

NEWS ALERT**LABOR & EMPLOYMENT****Impending Sexual Harassment Notice and Training Requirements to Affect New York State and New York City Employers**

By Salvatore G. Gangemi | August 23, 2018

Both New York State and New York City have passed legislation intended to curtail sexual harassment, while at the same time, expanding accountability for such. These laws impact large and small businesses that operate in the State and/or City.

New York State

By no later than October 9, 2018, employers are required to prepare and distribute a sexual harassment policy that complies with the requirements of recent amendments to the New York State Human Rights Law. The amendments require the New York State Division of Human Rights and New York State Department of Labor to develop jointly a model anti-harassment policy that employers could adopt. Alternatively, employers would be permitted to adopt their own policies as long as they comply with the requirements imposed by the amendments. In addition, starting in October 2018, New York employers will be required to provide interactive anti-harassment training to all employees.

In addition, the recent amendments:

- Impose liability on employers for the sexual harassment of non-employees such as contractors, vendors or consultants. An employer would be deemed liable if it "knew or should have known" that such harassment was taking place, and failed to take "immediate and appropriate corrective action." This provision was effective as of April 12, 2018.
- Prohibit in sexual harassment cases the use of mandatory pre-dispute arbitration agreements (entered on or after July 11, 2018) to resolve sexual harassment claims.
- Ban the use of non-disclosure agreements unless the confidentiality is the "complainant's preference," with such preference being memorialized in a written agreement. In cases in which a confidentiality provision is provided, an employee must be given 21 days to consider and sign the agreement, and a 7 day period to revoke acceptance after signing. This requirement was effective as of July 11, 2018.

New York City

Beginning September 6, 2018, all New York City employers must display a new sexual harassment prevention poster, recently created by the New York City Commission on Human Rights. In addition, the Commission has published a "factsheet," which will have to be distributed to all employees at the time of hire or included together with the employer's other personnel policies.

The Stop Sexual Harassment in NYC Act was signed by Mayor Bill de Blasio on May 9, 2018 and expanded the reach of the New York City Human Rights Law in cases of gender-based harassment. Among other things, the law amends the New York City Human Rights Law by:

- Applying provisions related to gender-based discrimination to all employers, regardless of the number of employees. This change is effective immediately.
- Increasing the statute of limitations from one-year to three-years for filing claims of gender-based harassment with the New York City Commission on Human Rights. This change is effective immediately.
- Mandating employers with 15 or more employees to conduct annual anti-sexual harassment training to all employees, including managers and supervisors. For new employees who work more than 80 hours in a year, such training must be provided within 90 days of initial hire. This requirement is effective April 1, 2019.

Impressions

New York State and New York City have enacted broad sweeping legislation in addressing the #MeToo movement. Some of these changes are profound, particularly those mandating sexual harassment training for all employees. Consequently, employers must review their anti-harassment policies immediately, to the extent that they have not done so, to ensure that they comply with the new requirements of state and city law.

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