

NY State Issues Guidance to Employers on Sexual Harassment Policy and Training Requirements

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New York Governor Andrew Cuomo on August 23, 2018, released for public comment a series of electronic [draft materials and guidance](#) as a follow-up to the State's sexual harassment law passed in April 2018. The public comment period closes on September 12, 2018.

The materials and guidance include a model sexual harassment prevention policy and complaint form, as well as a training presentation, to provide employers with what the state regards as legally compliant documents. They can be used by employers as they are or adapted to establish individualized policies to meet the "minimum standard" of workplace sexual harassment prevention required of public and private employers in New York.

The model policy defines sexual harassment to include harassment on the basis of sex, sexual orientation, and gender identity, including the status of being transgender. This definition comes on the heels of a recent expansion in the definition of gender identity and gender expression passed by New York City earlier this year and builds on a trend of state and local action in this area.

As set forth in the guidance, the employer's sexual harassment policy should:

- prohibit sexual harassment as defined by New York law;
- provide specific examples of prohibited conduct that would constitute unlawful sexual harassment (e.g., inappropriate touching and gestures, displays of sexually charged materials, etc.);
- provide information about federal and state laws that address sexual harassment, including

information about remedies available to victims of sexual harassment;

- encourage all employees to report harassment that they experience or of which they are aware and include a complaint form (see the [model form](#) issued by the State);
- include a procedure for the timely and confidential investigation of complaints (investigation should be completed within 30 days);
- inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- state that sexual harassment constitutes employee misconduct, sanctions will be enforced against individuals engaging in sexual harassment and also against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- state that retaliation against employees who complain of sexual harassment or who assist in any proceeding involving sexual harassment is unlawful.

The guidance also informs employers what is required when conducting anti-harassment training. For example, the training must be interactive, and provide an explanation of sexual harassment protections that align with the information included in the policy, including:

- examples of prohibited conduct;
- protections under federal and state laws; and
- employees' rights of redress and available forums for adjudicating complaints.

The training should also include information addressing supervisor responsibilities, such as mandatory reporting requirements once a supervisor observes or is informed about any complaint of sexual harassment. The website provides [draft training materials](#) in presentation form.

The time for employers to act is now. As of October 9, 2018, all employers must adopt a policy and provide a written copy of the policy to all employees. Further, employees must receive training on an annual basis, which should be completed by January 1, 2019. Additionally, effective January 1, 2019, all state contractors will be required to submit an affirmation that they have a sexual harassment policy meeting the minimum standards set forth in the guidance and that they have trained all of their employees. New York City employers are required to provide annual training, as well as train new employees within 90 days of hire.

While many employers already have sexual harassment policies in place, there are nuances in the New York materials that likely warrant review of existing policies. For example, the model policy includes references to the state and federal agencies and law enforcement personnel, going beyond the employer's internal complaint channels. It also suggests that employers must notify complainants of their right to file external complaints at the conclusion of the investigation process. Training materials should also be reviewed in light of the model training to ensure that such programs meet or exceed the minimum standards and are suitable for interactive sessions, which require some form of employee participation.

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