

July 2018

## New York Passes Law Requiring Annual Sexual Harassment Prevention Training

While our news apps and smart phone feeds tell us about prominent individuals and “big businesses” that have been besieged by sexual misconduct allegations, we know that small and mid-sized businesses may be subject to substantial liability for the actions of their principals and employees. For New York businesses, the stakes are now even higher.

Recent changes to New York state and New York City laws now **require** businesses to provide harassment avoidance training. Specifically, under the state budget recently signed by Gov. Cuomo amending the New York State Human Rights Law (the “Budget Amendments”), **all** New York employers will be required to provide annual sexual harassment training to all employees beginning on October 9, 2018. Mayor DeBlasio also signed the Stop Sexual Harassment in NYC Act (the “City Act”) in May, requiring city employers with at least fifteen (15) employees to provide annual “interactive” training on sexual harassment beginning on April 1, 2019, and that training acknowledgment forms be kept by employers for three (3) years. The City Act further requires that employers provide training to new hires within ninety (90) days of employment, unless they have already completed training in the same cycle with a previous employer. Both state and city laws also mandate that employers have sexual harassment policies containing specific provisions consistent with these new laws.

In short, providing anti-harassment training to your employees is now the law in New York. It is also a key component to preventing workplace harassment and limiting your company’s liability in the event of a lawsuit. The Labor & Employment Group at Norris McLaughlin & Marcus, P.A., offers comprehensive and affordable training to businesses. The training program is a lecture-based presentation involving significant attendee interaction (we encourage attendees to be involved by asking questions, working through hypothetical situations, and sometimes role playing). Our harassment training covers the following topics:

- Prejudice, stereotypes, discrimination
- History of harassment in the workplace
- Types of unlawful harassment
- Quid Pro Quo harassment
- Hostile work environment harassment
- The elements of a hostile work environment
- Technology issues and harassment
- Personal liability issues
- Policy review
- What to do if you believe you are being harassed
- What to do if a co-worker is being harassed



- Gray areas (compliments, social invitations, consensual relationships, third party harassment)
- Supervisors only -- duty to protect employees from harassment
- Supervisors only -- duty to eliminate and promptly correct harassment
- Supervisors only -- what to do when an employee complains
- Supervisors only -- what to do when they have knowledge of inappropriate conduct, but no one has complained
- Supervisors only -- legal framework for liability for company and supervisor
- Supervisors only -- retaliation issues

We recommend separate training sessions for supervisors and non-supervisors. Our training, tailored to each specific group, will satisfy the new requirements of the Budget Amendments and the City Act.

In addition to mandatory anti-harassment training, New York's new laws institute other sweeping changes to the sexual harassment landscape. Under the Budget Amendments, all employers must adopt and distribute to employees, an anti-sexual harassment policy by October 9, 2018 including, among other things, a standard complaint form and a statement informing employees of the available avenues to adjudicate their sexual harassment claims. Policies should also address the expansion of the New York State Human Rights Law's protections against harassment to "non-employees." Yes, you read that right - the amended law requires businesses to protect not only their traditional employees, but also independent contractors, vendors, and others who might be exposed to prohibited conduct on an employer's premises!

Not only must employers revise their anti-harassment policies, but they also must review their employment contracts and form separation agreements. Effective July 11, 2018, New York's new laws will render unenforceable any agreements that provide for mandatory arbitration of sexual harassment claims. As of the same date, employers may not include confidentiality provisions in an agreement settling a sexual harassment claim, unless the employee consents.

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