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## SPECIAL ALERT ON NEW YORK STATE

# Sexual Harassment Law

## New York State Releases Draft of Sexual Harassment Policy & Training Requirements

New York State's 2019 Budget, which was signed in to law this past April, includes legislation that requires every employer in New York State, within both the private sector and public sector, to establish a sexual harassment prevention policy and to provide employees with sexual harassment prevention training.

As detailed in our previous [Special Alert](#), New York State's Department of Labor and Division of Human Rights have issued a model sexual harassment prevention policy and model training program. Once finalized, those models will establish a minimum standard for all employers in New York State to follow or incorporate in to their own policy and training program.

While the Department of Labor and Division of Human Rights have not yet issued final requirements, employers can use the models to begin to prepare to comply with the sexual harassment prevention policy and training legislation.

### Drafts Released

New York State has added a section to their website called [Combating Sexual Harassment in the Workplace](#). Included in this section of the state's website in an extensive [FAQs](#) page as well as the following documents in draft form:

- Sexual Harassment Policy for All Employers in New York State ([click here](#))
- Minimum Standards For Sexual Harassment Prevention Policies ([click here](#))
- Model Complaint Form For Reporting Sexual Harassment ([click here](#))

- Minimum Standards For Sexual Harassment Prevention Training ([click here](#))
- Model Sexual Harassment Prevention Training ([click here](#))

### Sexual Harassment Policy

New York State will now require all employers to adopt a sexual harassment prevention policy. Employers are responsible for ensuring every employee receives a copy of the policy in writing. Employers have the option of following the [model sexual harassment prevention policy](#) provided by the state or utilizing their own policy, provided it meets or exceeds the following minimum standards:

1. prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
2. provide examples of prohibited conduct that would constitute unlawful sexual harassment;
3. include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws;
4. include a [complaint form](#);
5. include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
6. inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints;

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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 sexual harassment is unlawful.

## Sexual Harassment Prevention Training

In addition to having a sexual harassment *policy* in place, New York State is requiring all employers to provide sexual harassment prevention *training* to all employees. Employers will be required to train employees on sexual harassment prevention at least once per year. As of January 1, 2019, employers must have new employees complete the sexual harassment prevention training within 30 calendar days of their start date. All employees, including part-time employees, must be trained.

Employers have the option of following the [model sexual harassment prevention training](#) provided by the State Department of Labor and Division of Human Rights or utilizing their own training program, provided it meets or exceeds the following minimum standards:

1. be interactive;
2. include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
3. include examples of conduct that would constitute unlawful sexual harassment;
4. include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
5. include information concerning employees' rights of redress and all available forums for adjudicating complaints; and
6. include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

New York State's model sexual harassment prevention training provides details on the requirement that training must be "interactive." The model states that the training should include

as many of the following elements as possible:

- 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
- Require feedback from employees about the training and the materials presented

## Important Deadlines

**October 9, 2018:** New York State's 2019 budget states that all employers must have a sexual harassment prevention policy and training program in place by October 9, 2018 that meets the minimum standards outlined by the state. According to a recent announcement from Governor Cuomo's office, all employers must provide a written copy of the policy and training to employees by October 9, 2018. Given that the final models for policy and training have not yet been issued, there remains a possibility this date could be extended by the state.

**January 1, 2019:** Employers are required to have all employees complete a sexual harassment prevention training program by January 1, 2019.

## Next Steps

Based upon the feedback New York State receives on the draft materials released, changes may still be made before a final version of the models and minimum standards are released. However, employers may still be required to comply with the state's new sexual harassment laws by October 9, 2018 and have all employees trained by January 1, 2019.

Given the approaching deadlines, you should begin to prepare your business now to ensure you will be able to comply with the sexual harassment law requirements by the deadlines. All managers, owners, and employees, must participate in training, regardless of the size of the business.

Contact [Diane Perri Roberts](#) or [Michael Schiavone](#) for guidance on the specific sexual harassment prevention policies and training your company needs to have in place to be in compliance with the forthcoming guidelines.