

KD Alert: New York State Issues Final Guidance for Requirements Going Into Effect On October 9, 2018

By Keith Gutstein, co-managing partner of the Kaufman Dolowich & Voluck LLP Long Island office, and Matthew Cohen, KD Long Island attorney.

In preparation for next week's deadline for New York State employers to distribute a compliant sexual harassment prevention policy, New York State has identified the minimum standards for such policies and for sexual harassment prevention training.

*Specifically, New York State requires that, at a minimum, sexual harassment prevention policies must: (1) prohibit sexual harassment consistent with guidance issued by the New York Department of Labor in consultation with the New York State Division of Human Rights; (2) provide examples of prohibited conduct that would constitute unlawful sexual harassment; (3) include information concerning 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) include a complaint form; (5) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties; (6) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (7) clearly state 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 state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful. This policy must be in place by **October 9, 2018**.*

New York State also requires that, at a minimum, sexual harassment prevention training must: (1) be interactive; (2) include an explanation of sexual harassment consistent with guidance issued by the New York Department of Labor in consultation with the New York State Division of Human Rights; (3) include examples of conduct that constitutes unlawful sexual harassment; (4) include information concerning federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; (5) include information concerning employees' rights of redress and all available forums for adjudicating complaints; and (6) include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

It is important to note that New York State has also extended the deadline by which employers must conduct their initial sexual harassment prevention training, and has eliminated the 30 day deadline for new employees to complete training after being hired. As a result, employers are now required to have all employees complete sexual harassment prevention training in compliance with the law by October 9, 2019. Training of new employees is encouraged by New York State to take place as soon as possible. The required training must take place annually for all employees.

As discussed in our prior alerts, New York City's Stop Sexual Harassment in NYC Act provides further requirements that employers in New York City must follow. Accordingly, it is important that each employer takes all necessary steps to ensure that their sexual harassment prevention policy and training protocol are compliant with the applicable law.