

Employers in New York State Must Adopt / Distribute Sexual Harassment Policies by October 9, 2018

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As we previously noted in our May 2018 Client Alert, New York State and New York City have recently added substantial sexual-harassment related protections. Pursuant to these laws, on October 1, 2018, the New York State Department of Labor (“NYS DOL”) issued final versions of the following documents and resources, among others: (i) a model sexual harassment prevention policy; (ii) a model complaint form for reporting sexual harassment; (iii) a model sexual harassment prevention training program, including case studies; (iv) minimum standards for sexual harassment prevention policies (to be complied with if the model sexual harassment prevention policy is not adopted); (v) minimum standards for sexual harassment prevention training (to be complied with if the model sexual harassment prevention training program is not implemented); (vi) FAQs for combating sexual harassment; (vii) an optional sexual harassment prevention poster; and (viii) a sexual harassment prevention toolkit for employers. These documents can be found at: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Adopt / Distribute Policy by October 9, 2018

Pursuant to New York Labor Law §201-g(1), New York State employers must, **by October 9, 2018**, either adopt the model policy or adopt a policy that meets or exceeds the minimum standards. The minimum standards consist of the following:

- prohibit sexual harassment consistent with guidance issued by the NYSDOL 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 laws on sexual harassment, including remedies available to victims and a statement that there may be applicable local laws;

- include a complaint form (a model of which is also provided);
- 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 under law, and that sanctions will be enforced against individuals engaging in sexual harassment and against managers who take knowingly allow such harassment 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 each employee with a copy of its policy in writing, and should provide employees with such policy in the language spoken by the employees. Employers may provide the policy to employees electronically but, in such event, employees must be able to access the policy on a computer provided by the employer during work time and be able to print a copy for their records. The NYSDOL encourages, but does not require, employers to obtain a signed acknowledgement of receipt of the policy from employees.

Establish Investigative Procedures for Complaints

Pursuant to the above requirements, New York State employers must implement investigative procedures that meet or exceed the requirements set forth in the model policy. According to the FAQs, if an employer already has established investigative procedures that are similar, but not identical, to those provided in the model, the employer can deviate from the specific requirements in the model and still be compliant with the law. In such case, however, the investigative procedures that the employer will be using should be outlined in the employer's sexual harassment prevention policy.

The model policy states that **all** complaints or information about sexual harassment will be investigated, whether in verbal or written form, that such investigations will be commenced immediately and completed as soon as possible, and will be kept confidential to the extent possible. Although noting that the investigative process may vary from case to case, the model policy provides that investigations should be done in accordance with the following steps:

- upon receipt of complaint, a designated person or office will conduct an immediate review of the allegations and take any interim actions, as appropriate; if the complaint is verbal, encourage the complainant to complete a written complaint form and, if he or she refuses, then prepare a complaint form based on the verbal reporting;
- take steps to obtain and preserve any relevant documents, emails or phone records;
- request and review all relevant documents, including electronic communications;
- interview all parties involved, including any relevant witnesses—the model complaint specifically states that the investigation should include speaking with the complainant, the alleged harasser and witnesses;
- create written documentation of the investigation (such as a letter, memo or email), which includes list of all documents reviewed and detailed summary of relevant documents, list of names of those interviewed with detailed summary of their statements, timeline of events, summary of prior relevant incidents (reported or unreported); and basis for the decision and final resolution of the complaint, together with any corrective action(s);
- keep the written documentation and associated documents in a secure and confidential location;

- promptly notify the complainant and the alleged harasser of the final determination (which the model complaint form says can be done by email) and implement any corrective actions identified in the written document; and
- inform the individual who reported of the right to file a complaint or charge externally with the New York State Division of Human Rights, the US Equal Employment Opportunity Commission, the New York City Commission on Human Rights and/or the local police department.

Provide Employee Training by October 9, 2019

The NYS DOL also provided that the deadline for all employees in New York State to complete the model sexual harassment prevention training or comparable training that meets the minimum standards is being pushed back to **October 9, 2019** (although anti-sexual harassment training must be provided by April 1, 2019 under New York City law for employers with at least 15 employees). Employees must be trained at least once per year. The NYSDOL encourages employers to train new employees as soon as possible, given that employers may be liable for the actions of employees immediately upon hire. Employers must commence using the model training or establish sexual harassment prevention training that meets or exceeds the minimum standards for sexual harassment prevention training.

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