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FOCUS ON SEXUAL HARASSMENT POLICY & TRAINING

States Impose Sexual Harassment Policy & Training Requirements

In the wake of the #MeToo Movement, several states have attempted to curb ever-increasing sexual harassment claims through new legislation requiring employers to adopt sexual harassment policies, post sexual harassment prohibition notices and conduct regular sexual harassment training. For employers in these states, policies and training are not just good practice—they are now legally mandated. Below is an overview of the sexual harassment regulations recently enacted in New York, California, Connecticut, Delaware and Maine.

New York

The 2019 New York State Budget updated the state’s sexual harassment laws. Under the updated law, every employer in New York was required to adopt a sexual harassment policy by October 2018 and must provide annual sexual harassment training beginning in October 2019.

Sexual Harassment Policy Requirements

Under the law, every employer must establish a sexual harassment prevention policy. The New York Department of Labor drafted a [model sexual harassment prevention policy](#).

Instead of using the model policy, employers may adopt a similar policy that meets or exceeds the minimum standards of the model policy. Those minimum standards require that the policy:

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1. Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
2. Provide examples of prohibited conduct;
3. Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that local laws may apply;
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.



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A [model complaint form](#) is also available through the New York Department of Labor.

The policy must be provided to all employees in writing (which may be done electronically, e.g, by email). Employers are also encouraged to post the policy in an easily accessible location and to have employees acknowledge receipt of the policy. Additionally, employers should provide the policy in the language spoken by employees.

Sexual Harassment Training Requirements

Under the new law, every employer in New York is required to provide employees with sexual harassment prevention training. All employees must receive training as soon as possible, but no later than October 9, 2019. The New York Department of Labor established [model training](#) for employers to use. The model training can be used in a variety of formats, including a script for in-person group training, PowerPoint and video.

Alternatively, employers may use a training program that meets or exceeds the minimum standards of the model training. Those minimum standards require that the training:

1. Be interactive;
2. Include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;

3. Include examples of unlawful sexual harassment;
4. Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets 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 additional responsibilities for supervisors.

Concerning the interactive requirement, the training could ask questions of employees as part of the program, accommodate questions asked by employees with answers provided in a timely manner, or require feedback from employees about the training and the materials presented.

Each employee must receive training on an annual basis, and employers should provide training in the language spoken by employees.

California

SB 1343 expanded California's training requirement to mandate that employers with five or more employees provide training to all employees, both supervisory and nonsupervisory, by January 1, 2020.

Sexual Harassment Training Requirements

These employers must provide (1) at least *two hours* of classroom or other effective interactive training and education regarding sexual harassment to all *supervisory* employees, and (2) at least *one hour* of classroom or other effective interactive training and education regarding sexual harassment to all *nonsupervisory* employees in California within six months of their assumption of a position. This training must be provided once every two years.

Employers must provide sexual harassment prevention training in a classroom setting, through interactive E-learning or through a live webinar. E-learning training must provide instructions on how to contact a trainer who can answer questions within two business days.

The training must explain:

- The definition of sexual harassment under California's Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964;
- The statutes and case-law prohibiting and preventing sexual harassment;
- The types of conduct that can constitute sexual harassment;
- The remedies available for victims of sexual harassment;
- Strategies to prevent sexual harassment;
- Supervisors' obligation to report harassment;

- Practical examples of harassment;
- The limited confidentiality of the complaint process;
- Resources for victims of sexual harassment, including to whom they should report it;
- How employers must correct harassing behavior;
- What to do if a supervisor is personally accused of harassment;
- The elements of an effective anti-harassment policy and how to use it;
- The definition of “abusive conduct” under Government Code Section 12950.1(i)(2); and
- The elements of harassment based on gender identity, gender expression and sexual orientation.

Finally, any training must include questions that assess learning, skill-building activities to assess understanding and application of content, and hypothetical scenarios about harassment with discussion questions.

Connecticut

SSB 132, “An Act Combatting Sexual Assault and Sexual Harassment,” imposes significant changes to sexual harassment training requirements for employers. The bill takes effect October 1, 2019.

Sexual Harassment Training Requirements

Currently, employers with 50 or more employees are required to provide sexual harassment training to supervisors. The bill expands upon this obligation by requiring any employer with three or more employees to provide sexual harassment training and education to all employees. The bill also imposes certain sexual harassment training and education requirements on employers with fewer than three employees. The training must occur by October 1, 2020. However, employers that have already met the bill’s training requirements after October 1, 2018, are not required to provide training a second time.

The bill also requires employers to provide periodic supplemental training that updates all employees on the content of such training at least every 10 years. Further, the bill classifies an employer’s failure to provide the requisite training as a “discriminatory practice,” exposing noncomplying employers to legal liability.

The bill obligates the Connecticut Commission on Human Rights and Opportunities (CHRO) to develop and make available to employers a free, online training and education video or other interactive method that would fulfill the bill’s training requirements.

Sexual Harassment Notice Requirements

The bill also imposes additional notice requirements on employers. Currently, employers with three or more employees must post in a prominent and accessible place a notice stating that sexual harassment is illegal and listing the remedies available to victims. The bill now further requires employers to send a copy of this information to employees by email within three months of their hire if (1) the employer has provided an email account to the employee or (2) the employee has provided the employer with an email address. The email's subject line must include the words "Sexual Harassment Policy" or something similar. Additionally, if an employer has not provided an email account to employees, the employer must post the information regarding the illegality of sexual harassment and the remedies available to victims on the employer's website, if it has one. The employer may also comply with this provision by providing a link to the CHRO website.

Delaware

Effective January 1, 2019, employers with 50 or more employees must provide interactive sexual harassment training for all employees by December 31, 2019. Supervisors must receive additional training on their responsibilities and the retaliation prohibitions. Employers must provide training to all new employees and supervisors within one year of the commencement of their position.

Also effective January 1, 2019, each employer must distribute the Department of Labor's Sexual Harassment Notice to each new employee upon commencement of employment and to each existing employee by July 1, 2019. The notice explains sexual harassment, provides several examples, cautions against retaliation and gives instructions on filing a complaint with the Department of Labor.

Maine

Maine's 26 M.R.S.A §807 requires employers with 15 or more employees in the workplace to provide sexual harassment training to all employees. Training must be provided within one year of hire for new employees. Supervisors must be trained within one year of obtaining a supervisory position.

The Maine sexual harassment training law requires that the training include, at a minimum:

- A written notice of the illegality of sexual harassment;
- The definition of sexual harassment under Maine state law;
- A description of sexual harassment, using examples;
- The internal complaint process available to the employee;
- The legal recourse and complaint process available through the Maine Human Rights Commission;

- Directions on how to contact the Maine Human Rights Commission; and
- The protection against retaliation.

In addition, supervisors must receive additional training content on:

- The specific responsibilities of supervisory and managerial employees; and
- Methods that supervisors and managers must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Conclusion

Recent developments in connection with sexual harassment policy and training requirements, as articulated in various state and local legislation, simply highlight the dynamic, ever-changing nature of the employment law protections in the United States. In this regard, constant review and awareness of these developments permits corporate employers to be in compliance with the law and embrace what are considered to be best practices.

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