

Reviewing Your New York Anti-Harassment Policies

New Protections and Updated Requirements

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Anti-Harassment Laws

- Title VII
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Genetic Information Nondiscrimination Act
- New York State Human Rights Law
- New York City Human Rights Law

NYS Protected Characteristics

- Age
- Race
- Creed
- Color
- National origin
- Sexual orientation
- Gender identity or expression
- Prior arrest / conviction record
- Citizenship / immigration status
- Military status
- Sex
- Disability
- Predisposing genetic characteristics
- Pregnancy-related condition
- Familial status
- Marital status
- Status as victim of domestic violence

NYC Protected Characteristics

- Age
- Arrest or conviction record
- Caregiver status
- Color
- Credit history
- Disability
- Gender
- Gender Identify
- Immigration status
- Marital or partnership status
- Military service
- National origin
- Pregnancy
- Race
- Religion/creed
- Salary history
- Sexual and reproductive health decisions
- Sexual orientation
- Status as victim of domestic violence, sexual violence, or stalking
- Unemployment status

*Effective Nov. 22, 2023, will include Height and Weight

NY Harassment Standard

- 2019 Amendments made it easier to prove unlawful workplace harassment in New York
- Eliminated 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.”



NYS Requirements

- All employers must have written sexual harassment policy and provide annual sexual harassment training to all employees
- No express requirement for policy or training regarding other forms of harassment

Sexual Harassment Policy – Required Elements

**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 that would constitute unlawful sexual harassment.

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.

Primary Language

- Policy and written copy of information presented must be in employee's primary language if NYS has model forms in the language
- Available languages: Albanian, Bengali, Chinese, English, French, Greek, Haitian Creole, Hindi, Italian, Japanese, Korean, Polish, Russian, Spanish, Urdu, Yiddish

NYS Model Policy

- State required to review every 4 years
- First review in 2022, with new policy in 2023
- Employers not required to use model policy
- Uncertainty over impact of new model policy
- “Employers are encouraged to tailor this policy to their individual needs, though as a minimum standard, no section in this policy should be omitted.”

Changes to Model Policy

- Advises that sexual harassment need not be severe or pervasive to be illegal and that intent is irrelevant
- Expands on issues of gender, gender identity, and gender expression, as well as sexual orientation
- Incorporates bystander intervention methods*
- Addresses remote employees directly
- Attempts to expand the policy to harassment based on other protected characteristics
- Updates time for filing sexual harassment claims with DHR
- References new hotline: 1-800-HARASS-3

Other Forms of Harassment

- New model policy attempts to cover harassment based on other protected characteristics
- “While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same.”
- “The prevention policies outlined above should be considered applicable to all protected classes.”

Other Policies

- Equal Employment Opportunity
- Non-Discrimination
- Anti-Harassment
- Reasonable Accommodations
- Affirmative Action



Implementation Considerations

- Is sexual harassment enough?
- How many?
- What to include?
- Where do your employees work?
- Do policies make a difference?

Anti-Harassment

- Prohibit unlawful harassment unequivocally
- Don't focus too narrowly on legal standards
- Do include protected characteristics
- Use examples
- Address reporting and investigation
- Identify key contacts
- Zero tolerance doesn't have to mean automatic termination

Annual Training

- Originally required by October 9, 2019
- Annual training can be based on calendar year, employee anniversary date, or other date (e.g., October 9th)
- No specific time period for training new employees, but the State encourages training as soon as possible
- NYC has online training program compliant with NYS requirements

Training Materials



- 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

Training Considerations

- Expanding training beyond sexual harassment “involves” everyone
- Not just men vs. women
- Focus should be on changing behavior, not just checking off a box
- Still limited evidence on how effective training can be
- Regardless, probably the best preventative action possible, other than . . .

Better Management/Supervision

- Supervisors can make a difference
- No inappropriate conduct can be tolerated
- Very thin line between harassment and lawful conduct
- Focus on stopping problematic behavior before it gets worse

Questions?



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