

New York State Enacts New Anti-Harassment Legislation Aimed at Employers, Including Mandatory Annual Sexual Harassment Training

by Laura M. Lestrade

On April 12, 2018, New York Governor Andrew Cuomo signed into law budget legislation that includes significant anti-sex harassment measures that (1) require mandatory sexual harassment training and written anti-harassment policies; (2) expand sexual harassment protections to non-employees; (3) prohibit certain non-disclosure provisions in settlement agreements; (4) prohibit mandatory arbitration of sexual harassment claims; and (5) require bidders on state contracts to certify compliance with policy and training requirements.

Mandatory Annual Sexual Harassment Training and Written Anti-Harassment

Policy. Beginning October 9, 2018, employers will be required to distribute a written anti-harassment policy and provide annual sexual harassment training to all employees. The New York State Department of Labor and New York State Division of Human Rights will develop a training program and a model sexual harassment policy for employers to use. An employer may develop its own policy and training program as long as they meet all of the requirements of the new law. Policies must include a complaint form for use by employees. Training must include an explanation of sexual harassment; examples of prohibited harassment; supervisor responsibilities; state and federal anti-harassment laws, including the remedies provided by each; an explanation of employees' rights and the forums in which complaints can be made.

Expansion of Sexual Harassment Protections to Non-Employees. Effective immediately, coverage under the New York State Human Rights Law has been expanded to non-employees. Employers may now be held liable for sexual harassment of non-employees such as contractors, vendors, and consultants, if the employer knew or should have known that the individual was subjected to sexual harassment at the employer's workplace and failed to take appropriate corrective action.

Non-Disclosure Provisions in Settlement Agreements Prohibited. Beginning July 11, 2018, contract terms that would prevent the disclosure of the underlying facts and circumstances related to a sexual harassment claim are prohibited, unless the non-

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disclosure provision is the complaining party's preference. The complainant must be given 21 days to consider whether to accept the proposed confidentiality language, and then seven days to revoke his or her acceptance of it. Any agreed-upon non-disclosure provisions only become effective after the seven day revocation period has expired. Further, any such agreed upon non-disclosure provisions must apply to all parties to the agreement. The new law does not prohibit provisions that prevent disclosure of the terms of the agreement.

Mandatory Arbitration Clauses for Sexual Harassment Claims Prohibited.

Beginning July 11, 2018, mandatory arbitration clauses that purport to apply to sexual harassment claims are prohibited, and shall be rendered null and void, except where inconsistent with federal law. The Federal Arbitration Act (FAA) preempts any state rule that discriminates on its face against arbitration. Thus, this provision may be not be enforceable with respect to arbitration agreements governed by the FAA.

New Requirements for State Contract Bidders. Beginning January 1, 2019, every bidder on a New York State contract must certify that it is in compliance with the above requirements concerning written harassment policies and annual anti-harassment training. A bid that fails to include the required language will not be considered.