

## **Alert** | Labor & Employment



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### **New Anti-Sexual Harassment Compliance Mandates for New York State and New York City in Full Swing**

For New York employers who may not have closely monitored legal developments in the human resources and sexual harassment sphere over the summer, now is a good time to become familiar with the significant legal changes in effect, especially those with pressing deadlines.

With increasing national media coverage of sexual harassment claims, both New York State and New York City have passed new legislation in an effort to strengthen prohibitions against sexual harassment in the workplace.

The laws place new mandates on New York employers, and in some cases, require compliance within a tight timeframe. It is therefore critical for New York State and New York City employers to be aware of these requirements and to develop an action plan for timely and strategic compliance.

As detailed below, the most pressing deadline is for the requirement that New York City employers must display a new sexual harassment prevention poster and distribute to new employees a sexual harassment fact sheet. That deadline is **Sept. 6, 2018**.

## New York State Requirements

On April 12, 2018, New York Governor Andrew Cuomo signed into law the 2019 state budget, which includes several significant measures designed to combat sexual harassment in the workplace. Among other things, the new law imposes liability on employers for permitting sexual harassment in the workplace against non-employees, including contractors, subcontractors, vendors, and others providing services pursuant to a contract. It also mandates that employers adopt appropriate policies against harassment and conduct anti-harassment training that meets specific criteria.

The new measures also prohibit the use of non-disclosure agreements in connection with the resolution of sexual harassment claims, unless the claimant prefers confidentiality, as evidenced by the allowance of a 21-day review period and 7-day right of revocation. The provisions also prohibit the mandatory arbitration of sexual harassment claims; employers should be aware of these provisions, even though such prohibition may be subject to preemption challenges under the Federal Arbitration Act.

On Aug. 23, 2018, Governor Cuomo announced new guidelines in connection with the new laws, which are open for public comment until Sept. 12, 2018. In addition, the state has launched a website on [Combating Sexual Harassment in the Workplace](#).

The new website includes, among other things, a model sexual harassment policy and model training program that employers can adopt as well as complaint forms for workers, independent contractors, and vendor employees.

An employer that does not adopt the model policy must ensure that the policy that they do adopt meets or exceeds the state's promulgated minimum standards. Specifically, the policy must:

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 administratively and judicially;
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.

The state website also provides a [model complaint form for reporting sexual harassment](#) that employers may wish to use or replicate.

The model policy also suggests a process for investigations of alleged sexual harassment, to be completed within 30 days. A manager or supervisor who receives a complaint must immediately review the allegations and take immediate interim steps.

In terms of training, New York State employers must ensure that sessions are interactive, meaning that they offer workers a chance to ask questions and give feedback. The guidelines provide a fully scripted model training packet.

A key departure from past practice is that employers are now required to provide information in their policies about procedures for filing claims with external anti-discrimination agencies.

Managers and supervisors are now mandatory reporters in that they are “required to report any complaint that they receive, or any harassment that they observe....”

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. Additionally, all current employees and contractors must undergo anti-harassment training by **Jan. 1, 2019**, and new hires after that date must complete training within 30 days.

### **New York City Requirements**

New York City employers, in addition to complying with the new state law requirements, must also comply with the Stop Sexual Harassment in NYC Act, signed into law by Mayor Bill de Blasio in May 2018.

This law requires that employers with 15 or more employees provide all employees, including supervisors and managers, with annual sexual harassment training.

This sexual harassment training must specifically cover several topics, including:

- definitions and examples of sexual harassment;
- education on bystander intervention; and
- explanations for how to file complaints internally and with federal, state, and administrative agencies.

Like the state mandate, the city will require that such training be interactive and that employers keep signed records that the training sessions took place. Employers are thus required to obtain from each employee a signed acknowledgement, which may be electronic, that he or she attended the training.

The city law requires that new employees who work more than 80 hours in a year be trained within 90 days of hire. This discrepancy between the 90 days allowed for the training of new employees under the city law and 30 days allowed for the training of new employees under the state law will hopefully be addressed during the public comment period.

The New York City Commission on Human Rights (NYCCHR) also issued its own poster and fact sheet on the new law, which employers must be post and distribute by **Sept. 6, 2018**. These materials can be found on the [NYCCHR website](#).

Another change is that the statute of limitations to filing claims of gender-based harassment with the NYCCHR is extended from one year to three years.

**Deadlines for Compliance under State and City Law**

Keeping track of the new requirements can be tricky, so a chart of key dates and action items is provided below for the benefit of employers. As always, employers are advised to consult with counsel to ensure compliance with these new laws. GT attorneys are available to provide more information and to assist companies in drafting and implementing anti-harassment policies, conducting training of human resources staff and other employees, and responding to potential complaints of harassment in the workplace.

Effective Date	Action Item(s) for Employers
July 11, 2018	Under the New York State law, new employment agreements must be in compliance with respect to mandatory arbitration and non-disclosure provisions relating to sexual harassment claims.
Sept. 6, 2018	<p>NYC employers must comply with new poster and fact sheet distribution requirements.</p> <p>Links to the poster and fact sheet documents are provided <a href="#">here</a>.</p>
Oct. 9, 2018	Sexual harassment prevention policies must comply with the New York state law.
Jan. 1, 2019	All current employees must complete New York State interactive model training or a comparable training that meets minimum standards (new employees trained within 30 days).
April 1, 2019	New training requirements take effect for NYC employers with 15 or more employees.

**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](mailto:goldbergj@gtlaw.com)
- [Jack S. Gearan](#) | +1 617.310.5225 | [gearanj@gtlaw.com](mailto:gearanj@gtlaw.com)
- [Melanie A. Sarver](#) | +1 212.801.3145 | [sarverm@gtlaw.com](mailto:sarverm@gtlaw.com)
- [Kristine J. Feher](#) | +1 973.443.3273 | [feherk@gtlaw.com](mailto:feherk@gtlaw.com)
- [Wendy Johnson Lario](#) | +1 973.443.3274 | [lariow@gtlaw.com](mailto:lariow@gtlaw.com)
- Or your **Greenberg Traurig** attorney

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