



October 9, 2018 Deadline for Implementing New Sexual Harassment Law

Syracuse, New York

September 2018

As part of the New York State budget signed by Governor Cuomo earlier this year, sweeping legislative changes were made to strengthen sexual harassment laws. Two major changes, which become effective October 9, 2018, require employers to adopt a robust sexual harassment prevention policy and provide annual sexual harassment prevention training. This reform, which was driven in part by the #MeToo movement, aims to provide additional protections to employees, but also requires employers to follow some of the most stringent requirements in the country for sexual harassment training.

Sexual Harassment Prevention Policy

While most employers have a sexual harassment policy, many do **NOT** have a policy that meets all of the new requirements. Beginning October 9, 2018, all employers are required to adopt and distribute a written sexual harassment prevention policy, which must, at a minimum:

- (i) prohibit sexual harassment consistent with guidance issued by the New York Department of Labor ("DOL") in consultation with the New York Division of Human Rights ("DHR");
- (ii) provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- (iii) include information concerning the federal, state, and local statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- (iv) include a standard complaint form;
- (v) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- (vi) state that sexual harassment is employee misconduct and sanctions will be enforced against individuals engaging in sexual harassment and against managerial personnel who knowingly allow the behavior to continue; and
- (vii) state that it is unlawful to retaliate against individuals who complain of sexual harassment or assist in any proceeding involving sexual harassment.

Sexual Harassment Prevention Training

Beginning October 9, 2018, every employer is also required to provide sexual harassment training to all employees on an annual basis. At a minimum, this training must:

- (i) be interactive;
- (ii) include an explanation of sexual harassment consistent with guidance issued by the DOL and DHR;
- (iii) provide examples of conduct that would constitute unlawful sexual harassment;
- (iv) include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and
- (v) include information concerning an employees' rights of redress and all available forums for adjudicating complaints.

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In addition to the above, the legislative reform also allows non-employees, such as contractors, subcontractors, vendors and consultants (traditionally independent contractors) to sue employers for sexual harassment and requires every bidder on state and local contracts to certify that they provide annual sexual harassment prevention training to all of their employees.

The New York State Department of Labor ("DOL") has issued a draft model sexual harassment prevention policy and training program to assist employers with meeting the requirements of the law. The draft is open for public comment until September 12, 2018. The draft DOL policies appear to encompass more than the minimum requirements under the new law. A final model is expected to be released some time in October, 2018.

WHAT TO DO:

Employers need to be proactive in revising their policies to comply with the law. Given that most existing policies do not contain all the provisions required by the new law, revisions to existing policies will be necessary for most employers. Adopting the DOL's model policy is unnecessary and policies can still be tailored for each employer's workplace, as long as they meet the minimum requirements set forth in the new law.

Employers must decide how to satisfy the annual sexual harassment training requirement. Historical training programs will not meet all of the requirements of the new law. Among other things, the training must include an explanation of legal options available to employees in the event they have a complaint. We recommend that you work with your attorney to ensure that your policies are properly updated and that your training program meets the new law's criteria. Our firm is also available to provide sexual harassment training to your management staff and employees.

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How may we be of service?



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