

Employment Counseling & Litigation

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New York Employers: Don't Miss the Oct. 9 and Jan. 1 Deadlines to Comply With New York State's Sexual Harassment Prevention Law!

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Sexual Harassment Policy Required by Oct. 9, 2018

By Oct. 9, 2018, all New York employers must have a written sexual harassment prevention policy in place that contains new, specifically mandated language, and they must provide all employees with a copy of that policy in writing. While employers had some discretion in the past about the content of their policies, there is new language that now must be included to ensure compliance. The New York Department of Labor has issued a draft "model" sexual harassment prevention policy. Employers can adopt this policy, or they can create their own policy, as long as it contains certain minimum standards. To comply with New York law, a policy must do all of the following:

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws
- Include a complaint form

- 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 and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue
- 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

Sexual Harassment Training Required by Jan. 1, 2019

By Jan. 1, 2019, employers must provide sexual harassment training to all employees working in New York State, and they must provide training for all new hires within 30 days of their start date. In addition, companies that bid on contracts with the New York State government must provide sexual harassment training to all employees, even those who do not work in New York. Companies must then provide training each year thereafter.

The New York Department of Labor has issued model sexual harassment prevention training materials. Once again, employers are free to use the state's model materials or create and use their own that meet or exceed certain minimum standards enumerated by the state. The training must:

- Be interactive
- Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- Include examples of conduct that would constitute unlawful sexual harassment
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment

- Include information concerning employees' rights of redress and all available forums for adjudicating complaints
- Include information addressing conduct by supervisors and any additional responsibilities of such supervisors

Note that New York's model policy and training materials only cover sexual harassment. Employers are best advised to expand upon those models to address all forms of unlawful harassment and discrimination in the workplace.

The New York law will certainly create a compliance time crunch for many employers. We at Lowenstein Sandler routinely draft and review employer policies and present anti-discrimination and anti-harassment trainings. We would be pleased to assist as needed.

Contacts

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