

What is Required of New York Employers Under the Recent Changes to the State and City Sexual Harassment Laws?

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As the #MeToo movement was changing the conversation around sexual harassment nationwide, both New York State and New York City passed laws aimed at changing the way New York employers handle sexual harassment in the workplace. The changes include mandatory sexual harassment training and policies, enhanced protections for employees and non-employees and additional reporting and certification requirements for City and State contractors. Some of the new requirements are already in effect, while others must be implemented by employers over the next year. ***With laws changing at both the state and local level over the course of the next year, what do New York employers need to know?*** We have provided a detailed review of the new laws below.

New York State

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

1. Annual Sexual Harassment Training and Written Anti-Harassment Policy.

Beginning October 9, 2018, New York State employers will be required to distribute a written anti-harassment policy and provide annual anti-sexual harassment training to all New York employees. All employees must receive training by January 1, 2019. New York State has developed a model training program ([available here](#)) and a model sexual harassment policy ([available here](#)) for employers to use. These models are currently subject to revision following a public comment period, which is scheduled to end September 12, 2018.

An employer may develop its own policy and training program as long as they meet all of

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the requirements of the new law. Trainings must be interactive and include: (i) an explanation of sexual harassment consistent with Department of Labor guidance; (ii) examples of prohibited conduct; (iii) information concerning federal and state law related to sexual harassment and the remedies available under these laws; (iv) notice to employees of their rights of redress and all available administrative and judicial forums for adjudicating sexual harassment claims; and (v) information addressing conduct by supervisors and any additional supervisor responsibilities.

Anti-harassment policies must include a complaint form for use by employees. A model complaint form has been published for employer use, and is [available here](#).

2. Expansion of Sexual Harassment Protections to Non-Employees.

The New York State Human Rights Law has been expanded to cover 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.

3. Non-Disclosure Provisions in Settlement Agreements Prohibited.

Beginning July 11, 2018, contract terms that prevented the disclosure of the underlying facts and circumstances related to a sexual harassment claim became unlawful—unless the non-disclosure provision was 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. Furthermore, 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.

4. Mandatory Arbitration Clauses for Sexual Harassment Claims Prohibited.

Also beginning July 11, 2018, mandatory arbitration clauses that purported to apply to sexual harassment claims became prohibited (and 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.

5. New Requirements for State Contract Bidders.

Beginning January 1, 2019, every bidder on a New York State contract must certify that it complies 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.

In May 2018, New York City passed the *Stop Sexual Harassment in NYC Act* (“the Act”). The Act requires: (1) annual sexual harassment training of employees; (2) a poster in the workplace advising employees of their rights and a similar written notice to every new employee; and (3) enhanced reporting by bidders on New York City contracts. The Act also expands the protections of the New York City Human Rights Law to all employers, regardless of size.

1. Annual Sexual Harassment Training for Employers with 15+ Employees.

As of April 1, 2019, New York City employers with 15 or more employees (including interns) will be required to conduct annual anti-sexual harassment training for all employees, including supervisory and managerial employees. The Act requires that training be interactive (though it need not be live or conducted in-person) and must:

1. provide an explanation of sexual harassment as a form of unlawful discrimination under NYC law;
2. state that sexual harassment is a form of unlawful discrimination under federal and New York state law;
3. include a description of what sexual harassment is;
4. describe the employer’s internal complaint process;
5. state the complaint process available through the NYC Commission on Human Rights, the New York State Division of Human Rights and the Equal Employment Opportunity Commission, including contact information;
6. explain the prohibition against retaliation;
7. include information concerning bystander intervention (i.e., such as suggestions on how to confront a harasser); and
8. provide the specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures such employees should take to appropriately address sexual harassment complaints.

The training must be conducted on an annual basis for incumbent employees, and new employees who work 80 or more hours per year on a full or part-time basis in New York City must receive the training after 90 days of initial hire. If an employee has received training at one employer within the training cycle, he or she would not be required to receive additional training at a different employer until the next annual cycle. The Act also clarifies that if an employer is subject to training requirements in multiple jurisdictions, it will comply with the Act so long as any annual training that is provided to employees addresses, at a minimum, the substantive requirements of the Act. Thus, for practical purposes, NYC employers with 15 or more employees, who are required to provide training under New York State law by no later than January 1, 2019, should make sure such training satisfies the New York City requirements as well. The City will also require employers to generate and retain records of all trainings, including signed acknowledgements.

The New York City Commission on Human Rights will develop publicly available online sexual harassment training modules for employers’ use, which will satisfy the requirements of the Act so long as the employer supplements the module with information about the employer’s own internal complaint process to address sexual

harassment claims.

2. Mandatory Sexual Harassment Poster and Fact Sheet Distribution.

Effective September 6, 2018, all New York City employers are required to conspicuously display an anti-sexual harassment rights and responsibilities poster and to distribute an information sheet on sexual harassment to new hires, both of which were issued by the City August 2018. A copy of the poster can be [found here](#) (and [available here](#) in Spanish), and the corresponding fact sheet for distribution can be [found here](#).

The required poster must be “conspicuously display[ed] . . . in employee breakrooms or other common areas employees gather.” The Act requires that all employers display the poster in both English and Spanish. The notice must be at least 8.5 x 14 inches with a minimum 12 point font. Employers may distribute the information sheet to new employees as a standalone document or incorporate the factsheet into their employee handbook.

3. Expansion of Applicability to All Employers.

The New York City Human Rights Law was amended to permit claims of gender-based harassment by all employees, *regardless of the size of the employer*. Previously, the NYCHRL’s anti-discrimination provisions were only applicable to employers with four or more employees. The statute of limitations for filing complaints with the NYC Commission on Human Rights for gender-based harassment claims was also extended from one year to three years following occurrence of the alleged harassment.

4. New Requirements for City Contract Bidders.

As of July 8, 2018, city contractors are now required to include their practices, policies, and procedures “relating to preventing and addressing sexual harassment” as part of an existing report required for certain contracts under the City Charter and corresponding rules.