



AUGUST 24, 2018

New York Provides Additional Guidance On Sexual Harassment Policy And Annual Training Requirements

New York State has published its long-anticipated guidance on sexual harassment policies and training, along with releasing a model sexual harassment policy and complaint form. As reported in our previous alert, all employers will be required to adopt a written sexual harassment prevention policy and institute interactive sexual harassment training, effective October 9, 2018.

Sexual Harassment Policy

The published model sexual harassment prevention policy and complaint are drafts, and open for comments until September 12, 2018. Specifically, the sexual harassment prevention policy must:

- prohibit sexual harassment consistent with guidance issued by the Department of Labor (“DOL”) and Division of Human Rights;
- provide examples of unlawful sexual harassment;
- include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
- include a complaint form;
- include an investigative procedure;
- inform employees of their remedies and all available forums for adjudicating claims;
- clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue;
- clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

The sexual harassment policy must be in writing and, although not required, it would be best practices for employers to obtain an acknowledgment from employees. Employers may provide their policy to employees electronically, but employees must be able to access the policy on an employer-provided computer and be able to print a copy for their records.

Sexual Harassment Training

In addition to the sexual harassment prevention policy, employers are required to provide all employees (including temporary employees) with interactive training on an annual basis starting on October 9, 2018. For this year, all employees must complete the training by January 1, 2019. The interactive training must:

- include an explanation of sexual harassment consistent with guidance issued by the DOL and Division of Human Rights
- include examples of unlawful sexual harassment;
- include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- include information concerning employees' rights of redress and all available forums for adjudicating complaints;
- include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

New York State has defined "interactive" to mean requiring some form of employee participation, such as web-based with questions asked of employees as part of the program; accommodate questions asked by employees; include a live trainer during the training to answer questions; and/or require feedback from employees about the training and the materials present.

For employees who start employment after January 1, 2019, training must be completed within 30 calendar days of starting their job.

Takeaway for Employers

All employers should ensure that they have a written sexual harassment policy in compliance with the New York State law requirements by October 9, 2018. This includes providing a complaint form.

Employers should also ensure that all employees receive interactive sexual harassment prevention training by January 1, 2019.

In addition to the above, New York City employers must comply with the requirements of the City Commission on Human Rights to publish a sexual harassment notice and provide new employees with an information sheet on sexual harassment at the time of hire.

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For more information about sexual harassment prevention policies, complaint forms, or interactive training programs, feel free to contact us.

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