



OCTOBER 2, 2018

## New York State Releases Finalized Sexual Harassment Prevention Policy and Training

On October 1, 2018, New York State released finalized materials and guidance on sexual harassment policies and training. As reported in our previous alerts, the New York State Department of Labor (NYSDOL) published materials to assist in compliance with the newly enacted laws designed to combat sexual harassment in the workplace. The updated materials include the following: (1) revised model sexual harassment prevention policy; (2) revised sexual harassment complaint form; (3) revised model training; (4) revised minimum standards for sexual harassment prevention policies and training; (5) sexual harassment prevention policy poster; (6) instructional guide for employers; and (7) revised list of frequently asked questions (FAQs). Most importantly, in response to public comments, the NYSDOL has extended the time by which employers must complete mandatory training to October 9, 2019.

### Sexual Harassment Policy

The final version of the model sexual harassment policy includes the following notable revisions to the draft policy:

- extended protections to individuals, regardless of immigration status;
- specified that harassment on the basis of all protected classes is prohibited (in New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history);
- clarified that an employer's sexual harassment policy should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite location);
- added a definition of sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look;
- provided stronger language in the anti-retaliation section;
- omitted the requirement of completing the investigation of complaints within 30 days, and instead, specified that investigations should be commenced immediately and completed as soon as possible.

Although signed acknowledgments of receipt of the sexual harassment policy are not required, employers are encouraged to keep signed acknowledgments for their records.

The sexual harassment policy does not need to be provided to independent contractors, vendors, consultants because these individuals are not considered employees. However, employers should be mindful that the New York State Human Rights Law imposes liability on employers for their actions. Therefore, employers are encouraged to provide the policy and training to anyone providing services in the workplace.

## **Sexual Harassment Training**

Effective October 9, 2018, employers must provide all employees with interactive training on an annual basis. The updated FAQs specify that, for this year, the training must be completed by October 9, 2019 (instead of by January 1, 2019, as previously stated by the NYSDOL). In subsequent years, this annual requirement may be based on the calendar year, anniversary of each employee's start date, or any other date the employer chooses.

New York State also clarified the "interactive" training requirement. Although a live trainer is not required, it is recommended for effective and engaging trainings. Live trainers may appear in person or via phone or video conference. Employers are encouraged to keep a copy of training records.

Only employees who work or will work in New York State need to be trained. Employers should be aware that they may be liable for the actions of employees immediately upon hire. Best practices would be providing training as soon as practicable.

## **Complaint Form**

An employer's sexual harassment policy must include a complaint form for employees to report alleged incidents of sexual harassment. The revised FAQs explain that the complaint form does not need to be included in full in the policy, but employers must be clear about where the form may be found (such as on an internal website).

## **New York City Employers**

As we previously reported, New York City employers must also be sure to comply with the Stop Sexual Harassment Act (the "Act") passed earlier this year. The Act expands the New York City Human Rights Law in cases of gender-based harassment. Any unwanted sexual behavior is deemed unlawful.

Under the Act, employers must conspicuously display an anti-sexual harassment rights and responsibilities poster in both English and Spanish.

The Act also imposes an interactive training requirement for employers with 15 or more employees, effective April 1, 2019. The training must be conducted annually for all employees who work in New York City for more than 80 hours in a calendar year, and must be conducted 90 days after the initial hiring of employees. The training requirement is similar to the one required by New York State; however, the Act provides additional requirements for the training. These include (1) providing an explanation that sexual harassment is a form of unlawful discrimination under the City law; (2) providing the complaint process available through the Commission and New York City Division of Human Rights; (3) providing a description of the prohibition of retaliation pursuant to the New York City Human Rights Law, using examples; and (4) providing information concerning bystander intervention. Employers are required to keep a record of all trainings, including a signed employee acknowledgment.

## Takeaway for Employers

Employers should prepare for the changes in New York laws by taking the following steps:

- ensure they have a written sexual harassment policy that meets the minimum standards set forth by New York State by October 8, 2018;
- ensure they have a complaint form;
- adopt annual harassment training that meet the minimum standards set forth by New York State;
- train employees involved in employee relations on new requirements;
- ensure that all employees receive interactive sexual harassment prevention training by October 9, 2019;
- ensure that the sexual harassment prevention training meets the minimum requirements under New York State (and New York City if applicable) laws;
- display New York State (and New York City if applicable) sexual harassment posters;
- maintain records of acknowledgments of receipt of sexual harassment policies and trainings; and
- monitor and review policy and training materials published by New York State (and New York City if applicable).

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