

New York State Mandatory Sexual Harassment Training Finalized and Deadline Extended

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As discussed in our August 29, 2018 alert, *New York State Issues Model Sexual Harassment Prevention Policy and Training*, New York State previously disseminated sexual harassment guidelines for comment.

On October 1, 2018, New York State issued the final versions of its model sexual harassment policy, complaint forms and employee training materials aimed at combating sexual harassment in the workplace. The final version of the materials, including FAQs, apply to all New York employers regardless of their size.

The most recent guidance provides additional direction for employers and delays the deadline for training current employees. In addition to updates to the model sexual harassment training program, the FAQs extend the deadline to train employees for nine months, from January 1, 2019 until October 9, 2019. The guidance also clarifies that only employees who work or will work in New York State need to be trained. If, however, an individual works a portion of his or her time in New York State, even if the employee is based in another state, he or she must be trained.

The FAQ's further provide that "[e]mployers must make managers and supervisors as well as all employees aware of the extra requirements for those in managerial/supervisory roles . . . and [that] employers may choose to provide additional or separate training to supervisors and managers." We generally recommend that managers and supervisors receive training beyond that provided to other employees that addresses these additional duties and obligations.

Changes to the model policy including, but not limited to, the deadlines to report and investigate complaints, are also contained in the final documents. While New York State employers are not required to use the State's model policy and programs, they still must adopt a written anti-sexual harassment policy by no later than October 9, 2018 that substantially meets or exceeds the State's minimum standards. Employers must also provide each employee with a copy of the policy in writing in the language spoken by the employees. Employers may provide the policy to employees electronically but, in such event, employees must be able to access the policy on a computer provided by the employer during work time and be able to print a copy for their records. A signed acknowledgement of receipt is encouraged but not required.

Finally, as of July 11, 2018, New York employers have been prohibited from including a Non-Disclosure Agreement in any settlement of a claim involving sexual harassment that would prevent the person who complained from disclosing the underlying facts and circumstances of the harassment, unless the complainant requests confidentiality. The final FAQs clarify that waivers cannot be included in settlement agreements that can be presented and executed in a single document. Rather, if the complainant requests confidentiality, the terms must first be provided to all parties; the complainant must have 21 days to consider the provision; and, after 21 days, if confidentiality is still the complainant's preference, the provision must be memorialized in a *separate* agreement signed by all parties. The complainant then has seven days to revoke the agreement, which is not effective or enforceable until the revocation period expires. Most notably, the 21-day review period **cannot be waived, even if the complainant desires to shorten the review period.**

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ANNIVERSARY

White and
Williams LLP

White and Williams routinely assists its clients with the development of anti-sexual harassment training policies and the presentation of training programs to employees. We encourage New York employers to review and update their policies, training programs and agreements now to ensure compliance with all applicable laws and their preferred timing for conducting annual training.

Please contact George Morrison (morrisong@whiteandwilliams.com; 610.782.4911) or another member of our Labor and Employment Group with any questions related to harassment policies, training and other preventive practices.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

