

Client Update

Imminent New Laws to Combat Sexual Harassment in New York

On April 11, 2018, the New York City Council passed a package of 11 bills aimed at preventing sexual harassment in the workplace, collectively titled the “Stop Sexual Harassment in NYC Act.” These bills, which the Mayor is expected to soon sign into law, will require employers to take additional steps to combat sexual harassment, including by implementing annual anti-harassment training. New York State legislators also recently approved wide-reaching legislation concerning sexual harassment. The Governor is likewise expected to sign these provisions into law imminently. Of note for private employers, the laws mandate annual training of employees, limit the use of nondisclosure provisions in settlements and purport to prohibit mandatory arbitration of discrimination and harassment claims (though this last provision is likely to be challenged as inconsistent with federal law). The bills do not yet include specific penalties for noncompliance.

KEY PROVISIONS UNDER IMMEDIATE STOP SEXUAL HARASSMENT IN NYC ACT:

- Requires all private employers with **15 or more employees** to conduct **annual anti-harassment training**.
 - The training must be interactive, though it may be online or web-based rather than in person. It must be given to all employees, including supervisors and managers.
 - The training must include a number of specified topics, including a description of sexual harassment, an explanation of internal complaint and reporting mechanisms and a discussion of the responsibilities of supervisors and managers in preventing sexual harassment and retaliation. The NYC Commission on Human Rights will develop an online module to help employers satisfy these requirements.
 - The training must be given within 90 days of initial hire for new employees.
 - Employers must keep records of this employee training for at least three years.
- Requires all employers to **conspicuously display a poster**, to be designed by the NYC Commission on Human Rights, explaining workers’ rights and responsibilities with regard to sexual harassment.

- Amends the NYC Human Rights Law's prohibition on gender-based harassment to **apply to all employers**, regardless of number of employees.
- Extends the **statute of limitations** for filing gender-based harassment claims under the NYC Human Rights Law from one to three years.

KEY PROVISIONS UNDER IMMINENT NEW YORK STATE LAWS:

- Requires the Department of Labor to create a model **sexual harassment prevention training program**, which employers will then be required to administer (or to use as a model for their own training programs) **on an annual basis**.
 - The training must be interactive, though it may be online or web-based rather than in person, and it must be given to all employees.
 - The training must include a number of specified topics, including a description of sexual harassment, information on employees' rights of redress and complaint adjudication and a discussion of the responsibilities of supervisors.
- Requires the Department of Labor to develop a **model sexual harassment prevention policy**, which employers will then be required to adopt (or to use as a model for their own anti-harassment policies).
 - The policy must include information on federal and state laws on sexual harassment, a procedure for timely and confidential investigation of complaints and a discussion of employees' rights of redress and freedom from retaliation.
 - It must also include a standard complaint form employees can use.
- Prohibits the **inclusion of nondisclosure clauses** in any settlement of sexual harassment claims unless such a condition of confidentiality is the complainant's preference. To ensure it is the complainant's preference, the complainant must have 21 days to consider the confidentiality condition and may revoke his or her agreement to a settlement including a confidentiality provision within seven days after signing.
- Prohibits employers from including and enforcing **mandatory arbitration clauses** in employment contracts with respect to sexual harassment claims.
 - However, this provision is likely to face significant legal challenges given the strong federal policy and U.S. Supreme Court precedent supportive of mandatory arbitration clauses.
- Employers may now be held liable for **claims of sexual harassment made by non-employees**, including contractors, vendors and others providing contractual services to the employer.

In light of these sweeping imminent changes, New York employers should assess, and most will likely need to revise, their current policies, practices and forms related to sexual harassment. In

particular, to ensure compliance with imminent new requirements, employers should focus on adopting mandatory training protocols that meet the new requirements, revising anti-harassment and related policies and altering employment contract forms to remove newly impermissible provisions.

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Please do not hesitate to contact us with any questions.

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