

## Client Alert

### **New York State Provides Employers with Additional Guidance on Records Required for Combating Workplace Sexual Harassment**

December 11, 2019 – Over the last two years, New York State (the “State”) has significantly expanded its workplace harassment protections to include requirements that all employers in the State, regardless of size, implement (1) a sexual harassment prevention policy, (2) an “interactive” sexual harassment prevention training (both previously discussed in our [April 23, 2018](#), [September 4, 2018](#) and [August 21, 2019](#) client alerts), and now (3) a sexual harassment prevention notice (the “Notice”), which must contain the aforementioned sexual harassment prevention policy and the information presented in the sexual harassment prevention training.

The State has recently released additional guidance on when the Notice must be provided to employees, and what its form and content should be. The Notice must be provided both at the time of hiring<sup>1</sup> and during the employer’s annual harassment prevention training. It should explain the employer’s commitment to “maintaining a workplace free from sexual harassment,” verify that the employer has a sexual harassment prevention policy in place that protects the employee, and encourage the employee to report any harassment he or she experiences at work to a supervisor or designated individual so that the employer can take appropriate action.

The State’s updated [FAQs](#) provide further details on the Notice. Specifically, the Notice must be delivered in writing, whether in print or digitally, via email transmission or otherwise. It must also either “link to or include, as an attachment or printed copy” the employer’s sexual harassment prevention policy and harassment prevention training materials. These training materials should include “any printed materials, scripts, Q + As, outlines, handouts, PowerPoint slides, etc.” Where an employer’s training materials are delivered through software or video, a link to such materials is sufficient. Employers that provide their training materials in other formats must make “reasonable efforts” to provide those materials to employees along with the Notice. The State has published both a [model notice](#) and [model training materials](#) to its website in order to ease employers’ compliance with the law.

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<sup>1</sup> “At the time of hiring” is defined as “prior to or at the beginning of [the employee’s] first day or work.” See <https://www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions#>.

The Notice, like the harassment policy and training materials, must be provided to employees in both English and the employee's primary language if that language is Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali or Haitian-Creole. The model materials on the State's website are published in each of these languages, along with the Notice.<sup>2</sup> However, because employers may be held liable for the conduct of all of their employees, the FAQs strongly encourage employers to provide a policy and training in the language spoken by the employee, meaning employers should translate the Notice, harassment policy, and training materials to that employee's spoken language even if that language is outside of those documents already translated by the State.

In addition to providing this guidance, the State has updated its [model harassment policy](#) to reflect the most recent amendments to New York State Human Rights Law, as discussed in our [August 19, 2019 client alert](#). In particular, the model policy now explicitly states that sexual harassment need not be "severe and pervasive," but merely consist of "more than petty slights or trivial inconveniences" to be unlawful. The model policy also incorporates the extended statute of limitations for filing complaints of sexual harassment with the New York State Division of Human Rights (*i.e.*, from one to three years beginning on Aug. 12, 2020). Employers should move swiftly to adopt this model harassment policy or revise their own harassment prevention policies accordingly.

Lastly, the FAQs explain that the New York City Commission on Human Rights has partnered with the New York State Division of Human Rights and the New York State Department of Labor to ensure that the online anti-harassment training provided by the New York City Commission on Human Rights complies with both City and State requirements. New York City employers are therefore advised to use that online training, which is available [here](#), as a baseline for compliance with all applicable law.

If you require any additional information concerning employers' sexual harassment prevention notice, policy or training obligations, or would like schedule in-person training, please contact us.

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<sup>2</sup> See <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.