

New York State Publishes Draft Model Sexual Harassment Materials

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On Thursday, August 23, 2018, New York State released draft model sexual harassment materials in preparation for October 9, 2018 employer compliance with its new sexual harassment laws, discussed in detail in a [previous blog article](#).

New Materials:

New York State published the following draft materials on August 23, 2018:

- A new informational [webpage](#)
- A model sexual harassment prevention [policy](#)
- A model [complaint form](#)
- Model sexual harassment [training materials](#)
- A [frequently asked questions](#) guide to the new sexual harassment laws

All model materials are currently in draft form, pending a comment period set to end on September 12, 2018. Therefore, all model materials are subject to change prior to the October 9, 2018 effective date. Members of the public, as well as employers and employees, are encouraged to provide comments on the new materials via this [link](#).

Recap of Legal Requirements:

As of October 9, 2018, the new sexual harassment law requires that all employers

have a compliant sexual harassment policy, which must include the following:

- A statement prohibiting sexual harassment;
- An explanation and examples of prohibited sexual harassment;
- Information on federal and state statutes prohibiting sexual harassment;
- A statement that local anti-sexual harassment laws may apply;
- Remedies and rights of redress under the applicable statutes;
- Company procedure for reporting and timely investigation of complaints;
- A complaint form;
- A prohibition on retaliation; and
- A statement that sanctions will be enforced against those who engage in sexual harassment and managers and supervisors who knowingly allow sexual harassment.

Additionally, as of October 9, 2018, all employers must provide annual sexual harassment trainings to all employees, which must include the following:

- An interactive component;
- An explanation and examples of prohibited sexual harassment;
- Information on federal and state statutes prohibiting sexual harassment;
- Remedies and rights of redress under the applicable statutes; and
- An explanation of added responsibilities for supervisory employees.

The new law also expands sexual harassment protections and prohibitions to non-employees such as contractors and subcontractors, vendors, consultants, interns, and volunteers.

Lastly, the new law prohibits mandatory arbitration clauses and non-disclosure agreements that cover sexual harassment claims. However, non-disclosure agreements covering sexual harassment claims and the facts underlying those claims are enforceable if the complainant consents to such an agreement after being given 21 days to consider the agreement and 7 days to revoke consent and the agreement terms are provided to all relevant parties.

Key Information:

The new materials provide additional information on how the laws will be enforced as follows:

- All employees must receive a compliant sexual harassment training on or before January 1, 2019.

- New hires must receive a compliant sexual harassment training within 30 calendar days of hire.
- Temporary and transient employees must receive compliant trainings even if they only work for the employer or in New York for one day.
- Employers may satisfy the “interactive” training requirement by: (1) asking questions of the employees as part of the program; (2) including Q&A portion to accommodate employee questions; (3) using a live trainer to conduct the training or making a live-trainer available to answer questions; or (4) requiring employee feedback about the training. The materials also state that employers should implement as many of the above interactive components as is feasible.
- A sexual harassment policy can be provided to employees in hard copy or electronically but must also be accessible and printable during working hours.

Takeaways:

Although the model materials are still in draft form and subject to change, New York employers should review and revise their policies and agreements accordingly and conduct a compliant sexual harassment training for all employees by January 1, 2019, and within 30 days of any new employee’s start date. We will provide updates as new information becomes available.

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