

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New York Enacts Mandatory Sexual Harassment Requirements for Employers

By Bennett Pine

As the #MeToo movement translates to policy, New York state and New York City have joined the growing list of jurisdictions — including California, Maine and Connecticut — mandating sexual harassment policies, posters and training in the workplace.

While the new legislation is expected to impose substantial burdens on employers, in many cases the burdens will be alleviated because both the city and the state will make available ready-made materials that many employers will be able to utilize.

New York State Requirements

The New York state sexual harassment law and proposed requirements are built upon Governor Andrew Cuomo's approval of a state budget on April 12, 2018, which contained several measures regarding sexual harassment. The state requirements apply to all employers regardless of size. According to the proposed guidelines — which were announced on August 23 by Gov. Cuomo and were open for public comment until September 12 — starting on October 9, 2018, each New York state employer, regardless of size, must create and distribute a written anti-sexual harassment policy. Unlike anything that has been required in the past, *the policy must include guidance and instructions for filing a complaint of sexual harassment or discrimination*. The New York State Division of Human Rights will provide a model sexual harassment policy and complaint form. Such policy must contain the following components:

- A clear prohibition of sexual harassment and examples of conduct that constitute unlawful sexual harassment.
- Information concerning federal, state and local anti-harassment laws, including the remedies that are available to victims of sexual harassment.
- A standard complaint form.
- A procedure for the investigation of a complaint.
- Information concerning employees' rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially.

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- A statement that sexual harassment is a form of employee misconduct and that sanctions will be enforced against individuals who engage in sexual harassment as well as against supervisory and managerial personnel who knowingly allow such behavior to continue.
- A statement that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding is unlawful.

All employers, by October 9, 2018, must adopt either New York state's model anti-harassment policy or an adequate customized version of their own.

The Training Requirement

All current employees and contractors are to receive anti-harassment training by October 9, 2019. After October 9, 2019, all new hires must complete training within 30 days of hire, according to the New York state proposal.

State employers must provide "interactive" training that includes: (1) an explanation of sexual harassment, (2) examples of sexual harassment, (3) information concerning the federal and state laws concerning sexual harassment and remedies available to victims, and (4) information concerning employees' rights to redress and the agencies or other places to lodge complaints.

The state's Human Rights Division is required by the law to produce model sexual harassment prevention guidance and a sexual harassment prevention policy that is publicly available. Likewise, it is required to create a model training program, which employers may use or otherwise may adopt as their own. The state agencies have yet to create these materials.

The draft New York Model Sexual Harassment Prevention Training program can be found here: <https://www.ny.gov/sites/ny.gov/files/atoms/files/SexualHarassmentDRAFTModelTraining.pdf>

New York City Sexual Harassment Requirement

New York City has enacted a series of requirements that New York City employers with at least 15 employees must comply with, beginning now:

Poster: The New York City Commission on Human Rights has published a poster about the law that must be displayed in the workplace beginning now. The poster can be found here: https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Notice-8.5x11.pdf

Employee Notice: Also starting now, in addition to displaying the poster in the workplace, employers in New York must begin providing a "fact sheet" about the sexual harassment law to new hires. The Human Rights Commission has published a fact sheet,



which can be found here: https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Factsheet.pdf

Training: The New York City sexual harassment training requirement is quite similar to the training requirement imposed by the state. However, the city's training requirement, which will apply to employers with at least 15 employees, will not go into effect until April 1, 2019. Like New York state, the city requires that such training be "interactive." The Human Rights Commission will develop model training materials that may be used by employers. Such training materials must include the following:

- A description of the internal complaint process available to employees to address sexual harassment claims.
- A description of the complaint process available through the Equal Employment Opportunity Commission, the state's Human Rights Division, and the city's Human Rights Commission, including contact information for all three agencies.
- An explanation of retaliation and examples of prohibited retaliatory conduct.
- Information concerning bystander intervention, including resources that explain how to engage in it.
- The specific responsibilities of supervisory and managerial employees in preventing sexual harassment and retaliation.

Conclusion

Anderson Kill has substantial experience in drafting sexual harassment policies and in conducting sexual harassment training.

If you have any questions or require assistance, please contact the author at (212) 278-1288 or bpine@andersonkill.com. ▲

