

Client Alert

October 2018

New Guidance on Mandatory Sexual Harassment Training and Policies and New Reasonable Accommodation and Personal Leave Requirements in NY State and NYC

Earlier this year, New York State passed legislation to combat workplace sexual harassment. Recently, the State provided updated guidance on compliance with the new law, which can be found on the State's "[Combating Sexual Harassment in the Workplace](#)" website. By **October 9, 2018**, employers—regardless of size—must either adopt the state's model sexual harassment/prevention policy or ensure that their own policy meets or exceeds state standards, including a standard internal complaint form and procedures for a timely and confidential investigation of complaints. Employers who have not yet revised their policies should, at a minimum, distribute the state's model policy and complaint form to their employees by October 9. A copy of the policy and form can be found [here](#) and [here](#). If at a later date employers wish to tailor the policy to suit their company's specific purposes and/or update their handbook, they can do so.

The State also requires employers to train employees on issues of sexual harassment, with such training required to cover:

- A definition of sexual harassment and examples of what constitutes sexual harassment, consistent with guidance issued by the New York Department of Labor;
- Explanations of the applicable federal and state laws concerning sexual harassment and the remedies available under those laws;
- A description of all available forums for employees to adjudicate their complaints, whether that be through: (i) internal processes, (ii) the New York City Commission on Human Rights, (iii) the New York State Division of Human Rights, (iv) and/or the United States Equal Employment Opportunity Commission; and
- An interactive element that encourages employee participation.

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All employees must be trained by **October 9, 2019**, as that deadline was just extended by the State’s recent guidance. From that date forward, new hires must receive training as soon as possible (changed from within 30 days of hire).

New York City’s “Stop Sexual Harassment in NYC Act,” which takes effect on **April 1, 2019**, has similar, but more comprehensive, training requirements as the state law. It mandates employers to explain the prohibition against retaliation by giving examples of protected activity under the law, inclusion of bystander intervention, and specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation. The city law applies to employers with 15 or more employees, who work 90 or more hours per calendar year on a full or part-time basis in New York City, and requires annual sexual harassment training. All employees must be trained by **April 1, 2020**, with new employees trained within 90 days of their hire. Employers must keep a record of all training, including a signed employee acknowledgement, for at least three years.

New York City also passed the “Fair Work Leave Law,” which amends the New York City Human Rights Law (“NYCHRL”). The Fair Work Leave Law takes effect on **October 15, 2018**. Under the federal Americans with Disabilities Act, employers have a duty to engage in an “interactive process” to communicate with individuals to determine what, if any, appropriate reasonable accommodation that will enable an employee with a disability to perform the essential functions of his or her position. A similar process under the NYCHRL, termed “cooperative dialogue” is defined as the process through which an employer and an employee engage in good faith in a written or oral dialogue concerning the employee’s accommodation needs, including alternatives to the requested accommodation, and the difficulties that any potential accommodations may pose for the employer. Under the Fair Work Leave Law, failure to engage in “cooperative dialogue” is now considered a statutory violation of NYCHRL. The NYCHRL requires “covered entities”—which includes employers with four or more employees and public accommodations—to make reasonable accommodations for: (1) victims of domestic violence, sex offenses or stalking; (2) individuals with pregnancy and related conditions; (3) individuals with religious needs; and (4) individuals with disabilities. Additionally, the NYCHRL requires the covered entity to provide the individual requesting an accommodation with a written final determination identifying whether the accommodation was granted or denied.

The Fair Work Leave Law also entitles employees working in New York City to seek schedule changes of up to one business day per request, no more than twice per calendar year, for personal events, such as:
(1) caregiver emergency; (2) attendance at a legal proceeding or hearing

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involving subsistence benefits to which the employee, family member or the employee's care recipient is a party; or (3) safe or sick time pursuant to New York City's Earned Sick Time Act. Upon receiving an employee's request, the employer must respond immediately and include a written response within 14 days after receiving an employee's written request.

Olshan Frome Wolosky LLP can assist employers with compliance under each law, as the case may be. For more information, please contact the Olshan attorney with whom you regularly work or the attorney below.

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