

Key Provisions of New York's Sexual Harassment Law Now in Effect

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The authors of this article discuss several new New York anti-harassment laws enacted in the wake of the #MeToo movement that will require employers to provide annual sexual harassment prevention training to all workers, distribute a comprehensive sexual harassment prevention policy, and update their form employment contracts and settlement agreements.

New York State and New York City recently passed several anti-harassment laws in the wake of the #MeToo movement that will require employers to provide annual sexual harassment prevention training to all workers, distribute a comprehensive sexual harassment prevention policy, and update their form employment contracts and settlement agreements. Key parts of the state law are now in effect. Companies in the insurance and reinsurance industries are covered by the new laws.

NO MANDATORY ARBITRATION OF SEXUAL HARASSMENT CLAIMS

Effective July 11, 2018, New York State law prohibits employers with more than four employees from including contractual provisions in any written employment contracts that mandate arbitration of sexual harassment claims.

BAN ON NON-DISCLOSURE AGREEMENTS

Also, effective July 11, 2018, New York State law prohibits employers from including confidentiality/nondisclosure clauses in settlement agreements of sexual harassment claims, unless the employee prefers such a provision. If the parties mutually agree to such a clause, the employer must provide the employee/complainant 21 days to consider the clause, with a seven-day revocation period following execution of the agreement.

MANDATORY SEXUAL HARASSMENT POLICY AND TRAINING

Effective October 9, 2018, New York State law requires employers to maintain sexual harassment prevention policies and conduct annual sexual harassment prevention training. The written sexual harassment prevention policy must include:

- a statement prohibiting sexual harassment and providing examples of sexual harassment;
- information about federal and state sexual harassment laws and the remedies they provide to victims;
- a complaint form;
- a description of the employer's procedure regarding investigations of complaints of sexual harassment;
- an explanation of employees' external rights of redress and the available administrative and judicial forums for bringing complaints under federal and state law;
- a statement that sexual harassment is a form of employee misconduct and that sanctions will be enforced against those who engage in sexual harassment and supervisors who knowingly allow such behavior to continue; and
- an anti-retaliation statement.

The annual sexual harassment prevention training must be interactive and provide: an explanation of sexual harassment and specific examples of inappropriate conduct; detailed information concerning applicable federal, state, and local laws and the remedies available to victims of harassment; and a description of employees' external rights of redress and the available administrative and judicial forums for bringing complaints.

Companies in the insurance and reinsurance industry that operate in Connecticut have been mandated since 1992 by a law requiring companies with 50 or more employees to conduct sexual harassment training. However, that law did not require annual training, as is now required in New York.

Recently, a new bill seeking to strengthen Connecticut's sexual harassment laws and require new training for employees in the state passed the Connecticut Senate but was not acted on by the Connecticut House before the legislature recessed. New legislation in this area is expected in Connecticut once the legislature reconvenes.

PROTECTIONS FOR NON-EMPLOYEES

New York Labor Law now expands the anti-sexual harassment protections outlined above to non-employees who provide services to employers in the capacity of independent contractors, subcontractors, vendors, consultants, or any other capacity providing services in the workplace, if the employer, its agents, or supervisors knew or should have known that the non-employee was subject to sexual harassment in the employer's workplace, and failed to take appropriate corrective action.

Employers in New York City have another set of anti-harassment laws to incorporate into their policies and training. The New York City Council recently passed the Stop Sexual Harassment in NYC Act, which encompasses 11 separate bills and will be one of the strictest anti-sexual-harassment laws in the country.

SPECIFIC TRAINING REQUIREMENTS

Effective April 1, 2019, all private employers with 15 or more workers in New York City must conduct "interactive" *annual* sexual harassment training for all employees, including interns. Interactive training is defined to include live trainer-trainee interaction, use of audio-visuals, and computer or online or other participatory forms of training. While this training requirement overlaps with New York State's new training requirement, the local law applies some additional obligations to New York City employers. The City requires recordkeeping—all employees must sign forms acknowledging that they received training (which acknowledgments employers must maintain for at least three years). The training must also include:

- information about the complaint process available at the city, state, and federal levels;
- provide examples of protected activity;
- offer information about the importance of bystander intervention to curb workplace harassment; and
- detail the specific responsibilities of managers in preventing harassment and retaliation.

STATUTE OF LIMITATIONS

The limitations period for filing gender-based harassment claims under the New York City law has been extended from one to three years.

DEFINITION OF HARASSMENT

New York City law now clarifies that sexual harassment is a form of discrimination and extends gender-based harassment prohibitions to all employers in the City.

TAKEAWAY

All employers with New York State and New York City employees, including those in the insurance and reinsurance industry, should review their sexual harassment prevention policies, anti-harassment training programs, employment contracts, and settlement agreement forms to revise as necessary as these various new laws take effect.

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