CLIENT ALERT: New York Releases Additional Guidance and Training Materials About Employers' Obligations Under the New Sexual Harassment Law – By Maura D. McLaughlin and Desiree Murphy

Morgan, Brown & Joy (MBJ) issued a previous alert about the State of New York's new legislation to prevent and address sexual harassment in the workplace. The New York Department of Labor, in connection with the New York Division of Human Rights, has released additional guidance for employers about complying with the state's anti-harassment training and policy requirements, both of which are now in effect as of October 9, 2018. The guidance includes a set of "Frequently Asked Questions," a model sexual harassment policy and complaint form, a "Toolkit for Sexual Harassment Prevention," and model training materials. The new guidance is explained in more detail below.

1. Model Sexual Harassment Policy and Complaint Form

New York state human rights law now requires that all employers distribute a copy of their sexual harassment prevention policy to any employee working in the state of New York, so that employees can familiarize themselves with the policy and the process for filing a complaint. According to the "Frequently Asked Questions" section of the guidance, the policy may be provided electronically via a "work computer" (a term that is not defined in the FAQs), provided that employees are able to print a copy for their own records. While a signed acknowledgement receipt from the employee is not required by the law to demonstrate compliance, the FAQs encourage employers to keep records of employees' signed receipt (as well as copies of training records), because those records may be helpful for addressing any future complaints or lawsuits.

To assist employers in developing and implementing an appropriate sexual harassment policy, the state has provided a final form of its model policy. Employers can still elect to draft their own policies, but those who do so should be mindful that the policy must meet the state's minimum standards in order to comply with the law. Also contained in the state's guidance is the Employer's Toolkit for Sexual Harassment Prevention, which includes a helpful checklist of the minimum standards for sexual harassment policies, including but not limited to examples of prohibited conduct, and a link to a model complaint form.

2. Training Materials

Employers are also required to provide their employees with sexual harassment prevention training on an annual basis beginning on October 9, 2018, with the first round of training *completed by* October 9, 2019 (note: previously the deadline was January 1, 2019). The FAQs encourage

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employers to initiate training as soon as possible, particularly for new hires "as employers may be liable for the actions of their employees upon hire." The training does not have to be in-person, but the law does require training to be "interactive." For employers who elect a web-based training method, the "interactive" requirement can be met by including questions for which employees must select the right answer, or a "Feedback Survey" that employees must complete and submit at the end of the training.

As with the policy requirement, employers who do not wish to use the state's model training materials may use their own materials, provided the materials meet the state's minimum standards as outlined in the Employer's Toolkit.

The state's guidance strongly encourages employers to implement the appropriate training and policies as soon as possible. While employers have been given somewhat of a reprieve with the extended deadline to complete the state's training requirement, employers that are also covered by New York City's Human Rights Law should be mindful that the sexual harassment training requirements under the City's law take effect on April 1, 2019. MBJ attorneys are available to discuss training programs and requirements and answer any other questions about these new laws.

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