

August 29, 2018

## **New York State Draft Sexual Harassment Policy, Complaint Form, and Training Released**

Late last week, New York State launched a [new website](#) offering sexual harassment resources for employees and employers, including the much anticipated model sexual harassment policy, complaint form, and training called for by the [sexual harassment legislation](#) enacted last year. The website also offers answers to Frequently Asked Questions (FAQs) on these topics. Although all New York employers are required to adopt sexual harassment policies by October 9, 2018 and complete initial sexual harassment training by January 1, 2019, the model documents that are currently available are *drafts only*, and may be subject to change. The State is encouraging the public to [submit comments](#) on these documents by September 12, and may revise their templates in response to public comments. Therefore, employers will likely not receive final guidance on these requirements until close to the date of implementation. New York City employers should also be mindful that the City imposes heightened requirements not fully addressed by the State's model training, and has some posting requirements that take effect on September 6, 2018, as described later in this advisory.

### **1. Sexual Harassment Policy and Complaint Form**

By October 9, 2018, all NYS employers must adopt and distribute<sup>1</sup> to all employees a written sexual harassment policy, including an internal complaint form. Employers are encouraged, but are not required, to obtain written acknowledgment of receipt of the policy from employees. Policies may be distributed electronically, but employees must be able to access the policy on a computer provided by the employer during work time and be able to print a copy for their records.

Employers may either use the Model Policy provided by the State or draft a policy that satisfies the minimum standards of the Model Policy. According to the State's guidance, employers should provide employees with the policy in a language

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<sup>1</sup> The Model Policy, by its terms, also requires employers to post the policy "prominently in all work locations".

that is spoken by their employees, but it is not clear how many employees must speak a specific language for this requirement to apply.

It is unclear how much of the exact text of the Model Policy the State will expect employers to adopt in their own policies to satisfy the “minimum standards” of the statute; however, the law is clear that an employer’s policy must:

- prohibit sexual harassment consistent with the State’s [guidance](#) and provide examples of conduct that would constitute unlawful sexual harassment;
- include information about the federal and state laws on sexual harassment and the remedies available to victims of sexual harassment, including a statement that there may be applicable local laws;
- include a standard complaint form;
- include a procedure for the timely and confidential investigation of complaints and ensure 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 proceeding under the law is unlawful.

The State’s draft Model Policy can be found [here](#). The decision whether to adopt the State’s Model Policy or to rely on an alternative formulation should be undertaken after discussion with counsel as there are some provisions of the Model Policy that arguably exceed the requirements of the statute.

## **2. Sexual Harassment Training**

Although the sexual harassment training requirements are also effective October 9, 2018, the FAQs make clear that all employees (including part-time employees) must receive interactive sexual harassment training that meets the standards of the model training by January 1, 2019.<sup>2</sup> Thereafter, employees must be trained at least once per year, either based on a calendar, anniversary year, or other date of the employer’s

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<sup>2</sup> The FAQs seem to indicate that employees must be trained no matter how frequently the employee works in NY. In response to the question of what happens if “someone just works for one day for the employer, or if someone works for just one day in NY”, the State avers that employers must ensure that “*all* employees receive training”.

choosing. “New employees” or employees who commence employment after January 1, 2019 must be trained within 30 calendar days of starting their job. If a new employee has recently received the unmodified state training at a prior employer, or one of similar substance, the FAQs note that the new employer may consider the employee “trained”.

To be considered “interactive” the training should allow employees the opportunity to ask and/or answer questions and/or provide mandatory feedback about the training and related materials. As with the draft policy, the training should be provided in the language spoken by the employees.

The State has not specifically prescribed which, if any, elements of the model training need to appear in an employer’s training to satisfy the statute; however it is clear that the training must at least contain:

- an explanation of sexual harassment consistent with guidance issued by the State;
- examples of conduct that would constitute unlawful sexual harassment;
- information about the federal and state statutory provisions concerning sexual harassment and the remedies available to victims of sexual harassment;
- information concerning employees’ rights of redress and all available forums for adjudicating complaints; and
- information addressing conduct by supervisors and any additional responsibilities that apply to supervisors.

The model training can be found [here](#) and indicates that it will be made available in video or PowerPoint format, with a script and FAQs to accompany it for live presentations. Employers choosing to make use of the model training should discuss with counsel how to adjust the content to be more suitable for their own workforce and consistent with internal policies and procedures.

New York City employers with 15 or more employees, including interns, are reminded that they have additional training obligations under City law, effective April 2019. Details about these training requirements are still forthcoming, but the statute anticipates some specific departures and expansions from New York State requirements, including requiring discussion of “bystander intervention.” The N.Y.C. Commission on Human Rights has launched a website related to sexual harassment that states that employers will have one year from April 2019 to implement the training. The website also includes the [English and Spanish posters](#) which employers are required to conspicuously post in breakrooms or other common areas, as well as an information sheet that must be distributed to new hires. New York City employers are required to post and distribute these documents by **September 6, 2018**.

## **Next Steps**

Although both the policy and training are currently in draft form, employers who want to integrate the policy and training into their current handbooks and training platforms should begin reviewing and revising their materials to bring them into compliance with the legal requirements. We will continue to advise you on developments in the State and City's evolving guidance on these issues.

If you have any questions about the above legislation, please contact Tina Grimshaw or any other attorney at the Firm at (212) 758-7600.

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