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New York State Finally Releases Draft Sexual Harassment Policy, Complaint Form and Training

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On August 23, 2018, the New York State Department of Labor unveiled a [website](#) with resources for employers and employees about the new sexual harassment prevention law, which was detailed in our [April 5, 2018 alert](#).

Pursuant to that law, DOL has prepared model sexual harassment prevention policies and trainings and outlined employer requirements for conducting annual employee harassment prevention training sessions.

Sexual Harassment Policy and Complaint Form

Under the law, every employer in New York State is required to adopt a sexual harassment prevention policy. The DOL prepared a model [Sexual Harassment Policy for All Employers in New York State](#) that employers may choose to adopt in its entirety.

If an employer chooses not to adopt the State's model policy, it must revise its current policy to ensure that it meets or exceeds the minimum standards promulgated by the DOL. To comply with this requirement, an employer's sexual harassment prevention policy must, at a minimum, include the following:

- Prohibit sexual harassment;
- Provide examples of prohibited conduct that would constitute unlawful sexual harassment;
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;

- Include a complaint form;
- Include a procedure for the timely and confidential investigation of complaints that ensures 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 investigation or proceeding involving sexual harassment is unlawful.

In addition to the model policy, the DOL has also provided a model [Complaint Form](#) that employers can share with employees.

The model sexual harassment prevention policy and model complaint form are currently considered draft documents. If employers would like to [submit a comment](#) about these forms, they have until **September 12, 2018** to do so.

In the meantime, to ensure compliance with these requirements, it is recommended that employers not only review and revise their current sexual harassment policy to meet the minimum standards, but also include copies of the State's model policy

and model complaint form as attachments to their employee handbooks.

Sexual Harassment Prevention Training

The law also mandates that every employer in New York State provide employees with sexual harassment prevention training on an annual basis, starting on **October 9, 2018**. All current employees must complete their sexual harassment training by **January 1, 2019**, and then repeat such training at least once per year. All new employees must complete their sexual harassment prevention training within 30 calendar days of their start date and then every year thereafter.

The DOL and Division of Human Rights have developed a model Training Program and suggested PowerPoint slides that employers may use to comply with their obligations under the law. If an employer chooses not to utilize the State's model policy, it must ensure that its training meets or exceeds the following minimum standards.

The training must:

- Be interactive;
This means the training requires some level of participation by those being trained, and should include as many of the following elements as possible:
 - (i) be web-based, with questions asked of employees,
 - (ii) accommodate questions asked by employees,
 - (iii) include a live trainer who can participate in a question-and-answer session, and
 - (iv) require feedback from employees about the program and materials presented.
- Include an explanation of sexual harassment consistent with guidance issued by the DOL;
- Include examples of conduct that would constitute unlawful sexual harassment;
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;

- Include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- Include information addressing conduct by supervisors and any additional responsibilities of such supervisors.

The model sexual harassment prevention training is currently in draft form. If employers would like to submit a comment about the model training documents, they have until **September 12, 2018** to do so.

In the meantime, to ensure compliance with these requirements, it is recommended that employers commence sexual harassment prevention training forthwith or reach out to counsel or appropriate human resources professionals to make such arrangements. For those employers who already have sexual harassment prevention training programs, such employers should review their training programs to ensure that they comply with the new requirements discussed above and that they meet the minimum standards established by the DOL.

As a final note, adoption of the State's model policy and providing employees with the required training does **not** constitute a conclusive defense to charges of unlawful sexual harassment. If a sexual harassment complaint is lodged against your business or your employees, you should contact counsel to discuss your options.

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