

# One Minute Memo®



## New York State Releases The Draft Model Anti-Sexual Harassment Policy, Training, and Complaint Form

By Anne Dana, Nila Merola, and Robert Whitman

**Seyfarth Synopsis:** In compliance with the New York State Anti-Sexual Harassment legislation passed earlier this year, the Office of Governor Andrew M. Cuomo has released drafts of the model sexual harassment policy, training and complaint form, as well as draft FAQs. The State is now seeking comments from the public on the proposed materials. Comments can be submitted via the website on or before September 12, 2018.

Earlier this year, New York State enacted comprehensive legislation targeting workplace sexual harassment. Our previous Management Alerts outlining the various requirements under the law are linked [here](#) and [here](#).

Under the law, the Department of Labor, in consultation with the Division of Human Rights, must produce a model sexual harassment prevention policy and a model sexual harassment prevention training program. Employers must either adopt the model policy and training program, or establish a policy and training program that equals or exceeds the minimum standards provided by the models. The sexual harassment policy must also include a complaint form for employees to report alleged incidents of sexual harassment internally.

On August 23, 2018, the Office of Governor Andrew M. Cuomo released the following draft documents, copies of which can be found [here](#):

- The Model Sexual Harassment Policy
- Minimum Standards for Sexual Harassment Prevention Policies
- Model Sexual Harassment Complaint Form
- Model Sexual Harassment Training
- Minimum Standards for Sexual Harassment Prevention Training

Also included alongside the above publications are draft [FAQs](#), which are also subject to public comment, and which address the proposed model sexual harassment policy and sexual harassment prevention training. The draft FAQs state that the sexual harassment policy must be in writing, but that employers may provide the policy to employees electronically **if** the employee can access the policy on a computer provided by the employer during work time and the employee can print a copy of the policy.

The draft FAQs also state that all employees (whether full-time, part-time or transient—including employees who work for just one day for an employer or an employee who works for just one day in New York) must complete sexual harassment training that is compliant with the law **before January 1, 2019**. One ambiguity in the proposed materials is whether employers that have already conducted anti-harassment training this year will need to provide new training before the January 2019 deadline. The draft FAQs could be read to require new training during that period if the previous training was not in compliance with the strictures of the new law. We are hopeful that the State will clarify this uncertainty during the comment period. The draft FAQs further provide that after January 1, 2019, every employee must complete the training annually, which may be on the calendar year, anniversary of each employee's start date, or any other date the employer chooses.

Moreover, the draft FAQs state that all new employees must complete sexual harassment prevention training within 30 calendar days of their start date. What still remains unclear under the draft FAQs is whether new employees who are hired after October 9, 2018 (the date the law goes into effect) will need to complete the training within 30 days—even if the 30 day window is prior to the January 1, 2019 deadline for existing employees. We are similarly hopeful that the State will clarify this uncertainty during the comment period.

The draft FAQs also attempt to clarify what the “interactive” requirement under the law means: it requires some form of employee participation, which may include “questions asked of employees,” “questions asked by employees,” a live trainer, or “require feedback.” Finally, the draft FAQs state that employers may take appropriate administrative remedies if employees refuse to take the training.

## Comment Period and Next Steps:

The State is now seeking comments from the public on the proposed materials and draft FAQs. Comments can be submitted via the [website](#) on or before September 12, 2018. Employers should consider how these proposed models and FAQ guidance may impact their businesses and whether they want to submit comments. For any questions regarding the proposed models and guidance, attorneys at Seyfarth Shaw LLP are available.

Employers should also start thinking about whether they want to adopt the model sexual harassment policy and model sexual harassment training, or whether they want to prepare customized policies and training programs (or update existing ones). Because the law goes into effect on October 9, 2018, employers will need to adopt the model sexual harassment policy or adopt a compliant policy on or before this date. In anticipation of these needs, Seyfarth Shaw attorneys are available to assist.

If you'd like further information, please contact [Anne Dana at adana@seyfarth.com](mailto:adana@seyfarth.com), [Nila Merola at nmerola@seyfarth.com](mailto:nmerola@seyfarth.com), or [Robert Whitman at rwhitman@seyfarth.com](mailto:rwhitman@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

Seyfarth Shaw LLP One Minute Memo® | August 27, 2018

©2018 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.