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NYC Considers Sexual Harassment Liability of Co-Working Spaces

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The New York City Council may soon make co-working spaces potentially liable for sexual harassment between their tenants. Recently introduced legislation would make it an unlawful discriminatory practice under the New York City Human Rights Law for a co-working space to “permit sexual harassment of co-working space tenants on its premises.”

Compliance Obligations of Co-Working Spaces

Under the bill, a co-working space would be defined as “a business that, for a fee, provides shared meeting rooms, office spaces, desks or other workplace facilities or services to members of the public to use for work-related purposes.” This definition would cover not only traditional co-working spaces where solo entrepreneurs and small businesses rent out a desk or cubicle in a large office building, but also could include businesses, like restaurants, who allow their spaces to be used for a fee during times they would otherwise be closed during the day.

Co-working spaces would be liable for sexual harassment of one of its tenants by another if the co-working space “knew or should have known” of the harassment and failed to take “immediate and appropriate corrective action.” Co-working spaces will also be required to post a sexual harassment poster in common areas, distribute the poster to all new tenants and

keep a copy of the poster initialed and dated by each tenant for at least three years.

The bill instructs courts to consider the following factors when determining if a co-working space should be liable for sexual harassment of a tenant:

- (1) The co-working space’s actual knowledge of the complaint;
- (2) Whether the co-working space has complied with the poster requirement of the bill;
- (3) The co-working space’s efforts to address the tenant’s complaint; and
- (4) The reasonableness and adequacy of any corrective actions taken.

Co-working spaces would also be required to respond in writing to any tenant complaints of sexual harassment within 15 days informing the tenant what, if any, corrective action they have taken to address the complaint (and keep copies of such written responses for at least three years). If a tenant is not satisfied with a response, or does not receive a response within 15 days, the tenant can file a complaint with the New York City Commission on Human Rights.

The lone exception in the bill is for sexual harassment in a co-working space between employees of the same employer. In such circumstances, liability for such sexual

harassment would stay with the employer and not the co-working space.

Next Steps for Co-Working Spaces

Owners and operators of co-working spaces should pay close attention to the status of this legislation over the next few months. They also should review their current policies concerning tenant harassment and complaints between tenants as well as train their managers on such policies to address any potential issues before the pending legislation is enacted. Restaurants and other businesses that allow their locations to be used as co-working space for a part of the day should also review any agreements they have with any third-parties who operate the co-working spaces in their locations and those third-parties' complaint and harassment policies to ensure that they are protected from future claims.

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