

## **Updated NYS Sexual Harassment Laws:**

Beginning in October 2018 Employers must adopt a sexual harassment prevention policy and provide training, or use a similar policy and training that meet or exceeds the law's minimum standards. While the state's draft model documents suggested employers would be required to train all employees by January 1, 2019, the final documents released October 1<sup>st</sup> provide that all employees must be trained by **October 9, 2019**, one year from the effective date of the law.

Model policies are available at <https://www.ny.gov/programs/combating-sexual-harassment-workplace>

## **Training Requirements**

Every employer in New York State is required to provide employees with sexual harassment prevention training. An employer that does not use the model training developed by the Department of Labor and Division of Human Rights must ensure that the training that they use meets or exceeds the following minimum standards.

The training must:

- be interactive
- include an explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights
- include examples of conduct that would constitute unlawful sexual harassment
- include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment
- include information concerning employees' rights of redress and all available forums for adjudicating complaints
- include information addressing conduct by supervisors and any additional responsibilities for such supervisors

Each employee must receive training on an **annual** basis, starting October 9, 2018.

## **From the FAQ**

### **Q2. What type of records must employers maintain to verify compliance?**

A2. No signed acknowledgement of having read the policy is required, but employers are encouraged to keep a signed acknowledgement and to keep a copy of training records. These records may be helpful in addressing any future complaints or lawsuits.

### **Q5. If an employer already has established investigative procedures which are similar, but not identical to those provided in the model, can the employer deviate from these specific requirements and remain compliant with the law?**

A5. Yes. But the investigative procedures that the employer will be using should be outlined in the employer's policy.

### **Q6. Does the complaint form need to be included, in full, in the policy?**

A6. No. Employers should, however, be clear about where the form may be found, for example, on a company's internal website.

## **Training**

### **Q1. Who is considered an Employee for the training requirement? And when does the training need to be completed?**

A1. "Employee" includes all workers, regardless of immigration status. Employee also includes exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers. All employees must complete the model training or a comparable training that meets the minimum standards by Oct. 9, 2019.

**Q2. How often must employees receive sexual harassment training?**

A2. Employees must be trained at least once per year. In subsequent years, this may be based on the calendar year, anniversary of each employee's start date, or any other date the employer chooses.

**Q3. How soon do new employees need to be trained?**

A3. As employers may be liable for the actions of employees immediately upon hire, the State encourages training as soon as possible. Employers should distribute the policy to employees prior to commencing work and should have it posted.

**Q4. If an employer has previously provided training that meets or exceeds the requirements, must employees be retrained?**

A4. Employees must receive training on an annual basis. If employees have already received training this year, but it did NOT meet all new requirements, employers need only provide supplemental training to ensure all requirements are met.

**Q9. What does "interactive training" mean?**

A9. New York State law requires all sexual harassment training to be interactive. Training may be online, so long as it is interactive. Examples of employee participation include:

- If the training is web-based, it has questions at the end of a section and the employee must select the right answer;
- If the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner;
- In an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
- Web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training

An individual watching a training video or reading a document only, with no feedback mechanism or interaction, would NOT be considered interactive.

**Q10. Is a live trainer required and does a trainer need to have a certification?**

A10. While a best practice for effective and engaging trainings, a live trainer is not specifically required. Live trainers may appear in person or via phone, video conference, etc. No certification is required and the State does not currently certify or license training providers.

**Q12. What happens if some employees fail to take the training despite an employer's best efforts to make it available, and to require everyone to take it?**

A12. Employers are required to ensure that all employees receive training on an annual basis. Employers may take appropriate administrative remedies to ensure compliance.