

September 4, 2018

NYS Issues Draft Model Sexual Harassment Policy and Training: Employers Must Act to Ensure Compliance With Both State and City Laws

As previously [reported](#), both New York State and New York City recently enacted laws requiring employers to step up their efforts to stop sexual harassment in the workplace. These laws differ, but both require prompt action by employers.

NYC Notice to Employees

Employers must post a [notice](#) and distribute a [fact sheet](#) to employees to comply with the New York City law by **September 6, 2018**.

NYS Policy and Training

On August 23, 2018, New York State issued a draft model sexual harassment [policy](#), [complaint form](#) and [training program](#) to assist employers in complying with its law. These documents will be open for public comment until September 12, 2018, before being finalized. Despite the lack of finality of these documents, employers must distribute either the model sexual harassment policy or their own policy that equals or exceeds the model policy's minimum standards to their employees by **October 9, 2018**. Such policies must include a statement that all employees, applicants, interns, contractors and others conducting business with the employer are protected; a prohibition of retaliation for reporting sexual harassment or assisting in an investigation of a sexual harassment complaint; a definition of sexual harassment, including examples; a definition of unlawful retaliation; a process for reporting sexual harassment; a requirement that supervisors report sexual harassment they observe, learn of or suspect; a process for investigating complaints of sexual harassment; and a description of state and federal legal protections and remedies with respect to sexual harassment. Employers must provide the policy to all employees in writing or electronically. If a policy is provided electronically, employees must be able to access it on a computer provided by the employer during work time and be able to print a copy for their records. Though not required, employers are encouraged to obtain employees' signed acknowledgments of receipt.

As made clear by the guidance issued on August 23, employers must provide training in compliance with the New York State law to all their employees by **January 1, 2019**. This deadline was unexpected given the law's October implementation date, and together with the draft nature of the model training, leaves employers, especially larger ones, with little time to plan and conduct such training.

Training must be interactive and must include an explanation of sexual harassment, examples of unlawful sexual harassment, information concerning federal and state statutory provisions concerning sexual harassment, information concerning how employees may file claims and the remedies available, and information addressing conduct by supervisors and additional responsibilities for supervisors. To be interactive, the training should include as many of the following as possible: web-based training with questions asked of employees as part of the program; accommodation of questions asked by employees; availability of a live trainer during the session to answer questions; and required feedback from employees.

Employers must use either the State's model training program (which includes several sexual harassment scenarios for discussion) or one that equals or exceeds the model's minimum standards. Employers should include in their training programs any internal complaint processes and contact information for filing complaints. Employers who use the model training program should modify it to reflect the work of their organization, including industry-specific scenarios.

All New York employees, regardless of how many hours they work, must receive training. After January 1, 2019, new employees must be trained within 30 calendar days of hire. In subsequent years, employees must be trained at least once per year, which may be based on the calendar year, the anniversary of each employee's start date or any other date the employer chooses.

NYC Training

The New York City training requirement takes effect **April 1, 2019**. Because New York City has not yet provided guidance on its training requirement, it is unclear whether the State's model training program will satisfy New York City's requirement.

Day Pitney can assist employers with meeting their obligations under these laws, including by drafting policies and conducting training.

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