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September 5, 2018

## New York State Issues Model Sexual Harassment Prevention Policy and Training Module

On August 23, 2018, the New York State Department of Labor (the “DOL”), together with the New York State Division of Human Rights, issued in draft form a [model sexual harassment prevention policy](#), [model sexual harassment prevention training module](#), [model complaint form](#), a [list of frequently asked questions and corresponding answers](#), and guidance setting forth the minimum requirements for [sexual harassment prevention policies](#) and [trainings](#). These documents, subject to revision following an [open public comment period](#) that ends on September 12, 2018, were released as part of New York’s expanded protections against sexual harassment in the workplace. The expanded protections, discussed in our prior memorandum of May 10, 2018,<sup>1</sup> require employers in New York to provide all employees with annual sexual harassment prevention trainings and a written copy of a sexual harassment prevention policy.

### Sexual Harassment Prevention Policy

As discussed in the DOL’s guidance document, at a minimum, all sexual harassment prevention policies must:

- Prohibit sexual harassment consistent with the guidance documents issued by the DOL and provide examples of prohibited conduct;
- Clearly state that sexual harassment is a form of employee misconduct, as is supervisory or managerial personnel knowingly allowing such behavior to continue;
- Clearly state that sanctions will be imposed against individuals who engage in sexual harassment or supervisors who knowingly permit such harassment;
- Clearly state that retaliation against individuals who complain about, or who cooperate in an investigation or proceeding regarding, sexual harassment is prohibited and unlawful;
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;

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<sup>1</sup> For a more comprehensive discussion of the new state measures expanding protections against workplace sexual harassment, see Paul, Weiss Client Memorandum, “New Anti-Sexual Harassment Measures in New York State and New York City,” (May 10, 2018), available [here](#).

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- Include a complaint form;
  - Include information about any applicable federal or state statutes concerning sexual harassment and any remedies those statutes provide; and
  - Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints.

Employers must adopt the model policy or a policy that meets the minimum standards by October 9, 2018. Employers must also provide a copy of this policy, which should be in the language spoken by employees, in writing to each employee. Policies may be provided electronically, but employees must be able to access the policy during work time on a computer provided by their employer and be able to print a copy for their records.

### **Sexual Harassment Prevention Training**

At a minimum, an employer's sexual harassment prevention training program must be interactive, and must also:

- Include an explanation of sexual harassment consistent with the guidance documents issued by the DOL and provide examples of prohibited conduct;
- Include information about any applicable federal or state statutes concerning sexual harassment and any remedies those statutes provide;
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints; and
- Include information addressing conduct by supervisors and any additional responsibilities for supervisors.

Each employee must receive the model training or a comparable training that meets the minimum standards on an annual basis, starting on October 9, 2018; employers must also ensure that all employees receive training by January 1, 2019. As with the sexual harassment prevention policy, employers should provide the training in the language spoken by employees.

### **Key Takeaways for Employers Going Forward**

The new DOL guidance documents—including the model sexual harassment prevention policy, training module, and complaint form—may change following the open public comment period that ends on September 12, 2018. Given that the implementation date of October 9, 2018 is fast approaching, however,

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employers have the next month to review their sexual harassment prevention policies and trainings, and may want to consider updating or modifying them to ensure that they meet or exceed the minimum standards in the DOL's draft guidance.

In evaluating updates to their policies and trainings, employers in New York City may also be subject to the requirements of the recently enacted Stop Sexual Harassment in NYC Act (the "Act"), which requires employers with 15 or more employees to conduct annual sexual harassment prevention trainings for all employees employed in New York City.<sup>2</sup> The Act's requirements are more stringent than those required by the state measures—in addition to the DOL's mandatory minimum standards, the Act requires that trainings include information concerning bystander intervention.

New York City employers may satisfy the Act's requirements by developing an online interactive training module, provided that employers inform all employees of any internal processes available to them to address sexual harassment complaints. Employers must also maintain records of all such trainings (including signed employee acknowledgements) for a period of at least three years. The Act's training requirements will take effect on April 1, 2019.

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<sup>2</sup> The portions of the Act mandating employee trainings are available [here](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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