



Client Advisory: Attention Employers - New York Mandatory Sexual Harassment Policy and Training on the Horizon

In the wake of the #MeToo movement and widespread allegations of sexual harassment in the workplace, New York State Governor Andrew Cuomo has signed into law a provision which mandates employers to not only implement a sexual harassment policy but to provide all employees with annual sexual harassment prevention training.

What is Changing

In 1983, then Governor Mario Cuomo issued Executive Order #19 which forbids sexual harassment in the workplace. Laws regarding sexual harassment were set in place prior to that time, and further defined since, including laws implemented within Title VII of the Civil Rights Act of 1964, the Civil Rights Law of 1991, and the New York State Human Rights Law.

Governor Andrew Cuomo has expanded on New York's laws, to include the barring of non-disclosure agreements in sexual harassment claims, the banning of mandatory arbitration of sexual harassment claims, and requiring all New York employers to implement sexual harassment policies and training.

What to Expect

- *July 11, 2018 | Non-Disclosure Agreements Barred*
NYS employees will be barred from including a non-disclosure provision in agreements settling sexual harassment claims *unless* the complainant "prefers" the nondisclosure provision. In that case, the complainant must be provided 21 days to consider the agreement and seven days to revoke after signing.
- *July 11, 2018 | Arbitration Banned*
NYS employees will be banned from requiring employees to sign employment, separation, or other agreements which impose mandatory arbitration of sexual harassment claims *except* as part of a collective bargaining agreement. Existing mandatory arbitration clauses concerning sexual harassment claims cannot be enforced after July 11, 2018.

- *October 9, 2018 | Mandatory Sexual Harassment Policy*
NYS employers will be required to have a sexual harassment prevention policy that either adopts the State's model policy or develop their own policy which meets or exceeds the NYS standards.
- *October 9, 2018 | Mandatory Sexual Harassment Prevention Training*
NYS employers are required to provide annual anti-sexual harassment training to all employees that adopts the State's model training program, or meets or exceeds the NYS standards.

Mandatory Sexual Harassment Policy

The NYS Labor Law, as amended, requires the New York State Department of Labor (NYSDOL) and the New York State Division of Human Rights (NYSDHR) to collaboratively develop a model sexual harassment prevention policy. All New York employers will be required to either adopt the model policy, or develop a policy which meets or exceeds the model policy. All sexual harassment prevention policies are required to include, at minimum, the following:

- A statement prohibiting sexual harassment and providing examples of what constitutes sexual harassment.
- Information about federal and state sexual-harassment laws and the remedies that are available to victims-and a statement that there may be additional local laws on the matter.
- A standard complaint form.
- Procedures for a timely and confidential investigation of complaints that ensure due process for all parties.
- An explanation of employees' external rights of redress and the available administrative and judicial forums for bringing complaints.
- A statement that sexual harassment is a form of employee misconduct and that sanctions will be enforced against those who engage in sexual harassment and against supervisors who knowingly allow such behavior to continue.
- A statement that it is unlawful to retaliate against employees who report sexual harassment or who testify or assist in related proceedings.

Mandatory Sexual Harassment Training

The NYSDOL and NYSDHR are also tasked with the development of a model sexual harassment prevention training program. New York employers will be required to either adopt the model training program, or develop a training program which meets or exceeds the model training program. Employers will be required to present the training to all employees on an annual basis. The training must be interactive, and include, at minimum, the following:

- An explanation of sexual harassment and specific examples of inappropriate conduct.
- Detailed information concerning federal, state and local laws and the remedies available to victims of harassment.
- An explanation of employees' external rights of redress and the available administrative and judicial forums for bringing complaints.

Actions to Consider

If you have existing employment, separation, and/or non-disclosure agreements, review them for mandatory arbitration and non-disclosure provisions related to sexual harassment. Decide on your plan of action.

- Review your existing sexual harassment policy and training program now. Does it comply with the new minimum requirements? If so, great. If not, be prepared to update.
- If you do not have an existing sexual harassment policy or training program, be prepared to adopt the model policy or create your own that meets the minimum standards.
- Watch the NYS DOL and NYS DHR closely for their issuance of the model policy and training program.
- Contact your employment attorney for guidance on developing policies, procedures and training that work best for your particular company.
- Does your business or other insurance policy cover you and your potential liability for sexual harassment in the workplace, or by vendors, consultants, or independent contractors? Review your policies and talk to your agent.
- Take this opportunity to reinforce your company's commitment to combating sexual harassment in the workplace. There's no reason to wait until the October 9th deadline - implement your new sexual harassment policy and training now, if possible.

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