

Management Alert



Following State's Lead, New York City Council Passes "Stop Sexual Harassment in NYC Act"

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Seyfarth Synopsis: The New York City Council has passed, and Mayor Bill de Blasio is expected to sign, a package of eleven bills—together referred to as the Stop Sexual Harassment in NYC Act—that will require most private employers to conduct annual sexual harassment training. The legislation also extends the statute of limitations for filing claims of sexual harassment from one year to three, requires employers to display an anti-sexual harassment poster in common areas, requires the Commission on Human Rights to post certain information about sexual harassment, and expands the New York City Human Rights Law's coverage to all employers, regardless of the number of employees.

The "Stop Sexual Harassment in NYC Act," passed by the City Council on April 11, 2018, is a package of eleven bills designed to combat workplace sexual harassment. The Mayor is expected to sign the bill shortly. Following on the heels of the recently enacted [New York State](#) anti-sexual harassment legislation, the Act makes a number of significant changes to the law of sexual harassment applicable to employers in the City.

The provisions in the bill affecting private employers are summarized briefly below.

Mandatory Anti-Sexual Harassment Training

The [Act](#) will amend section 8-107 of the Administrative Code of the City of New York to require employers with 15 or more employees to conduct annual anti-sexual harassment training for all employees employed in New York City, including supervisory and managerial employees. Training will be required after 90 days of initial hire for employees who work more than 80 hours in a calendar year, whether or not they work on a full-time or part-time basis. For purposes of this subdivision, the term "employee" includes interns.

The legislation requires that the training be "interactive." While it need not be live or with an in-person instructor, it must qualify as participatory teaching "whereby the trainee is engaged in a trainer-trainee interaction, use of audio-visuals, computer or online training program, or other participatory forms of training as determined by the commission."

Training must, at a minimum, include the following: (1) an explanation of sexual harassment as a form of unlawful discrimination under city, state, and federal law; (2) a description of sexual harassment, including examples; (3) the employer's internal complaint process as well as the complaint process available through the City Commission on Human Rights, the State Division of Human Rights, and the Equal Employment Opportunity Commission; (4) a prohibition of retaliation and examples of what constitutes retaliation; (5) information concerning bystander intervention; and (6) the responsibilities of and actions that must be taken by supervisory and managerial employees in the prevention of sexual harassment and retaliation.

The legislation also requires that employers keep a record of all trainings and signed employee acknowledgements of attendance. The records must be retained for three years and be available, upon request, for inspection by the Commission.

The Commission is required to develop an online interactive training module that may be used by employers to satisfy the training component, provided that employers also inform all employees of internal reporting procedures. The module will be available for free to the public and must allow for electronic provision of certification.

The legislation also includes two novel additional provisions. First, “[a]n employee who has received anti-sexual harassment training within the required training cycle shall not be required to receive additional anti-sexual harassment training at another employer until the next cycle.” The legislation does not define “cycle,” but presumably it means calendar year. Second, any employer that is subject to training requirements in multiple jurisdictions may demonstrate that it is compliant with the legislation by submitting proof that it provides all employees with annual interactive anti-sexual harassment training that is compliant with the training standards set forth under sub-section (b).

This legislation will take effect April 1, 2019.

Sexual Harassment Poster

The [Act](#) amends section 8-107 of the City Code to require employers to display conspicuously an anti-sexual harassment rights and responsibilities poster in employee break rooms or other common areas. The Commission will design the poster, and each poster must be displayed in English and Spanish. Employers will also be required to distribute a sexual harassment information sheet, developed by the Commission, to new employees at the time of hire. This portion of the law takes effect 120 days after it is signed, provided that the Commission takes all actions necessary for its implementation.

Expansion of the Statute of Limitations

The Commission previously did not have jurisdiction over complaints filed more than one year after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence occurred. The [Act](#) amends section 8-109(e) of the City Code to give the Commission jurisdiction over claims of gender-based harassment filed within three years after the alleged harassing conduct occurred. This provision takes effect immediately upon the law’s enactment.

Increased Coverage

The [Act](#) amends 8-102(5) of the City Code to expand coverage of sexual harassment cases to employers with fewer than four employees. Previously, only employers with four or more employees were covered by the law. This amendment aligns the City Human Rights Law with the State law. This amendment takes effect immediately upon final enactment of the law.

Publicly Available Information

The [Act](#) adds section 8-132 to the City Code and requires the Commission to post resources about sexual harassment on its website. The information required includes: an explanation that sexual harassment is a form of unlawful discrimination, specific examples of sexual harassment, a description of the Commission’s complaint process, a list of alternate agencies for filing complaints, an explanation that retaliation is prohibited, and bystander intervention education.

What Happens Next?

The provision concerning anti-sexual-harassment training for private employers will likely have the biggest impact on employers. However, because this provision does not take effect until April 1, 2019, employers will have plenty of time to ensure they are in compliance. Once the Commission creates the model training, employers will be able to assess whether their current training materials satisfy the City requirements as well as the State requirements.

Those employers that do not already provide training will have to determine whether to utilize the Commission's model or institute a more tailored training program that still meets the training requirements. Employers in multiple jurisdictions should review their existing training programs, if any, to ensure that their New York City locations are compliant. Additionally, employers utilizing interns should assess whether their interns will require training.

The attorneys at Seyfarth Shaw LLP will present a webinar on the new City and State legislation on April 25, 2018 at 1:00 PM EDT. Details will be announced shortly. We are also available to provide any assistance with ensuring that you have robust policies in place regarding anti-harassment in the workplace and procedures to effectively respond to complaints. We can also provide interactive anti-harassment training tailored to your company's specific business and needs.

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