

New York State And NYC Employers Face Various Upcoming Deadlines Under New Sexual Harassment Rules

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As a part of the sweeping changes made in response to the #MeToo movement, NY state and NY City have implemented a bundle of new regulations in 2018 to address issues of sexual harassment in the workplace. Several deadlines under these laws are upcoming, and employers must prepare accordingly to ensure they are in compliance.

As of September 6, 2018:

Pursuant to the Stop Sexual Harassment in NYC Act, New York City employers must display posters provided by the NYC Commission on Human Rights in a prominent place in the workplace, in both English and Spanish, regarding anti-sexual harassment rights and responsibilities.

NYC employers must also provide employees with a sexual harassment fact sheet when hired, or this can be incorporated into an employee handbook or fact sheet that is distributed to all employees. Notably, employers must comply with both of these provisions. Providing notice to employees only through a poster, or only through a fact sheet is insufficient under the new rules.

By October 9, 2018:

The 2019 New York State Budget further incorporated new updates to NY state sexual harassment laws that apply to all employers both in NY city and NY state.

Pursuant to the law, all employers in NY state must adopt the NY state model anti-sexual harassment policy, or alternatively adopt a customized policy that meets the minimum standards set by the State.

The minimum standards will require that a policy must:

1. Prohibit sexual harassment;
2. Provide examples of prohibited conduct that would constitute unlawful sexual harassment;
3. Include information regarding federal and state laws, and local laws;
4. Include a complaint form;
5. Include a procedure for timely and confidential investigation of complaints that ensures due process for all parties;
6. Inform employees of their rights and redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
7. 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
8. Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving same is unlawful.

Employers must provide each employee with a copy of its policy in writing, and the policy should be provided to employees in the language that is spoken by their employees.

NYC employers of 15 employees or more also face a requirement to provide sexual harassment training to all full time and part time employees and interns on an annual basis, beginning on April 1, 2019. New employees working more than 80 hours in a year must receive training within 90 days of hire. Such requirements may overlap with the overall State requirements for training that are discussed below, but may require additional obligations for NYC employers beyond those in required by the state.

By January 1, 2019:

Beginning on October 9, 2018, employers in both NY City and NY state must also begin the process of providing sexual harassment training to their employees before the beginning of the new year. Such training may follow the state approved model, or may be a customized training that meets the minimum standards set by the state.

Minimum standards of this training include that it must be interactive; must include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights; 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.

All current employees and contractors must have received anti-harassment training by January 1, 2019. Any newly hired employees or contractors hired after the deadline must complete that training within 30 days of hire. Such training must be provided on an annual basis.

Employers must note that these training requirements are very expansive, requiring training even for temporary employees, and even if an employee worked just one day for the employer, or if the employee works for the employer just one day in New York.

If you have any questions regarding your compliance with any of the above requirements, contact an Einhorn Barbarito attorney.