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New York State and New York City Enact Sweeping Legislation to Combat Workplace Sexual Harassment

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In the wake of the #MeToo movement and the resulting nationwide conversation about sexual harassment, lawmakers in New York State and New York City recently passed legislation intended to combat sexual harassment in the workplace. Both the New York State Budget Bill (the NYS Law) and the Stop Sexual Harassment in New York City Act (the NYC Act) (collectively, the #MeToo Laws) aim to address workplace sexual harassment by expanding the rights and means of redress for employees while imposing additional requirements and liabilities on employers.

Upcoming timeline of changes and new requirements under #MeToo laws

Effective Date	New York Jurisdiction	Topic	Description
April 12, 2018	State	Expansion of covered workers permitted to bring harassment claims	Employer liability for sexual harassment claims now extends to non-employees, including independent contractors, subcontractors, vendors, consultants or other individuals providing services under a contract in the workplace
May 9, 2018	City	Expansion of employer liability for sexual harassment claims	All NYC employers can now be held liable for sexual harassment claims regardless of employer size. In addition, the statute of limitations for sexual harassment claims under the New York City Human Rights Law is extended from one year to three years
July 11, 2018	State	Prohibiting nondisclosure clauses in settlement agreements containing sexual harassment claims	Employers are now prohibited from including nondisclosure clauses in settlement agreements relating to sexual harassment, unless the complaining party wishes to include a confidentiality provision and is provided with 21 days to consider, and seven days to revoke, any such clause

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July 11, 2018	State	Prohibiting mandatory arbitration of sexual harassment claims	Employers are now prohibited from requiring arbitration of sexual harassment claims, unless such arbitration clauses are contained in collective bargaining agreements
October 9, 2018	State	Requiring anti-sexual harassment policy and annual training	*Discussed below*
January 1, 2019	State	Affirmations in state contract bids	Employers who bid on state contracts must affirm that they have a written sexual harassment policy and that they provide annual sexual harassment training to their employees
April 1, 2019	City	Requiring mandatory anti-sexual harassment annual training	*Discussed below*

Anti-sexual harassment training

Which employers are subject to the annual anti-sexual harassment training requirements? Although the NYC Act only covers employers with 15 or more employees working in New York City, the training requirement under the NYS Law applies to all employers with employees working in New York, regardless of employer size. The NYC Act also clarifies that an employer who is subject to training requirements in multiple jurisdictions may provide proof of compliance with the NYC Act, as long as the employer's sexual harassment training is provided annually and contains the mandated training areas discussed below. While not explicitly addressed in the NYS Law, we expect similar cross-compliance credit under the NYS Law.

Which employees must receive annual anti-sexual harassment training? The NYS Law requires all employees working in New York State, including supervisors and managerial employees, to be trained. The NYC Act makes training mandatory for all employees employed within New York City for more than 80 hours in a calendar year, as well as temporary employees who are engaged for more than 90 days of employment. The NYC Act also provides that an employee who changes employers but received sexual harassment training at a previous employer within the required training cycle is not required to receive additional sexual harassment training until the next cycle.

Must interns receive the training? The NYS Law does not state whether interns are included (or excluded). On the other hand, the NYC Act includes interns, unless they work for an employer for less than 90 days.

How frequently must covered employers train employees? Each covered employee must be trained annually.

What is the required content of the anti-sexual harassment training? The NYS Law requires any interactive training to meet or

exceed the model training program and standards to be set forth by the New York State Department of Labor (NYSDOL) and New York State Division of Human Rights (NYSDHR). Although the training program has not yet been promulgated, the NYS Law itself requires the training to include:

- An explanation of what constitutes sexual harassment (under NYS and NYC law), with examples
- Information on employees' legal rights and forums in which to bring sexual harassment claims
- Information on the remedies available to victims of sexual harassment under federal and state laws
- Information on supervisors' additional responsibilities and prohibited conduct

Under the NYC Act, interactive training of employees must include:

- An explanation that sexual harassment is a form of unlawful discrimination under federal, state and local law
- A description of sexual harassment, with examples of what constitutes sexual harassment
- An explanation of the internal complaint procedure process available to employees through their employer to address sexual harassment claims
- Information on administrative complaint processes, available through the New York City Commission on Human Rights (NYCCHR), the NYSDHR and the United States Equal Employment Opportunity Commission, including contact information
- Examples and information on the prohibition on retaliation
- Information concerning bystander intervention (a prevention technique where a third person interrupts a potentially harmful situation or conversation)
- The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation and measures that such employees may take to appropriately address sexual harassment complaints

What makes a training interactive? The NYC Act defines interactive training as "participatory teaching" where the trainee is engaged in a form of trainer-trainee instruction, but such instruction need not be live or facilitated by an in-person instructor. The NYS Law does not define interactive, but we expect any clarification provided by the NYSDOL or NYSDHR to resemble the NYC Act's definition.

What are covered employers' recordkeeping requirements? Under the NYC Act, employers must keep and store a record of each training and each signed acknowledgment of attendance for three years.

Required policies and notices

What must a covered employer include in its anti-sexual harassment policy? All New York employers must implement and distribute an anti-sexual harassment policy that meets or exceeds a model policy to be disseminated by the NYSDOL and NYSDHR. At a minimum, each policy must include:

- A statement that sexual harassment is a form of employee misconduct
- A prohibition against sexual harassment, with examples
- Information regarding employees' legal rights and avenues to bring sexual harassment claims
- Information regarding the remedies available to victims of sexual harassment under federal and state laws
- A statement that employees may have rights and remedies under applicable local law
- A confidential investigation procedure and a commitment to due process for all parties involved
- A statement that any employee engaging in sexual harassment, or any supervisory or managerial personnel who knowingly

allows such misconduct, will be sanctioned

- A prohibition against retaliation for those who complain or assist in any sexual harassment proceeding
- A complaint form

Are any new notices required? Yes, covered NYC employers must display an anti-sexual harassment rights and responsibilities poster, as well as provide an information sheet on sexual harassment to all new hires. The poster and information sheet will be created by the NYCCHR and will be available to employers on the NYCCHR's website. Currently, there is no new requirement under the NYS Law concerning notices or informational documents for new hires.

Action items

In anticipation of these new requirements and varying deadlines, employers in New York State and New York City must conduct an extensive overhaul of their internal HR policies, including sexual harassment policies, training materials, employment agreements, and separation agreements and update them accordingly. With respect to anti-sexual harassment trainings, employers are encouraged to schedule their training sessions with Cooley or other vendors as soon as possible, as every employer in New York will soon be seeking to fulfill their new annual training requirement. Please feel free to contact us with any questions about the new laws or how to comply.

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