

CLIENT ALERT: New York Department of Labor Finalizes Updates to the State's Model Sexual Harassment Prevention Policy

On April 11, 2023, the New York State Department of Labor ("NYDOL") released its updates to the State's **model sexual harassment prevention policy** and published updated training materials for New York employers on preventing sexual harassment and discrimination. The updated model policy was developed consistent with **a law that went into effect on October 9, 2018**, which requires New York employers to either adopt and disseminate written sexual harassment prevention policies that meet or exceed the **minimum standards** set forth in **Section 201-G** of the New York Labor law or adopt the model policy published by the NYDOL. These recent updates to the model policy were made in accordance with the statutory requirement that the State review and revise its model policy every four years. The policy and training requirements generally apply to all employers, regardless of size, who employ at least one employee in New York State.

What Changes to the Model Policy Should Employers Be Aware of?

There are several noteworthy revisions to the updated model policy, including, but not limited to:

- Added provisions specifying that harassing behavior can happen in a remote workplace.
- An added reference in the model policy's section on Legal Protections and External Remedies to the **State's confidential hotline** for complaints of workplace sexual harassment.
- An added provision clarifying that intent is not a defense available to employers under the New York State Human Rights Law ("NYSHRL").
- An explanation that under the NYSHRL, harassing conduct does not need to be "severe or pervasive" to be illegal. Rather harassing conduct may be unlawful if it exceeds what a "reasonable victim" would consider "petty slights or trivial inconveniences."
- A greater emphasis on harassment and discrimination based on an individual identifying as transgender. It includes a new section regarding respect of gender identity in the workplace and definitions of terms cisgender, transgender, and non-binary.
- Clarification that retaliation may include the public disclosure of an employee's personnel file.
- Additional examples of sexual harassment and retaliation (such as intentional misuse of an individual's preferred pronouns).
- An added section concerning bystander intervention that encourages employees to intervene if they witness workplace harassment and provides employees with strategies for such an intervention.
- Updates the time to report a claim of sexual harassment to the New York Department of Human rights or to bring a lawsuit in state court alleging sexual harassment to within three years of the alleged sexual harassment, consistent with the state law that went into effect on August 12, 2020.
- Revisions to the Investigation section of the policy that replaces a specific 30-day investigation timeframe with a more general obligation on the employer to complete a thorough investigation "as soon as possible."
- An added Conclusion section, which states that while the policy focuses on sexual harassment and gender discrimination, the NYSHRL prohibits discrimination against all other protected classes and that the sexual harassment protection policies outlined in the model policy "should be considered applicable to all protected classes."

Updates to the NYDOL's Published Training Materials

In addition to adopting a sexual harassment policy that meets or exceeds the minimum standards set

forth above, employers are required to provide employees who work in New York State with sexual harassment training on an annual basis. An employer that does not adopt the model training materials published by the NYDOL must ensure that their training materials meet or exceed the **State's minimum standards**.

An employer can meet these minimum standards by utilizing the NYDOL's model training materials (which includes a **script** to pair with a model training **slide deck**). The NYDOL's updated model training materials largely incorporate the changes made to New York's model policy. As part of the NYDOL's updates to its model training materials, it released an updated sexual harassment prevention training **video** that may be watched on YouTube or downloaded. The NYDOL's video meets all of the State's annual minimum training requirements except that watching the video by itself will not be considered sufficiently "interactive." The NYDOL states that employers who use the video to meet the minimum training requirements must ask questions as part of the program; accommodate questions asked by employees, with answers provided in a timely manner; or require feedback from employees about the training and materials presented. The NYDOL provides employers with a **fillable PDF** for employees to complete after watching the video that meets all of the above requirements for being considered sufficiently "interactive."

Employers with operations in New York should contact their MBJ attorney to discuss any necessary or recommend changes to their policies and training practices to ensure that they remain in compliance with state requirements.

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This alert was prepared on April 25, 2023.

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