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NY State Issues Final Sexual Harassment Policy and Materials

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As detailed in our [August 27, 2018 alert](#), the New York State Department of Labor (DOL) has published resources for employers and employees about the state's new sexual harassment prevention laws.

On October 1, 2019, the DOL unveiled an updated [website](#) with final versions of its

- minimum standards for employer sexual harassment prevention policies;
- a model sexual harassment prevention policy;
- a model complaint form; and
- sexual harassment prevention training materials.

The DOL's updated website also includes a more comprehensive FAQ section, a sexual harassment prevention toolkit for employers, a sexual harassment prevention policy notice, and supplemental training materials.

Because employers must adopt a sexual harassment prevention policy that complies with the new law by October 9, 2018, it is imperative that employers review the DOL's website and determine whether they need to update their sexual harassment prevention policies. A number of things have changed since the initial drafts were released in August. A summary of all requirements, including key changes to the final documents are summarized below.

Sexual Harassment Policy, Poster, Toolkit, and Complaint Form

The DOL's updated website includes a revised model Sexual Harassment Policy for All Employers in New York State, which employers may choose to adopt in its entirety, as well as a revised complaint form. While the updated policy and complaint form are

not significantly different from the draft versions released in August, employers should use the updated versions of these documents to revise their current sexual harassment policy to meet the minimum standards, and include copies of the State's model policy and model complaint form as attachments in their employee handbooks.

In addition to the revised policy, the DOL issued a workplace notice to notify employees of the employer's sexual harassment prevention policy that employers should distribute with their employee handbooks and post in a conspicuous location. The DOL also released an Employer Toolkit – which provides a summary of the law's requirements, tips for implementation of new sexual harassment prevention policies and sexual harassment prevention training, and minimum standards checklists – for employers to ensure they are complying with the new law. All of these documents can be located [here](#).

Sexual Harassment Prevention Training

In addition to updating sexual harassment prevention policies, the law also mandates that every employer in New York State provide its employees with sexual harassment prevention training on an annual basis, starting on **October 9, 2018**. However, in a significant change from the DOL's initial website release (which required training of current employees to be completed by January 1, 2019), employers now have one (1) year – until **October 9, 2019** – to complete their sexual harassment prevention training.

In another change from the DOL's initial website release, new employees do not have to undergo sexual harassment prevention training within 30 days of hire, although the DOL "encourages"

employers to train new employees as soon as possible. Rather, new employees must be trained within one year of hire. Further, training for all employees must be repeated at least once per year, with the subsequent training date based on a calendar year, anniversary of each employee's start date, or another date of the employer's choosing.

The DOL now provides a suite of model training materials that employers may use to comply with their obligations under the law. The model training programs can be found [here](#) under the "Training Requirements" tab, and includes a model training syllabus and script, a set of Power Point slides, and sexual harassment prevention case studies. The Employer Toolkit – located [here](#) – also provides guidance and a checklist for employers as they implement a training program. If an employer chooses not to utilize the State's training materials, it must ensure that its training meets or exceeds the State's 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:
 - be live, web-based, or presented via video, with questions asked of employees,
 - accommodate questions asked by employees,
 - include a live trainer who can participate in a question-and-answer session, whether in-person, via phone, or online, and
 - 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 for such supervisors.

To ensure compliance with the DOL's training requirements, employers should reach out to counsel to make arrangements to begin sexual harassment prevention training. Employers who already have sexual harassment prevention training programs should review their training programs to ensure that they comply with the State's new requirements and that they meet the minimum standards established by the DOL.

Updates to the FAQs

In addition to its changes to the policy and training materials, the DOL also updated the FAQ section on its website, which can be located [here](#). While all employers are advised to review these updated FAQs closely, several additions and revisions are worthy of note:

- The State will be offering employee sexual harassment prevention training sessions in the near future that employers can use to train their employees and thereby comply with State training requirements. The DOL will be posting dates for these training sessions online. Accordingly, employers who wish to rely on State-provided training should monitor the DOL's website for training dates.
- While employers are required to provide their sexual harassment prevention policies and training in languages spoken by their employees, currently, the policy and training materials are only posted in English. However, the DOL will be adding materials in Spanish, Chinese, Korean, Bengali, Russian, Italian, Polish, and Haitian-Creole soon, and employers should monitor the DOL's website if they need these materials in one of these languages.
- Employers are required to pay their employees for the time they participate in sexual harassment prevention training.

- With respect to tipped employees being paid the sub-minimum wage, employers should assume that training time will impact tipped employees with respect to how much of their work day is spent performing non-tipped work. While the FAQs address whether this training time will have an impact on the Hospitality Wage Order's 80/20 rule, the answer provided by the DOL is ambiguous at best. Accordingly, employers should operate on the assumption that training will count as non-tipped work for purposes of the federal and state 80/20 rule and be sure such training does not invalidate their ability to take a tip credit.

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