



# NY State and NY City Place New Requirements on Employers to Prevent Sexual Harassment in the Workplace

May 31, 2018

In response to the #MeToo movement and increased discourse, media, and lawsuits involving sexual harassment in the workplace, employers conducting business in New York will face a new host of legally mandated sexual harassment prevention requirements. The New York State budget bill for the 2019 fiscal year, approved by the New York State Legislature and Governor Andrew Cuomo on April 12, 2018 (the “Budget”), and the Stop Sexual Harassment in New York City Act, signed into law by Mayor Bill de Blasio on May 9, 2018 (the “Act”), revise New York State and City law, respectively, to require employers to (i) implement policies and procedures for preventing sexual harassment in the workplace, and (ii) conduct annual sexual harassment prevention training for all employees.

## **Mandated Anti-Sexual Harassment Policies**

Under the new laws, all New York State employers must adopt and distribute to employees a sexual harassment prevention policy. At a minimum, this policy must:

- Explicitly state that sexual harassment is prohibited in the workplace;
- Contain a statement that sexual harassment is a form of employee misconduct that can result in adverse employment consequences for the harasser and any supervisor or manager who knowingly allow such behavior to continue;
- Provide examples of conduct that would constitute sexual harassment;
- Inform employees of applicable federal and state laws, the remedies available to sexual harassment victims, and contain a disclosure that other local laws may apply;
- Provide employees with a standard complaint form;
- Set forth the employer’s procedure for a timely and confidential investigation of complaints;
- State employees’ rights of redress, including all available forums available to the employee for adjudicating sexual harassment complaints both administratively and judicially; and
- Set forth an anti-retaliation policy.

Employers located in New York City with fifteen (15) or more employees must also display a state-issued anti-sexual harassment rights and responsibilities poster, and provide a state-issued information sheet on sexual harassment to new hires by September 6, 2018. Both the poster and information sheet will be created by the New York City Commission on Human Rights (the “Commission”) and made available to employers through the

Commission's website.

### **Mandated Annual Sexual Harassment Prevention Training**

While both the Budget and the Act require covered employers to provide their employees with annual sexual harassment prevention training, the Act mandates additional requirements:

	<b><u>New York State: The Budget</u></b>	<b><u>New York City: The Act</u></b>
<b>Covered Employers</b>	All employers in New York State, regardless of size	Employers in New York City with fifteen (15) or more employees
<b>Frequency of Training</b>	Annually	Annually
<b>Mandated contents of Training</b>	The training must be interactive	Must contain all training requirements of the Budget
	Define sexual harassment	The training must be interactive.
	Provide examples of conduct that would constitute sexual harassment	While this interactive training is not required to be live, it must include some form of participatory teaching or trainer-trainee interaction.
	Provide information on applicable state and federal laws, along with the remedies available to victims	Set forth the employer's anti-retaliation policy and provide examples of retaliation
	Inform employees of the available forums for adjudicating complaints of sexual harassment, both internally with the employer as well as through available administrative and judicial forums	Must also address: <ul style="list-style-type: none"><li>o Bystander Intervention</li><li>o A description of the complaint process available through the New York State Department of Human Rights, and the United States Equal Employment Opportunity Commission, as well as provide contact information for both agencies</li><li>o State the specific responsibilities of supervisors and managers for preventing sexual harassment and retaliation.</li></ul>
	Special training must also be afforded to supervisors regarding additional responsibilities they bear in preventing and responding to complaints of sexual harassment in the workplace	

<b>New Employees</b>	No specification as to how soon new hires must be trained	New employees who work 80 or more hours per year must be trained after 90 days of hire, unless the employee received training within the same annual cycle from a prior employer
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<b>Recordkeeping</b>	No requirement	Employers must maintain signed employee acknowledgments (which can be electronic) of trainings for three years. These records must be made available for inspection upon request.
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<b>Effective Date</b>	October 9, 2018	April 1, 2019
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**Other Important Dates:**

Finally, the Budget and the Act not only require that covered employers create and implement sexual harassment policies and annual training, but also:

<b>Effective Immediately for all New York State Employers</b>	Employers can be held liable for sexual harassment of non-employees, including contractors, subcontractors, vendors, consultants or other individuals providing services under a contract at the workplace. Previously, “non-employees” could not file a claim for sexual harassment.
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<b>Effective Immediately for New York City Employers, regardless of size</b>	The New York City Human Rights Law (the “NYCHRL”) is amended to permit claims of general harassment by all employees, regardless of the size of the employer. Previously, the NYCHRL applied to employers with four or more employees.
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	The NYCHRL is amended to extend the statute of limitations period for filing sexual harassment claims from one to three years.
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City contractors will be required to provide their practices, policies, and procedures as to preventing sexual harassment in the workplace, as part of an existing report required on all contracts pursuant to the City Charter and corresponding rules.

**July 2018 (all New York State employers)**

Employers will not have the authority to include in settlement agreements any nondisclosure provision for a claim involving sexual harassment, unless the complaining party desires confidentiality. The complaining party will be provided with twenty-one (21) days to consider the clause and a seven (7) day revocation period.

Contractual provisions mandating arbitration for any allegations or claims of sexual harassment, except where inconsistent with federal law, will be prohibited, unless such arbitration clause is contained in a collective bargaining agreement. Any such provision included in a contract not contained in a collective bargaining agreement will be considered null and void, but will not impact the enforceability of other provisions in the contract. How this requirement will stand-up to the Federal Arbitration Act and to what extent has yet to be determined.

**January 2019 (all New York State employers)**

All state contracts requiring competitive bidding for services performed or goods sold must include a statement affirming that the contracting organization or bidder has implemented a written sexual harassment policy and that it provides annual sexual harassment prevention training to all employees.

**Employer Next Steps**

Model policies and training modules will be provided by state agencies in the near future (the “Guidance”). Employers can either adopt the Guidance or implement their own policies and procedures, so long as same either meet or exceed the standards set forth in the Guidance. While the Guidance may result in additional changes to existing policies and procedures, New York State employers should begin:

- Evaluating existing sexual harassment policies and procedures for compliance with the newly enacted laws;
- Evaluating existing sexual harassment training programs for compliance with the newly enacted laws; and
- Reviewing standard settlement and arbitration agreements in connection with sexual harassment complaints to ensure compliance with the newly enacted laws, keeping in mind that the Budget’s interplay with the Federal Arbitration Act has yet to be determined.

Please note that this is a general overview of developments in the law, and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of employment law, please contact Thomas B. Wassel at (516) 357-3868 or [twassel@cullenanddykman.com](mailto:twassel@cullenanddykman.com).

## Practices

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