

### **The Time is Now: New York-Compliant Sexual Harassment Prevention Policies Must be Implemented by October 9, 2018**

As we mentioned in our [May 2018 alert](#), New York State recently passed new legislation requiring all employers in the state to adopt sexual harassment prevention policies and implement training. New York State has now released final guidance expanding on the new requirements for policies and training.

The law takes effect on October 9, 2018, and has two components that affect all New York State employers:

- 1) All employers must enact a sexual harassment prevention policy that complies with the law's minimum standard by October 9, 2018; and
- 2) All employers must provide sexual harassment prevention training to employees by October 9, 2019.

#### **Policies**

We strongly urge employers to review the minimum standards outlined in [New York State's guidance](#) website to identify any gaps in their existing handbooks. Employers must adopt a policy that meets or exceeds New York State's requirements by October 9, 2018.

All policies must:

- Prohibit sexual harassment consistent with the guidance issued by the New York Department of Labor in consultation with the New York State Division of Human Rights;
- Provide examples of prohibited conduct that would constitute 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 (or the employer should make clear where the form is located on the employer's intranet);
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- 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; and
- 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.

Employers must provide employees their policies in writing or electronically (through an internal website for example). If the policy is provided electronically, employees should be able to print a copy for their own records.

We also recommend that as a best practice, employers maintain records of their employees' acknowledgments that they received the policies and the complaint form.

## Training

As we mentioned in our earlier alert, New York State's law also requires that employers implement annual sexual harassment prevention training. According to the final guidance, this requirement must be satisfied by October 9, 2019, although employers are urged to undertake training as soon as reasonably practicable, including for example, during the onboarding process for new employees.

The minimum requirements are outlined below. Training must:

- Be interactive. Training can be web-based as long as there is a component of the training where the employee must answer or ask questions; in person training should also include a similar question-and-answer or discussion portion;
- Include an explanation of sexual harassment consistent with New York State's guidance;
- Include examples of conduct that constitute unlawful sexual harassment. New York State's guidance provides many examples of case studies and factual hypotheticals;
- Include information concerning federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- Include information concerning employees' right of redress and all available forums for adjudicating complaints; and
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

The training requirements are outlined in greater detail on the New York State's website, which also includes samples of "interactive" training presentations, an employer tool kit, and case studies. New York State will also be offering webinars and workshops.

As a reminder, New York City's training requirement will be effective April 2019. We will continue to monitor whether there is any new guidance from New York City, including how, if at all, New York City's requirements differ from New York State's training requirements. In the interim, the law requires employers to post an anti-sexual harassment rights and responsibilities [poster](#) in the workplace and distribute an [information sheet](#) on sexual harassment to employees when hired.

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