers in Illinois if their employees engage in gender-related violence. Moreover, the IGVA's statute of limitations is much longer than other harassment statutes, such as Title VII of the Civil Rights Act ("Title VII") and the Illinois Human Rights Act ("IHRA"). The IGVA's statute of limitations is seven years for gender-related violence involving a battery and two years if the IGVA claim involves the threat of a battery. Comparatively, the statute of limitations for charges of sexual harassment filed with the Illinois Department of Human Rights or with the Equal Employment Opportunity Commission is 300 days.

In addition, the IGVA exposes business entities to more extensive damages than under either Title VII or the IHRA. The IGVA authorizes, among other forms of relief, monetary damages for emotional distress, punitive damages, and attorneys' fees and costs. In contrast, the IHRA does not allow punitive damages and, contrary to Title VII, damages under the IGVA are not capped and the IGVA applies to all employers in Illinois regardless of size.

However, not every act or omission by a corporate employer will give rise to liability under the IGVA after *Gasic*. Some federal courts after *Gasic* have dismissed without prejudice IGVA claims against corporate employers where the plaintiff merely alleged that the defendant corporation knew that its employee committed an act of gender-related violence and failed to take a reasonable corrective action. In other words, a complaint that merely alleges "a corporation's knowledge plus inaction doesn't state a claim for personally encouraging or assisting under the IGVA." It is still unclear what acts and omissions by a corporate entity will be construed as tantamount to "personally" encouraging or assisting an employee's gender-related violence. It is also unclear what, if any, remedial action by a corporate employer will preclude liability under the IGVA.

In light of the *Gasic* decision and the cases following it, Illinois employers should consider taking the following actions now:

- Ensure that employees who come forward with harassment complaints influenced by the #MeToo movement are not ignored or given short shrift. They may have claims for significant damages under the IGVA, even though those claims are stale or time-barred under Title VII and the IHRA.
- Review and reinforce their policies and practices addressing sexual harassment as well as physical and verbal misconduct in the workplace to avoid corporate liability under the IGVA.
- Train supervisors and managers to recognize and pay special attention to claims involving battery or the threats of battery that can give rise to claims under the IGVA.
- Train employees that if they observe harassment or other gender-related violence, they must immediately report it so the employer can investigate it and take prompt remedial action.

Even though the final chapter of the IGVA has not yet been written, Illinois employers should recognize that *Gasic* and the cases following it have opened the door to corporate employer liability under the IGVA.

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