Cooley

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.

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