ALERTS

New York State and City to Mandate Anti-Sexual Harassment Training for Private Employers

April 12, 2018

On April 11, 2018, the New York City Council passed a package of legislation aimed at combating sexual harassment in New York City, the Stop Sexual Harassment in NYC Act, which the mayor is expected to sign. A key provision of the act mandates that private employers in New York City conduct sexual harassment trainings. In early April 2018, the New York State Legislature passed legislation with a similar mandate for employers in New York State, which the governor signed into law on April 12.

New York City Law Changes

The city law provides that trainings must be conducted by employers with 15 or more employees in New York City, and that the training must:

- Be interactive;
- Occur at least annually (and, for new employees, within 90 days of employment);
- Explain that sexual harassment is a form of unlawful discrimination under local, state and federal law;
- Describe what sexual harassment is, with examples;
- Address the internal complaint process available to employees;

- Explain that retaliation against complainants is prohibited, and list examples of retaliation;
- Provide information concerning bystander intervention; and
- Address the specific responsibilities of supervisors and managers in the prevention of sexual harassment and retaliation.

The city law also has a record-keeping requirement. In addition to the training mandate, provisions of the city law affecting private employers, include a posting requirement, an extension of the statute of limitations for filing sexual harassment complaints with the New York City Commission on Human Rights under the New York City Human Rights Law from one year to three years, and a clarification to the New York City Human Rights Law to explicitly include sexual harassment. The city law will become effective in April 2019.

New York State Law Changes

New York State law will require that, in consultation with the New York State Division of Human Rights, the New York State Department of Labor must develop a model sexual harassment prevention guidance document, model sexual harassment prevention policy and model sexual harassment prevention training program. After the policy and training have been developed, New York employers must either adopt the policy, or a policy that meets or exceeds the state policy's minimum standards, and administer the model training, or develop and administer a training that meets or exceeds the state training's minimum standards. The model policy must:

- Explain what sexual harassment is, and include examples;
- Include a standard complaint form;
- Include information about state and federal sexual harassment laws and remedies;
- Include information about employee rights;
- Include a clear statement that sexual harassment is considered a form of employee misconduct; and
- Prohibit retaliation.

The model training must provide the above information in an interactive format. Regulations regarding the state law have yet to be enacted, but it is expected that they will outline the timeline for employer compliance with the law, set parameters for the length and specific subject matter of the training, and carve out any exceptions for small employers. This provision will take effect 180 days after the governor signs the bill into law.

The state bill also amends New York State Law to prohibit the sexual harassment of non-employees, such as vendors and contractors, in the workplace, effective immediately. The state bill institutes a 21-day period for settling complainants to consider nondisclosure provisions, and a seven-day revocation period after such agreements have been signed, effective 90 days after the bill becomes law. The state bill also bans mandatory workplace arbitration of sexual harassment claims, with a carve-out for collectively bargained arbitration procedures, effective 90 days after the bill becomes law. The mandatory arbitration amendment is likely to face a challenge grounded in the Federal Arbitration Act's preemption provision. See *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

Conclusion

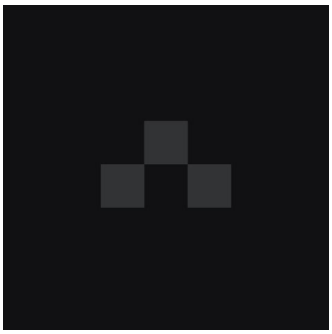
New York employers will need to take steps to comply with these statutory changes. These steps will include updates to existing sexual harassment trainings and policies, or the adoption of new trainings and polices, revisions to forms of employment agreements and settlement agreements, and the development of procedures to comply with the waiting periods set forth in the nondisclosure agreement provision.

While the state and city laws will set minimum standards, the EEOC has stated that when it comes to training, one size does not fit all. "Training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees," such as departments, bands and offices. A commitment across all levels of an organization, starting at the top, to preventing harassment and developing an inclusive workplace, combined with effective accountability systems, are an employer's best lines of defense against the behaviors that lead to sexual harassment claims.

Authored by Holly H. Weiss.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

Related People



Holly Weiss

Retired Partner

New York

Practices

EMPLOYMENT AND EMPLOYEE BENEFITS

Attachments

Download Alert