

NYS ISSUES FINAL GUIDANCE ON SEXUAL HARASSMENT TRAINING AND POLICY REQUIREMENTS

Labor & Employment Alert
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Today the New York State Department of Labor and the New York State Division of Human Rights published the final guidance related to the State's new sexual harassment requirements.

As we previously reported, the draft guidance issued by the State required employers to issue a compliant sexual harassment policy to employees by October 9, 2018, and provide sex harassment training to all existing employees by January 1, 2019 and all new hires within thirty days of employment.

The final guidance retains the October 9, 2018 deadline by which employers must issue a compliant sexual harassment policy, but it gives employers until October 9, 2019 to provide sex harassment training to all of their existing employees. The final guidance also eliminates the requirement that all new hires receive sex harassment training within thirty days of hire, though it recommends that new hires be trained "as quickly as possible".

The State also updated its FAQ document and the following are several of the key changes:

- Employers should provide the sexual harassment policy and training in the language spoken by employees. New York's policy and template training documents will be translated into a number of languages for employers' use, but if a template is not available in an employee's primary language, the training may be provided in English only. The State, however, "strongly encourages" that employers provide training in the languages spoken by their employees, even if a translation is not available.
- Employers are not required to provide training on sexual harassment to third parties or non-employees, but the State recommends that employers post a copy of their policy in an area that is "highly visible"
- A complaint form need not be included within the anti-sexual harassment policy itself, but employers should be clear about where one may be found
- There is no minimum duration for sexual harassment training, as long as it meets the minimum standards and covers all of the elements required by the law

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- Clarifies that employers can utilize third-party vendors to provide training but that employers will remain responsible for ensuring that any such training satisfies the State’s minimum standards;
- Employees who have already received training this year do not need to be re-trained but if the training did not meet all the new requirements, employers are required to provide supplemental training to ensure that all requirements are met;
- Employees who physically work outside of New York State do not need to be provided the sexual harassment training. Only employees who work or will work in New York State (even if only for “a portion of their time”) need to receive the training.
- Simply watching a training video or reading a document, with no feedback mechanism or interaction, will not be considered interactive training. The final guidance states that live trainers (whether available in person or via phone or video) are the “best practice” for effective trainings, but a live trainer is not required. The guidance provides the following examples of interactive training:
 - 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, employees have an option to submit a question online and receive an answer immediately or in a “timely manner”
 - if the training is in-person live, the presenter asks the employees questions or gives them time throughout the presentation to ask questions
 - if the training is web-based or in-person, the training provides a feedback survey for employees to turn in after they have completed the training
- Clarifies that sections in the model training materials that are not expressly required by law are not mandatory for compliance with the requirements, but are “strongly recommended.”

Please contact any member of our Labor and Employment team if you have any questions regarding this topic.