KAUFMAN | DOLOWICH

KD Alert: Important Deadlines for New York State and New York City Laws Combatting Sexual Harassment

As discussed in our May 7, 2018 alert, New York State and New York City have each enacted legislation to address sexual harassment in the workplace. Particularly, in April 2018, New York State and New York City passed and began implementing new laws expanding the protections for employees (as well as "non-employees") against sexual harassment. Employers are reminded to adhere to the strict deadlines and requirements set forth in these new laws

Below is a summary of the new statutes and corresponding effective dates that New York State and New York City employers should be aware of.

All New York State Employers

1. **Mandatory Sexual Harassment Training (effective October 9, 2018): The 2019 Budget Bill requires employers to implement a mandatory sexual harassment training program by October 9, 2018. Notably, on August 27, 2018, the New York State Department of Labor ("NYSDOL") and the New York State Division of Human Rights ("NYSDHR") provided guidance for such a training program for employers in New York.**

   At a minimum, an employer's annual sexual harassment prevention training program must include: (1) an explanation of sexual harassment; (2) examples of conduct that constitutes unlawful sexual harassment; (3) information about the federal and state statutory provisions concerning sexual harassment and remedies available to victims; (4) information concerning employees' rights of legal redress and all available forums for adjudicating complaints; and (5) information addressing conduct by supervisors and any additional responsibilities of supervisors. The model program also requires that the training be interactive, conducted annually, completed by all employees by January 1, 2019, given to all new employees within 30 calendar days of their start date, and given to employees in their primary/spoken language.

2. **Mandatory Anti-Harassment Policies (effective October 9, 2018): The Budget Bill also requires all employers in New York State to promulgate anti-harassment policies by October 9, 2018. According to the guidance released by the NYSDOL and the NYSDHR, employers must implement a policy that: (1) prohibits sexual harassment; (2) provides examples of prohibited conduct that would constitute unlawful sexual harassment; (3) includes information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws; (4) includes a complaint form; (5) includes a procedure for the timely and confidential investigation of complaints that ensures due process for all parties; (6) informs employees of their rights of legal redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (7) clearly states that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and (8) clearly states that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.**

3. **Mandatory Arbitration Clauses (effective July 11, 2018): Employers are no longer permitted to include provisions in contracts (***i.e., employment agreements) subjecting sexual harassment claims to mandatory arbitration. Any portion of a contract (other than a collective bargaining agreement), that is entered into on and after July 11, 2018, requiring mandatory arbitration of sexual harassment claims, will be unenforceable. Notably, the new legislation does not appear to impact contracts containing mandatory arbitration provisions that are, or were, executed prior to July 11, 2018.*

4. **Confidentiality Clauses (effective July 11, 2018): Pursuant to New York's General Obligation Law, employers (or its officers or employees) no longer have the authority to include a non-disclosure or confidentiality provision in any agreement or other resolution of a sexual harassment claim unless it is the complainant's "preference." Moreover, if a settlement agreement contains such a confidentiality provision, the complainant must be afforded twenty-one (21) days to review the agreement before executing it. Once the complainant executes the agreement, he/she will have seven (7) days to revoke his/her acceptance of same.**

5. **"Non-employees" (effective April 12, 2018): The New York State Human Rights Law has now been expanded to cover "non-employees." Non-employees include contractors, subcontractors, vendors, consultants, and other individuals hired to carry out services for an employer. With the new amendments, employers may now be liable for permitting sexual harassment of "non-employees" if the employer knew or should have known that sexual harassment was occurring and failed to take appropriate remedial actions.**

<u>New York City Employers</u>

1. **Sexual Harassment Training (effective April 1, 2018): On May 9, 2018, Mayor Bill de Blasio signed into law the Stop Sexual Harassment in NYC Act (the "Act"). Pursuant to the Act, NYC employers with fifteen (15) or more employees will be required to provide interactive annual sexual harassment training to employees, including supervisory and managerial employees. In addition, both part-time and full-time employees, who work more than eighty (80) hours in a calendar year, will need to receive training within ninety (90) days of their initial date of hire, unless they received training within the same annual cycle from a prior employer.**

At a minimum, the training must: (1) explain that sexual harassment constitutes discrimination under local, state and federal law; (2) provide a description, with examples, of what conduct does and does not constitute sexual harassment; (3) educate employees about their employer's internal complaint policies and procedures, as well as the complaint process available to them through the New York City Commission on Human Rights (the "Commission"), the NYSDHR, and the Equal Employment Opportunity Commission; (4) notify employees that local law prohibits retaliation; (5) include specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation; and (6) stress the importance of bystander intervention. The Act also requires employers to maintain training records for three (3) years and make those records available to the Commission upon request.

2. **Increased Statute of Limitations Period (effective April 2018): The statute of limitations under NYC law (***i.e. the time period in which a complainant must file a claim) concerning sexual harassment/gender-based claims has been extended from one (1) year to three (3) years.*

3. **Expanded Coverage (effective April 2018): The scope of the New York City Human Rights Law ("NYCHRL") will be expanded to cover <u>all</u> employers, regardless of the number of employees. Prior to the amendment, the NYCHRL only covered employers with**

four (4) or more employees.

4. Anti-Harassment Poster (effective September 6, 2018): The Act also requires employers to conspicuously display in the workplace an anti-sexual harassment rights and responsibilities poster, which is to be made available by the Commission.

Please note that the above is only intended to give an overview and snap shot of the recently enacted legislation in New York State and New York City. Each employer covered by either of the above statutes should take the needed steps to ensure their policies and training protocols are compliant with the changes noted above.

For more information about the new legislation, or this alert, please contact Keith Gutstein or Matthew R. Capobianco by email at KGutstein@kaufmandolowich.com, MCapobianco@kaufmandolowich.com, or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group.