

Alert | Labor & Employment



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UPDATE: New Anti-Sexual Harassment Compliance Mandates for New York State and New York City in Full Swing

New York State and New York City have passed new legislation in an effort to strengthen prohibitions against sexual harassment in the workplace. Last month, we reported on those new developments (See GT Alert, [“New Anti-Sexual Harassment Compliance Mandates for New York State and New York City in Full Swing,”](#) September 2018).

By Oct. 9, 2018, all employers must adopt the state’s model anti-sexual harassment policy or a customized version meeting the state’s minimum standards. After issuing draft documents in August, the state issued, on Oct. 1, final model policy and training documents. As detailed below, many of the changes made last week to the draft policies and documents are worth noting.

Model Sexual Harassment Prevention Policy

To satisfy the Oct. 9, 2018, deadline, employers may, as outlined in last month’s GT Alert, adopt the state’s model sexual harassment prevention policy and complaint form or implement their own policy and complaint form that meets or exceeds the state’s promulgated minimum standards.

Last week, the state made notable changes to the model policy and complaint form. For example, references in the model policy to the employer having a “zero-tolerance policy” for sexual harassment and

retaliation have been removed, bringing the state's guidance in line with the federal Equal Employment Opportunity Commission (EEOC)'s position disfavoring the use of the term. Additionally, the state's model policy:

- no longer requires that the investigation of a complaint be completed “within 30 days” as previously suggested, but rather states that the investigation should be completed “as soon as possible”;
- now makes clear that the investigation process “may vary from case to case”;
- indicates that investigation-related documents should be kept in a “confidential location”;
- notes that written documentation of the investigation should include “[t]he basis for the decision” regarding the resolution of the complaint, as opposed to simply a statement of any corrective actions that will be taken;
- specifies that even a single incident of harassing conduct can be addressed under the policy;
- clarifies that it protects individuals against whom hostile actions have been taken on account of not only their sex, but also their sexual orientation, gender identity, and the status of being transgender;
- notes that sexual harassment can occur on personal devices;
- adds an instruction that even if the alleged harassment does not rise to the level of a violation of law, an individual is protected against retaliation if the person had a good faith belief that the practices were unlawful;
- now requires that the individual about whom the complaint was made be made aware of the final determination after an investigation;
- indicates that an individual may seek the advice of a private attorney while filing a complaint with a governmental agency;
- clarifies that this policy protects employees regardless of immigration status;
- provides additional instructions regarding filing a complaint with a governmental agency, including, but not limited to, the fact that complaining internally to an employer does not extend an employee's time to file a complaint with the Division of Human Rights or in court; and
- provides additional instructions regarding filing a complaint with the EEOC, including but not limited to the fact that there is no cost to file a complaint with the EEOC.

More information can also be found on the [state's website on Combating Sexual Harassment in the Workplace](#).

Model Complaint Form

New York State has also finalized its [model complaint form](#) for employees to use when reporting sexual harassment. The final form contains a few notable updates:

- the form does not ask whether the individual has filed a claim with a government agency or a lawsuit in connection with the complaint; and
- the form does not ask whether employees have hired an attorney (though it does still provide the opportunity to share contact information for a legal representative if the employee has such representation).

Model Sexual Harassment Training Documents

The final guidelines also change the deadlines by which all New York employees must complete sexual harassment prevention training that meets or exceeds the minimum standards. Now, this must be completed by no later than **Oct. 9, 2019** (rather than the earlier draft's Jan. 1, 2019, deadline), after which future training must be completed on an annual basis. Similarly, the final guidance provides some additional flexibility to employers by requiring that *new* employees complete training **as soon as possible after their start date** (rather than the earlier draft's requirement that such training be completed in the first 30 days of employment).

Other Noteworthy Changes

Other noteworthy changes made to the draft model training documents and the [associated FAQs](#) include the following:

- there is no minimum number of training hours required per year for employees – that is, there is no minimum length of time for each training session.
- with regard to the requirement that training address “additional responsibilities for supervisors,” the final guidance states that all employees (not just managers and supervisors) must be “[made] aware of the extra requirements for those in managerial/supervisory roles.”
- the final guidance provides that in order for training to be “interactive,” some form of employee participation is required. Examples given of such participation include:
 - if the training is web-based, it has questions at the end of a section and the employee must select the right answer;
 - if the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner;
 - in an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
 - web-based or in-person trainings that provide a feedback survey for employees to turn in after they have completed the training.

Now is the time to become familiar with the significant legal changes in effect, especially those with tomorrow's Oct. 9, 2018, deadline. Similarly, though the initial training deadline has now been extended to Oct. 9, 2019, employers should begin considering how they will fulfill their training obligations under the law, particularly in light of the training requirements that will become effective on April 1, 2019, for employers covered by the New York City Human Rights Law. As always, employers are advised to consult with counsel to ensure compliance with these new laws.

Authors

This was prepared by **Jerrold F. Goldberg**, **Jack S. Gearan**, and **Melanie A. Sarver**. Questions about this information can be directed to:

- **Jerrold F. Goldberg** | +1 212.801.9209 | goldbergj@gtlaw.com
- **Jack S. Gearan** | +1 617.310.5225 | gearanj@gtlaw.com
- **Melanie A. Sarver** | +1 212.801.3145 | sarverm@gtlaw.com
- **Kristine J. Feher** | +1 973.443.3273 | feherk@gtlaw.com
- **Wendy Johnson Lario** | +1 973.443.3274 | lariow@gtlaw.com
- Or your **Greenberg Traurig** attorney

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