

## New York Issues Updated Sexual Harassment Prevention Materials

May 5, 2023

On April 11, 2023, the New York State Department of Labor finalized updates to the state's [sexual harassment prevention materials](#). These updated materials include a revised model sexual harassment prevention policy, complaint form and training materials. [Since 2018](#), New York employers have been required to either adopt the state's model sexual harassment policy or maintain a policy that meets or exceeds the standards set forth in the state's model policy. New York employers also are required to conduct annual sexual harassment prevention training for employees.

We discuss notable changes to these materials below.

### Model sexual harassment policy

- **Emphasis on gender diversity and identity** – The model policy now makes clear that sexual harassment includes all forms of gender discrimination, including “gender role stereotyping” and failing to respect an individual’s gender identity. The policy also includes definitions of cisgender, transgender and nonbinary persons to provide clarity for employers addressing gender discrimination issues.
- **Addressing the remote workforce** – The model policy addresses issues related to post-pandemic hybrid workplaces, including by explaining that an employer’s sexual harassment prevention policy must be provided to all employees in person or digitally through email upon hiring, and that for offices operating remotely, the policy also should be made available on the employer’s shared network.
- **New legal standard** – The model policy revises the standard for harassment to clarify that conduct does not need to be severe or pervasive to be illegal, though it also must rise above “petty slights or trivial inconveniences.” This change aligns with the 2019 removal of the “severe or pervasive” standard in the New York State Human Rights Law.
- **Additional examples of sexual harassment** – The model policy contains several new examples of sexual harassment, making clear that such examples are not exhaustive. These new examples reflect different work contexts, such as issues related to a remote workforce. They also mirror the state’s new emphasis on gender diversity and identity. For example, remarks regarding an employee’s gender expression or intentionally misusing a person’s preferred pronouns are cited as examples of harassment.
- **Expanded retaliation section** – The model policy expands its retaliation section to include several new examples of retaliation, such as disparaging someone on social media, publicly releasing personnel files, labeling someone as “difficult,” refusing to provide a reference or undermining an individual’s immigration status.
- **Emphasis on supervisory responsibilities** – In addition to emphasizing that managers and supervisors cannot be passive and must act if they observe harassing behavior, the model policy also now cautions them to be mindful of the impact an investigation may have on victims.
- **New section on bystander intervention** – A new section on bystander intervention now specifically addresses the responsibilities of bystanders who witness harassing behavior.
- **Reference to the Division of Human Rights’ (DHR) sexual harassment hotline** – In addition to listing other resources for filing a harassment complaint, the model policy now includes information regarding the DHR’s sexual harassment hotline, which was introduced in July 2022. The model policy explains that individuals can call this hotline for attorney referrals and more information about filing a complaint.

## Training and other materials

The state's training materials and other resources also have been updated to comport with the notable changes to the model policy outlined above. For example, as in the model policy, the training script and slide deck reiterate that sexual harassment includes all forms of gender discrimination – including gender role stereotyping – and also contain new content on gender identity and bystander intervention.

## Next steps

New York employers should review the state's new sexual harassment materials and ensure that their sexual harassment policies, procedures and training materials are compliant with the latest guidance.

For additional resources, on May 3, 2023, Cooley's employment team issued an alert on [10 Actionable Compliance Steps for New York City Employers](#).

If you have questions about addressing any of these issues, please contact the Cooley employment team.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

---

## Key Contacts

Erika Freeman New York	efreeman@cooley.com +1 212 479 6367
Anna Matsuo New York	amatsuo@cooley.com +1 212 479 6827
Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704

Steven A. Zuckerman New York	szuckerman@cooley.com +1 212 479 6647
Joseph Lockinger Washington, DC	jlockinger@cooley.com +1 202 776 2286

---

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.