

NY Sexual Harassment: You Must Act (Right) Now!

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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

- Covers employers with 4+ employees
- But, 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)

New Requirements for All NY Employers

Included in New York State Budget Legislation

Written Policy

October 9, 2018

Annual Training

October 9, 2019

New York State's Website

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.](#)

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

NYS Model Policy

- 8 pages long, single spaced (with footnotes)
- Improved overall from initial public draft
- No longer references “zero tolerance”
- One-size fits all; not tailored based on industry
- Only covers New York State law (not NYC requirements)
- Notable emphasis on outside reporting
- Remove footer language

Policy Options

- “You may choose to modify the policy to reflect the work of your organization and industry specific scenarios or best practices.”
- Must meet required minimum standards.
- Can distribute on paper or electronically.

Minimum Standards Checklist

- Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights.
- Provide examples of prohibited conduct.
- Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws.
- Include a complaint form.
- Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties.
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially.
- Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.
- Clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights.

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Should We Use the Model Policy?

» Pros

- Guaranteed to satisfy state requirement
- Quick and cheap
- Will be available in other languages

» Cons

- Might not fit with other existing policies (e.g., other forms of discrimination/harassment)
- Might over-encourage external reporting
- Alternative approaches might be more effective at actually deterring/redressing sexual harassment

Make sure to obtain acknowledgment that employee has received and reviewed the policy.

NYS encourages this, but did not include acknowledgment on model policy.

Model Complaint Form

- Revised form less cumbersome than draft version
- Less formal wording
- Eliminates some questionable items:
 - home contact information
 - whether employee has filed lawsuit or administrative claims
- Asks whether complainant would like employer to “work with” their attorney
- Remove footer language
- Instruction page?

Model Complaint Form for Reporting Sexual Harassment



Combating Sexual Harassment

[Name of employer]

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to [person or office designated; contact information for designee or office; how the form can be submitted]. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method: Email Phone In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ Date: _____

Instructions for Employers

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.

Model Policy Notice



Sexual Harassment Prevention Policy Notice



Sexual harassment is against the law.

All employees have a legal right to a workplace free from sexual harassment, and **[Employer Name]** is committed to maintaining a workplace free from sexual harassment.

Per New York State Law, **[Employer Name]** has a sexual harassment prevention policy in place that protects you. This policy applies to all employees, paid or unpaid interns and non-employees in our workplace, regardless of immigration status.

If you believe you have been subjected to or witnessed sexual harassment, you are encouraged to report the harassment to a supervisor, manager or [other person designated] so we can take action.

Our complete policy may be found: _____

Our Complaint Form may be found: _____

If you have questions and to make a complaint, please contact:

[Person or office designated]

[Contact information for designee or office]

For more information and additional resources, please visit:

www.ny.gov/programs/combating-sexual-harassment-workplace

Sexual Harassment Training

- State's original deadline for training all current employees was January 1, 2019
- New deadline is October 9, 2019, and annually after that
- Annual training can be based on calendar year, employee anniversary date, or other date (e.g., October 9th)
- Originally required that new employees be trained within 30 days
- No longer a specific time period for training new employees, but the State encourages training as soon as possible

Sexual Harassment Training

Under New York law, beginning October 9th, 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?

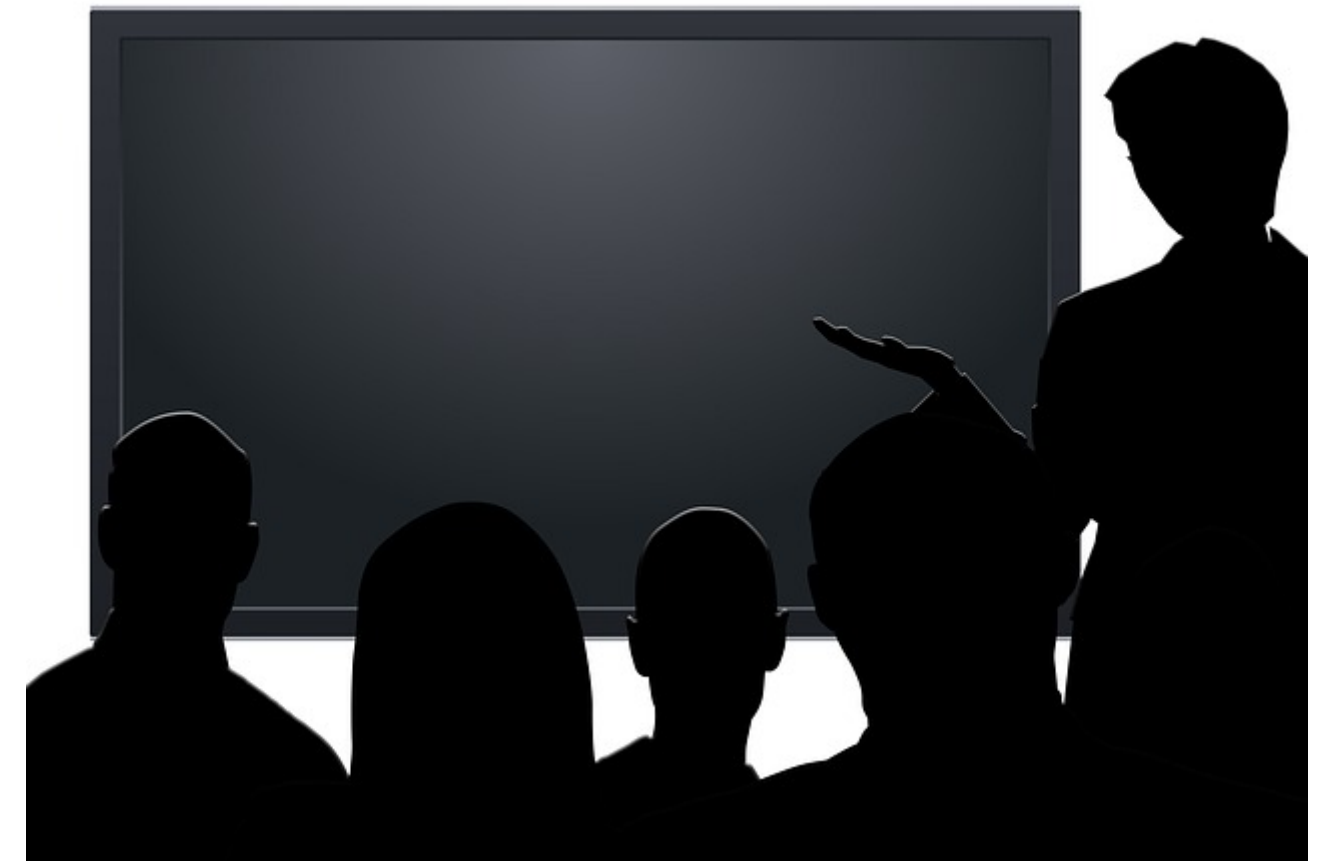
NYS Examples include:

- 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)

Should We Use the Model Training?

» Pros

- Should satisfy state requirement
- Quick and cheap
- Will be available in other languages

» Cons

- Someone still has to present it
- No video or images included
- Might be giving exact same training each year
- Alternative approaches might be more effective at actually deterring/redressing sexual harassment



Thanks for your time!



Questions?

NY Sexual Harassment

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