

## New York State Implements New Sexual Harassment Prevention Policy

New York State has recently passed legislation which includes the nation's strongest and most comprehensive sexual harassment resources and requirements for employers. Effective October 9, 2018, every employer in New York is required to establish a sexual harassment prevention policy. Employers have a choice of either adopting the Department of Labor's model sexual harassment prevention policy, or adopting a similar policy that meets or exceeds the minimum standards of the model policy. The model policy is available at [www.ny.gov/programs/combating-sexual-harassment-workplace](http://www.ny.gov/programs/combating-sexual-harassment-workplace).

New York State recommends that the policy be distributed to all employees in writing or electronically. Further, employers are encouraged to have their employees acknowledge receipt of the policy and post a copy of the policy where it's readily available to all employees. The model policy also includes a model complaint form that employees can use to file complaints of harassment.

New York State has set a "Minimum Standards Checklist" which requires that the policy have the following:

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- Provide examples of prohibited conduct;
- 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; 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.

The New Sexual Harassment Prevention Policy also requires every employer in New York to provide employees with sexual harassment prevention training to its employees. The Department of Labor has established a model training for employers to use as well. All employers must adopt and provide a sexual harassment prevention training to all current employees by October 9, 2019.

An employer's sexual harassment prevention training must be interactive, meaning it requires some level of feedback by those being trained and the presenter. The training can be provided to employees individually or in a group setting. The training can also be presented in person, via phone or online, via webinar or recorded presentation. New York State recommends that the training allow employees to ask questions and provide answers to those questions in a timely manner. The employees are also allowed to provide feedback on the training and the materials.

New York State provided the following a "Minimum Standards Checklist" should an employer not use the

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model training:

- 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 unlawful sexual harassment;
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment;
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- Include information addressing conduct by supervisors and additional responsibilities for supervisors.

**Comment:** In light of this new law, we recommend that you review your current sexual harassment policy as soon as possible in order to determine if it satisfies the New York State's Model policy. If it doesn't or if you don't have one, simply adopt the model policy and begin preparing your sexual harassment prevention training.

For more information, please contact Tracy A. Walsh, Chair of the Employment Group at [twalsh@wglaw.com](mailto:twalsh@wglaw.com) or 215.825.7224. or Christina Abreu at [cabreu@wglaw.com](mailto:cabreu@wglaw.com) or at 973.854.1075.