



New York State Employers Face Significant New Sexual Harassment Laws

Insights

4.16.18

Employers operating in New York will soon face a raft of new sexual harassment laws. The state budget bill for the 2019 fiscal year approved by the New York State Legislature on March 31 and signed into law by Governor Andrew Cuomo late last week contains a host of significant provisions to strengthen the state's sexual harassment laws.

As previously reported, the New York State Senate passed a bill last month aimed at strengthening and reforming the state's sexual harassment laws. Now, through the 2019 budget bill, many of these provisions have become the law of the land—along with additional requirements beyond those contemplated by the Senate's bill. For employers in New York City, these new laws are in addition to recently enacted legislation increasing sexual harassment protections citywide.

What Does The Legislation Entail?

The budget bill, signed on April 12, contains significant new obligations for private and public employers, aimed at curtailing sexual harassment in the workplace. Specifically, the bill includes the following requirements impacting private employers:

Mandatory Sexual Harassment Training And Policies

The bill amends the New York Labor Law to require all employers to adopt a sexual harassment prevention policy to be distributed in writing to employees, and conduct annual sexual harassment prevention training. The bill directs the New York State Department of Labor to work with the New York State Division of Human Rights to develop both a model sexual harassment policy and model training program. Employers can then choose whether to adopt the models prepared by the state or develop their own, so long as their policies and training meet or exceed the standards contained in the models. This law will take effect **October 9, 2018**.

The model sexual harassment prevention policy must include the following:

- a statement prohibiting sexual harassment;
- examples of prohibited conduct that would constitute sexual harassment;
- information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims, along with a statement that there may be additional applicable

- local laws;
- a standard complaint form;
- the procedure for the timely and confidential investigation of complaints;
- a statement informing employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- a statement that sexual harassment is a form of employee misconduct, and that sanctions will be enforced against individuals engaging in sexual harassment and managers and supervisory personnel who knowingly allow such behavior to continue; and
- a statement that retaliation against individuals reporting sexual harassment or who testify or assist in any proceeding is unlawful.

Meanwhile, the model sexual harassment prevention training must be interactive and include the following:

- an explanation of sexual harassment;
- examples of conduct that would constitute unlawful sexual harassment;
- information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims; and
- information concerning employees' rights of redress and all available forums for adjudicating complaints.

The model training must also include information addressing conduct by supervisors and additional responsibilities for supervisory personnel.

Prohibition Of Confidential Settlements

The bill prohibits settlement agreements for sexual harassment claims that include nondisclosure provisions, unless that is the complainant's preference. Specifically, employers will not "have the authority" to include in a settlement agreement any terms or conditions that would "prevent the disclosure of the underlying facts and circumstances," for a claim for which "the factual foundation... involves sexual harassment."

Confidentiality language can only be included if that is the complainant's preference. The complainant must be given a period of 21 days to consider whether to accept confidentiality language, and then has seven days to revoke his or her acceptance. This new law will bestow on employees broad bargaining power in choosing whether or not to keep sexual harassment claims private. This law takes effect on **July 11, 2018**.

Prohibition Of Mandatory Arbitration Agreements

The new legislation amends New York's Civil Practice Law and Rules to ban contractual provisions that mandate arbitration for any allegations or claims of sexual harassment, except where inconsistent with federal law. Any such provision included in a contract will be null and void, but will

not impact the enforceability of any other provision in the contract. It is yet to be seen whether and to what extent this provision will be enforceable in light of the Federal Arbitration Act. This law takes effect on **July 11, 2018**.

Extension Of Sexual Harassment Protections To Nonemployees

Currently, individuals who are not “employees” but are otherwise present in a workplace cannot file a claim for sexual harassment. The new law aims to fix this gap in protection and extends the state’s sexual harassment laws to such nonemployees.

Employers may now be held liable for sexual harassment contractors, subcontractors, vendors, consultants, or any other person providing services in the workplace, if the employer, its agents, or supervisors knew or should have known that the nonemployee was subject to sexual harassment in the employer’s workplace, and failed to take appropriate corrective action. This provision takes effect **immediately**.

Other Measures

In addition to the above laws impacting private employers, the new budget law imposes an obligation that bidding entities for state contracts certify that they have implemented a written policy addressing sexual harassment and provide annual sexual harassment training to employees. Additionally, the law requires state employers found responsible for committing sexual harassment to reimburse the state agency or entity for any damages award paid to the plaintiff.

What Should New York Employers Do Now?

Significant changes are coming to New York’s sexual harassment laws. For the first time ever, employers in the state will be required to conduct annual sexual harassment training for their employees. Additionally, employers will be required to have a written sexual harassment prevention policy.

You should take stock of your current sexual harassment policies and training procedures to ensure compliance with the new law. Though you must await the state’s model policy and training program, you will need to implement a compliant policy and conduct sexual harassment training in short order if you do not currently have such measures in place. If you have already implemented policies and conduct regular training sessions, you still may need to update your existing policies and training materials. Additionally, you may need to revise any existing arbitration agreements.

We will continue to keep you informed on additional developments. For more information about how to comply with this new legislation, contact any attorney in our [New York City office](#) at 212.899.9960, or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of specific state legislation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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