

September 2018

New York State and City Adopt New Tools to Combat Gender-Based Harassment

Continuing its aggressive measures to combat workplace sexual harassment, on August 23, the New York State Department of Labor issued for public comment a draft sexual harassment training program, a checklist of minimum standards for compliant sexual-harassment policies, and a list of FAQs. The materials can be found [here](#). In addition, the New York City Commission on Human Rights published the mandated [sexual harassment poster](#), which must be posted conspicuously, both in English and Spanish, in covered workplaces on or before September 9.

Adopted in April and May by the New York General Assembly and New York City Council respectively, the sweeping sexual harassment laws represent a renewed and comprehensive program to end workplace sexual harassment. Among other things, the legislation adopted the following:

- **Mandatory Arbitration** — Banned provisions requiring arbitration of sexual harassment claims or limiting an employee's ability to bring a sexual harassment claim in any forum.
- **Protections for Non-Employees** — Created liability on employers for harassment of a contractor, subcontractor, consultant, or other person providing services pursuant to a contract if the employer knew or should have known of the conduct and failed to take action.
- **Non-Disclosure Agreements** — Banned any provision in an agreement preventing disclosure of underlying facts and circumstances of a claim of sexual harassment unless the provision is the plaintiff's preference. The law requires that to be effective the non-disclosure provisions must be included in the agreement presented to "all parties," with the plaintiff having 21 days to consider the agreement and seven days to revoke acceptance of the agreement.
- **State Contractors** — Mandated that entities submitting bids on state contracts certify that they have adopted a sexual harassment policy that meets mandated minimum standards, and provide annual training for all employees, including those working outside the State of New York.
- **Sexual Harassment Training and Policy** — Directed the New York Department of Labor and the New York State Division of Human Rights to develop a model sexual harassment policy and employee training program. Effective October 8, 2018, every employer must adopt the model sexual harassment policy (or a policy that exceeds the model policy) and annually train employees using the model training program (or a training program that exceeds the model program).
- The Labor Department's August 23 publications are in draft form and the Department will consider public comments submitted on or before September 12. It is significant that one of the FAQs expressly states that covered employers must train covered employees **prior to**

January 1, 2019, only 12 weeks after the law's effective date.

While the mandatory training program should not come as a surprise to employers, having to complete all employee training by January 1 was not anticipated. The Department appears to have taken the position that since the law becomes effective on October 8, the "annual training" for 2018 must be completed before the end of the year. Adding to the challenge, since the mandatory training program must include the state's model complaint form as well as information on how an employee may file a complaint with the State Division of Human Rights and/or any local fair employment practices agency, it is likely that few, if any, employers' current sexual harassment programs will comply with these requirements.

Employers with workers in New York State or City, and those seeking to bid on state contracts, might want to confer with their human resources partners and/or legal counsel to make sure they comply with these aggressive deadlines. If unchanged as a result of public comments, all 8.1 million workers in New York State will have to be trained within the next 90 days.

For more information or if you have questions about how the issues raised in this update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#):

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