

## New York State Releases Final Guidance on Employer Sexual Harassment Prevention Policies and Trainings

OCTOBER 17, 2018

As we previously covered [here](#), on April 12, 2018, New York's Governor, Andrew Cuomo, signed new laws governing sexual harassment in the workplace. This month, following a notice and comment period, New York issued final guidance and FAQs regarding the new laws' anti-sexual harassment requirements (Guidance). Notably, as of October 9, 2018, every employer in New York state must adopt and distribute a written sexual harassment prevention policy that meets certain minimum standards. Employers must also conduct sexual harassment prevention training for all employees by October 9, 2019.

The New York state website provides a number of resources for employers to consult, including guidance and checklists, a model policy and training, a sexual harassment prevention poster, and [FAQs](#). Key provisions from the Guidance are discussed below.

### Required Sexual Harassment Prevention Policy and Complaint Form

As of October 9, 2018, employers must either adopt (1) the state's model sexual harassment prevention policy (available [here](#)), or (2) a written policy that equals or exceeds minimum standards set forth in the Guidance. Employers are not required to adopt the model complaint form contained in the Guidance, or to include it in their policy, but employers must maintain a complaint form and clearly inform their employees where the form is available. Further, employers may adopt or maintain investigative procedures that are similar – but not identical – to those provided in the Guidance, so long as the investigative procedures are clearly outlined in the employer's written policy.

Employers may distribute their sexual harassment prevention policies by hard copy or electronically (provided that employees are able to print or otherwise obtain a hard copy of the policy). New hires should receive the policy prior to beginning work.

### Required Sexual Harassment Prevention Training

By October 9, 2019, New York employers must provide sexual harassment prevention training to all of their employees. The training provided must either (1) be in the form of the state's model training, or (2) be in a form that equals or exceeds minimum standards set forth in the Guidance. (An earlier version of proposed guidance would have required the training to occur by January 1, 2019.) The minimum standards require that training is "interactive." Although a live trainer is not required, the Guidance makes clear that having employees watch a training video or read a document, without any feedback mechanism or interaction, would not satisfy the employer's obligations under the new laws.

The sexual harassment prevention training must be provided to all employees at least annually, and, for new hires, "as soon as possible" after their start date. Notably, "employee" is broadly defined to include all workers, regardless of immigration status, including all exempt and non-exempt employees, part-time employees, and seasonal and temporary workers. Employers are required to provide trainings for any individual that works any portion of time in New York, even if they are based in another state.

Training must be provided "in the language spoken by [the employers'] employees," which likely will be interpreted to mean each employee's "primary language." New York has provided its model training program in a variety of languages. If New York does not have a template training available in an employee's primary language, the employer is permitted to provide that employee with an English-language version of the training.

## Optional Measures

The Guidance provides that, although employers are not required to post a sexual harassment prevention policy or to obtain signed employee acknowledgements of receipt, both practices are strongly encouraged. The Guidance also encourages employers to provide the required policy and training to all individuals providing services in the workplace, including contractors, subcontractors, vendors, or consultants.

The FAQs also offer guidance on other provisions of the new laws, including the expansion of the New York State Human Rights Law, which now prohibits sexual harassment of certain nonemployees in the workplace, significantly limits the use of nondisclosure agreements related to settlements of sexual harassment claims, and prohibits almost all mandatory arbitration clauses for sexual harassment claims. See [FAQs](#) and our prior briefing [here](#).

## Next Steps

Employers should examine their anti-harassment policies and update them to meet or exceed the minimum requirements set forth in the Guidance. Because the new laws require employers to include state-specific information and remedies, national employers should consider adopting a separate policy covering New York employees. Further, employers should carefully consider whether it is in their best interest to adopt all of the provisions of the model policy and use the model training, both of which contain information that is not required by the law and may not comport with the employer's existing policies and practices. To the extent they have not already, employers should be actively working toward adoption and dissemination of a compliant policy as soon as possible.

Employers should also complete interactive sexual harassment prevention training for all employees on or before October 9, 2019, and should do so annually thereafter.

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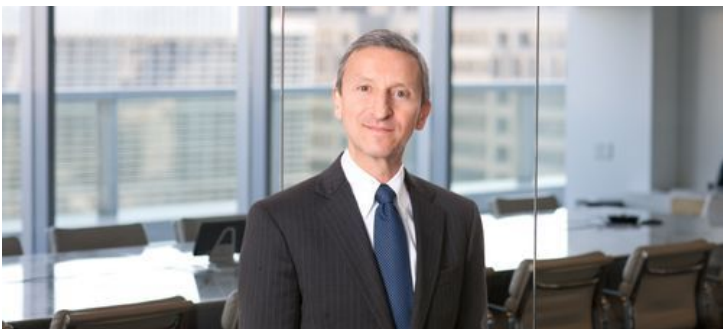
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