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New York Targets Workplace Sexual Harassment

Effective October 9, all New York employers must implement a written sexual harassment prevention policy and conduct annual anti-harassment training for employees. To satisfy these obligations, employers may either use the model policy and model training module recently released by the state or develop their own policies and training that meet minimum standards. Employers should take immediate action to ensure compliance.

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Background

Earlier this year as part of the 2018-2019 budget bill, New York State enacted sweeping changes to its laws governing sexual harassment in the workplace and imposed new obligations on New York employers. Among other things, the legislation established a new Section 201-G of the Labor Law requiring all New York employers to implement a written sexual harassment prevention policy and an anti-harassment training program for employees that satisfies minimum requirements. It also extended protections against workplace sexual harassment to non-employees (such as independent contractors, subcontractors, vendors, consultants and others providing services in the workplace).

Sexual harassment guidance

Shortly before the new employer policy and annual training mandates took effect on October 9, 2018, the New York State Department of Labor (NYSDOL), in consultation with the state Division of Human Rights (NYSDHR), released both a model sexual harassment prevention policy and a model sexual harassment prevention training module that employers may — but are not required to — utilize to satisfy their new obligations. The model policy and training materials along with additional guidance for employers and workers, a complaint form, and FAQs are now available on the NYSDOL website.

Sexual harassment policy

Employers with employees in New York are required to adopt a compliant sexual harassment policy and distribute a written copy to employees as of October 9, 2018. To satisfy the new law's requirements, employers must either adopt the model policy and training program or establish a policy and training program that equals or exceeds the minimum standards provided by the models. The state's model training makes clear which elements are required by the new law and which are recommended but not mandatory.

Among other things, the sexual harassment policy must include:

- A prohibition against sexual harassment consistent with guidance issued by the NYSDOL in consultation with the NYSDHR
- Examples of prohibited conduct
- A complaint investigation procedure
- A prohibition against retaliation against individuals who complain of sexual harassment or who testify or assist in an investigation or proceeding involving sexual harassment
- A reference to federal and state statutory provisions regarding sexual harassment and available remedies
- A complaint form or, if not included, where it may be found (e.g., on the company's intranet)
- Information regarding employees' rights to seek redress in administrative and judicial forums
- Sanctions against individuals who engage in sexual harassment and against managers or supervisors who knowingly allow such conduct

Distribution of the written sexual harassment policy may be made electronically, provided employees have the capability of printing a copy. Employers are also required to provide all employees with a written copy of the policy and training annually.

Buck comment. While the NYSDOL does not require employers to secure or maintain signed employee acknowledgements of receiving the sexual harassment policy or anti-harassment training records, employers should consider obtaining and retaining copies to address potential complaints or enforcement actions. To ensure compliance with NYC law, employers subject to the new Stop Sexual Harassment in NYC Act must keep a record of all such training and a signed acknowledgement of attendance from employees for at least three years.

NYC's Stop Harassment Law now in effect

The Stop Sexual Harassment in NYC Act, a package of 11 bills targeting gender-based harassment in the workplace, took effect generally on September 6.

Effective April 1, 2019, the new law will require employers with 15 or more employees to conduct annual, anti-sexual harassment interactive training for all employees in NYC. The law requires the NYC Commission on Human Rights to develop an online interactive training module that will satisfy training requirements. (See our **August 29, 2018 FYI.**)

Anti-harassment training

Starting October 9, 2018, each employee — whether exempt or non-exempt, full- or part-time, seasonal or temporary — must receive anti-harassment training on an annual basis. As the FAQs make clear, annual training is needed only for employees who work or will work in New York state. Employees who are based in another state must be trained if they work a portion of their time in New York state. Employers are not required to train non-employees. Additional requirements for managers and supervisors may be addressed by providing them with additional or separate training.

Employees' initial annual training must be completed by October 9, 2019. After the initial deadline, the annual completion date may be based on the calendar year, employee's anniversary date, or other date of the employer's choosing.

Buck comment. Previously released draft guidance indicated that initial training would have to be completed by January 1, 2019. However, the FAQs clarified that employers would have one year from the new law's effective date, or until October 9, 2019, to complete the initial training.

Mandated anti-harassment training must, at a minimum, be interactive and include:

- An explanation of sexual harassment consistent with guidance issued by the NYSDOL in consultation with the NYSDHR
- Examples of conduct that would constitute unlawful sexual harassment
- Information on federal and state statutory provisions regarding sexual harassment and available remedies for victims
- Information on employees' rights of redress and forums available to employees for adjudicating complaints
- Information addressing supervisory conduct and responsibilities

Other states mandate training

On August 29, Delaware became the latest state to require employers to provide anti-harassment training to employees, joining New York, California, Connecticut, and Maine. The **new law** amends the Delaware Discrimination in Employment Act to add the harassment prevention provisions, effective January 1, 2019. Initial training for existing Delaware employees must be completed by January 1, 2020.

Employers should provide employees with training in the language spoken by their employees. Currently available in English only, finalized materials will be translated by the state into Spanish, Chinese, Korean, Bengali, Russian, Italian, Polish and Haitian-Creole and made available online. Other languages may be added in the future. However, if model training is not available in an employee's primary language, employers may use an English language version.

Interactive training requirement

New York law requires "interactive training." The NYSDOL has posted training videos for employer use that meet all state minimum requirements except the interactive training requirement. While live

instruction and an in-person trainer is not specifically required, some form of employee participation and some level of feedback by those being trained is needed. Simply providing a training video or written materials to employees will not satisfy the new mandate.

The guidance provides several examples of measures that would meet the minimum interactive training requirement. For example, web-based training may satisfy the requirement if it:

- Includes questions at the end of a section that the employee must answer
- Gives employees an option to submit online questions and receive timely answers
- Provides a feedback survey for employees to turn in after completing training

Similarly, in-person or live trainings — in which the presenter asks questions, gives employees time throughout the presentation to ask questions or provides a feedback survey — would meet the minimum interactive training requirement.

In closing

As of October 9, New York law requires every employer in the state to implement a written sexual harassment prevention policy and to provide annual anti-harassment training for their employees using the state's models or their own as long as it meets minimum standards. New York employers should take immediate action to update their anti-harassment policies and employee handbooks, develop a training plan for existing employees, and consider adding anti-harassment training to their employee onboarding process.

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