

**GENDER-RELATED VIOLENCE, ALSO REFERRED TO AS “GENDER-BASED VIOLENCE,”** affects millions of individuals each year. Gender-related violence is a public health and human rights issue, which includes, but is not limited to, domestic violence, sexual assault, sexual harassment, and stalking. While this kind of violence affects individuals across all demographics, women and marginalized groups are disproportionately affected. The World Health Organization estimates that one in three women globally have been subjected to physical and/or sexual intimate partner violence or nonpartner sexual violence in their lifetime.<sup>1</sup>

1. *Violence Against Women*, World Health Org. (Mar. 25, 2024), [law.isba.org/4muoLBG](http://law.isba.org/4muoLBG).

# Gender Violence in the Workplace

Illinois expands protections for victims of gender-related violence.



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Enacted in 2004, the Illinois Gender Violence Act (GVA), 740 ILCS 82/1 *et seq.*, allows victims of sexual assault, domestic violence, and other forms of gender-related violence to bring civil claims even when criminal charges are never filed. Historically, its scope was unclear in workplace contexts—but a recent amendment, effective Jan. 1, 2024, expressly extends liability to employers.

Gender-related violence and harassment are all too common in the workplace. Nearly 7 million women in the U.S. have reported some type of sexual violence by a workplace-related perpetrator in their lifetime.<sup>2</sup> In 2016, the Unite Here Local 1 Union of Chicago surveyed 500 women who held customer service or hospitality positions. The survey revealed that 58 percent of hotel workers and 77 percent of casino workers had been sexually harassed by a guest.<sup>3</sup> In addition, Equal Employment Opportunity Commission (EEOC) reports indicate that gender-based discrimination and harassment are barriers to the recruitment and retention of women in trades.<sup>4</sup> The EEOC also has stated that women consistently file a

disproportionate number of sexual harassment charges with the agency—between 2018 and 2021, women filed 78.2 percent of the sexual harassment charges received by the EEOC.<sup>5</sup> While women are primarily affected, men are not immune from gender-related violence in the workplace. Nearly 3 million (2.5 percent) men in the U.S. have reported some form of sexual violence by a workplace-related perpetrator.<sup>6</sup>

### Illinois Gender Violence Act

Illinois enacted the GVA in an effort to provide an avenue for victims of sexual assault and other forms of gender-related violence to sue their alleged perpetrators in civil court

2. Katherine C. Basile, Ashley S D’Inverno & Jing Wang, *National Prevalence of Sexual Violence by a Workplace-Related Perpetrator*, 58 Am. J. Preventive Med., no. 2, 2020.

3. Robin R. Runge, *Progress Toward Ending Gender-Based Violence and Harassment in the World of Work*, Am. Bar Ass’n (Oct. 31, 2023), [law.isba.org/3KinT5F](http://law.isba.org/3KinT5F).

4. EEOC Chair Issues New Report “Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry”, U.S. Equal Emp. Opportunity Comm’n (May 31, 2023), [law.isba.org/4nE6pyY](http://law.isba.org/4nE6pyY).

5. *Sex Harassment in Our Nation’s Workplaces*, U.S. Equal Emp. Opportunity Comm’n (Apr. 2022), [law.isba.org/47ShEPT](http://law.isba.org/47ShEPT).

6. Basile, *supra* note 2.

### TAKEAWAYS >>

- Recent amendments to the Gender Violence Act (GVA), effective Jan. 1, 2024, expressly extend liability to employers.
- The GVA is intended to provide victims of sexual assault and other forms of gender-related violence an avenue to sue their alleged perpetrators in civil court regardless of parallel criminal proceedings or the lack thereof.
- The GVA provides powerful tools for victims and their attorneys, including an expanded statute of limitations, arguably lower standards of proof compared with federal and state anti-harassment laws, and a broad definition of “workplace.”

### ISBA RESOURCES >>

- Fiona Ong & Evan Conder, *Practical Suggestions for Employers From the EEOC’s New Harassment Guidance*, Labor & Employment (June 2024), [law.isba.org/47YZ8W8](http://law.isba.org/47YZ8W8).
- Caitlin K. Cervenka & Christine M. Crow, *Lawyering in the #MeToo Era*, 109 Ill. B.J. 30 (Oct. 2021), [law.isba.org/3vaqrZY](http://law.isba.org/3vaqrZY).
- Daniel S. Alcorn, *Preventing Violence in the Illinois Workplace*, Labor & Employment (Oct. 2019), [law.isba.org/46CDKUf](http://law.isba.org/46CDKUf).

IN 2016, THE UNITE HERE LOCAL 1 UNION OF CHICAGO SURVEYED 500 WOMEN WHO HELD CUSTOMER SERVICE OR HOSPITALITY POSITIONS. THE SURVEY REVEALED THAT 58 PERCENT OF HOTEL WORKERS AND 77 PERCENT OF CASINO WORKERS HAD BEEN SEXUALLY HARASSED BY A GUEST.

regardless of whether the victim filed a police report or whether the perpetrator was ever criminally charged or convicted of sexual assault or intimate violence.<sup>7</sup>

“Gender-related violence” is defined by statute, as amended, as a form of sex discrimination meaning the following:

- 1) One or more acts of violence or physical aggression satisfying the elements of battery under the laws of Illinois that are committed, at least in part, on the basis of a person’s sex, whether or not those acts have resulted in criminal charges, prosecution, or conviction.
- 2) A physical intrusion or physical invasion of a sexual nature under coercive conditions satisfying the elements of battery under the laws of Illinois, whether or not the act or acts resulted in criminal charges, prosecution, or conviction.
- 2.5) Domestic violence, as defined in the Victims’ Economic Security and Safety Act.
- 3) A threat of an act described in item 1), 2), or 2.5) causing a realistic apprehension that the originator of the threat will commit the act.

The GVA defines “perpetrating” as meaning “either personally committing the gender-related violence or personally encouraging or assisting the act or acts of gender-related violence.”

### Corporate & employer liability

Between 2004, when the GVA was originally enacted, and 2019, it was largely unclear whether the statute applied to gender-related violence in the workplace. The Third District of the Illinois Appellate

Court finally addressed the question of whether corporations can be subject to liability under the GVA in *Gasic v. Marquette Management*.

In that case, the plaintiff brought suit against the apartment complex where she resided, alleging that the complex’s maintenance employee entered her apartment and made inappropriate sexual contact with her.<sup>8</sup> The plaintiff argued that the apartment complex knew or should have known that the maintenance employee was previously accused of unwanted sexual touching and that the complex “perpetrated” the gender-related violence she experienced by “encouraging or assisting” the maintenance employee because of its “failure to supervise and monitor” him.<sup>9</sup> The Third District determined that the language of the GVA encompassed circumstances in which a legal entity, such as a corporation, could act “personally” for purposes of civil liability under the Act. The Court explained that, as a matter of law, legal entities could not *personally* commit assault or battery, but since the statutory language defines perpetrating conduct as “encouraging or assisting in gender-related violence” corporations are susceptible to liability under the GVA.<sup>10</sup>

Employer liability for gender-related violence was codified into law on July 28, 2023, when Gov. Pritzker signed an amendment to the GVA, which explicitly extended the GVA’s application to the workplace. The amendment went into effect on Jan. 1, 2024. The amendment specified when employers are subject to liability under the GVA and broadened the definition of “gender-related violence” to encompass “domestic violence” as defined by the Victims’ Economic Security and Safety Act<sup>11</sup> (VESSA).

With regard to employer liability, the Act states:

An employer is only liable for gender-related violence committed in the workplace by an employee or agent of the employer when the interaction giving rise to the gender-related violence arises out of and in the course of employment with the employer. Liability only extends to gender-

related violence that occurs: (i) while the employee was directly performing the employee’s job duties and the gender-related violence was the proximate cause of the injury; or (ii) while the agent of the employer was directly involved in the gender-related violence and the performance of the contracted work was the proximate cause of the injury. Proximate cause exists when the actions of the employee or the agent of the employer were a substantial factor in causing the injury, and the employer is liable if the employer has acted in a manner inconsistent with how a reasonable person would act under similar circumstances.<sup>12</sup>

Specifically, the amendment imputes GVA liability to an employer if the employer:

- 1) failed to supervise, train, or monitor the employee who engaged in the gender-related violence; or 2) failed to investigate complaints or reports directly provided to a supervisor, manager, owner, or another person designated by the employer of similar conduct by an employee or agent of the employer and the employer failed to take remedial measures in response to the complaints or reports. An employer who provides training pursuant to section 2-109 of the Illinois Human Rights Act (IHRA) has an affirmative defense to a claim that the employer failed to provide adequate training to the employee.

### Practice considerations

The GVA offers expansive protections to victims of gender-related workplace violence. Plaintiff’s employment attorneys should use the GVA’s protections to both advocate for their clients and create leverage to reach an expeditious resolution to their clients’ claims.

There are three important considerations that Illinois employment attorneys should keep front of mind when bringing claims under the GVA.

First, the GVA offers a much longer statute of limitations than the civil rights laws enforced by the EEOC and Illinois

7. 740 ILCS 82/1.

8. *Gasic v. Marquette Management, Inc.*, 2019 IL App (3d) 170756, ¶ 3.

9. *Id.* ¶ 5.

10. *Id.* ¶ 16.

11. 820 ILCS 180.

12. 740 ILCS 82/11(a).

## Resources

- National Domestic Violence Hotline: 1-800-799-SAFE
- National Sexual Assault Hotline: 1-800-656-HOPE
- Find a Shelter: [domesticshelters.org](http://domesticshelters.org)
- Chicago Alliance Against Sexual Exploitation: [caase.org](http://caase.org)

Department of Human Rights. Under federal anti-harassment statutes, sexual harassment and assault complaints must be filed within 300 days of the date the last instance of sexual harassment or assault occurred. A 300-day statute of limitations is unjustly short, as victims may be dealing with the aftermath of the sexual harassment or assault. Illinois recently extended the statute of limitations to file a charge of discrimination or harassment under the IHRA to two years. However, victims may still be hesitant to step forward due to stigma or fear of retaliation. The amendment to the GVA provides for a four-year statute of limitations on gender-violence claims against an employer. This offers a longer period for victims to come forward but is shorter than the seven-year limitations period applied to the remainder of the statute.

Second, proving sexual assault claims under the GVA is arguably less onerous than under Illinois and federal anti-harassment laws. Under Title VII of the Civil Rights Act of 1964, the plaintiff has the burden of proving that the perpetrator's conduct was "severe

or pervasive."<sup>13</sup> This includes a showing that the conduct itself was serious (*i.e.*, touching of an intimate body part) or pervasive in that the harassing conduct occurred with frequency. The GVA does not require a plaintiff to prove the harassing conduct was "severe or pervasive" to prevail, however. The statute provides that even a "threat" or "causing a realistic apprehension that the originator will commit the act" of battery or physical intrusion or physical invasion of a sexual nature under coercive conditions gives rise to a claim. The GVA encompasses a wide range of conduct that falls short of physical contact.

Third, the Act defines "workplace" broadly. What constitutes a "workplace" under the GVA is important because the employer is only liable for gender-related violence committed in the workplace by an employee or agent of the employer. For purposes of the statute, a workplace includes the employer's premises, including any building, real property, parking lot controlled by the employer, or any location used by an employee while in performance of the employee's job duties. "Workplace" also includes activities taking place off-premises at employer-sponsored events where an employee is not performing the employee's job duties.<sup>14</sup> An employer could therefore be liable for any gender-related violence that is perpetrated by its agent or employee at an off-site holiday party, corporate retreat, or corporate outing.

Under the GVA, a victim may be awarded damages, injunctive relief, or other appropriate relief. A court may

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award actual damages, damages for emotional distress, or punitive damages.<sup>15</sup> The GVA is a fee-shifting statute, so attorneys can recover their fees and costs.

## Conclusion

The impact of gender-related violence cannot be understated. Victims of such violence can experience devastating outcomes such as severe physical injuries, chronic pain, post-traumatic stress disorder, depression, emotional distress, and unwanted pregnancies, among others. Everyone has a right to a workplace free from sexual abuse and harassment. The amendment to the Gender Violence Act was a significant advancement in the protections for victims of gender-related violence in the workplace. **EB**

13. See *Hostetler v. Quality Dining, Inc.*, 218 F.3d 798, 808 (7th Cir. 2000).

14. 740 ILCS 82/5.

15. 820 ILCS 82/15.