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UPDATED New Sexual Harassment Posting and Training Obligations
for New York Employers

This year New York State and New York City each responded to the ongoing #MeToo movement by amending existing laws that aim to prevent sexual harassment. Among other changes, soon all employers in New York State will be required to adopt a minimum sexual harassment policy and provide anti-sexual harassment training to their employees, with similar training requirements for certain New York City employers. The amendments also strengthen protections for victims of harassment.

New York State has created a website dedicated to these new laws, which includes a sexual harassment policy, training materials, and an FAQ: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>. Additionally, New York City employers are required to post and distribute informational materials starting on September 6 of this year:

https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Notice-8.5x11.pdf

The effective dates of these changes are as follows:

- 9/6/18 New York **City** poster on sexual harassment must be displayed, and also handed out as a fact sheet to new hires.
- 10/9/18 New York **State** requires all employers to have and distribute a sexual harassment prevention policy.
- 4/1/19 New York **City** requires employers with at least 15 employees to train all employees annually and new hires within 90 days.
- 10/9/19 New York **State** requires completion of first round of annual training of **all** employees by **all** employers. *The original January 9, 2019 deadline has been rescinded.*

YOUR ORGANIZATION WILL BE LEGALLY COMPLIANT BY ADOPTING AND DISTRIBUTING THE STATE'S MODEL POLICY(see links on next page).
ALTERNATIVELY, YOUR ORGANIZATION CAN COMPLY BY UPDATING YOUR CURRENT POLICY TO INCLUDE ANY ADDITIONAL PROVISIONS AND LANGUAGE FROM THE MODEL THAT ARE NOW LEGALLY REQUIRED.

New York State Mandates a Model Sexual Harassment Prevention Policy

The New York State [Department of Labor](#) (DOL) and [Division of Human Rights](#) (DHR) have published a model sexual harassment prevention policy: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>. Every employer in the state is required to adopt and distribute in writing¹ either the State’s model policy, or its own policy that equals or exceeds the model’s standards. The draft policy includes:

1. an explanation of sexual harassment with examples of unlawful harassment;
2. Federal and State statutory provisions and remedies;
3. an explanation of the procedure for the timely and confidential investigation of complaints²; and
4. a standard complaint form.

Employers who wish to adopt their own policy must include minimum provisions, such as an anti-retaliation clause. The minimum provisions to be included in such a policy can be found here: <https://www.ny.gov/sites/ny.gov/files/atoms/files/MinimumStandardsforSexualHarassmentPreventionPolicies.pdf>

The FAQ states that the policy may be distributed electronically as long as employees have access to a computer and a printer, and further clarifies that, while a written acknowledgement by each employee who receives the policy is not legally required, employees should be “encouraged” to submit one. Because the policy is rather long – seven pages, employers should consider distributing this as a stand-alone policy rather than incorporating it into an employee handbook.

The state has also created a model written complaint form: <https://www.ny.gov/combating-sexual-harassment-workplace/employers> The model form makes clear that employers need not adopt this, or any, written complaint form and that employees should be allowed to make a formal complaint of harassment in whatever way is most comfortable for them. Any form that is adopted must be attached to the policy.

New York State and New York City Require Anti-Sexual Harassment Training Programs

NYS Training Requirements

NYS DOL and DHR have published a model interactive sexual harassment training program, which includes a script, a PowerPoint, examples of harassment, and a video. Note that this training covers gender as well as sexual harassment: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>

¹If employees speak a language other than English, materials must be distributed in their language if the state has prepared a translation. Translations will be available for the following languages: Spanish, Chinese, Korean, Bengali, Russian, Italian, Polish, and Haitian-Creole. Otherwise, materials may be in English.

² The draft requirement that investigations must be completed within 30 days has been rescinded.

Every employer in the State, regardless of its size, must either adopt the model program or establish one that equals or exceeds the minimum standards set forth in the model program. The NYS training program or its equivalent will:

1. be given to all employees annually³;
2. explain sexual harassment and provide examples;
3. address supervisor's responsibilities;
4. provide Federal and State statutory provisions and remedies; and
5. explain the means of redress available to employees.

All employees must be trained by October 9, 2019. Note that the earlier January 1, 2019, deadline has been extended. Thereafter, employers may adopt any twelve-month period such as the calendar year, or the employee's anniversary date, for the annual training.

The FAQ clarifies that "interactive" means that there must be some opportunity for employee participation, which may be accomplished by any of the following:

- Be web-based with questions asked of employees as part of the program;
- Accommodate questions asked by employees;
- Include a live trainer made available during the session to answer questions; and/or
- Require feedback from employees about the training and the materials presented.

The FAQ also states that *all* employees, including part time and temporary employees must be trained.

NYC Training Requirements

Additionally, effective April 1, 2019, all New York City employers with 15 or more employees will be required to provide all employees (including interns, supervisory, and managerial employees) with an annual training regarding sexual harassment, and to maintain signed employee acknowledgements of the training for three years. The training - which, in addition to the NYS training requirements, must include information on internal and local complaint processes as well as explain, with examples, bystander intervention and the prohibition of retaliation - will be based on guidelines to be determined by the [New York City Commission on Human Rights](#) and must:

1. be given within 90 days of hiring a new full- or part-time employee who works more than 80 hours in a calendar year;
2. be interactive (though it need not be live or facilitated by an in-person instructor); and
3. be available to the NYC CHR upon request.
4. The NYC training model, developed with NYS to meet the requirements of both jurisdictions will be available for free on the NYC CHR website on or about April 1, 2019.

Both the NYS and NYC training programs must describe sexual harassment using examples and make clear that sexual harassment is a form of unlawful discrimination under local, state, and federal law.

³ The draft requirement that new employees be trained within 30 days of hire has been rescinded.

EXPANDED COVERAGE, NO MORE NDAS, AND MORE CHANGES

Beyond the new training and policy requirements, both New York City and State have amended the human rights laws to protect more individuals from sexual harassment, create transparency, and facilitate enforcement. Those changes include:

- **New York State Expanded Sexual Harassment Coverage**
New York Human Rights law forbidding sexual harassment of employees has been expanded to include non-employees who are contractors, subcontractors, vendors, consultants, or others providing services pursuant to contracts. It is unclear but possible that volunteers are covered. Paid and unpaid interns have been included in this coverage since 2014. The training requirement does not apply to these individuals.
- **New York City Expanded Sexual Harassment Coverage**
For purposes of sexual harassment claims, New York City Human Rights Law now applies to all employers with at least one employee. Additionally, individuals now have three years to file sexual harassment claims with the NYC CHR or in court. These changes apply only to sexual harassment claims. All other discrimination claims under city law continue to apply only to entities with at least four employees, and must be brought within one year.
- **New York State Non-Disclosure Agreement Prohibitions**
Settlement agreements based on a claim involving sexual harassment can no longer include a Non-Disclosure Agreement (NDA) unless the claimant requests one - in which case they have 21 days to consider one and, if they choose, seven days after that to revoke the NDA.
- **New York State Sexual Harassment Related Mandatory Arbitration Prohibited**
Mandatory arbitration provisions regarding sexual harassment claims are now void and, except where inconsistent with federal law, no written contract can require mandatory arbitration for a claim of unlawful sexual harassment.
- **NYC Employers Must Post and Distribute Sexual Harassment Information Sheet**
Finally, effective September 6, 2018, all NYC employers are required to post an anti-sexual harassment poster in English and Spanish that explains employee rights and responsibilities, as well as distribute a written information sheet on sexual harassment. The NYC CHR has made the poster and information sheet available on [its website](#).

What nonprofits should do now:

1. Download the NYC poster and exhibit it in a place where employees can see it.
2. Download the NYC fact sheet and give it to new hires; although apparently not legally required, you may also give it to current employees.

3. Review your harassment policy to make sure it complies with state and city law. Make sure the policy includes internal complaint procedures, a non-retaliation provision, and information about the federal, state, and city agencies administering laws prohibiting sexual harassment.

4. Even if you already conduct sexual harassment training, start planning now for when, where, and how you will train all of your employees annually.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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