

# New York Sexual Harassment Training Update

*First Deadline Approaches  
with More Changes on the Way*

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# Workplace Sexual Harassment Laws

## » Title VII (federal)

- **Covers employers with 15+ employees**
- **Employees can file claims with the U.S. Equal Employment Opportunity Commission**
- **EEOC recently demonstrated intentional focus on redressing sexual harassment**

## » New York Human Rights Law

- **Prohibits sexual harassment by all employers (with as few as 1 employee)**
- **Employees can file claims with the New York State Division of Human Rights**
- **Employers can now face claims of sexual harassment by non-employees (e.g., consultants, vendors, independent contractors)**

# “Old” Requirements for All NY Employers

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Included in 2018 New York State Budget Legislation

Written Policy

**October 9, 2018**

Annual Training

**October 9, 2019**

# New York State's Website

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PROGRAMS

## Combating Sexual Harassment in the Workplace

SHARE A NATION-LEADING A   

### A NATION-LEADING ANTI-SEXUAL HARASSMENT AGENDA

Governor Cuomo and New York State are leading the nation with new laws to combat sexual harassment in the workplace as part of his [2018 Women's Agenda for New York: Equal Rights. Equal Opportunity.](#)

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<https://www.ny.gov/programs/combating-sexual-harassment-workplace>

# Sexual Harassment Training

- State's original deadline for training all current employees was January 1, 2019
- Revised to October 9, 2019, and annually after that
- Annual training can be based on calendar year, employee anniversary date, or other date (e.g., October 9<sup>th</sup>)
- No specific time period for training new employees, but the State encourages training as soon as possible

# Sexual Harassment Training

**Under New York State law, annual training must be INTERACTIVE and include:**

- An explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- Examples of conduct that would constitute unlawful sexual harassment;
- Information about the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- Information concerning employees' rights of redress and available forums for adjudicating complaints; and
- Information addressing conduct by supervisors and any additional responsibilities for such supervisors.

**Note: There is no specific time requirement for the training.**

# What is “Interactive” Training?

## **NYS Examples** 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.”**





**“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.”**



# NYS Model Training

- PowerPoint Presentation with 32 slides
- Training Script
- Sexual Harassment Case Studies (Additional 66 slides)
- Not Updated Since October 2018

# Should We Use the Model Training?

## » Pros

- **Should satisfy NYS requirement**
- **Quick and cheap**
- **Available in other languages**

## » Cons

- **Someone still has to present it**
- **Relying on NYS to update content\***
- **Alternative approaches might be more effective at **ACTUALLY PREVENTING SEXUAL HARASSMENT****

\*DOL now must re-evaluate and update model policies and training programs every 4 years beginning in 2022

# ***New Requirements for All NY Employers***

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Included in July 2019 Legislation

Distribution

Primary Language

**August 12, 2019**

# Distribution Requirements

- Must give each employee a copy of your sexual harassment prevention policy at each training session
- Must also provide written copy of information presented at training

# Primary Language Requirement

- Policy and written copy of information presented must be in employee's primary language if NYS has model forms in the language

- Current languages:

Bengali  
Chinese  
Haitian Creole  
Italian

Korean  
Polish  
Russian  
Spanish

**Does the training have to be presented in the employee's primary language?**



**“Yes. Employers *should* provide employees with training in the language spoken by their employees.... When a template training is not available from the State in an employee’s primary language, the employer may provide that employee an English-language version. However, as employers may be held liable for the conduct of all their employees, **employers are strongly encouraged to provide a policy and training in the language spoken by the employee.”****





# Workplace Harassment Law in NYS

Amendments in effect beginning October 11, 2019

- Eliminate long-standing “severe or pervasive” standard
- Unlawful = “subjects an individual to inferior terms, conditions or privileges of employment because of the individual’s membership in one or more of these protected categories”
- Failure to make a complaint is not “determinative”
- Employee need not “demonstrate the existence of an individual to whom the employee’s treatment must be compared”
- Affirmative defense = “harassing conduct does not rise above the level of what a **reasonable victim** of discrimination with the same protected characteristic would consider **petty slights or trivial inconveniences**”

# New Penalties

- Punitive Damages (private employers only) with no statutory cap
- Mandatory Attorneys' Fees to prevailing plaintiff (previously discretionary and only for sexual harassment cases)
- Defendant can only recover attorneys' fees upon showing that the case was "frivolous"



# Final Thoughts

- There will be more administrative claims and litigation
- Employers will lose more often and spend more
- Preventing harassment at work is now more critical than ever
- Still no magic solution
- Training is probably best and most cost-effective approach
- Plan to exceed NYS requirements
- Don't ignore other forms of harassment (e.g., race, age, national origin)



**Thanks for your time!**

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**Questions?**

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