TEXAS LAW · STATE COMPLIANCE

The Texas SB 45 Compliance Brief

The 2021 amendments lowered the employer threshold to a single employee, opened the door to individual liability for supervisors and managers, and raised the response standard. What changed, what it means, and what to do about it.

TEXAS LAW | STATE COMPLIANCE | HARASSMENT LIABILITY

empathiHR Compliance Guide Series
Prepared for HR & legal decision-makers

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What's inside

A PRECISION NOTE ON THE 300-DAY DEADLINE

The widely repeated statement that 'SB 45 extended the filing deadline to 300 days' is imprecise. SB 45 itself is silent on limitations. The 300-day window for sexual-harassment complaints came from its companion bill, **House Bill 21**, both effective September 1, 2021. This brief attributes each change to the correct bill.

01 · Overview

What changed, and why it matters

On September 1, 2021, Texas quietly became one of the most employer-exposed states in the country for workplace sexual harassment. Senate Bill 45 (87th Legislature) added a new Subchapter C-1 to Chapter 21 of the Texas Labor Code, the Texas Commission on Human Rights Act (TCHRA), and changed three fundamentals at once.

BEFORE SB 45	AFTER SB 45 (SEPT 1, 2021)
15+ employees to be liable for harassment	**1+ employee** essentially every Texas employer
No individual liability employer entity only	**Potential individual liability** supervisors and managers personally exposed; Texas courts are still defining the scope
"Prompt remedial action" the response standard	**"Immediate and appropriate"** a higher corrective-action standard
180-day filing window to file with the TWC Civil Rights Division	**300-day window** via companion HB 21, not SB 45 itself

None of these changes made headlines the way a training mandate would. But together they mean that a two-person business is now covered, an individual supervisor can be named personally as a defendant, and the old "we responded eventually" defense no longer meets the standard. For empathiHR's home state, this is the single most important employment-law development of the decade.

THE THROUGH-LINE

Texas did not add a training requirement, it added **exposure**. With no statutory training safe harbor, the only real protection is a documented program: clear policy, real reporting channels, prompt investigations, and immediate corrective action. In Texas, the program and its records are what the defense is argued from.

02 · Coverage

The one-employee threshold

The most sweeping change is also the simplest. For sexual-harassment claims, SB 45 redefined "employer" to reach almost everyone.

"EMPLOYER," AS REDEFINED BY SB 45 (TEX. LAB. CODE §21.141)

A person who **"(A) employs one or more employees; or (B) acts directly in the interests of an employer in relation to an employee."**

Before SB 45, the TCHRA, like federal Title VII, applied only to employers with 15 or more employees. That 15-employee floor still governs every other discrimination claim under Chapter 21. But for sexual harassment specifically, the threshold is now **one employee**. Small businesses, startups, and family-owned firms that were never previously covered are now fully exposed.

1+

Employees needed for TCHRA sexual-harassment coverage after SB 45

15+

Employees still required for every other Chapter 21 discrimination claim

Sept 1, 2021

Effective date of SB 45 and its companion HB 21

THIS IS BROADER THAN FEDERAL LAW

Federal Title VII still requires 15 or more employees and does not allow individual liability. On both points, Texas state law is now broader than the federal standard, so a claim that could not proceed under Title VII may still proceed under the TCHRA.

03 · Who Is Liable

Individual liability

The second prong of the new definition, “acts directly in the interests of an employer in relation to an employee,” is the hook for something Texas law did not previously allow: **potential personal liability**.

Before SB 45, Texas courts had held that individuals could not be personally liable under the TCHRA. Now, supervisors, managers, owners, and agents can be named as individual defendants in a sexual-harassment suit, potentially exposing personal assets and not just the company’s. That reverses prior law and puts individual accountability on the table for essentially the first time in Texas, but how far it reaches is still being worked out.

FOR SUPERVISORS AND HR

Potential personal exposure means personal incentive. Supervisor-specific training and clear escalation procedures now protect the individual as well as the company.

AN UNSETTLED EDGE

The exact outer boundary of individual liability, for example whether a rank-and-file co-worker or a third-party contractor qualifies as someone who ‘acts directly in the interests of an employer,’ is not defined in the statute and is still being worked out by Texas courts. Treat the scope as broad but not yet fully settled, and confirm the current state of the case law with counsel.

HOW TO SAY THIS INTERNALLY

Describe it as **potential** personal liability whose scope Texas courts are still defining, not as a settled rule. Overstating it invites pushback from the people you most need to train; understating it leaves supervisors unaware that their own exposure is now genuinely in play.

04 · The Standard

The heightened corrective-action standard

SB 45 also raised the bar for how an employer must respond. The change is two words, but it moves the goalposts.

THE NEW STANDARD (TEX. LAB. CODE §21.142)

An employer commits an unlawful employment practice if sexual harassment occurs and the employer or its agents or supervisors "(1) know or should have known that the conduct … was occurring; and (2) fail to take **immediate and appropriate corrective action**."

Prior TCHRA and federal case law generally asked whether the employer took *"prompt remedial action."* SB 45 raises that to **"immediate and appropriate corrective action."** The words "immediate" and "appropriate" are not defined in the statute and will be interpreted by the courts, but the direction is clear: a slow or half-measure response is more likely to be found insufficient than under the old standard.

WHAT 'IMMEDIATE' REWARDS

An employer that already has a reporting hotline, a defined investigation process, and pre-built documentation can act immediately because the machinery already exists. An employer improvising after a complaint cannot. The heightened standard is, in effect, a **premium on preparation**.

WHAT THE SHIFT LOOKS LIKE IN PRACTICE

Response element	Under 'prompt remedial action'	Under 'immediate and appropriate'
Intake	Complaint reaches HR through whatever channel exists	A defined channel that does not route through the accused supervisor, with a timestamp
Timing	Action within a reasonable period after notice	Action begun without avoidable delay, and the file shows when
Interim measures	Often deferred until the investigation closed	Considered at intake, documented whether taken or not
Outcome	A remedy that stopped the conduct	A remedy proportionate to the findings, with the reasoning recorded

Practical risk-management expectations, not statutory text. Neither term is defined in Chapter 21.

05 · Deadlines

The 300-day filing window

Employees now have longer to bring a sexual-harassment complaint, a change often mis-attributed to SB 45.

Companion **House Bill 21** (also effective September 1, 2021) amended the TCHRA to give employees **300 days**, up from 180, to file a sexual-harassment complaint with the Texas Workforce Commission Civil Rights Division. The 180-day deadline still applies to all other discrimination claims under Chapter 21. The 300-day window mirrors the federal EEOC deferral-state deadline.

WHICH BILL DID WHAT

Change	Source bill	Effect
One-employee threshold	SB 45	Redefines “employer” for sexual-harassment claims at Tex. Lab. Code §21.141
Potential individual liability	SB 45	Second prong of the definition reaches those who act directly in the employer’s interests; scope still being defined by Texas courts
“Immediate and appropriate”	SB 45	Raises the corrective-action standard at Tex. Lab. Code §21.142
300-day filing window	**HB 21**	Extends the sexual-harassment filing deadline from 180 to 300 days; SB 45 is silent on limitations

WHY THE LONGER WINDOW MATTERS OPERATIONALLY

A complaint can surface many months after the events. That makes contemporaneous documentation, dated policies, training rosters, hotline logs, and investigation files more valuable, because memories fade but records do not. Retention is now part of the defense.

HOW LONG TO KEEP THE RECORDS

No Texas statute sets a retention period for harassment policies, training rosters, or investigation files. The federal floor under **29 CFR 1602.14** is one year from the making of the record or the personnel action, and where a charge has been filed, until final disposition of that charge. Because a Texas sexual-harassment complaint can arrive up to 300 days after the events and litigation runs longer still, many employers adopt **four years** as a conservative working standard. That is a risk-management recommendation, not a legal requirement.

06 · Exposure

Remedies & damage caps

Chapter 21 tracks Title VII on remedies: back pay, compensatory and punitive damages, injunctive relief, and attorney's fees. Compensatory and punitive damages are capped by employer size.

TCHRA COMPENSATORY + PUNITIVE DAMAGE CAPS (TEX. LAB. CODE §21.2585)

Employer size	Combined cap
15–100 employees	$50,000
101–200 employees	$100,000
201–500 employees	$200,000
501+ employees	$300,000

Caps apply to compensatory and punitive damages combined. Back pay, interest on back pay, and attorney's fees fall outside the caps.

AN OPEN QUESTION FOR THE NEWLY COVERED

The cap tiers begin at '15–100 employees.' How they apply to the sub-15-employee employers now covered by SB 45, and how they apply when individuals are named as defendants, is not squarely resolved by the statute. Back pay and attorney's fees are not subject to these caps. Treat cap application to small employers and to individuals as an unsettled issue to raise with counsel.

THE CAP IS NOT THE WHOLE COST

Damage caps limit one line item. They do not limit back pay, attorney's fees, injunctive relief, the cost of defending the case, or the operational disruption of an investigation conducted under litigation conditions. Employers who budget only to the cap consistently underestimate the exposure.

07 · Training

No mandate, why it still matters

Texas does **not** require private employers to provide sexual-harassment training. There is no statutory training mandate and no statutory safe harbor. (State agencies must train their own employees under Tex. Lab. Code §21.010; that duty does not reach private employers.) That absence is exactly why a voluntary program is so valuable here.

In states with a training mandate, completing the required course is a compliance checkbox. In Texas there is no checkbox, so there is no safe harbor to hide behind and no ceiling on what "reasonable" looks like. With liability expanded to every employer, individual defendants potentially in play, and an "immediate and appropriate" standard to meet, the practical defense is a documented program built before a complaint arrives. Training is a strongly recommended risk-control practice rather than a legal requirement, and in a state with no mandate it has become the de facto standard of care.

Written policy

Clear anti-harassment and anti-retaliation policy with multi-channel reporting, the baseline every Texas employer, however small, now needs.

Supervisor training

Because supervisors now face potential personal exposure, training protects the individual as well as the company.

Reporting hotline

A neutral, timestamped channel makes an "immediate" response possible and provable.

Prompt investigations

A defined, documented process is what "appropriate corrective action" looks like in the file.

Nothing in Texas law obligates a private employer to run any of the four. They are recommended controls that build the record a heightened standard demands.

08 · Act

What Texas employers should do now

Whether you have three employees or three thousand, SB 45 changed your risk profile. Five moves close the gap.

1. **Confirm you are covered**
   If you have even one employee, you are, for sexual-harassment claims. The 15-employee floor you may be relying on still applies to other Chapter 21 claims, but not to this one.

2. **Update the policy to the new standard**
   Revise your anti-harassment and anti-retaliation policy to reflect "immediate and appropriate corrective action," and date the revision so the file shows when you moved.

3. **Stand up a channel that bypasses the supervisor**
   At least one reporting route that does not run through an employee's own manager. A neutral, timestamped channel is what makes an immediate response provable.

4. **Train supervisors specifically**
   Their potential personal exposure is now genuinely in play, even as Texas courts continue to define its limits. Cover the new standard, the escalation path, and what they must not do.

5. **Document everything and retain it**
   The 300-day window from HB 21 means complaints can arrive long after the events. Set a retention period with counsel and apply it consistently.

Important

About this guide

Educational information, not legal advice. This guide is provided by empathiHR for general educational purposes. It is not legal advice and does not create an attorney-client or consultant-client relationship. Employment law changes frequently and varies by jurisdiction, industry, and the specific facts of each situation.

Texas case law interpreting SB 45, particularly the scope of individual liability and how the damage caps apply to newly covered small employers and to individual defendants, is still developing. Verify the current state of the law and your specific obligations with Texas employment counsel before relying on this brief. Before acting on anything in this guide, review your policies, programs, and specific circumstances with qualified employment counsel. empathiHR works alongside your legal counsel to build and maintain the operational program described here.

Case citations, statutes, and figures were current as of the update date on the cover and should be re-verified against primary sources before you rely on them. Where the law is unsettled or a figure is not fixed by statute, this guide says so. Texas imposes no harassment-training mandate on private employers; the training and retention practices described here are recommended risk controls, not legal requirements.

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