

CLIENT ALERT

New York State Releases Final Guidance On Legislation Aimed At Preventing Sexual Harassment

October 5, 2018

The New York State Division of Human Rights (NYDHR) and the New York State Department of Labor (NYDOL) released their final guidance, including a model sexual harassment prevention policy and training, on October 1, 2018. These materials clarify the obligations imposed on employers who do business in New York State under legislation signed by Governor Cuomo in April of this year aimed at preventing sexual harassment in the workplace. This guidance comes just one week before the October 9, 2018 deadline for employers to issue a compliant policy, although it extends the deadline for employers to conduct compliant training from January 1, 2019 to October 9, 2019. Note that the New York City Stop Sexual Harassment Act, also enacted earlier this year, requires a city-specific training to be completed by March 31, 2020. The requirements of the mandated city training largely overlap with the state training, with the notable addition of a bystander intervention training component. Employers in New York City should consider conducting training that complies with both the city and state requirements before the state-mandated October 9, 2019 deadline to be most efficient with employees' time and attention.

With respect to the sexual harassment prevention policy, the state adds the following clarifications:

- Employers should distribute the policy to new hires prior to the new hire commencing work and should also post the policy.
- Employers should make the policy available in the language spoken by their employees and provide the model policy translated into several languages where necessary.
- Employers need not adopt the investigative procedures set forth in the model policy but the employer's investigative procedures must be included in their specific policy in order for the policy to be compliant.
- The complaint form does not need to be included in the policy, but employers should be clear about where the form may be found (*e.g.*, on the company website).
- Employers need not provide the policy to independent contractors, vendors, or consultants; however, because the law imposes liability on the employer for their actions, employers are encouraged to provide the policy and training to anyone providing services in the workplace.

With respect to the sexual harassment prevention training, in addition to extending the compliance deadline, New York State further provides:

- If an employer has previously provided training this year that did not meet all new requirements, employers need only provide supplemental training to ensure all requirements are met.
- New hire training should be done "as soon as possible" but there is no specific temporal requirement. This is a notable change from the draft guidance, which provided that new hire training be done within thirty days of employment.
- Employees must be trained at least once per year.
- Only employees who work or will work (either part time or full time) in New York State need to be trained.

- There is no specified length for the training, so long as it meets the minimum requirements outlined by the law.
- The training must be “interactive”; simply watching a video or reading a document with no feedback mechanism or interaction will not suffice. Employers may conduct, for example, web-based training with questions at the end of a section or in-person training, though live training is not required.
- A third party vendor may conduct the training on the employer's behalf; the employer is still ultimately responsible for ensuring the training meets the state requirements.
- Supervisors and managers need not be trained separately although additional requirements imposed on them should be included in the training; employers may elect to do separate or additional supervisory/managerial training.

The model policy and training and additional resources for employers are available here.

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