

NEW YORK'S BUDGET BILL CREATES NEW AND SIGNIFICANT OBLIGATIONS FOR EMPLOYERS

Labor and Employment Alert
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Through the FY 2019 budget bill, New York's lawmakers have taken on the headline-grabbing issues of sexual harassment in the workplace, mandatory arbitration, confidentiality, and the use of taxpayer funds to compensate sexual harassment complainants. The budget bill contains a host of provisions that the Governor described as "the strongest and most comprehensive anti-sexual harassment protections in the nation, ending once and for all the secrecy and coercive practices that have enable this unacceptable behavior for too long." As a result, there are significant new obligations for private and public employers – including a new annual training requirement for employees.

1. Mandatory Anti-Harassment Policies and Annual Training Required of All New York Employers

The bill amends the New York Labor Law to require all employers to adopt a sexual harassment prevention policy, and provide all employees with annual harassment prevention training. The Department of Labor, in consultation with the Division of Human Rights, will first develop both a model policy and a model sexual harassment prevent training program. Employers can choose whether to adopt the models promulgated by the Department, or develop their own, so long as the policy and training equal or exceed the minimum standards contained in the models.

These sexual harassment prevention requirements will go into effect 180 days after the bill is enacted. Failure to comply will be a violation of the Labor Law, subject to fines and other penalties.

2. Employer Liability for Sexual Harassment of Non-Employees

Through an amendment to the New York Executive Law, the bill provides that employers may be held liable for sexual harassment of non-employees such as contractors, vendors, and consultants, if the employer knew or should have known that the individual was subjected to sexual harassment at the employer's workplace and failed to take appropriate corrective action. This provision is consistent with pre-existing hostile work environment obligations that applied to employers, but the codification of the rule amplifies employers' obligations to create a hostile-free work environment.

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This provision is to take effect immediately upon signing.

3. Mandatory Arbitration Clauses Prohibited for Sexual Harassment Claims

By adding a new section to Article 75 of the New York Civil Practice Law and Rules, the bill purports to prohibit and render null and void mandatory arbitration clauses used to “resolve any allegations or claim of an unlawful discriminatory practice of sexual harassment,” except where inconsistent with federal law. Whether and to what extent this provision will be enforceable under Supreme Court precedent interpreting the Federal Arbitration Act will undoubtedly be the subject of subsequent litigation.

This provision is to take effect 90 days after it is enacted.

4. Mandatory Non-disclosure Provisions Prohibited

The bill amends the New York General Obligations Law and the New York CPLR to prohibit the parties to a settlement or other resolution of a sexual harassment claim from agreeing to the inclusion of terms that would “prevent the disclosure of the underlying facts and circumstances” related to such claim, unless the non-disclosure provision is the complaining party’s preference. Any such confidentiality provisions that are agreed to must apply to both parties. Further, a complainant/plaintiff must be given 21 days to consider whether to accept the proposed confidentiality language, and then seven days to revoke his or her acceptance of it. Any agreed-upon confidentiality provisions only become effective after the seven day revocation period has expired. This provision does not purport to have any retroactive effect.

This provision is to take effect 90 days after it is enacted.

5. Reimbursement of Public Funds Paid to Sexual Harassment Plaintiffs

The bill amends the New York Public Officers Law to require public employees or officers --whether elected or appointed, and whether paid or unpaid-- who are found to be personally liable for sexual harassment to reimburse the government for taxpayer funds used to make payments to the plaintiff(s). There are important caveats and limitations in the law, however. For example, a public official’s reimbursement obligations is limited to his or her “proportionate share” of the liability. And the obligation only arises with respect to “final judgments” and “adjudicated awards.”

This provision is to take effect immediately upon its enactment.

6. New Language in State Contract Bids

A new provision of the New York State Finance Law will require every bidder on a competitive state contract for the provision of a service, work or goods, to certify that it has implemented a written policy addressing sexual harassment prevention in the workplace, and provides for the annual sexual harassment prevention training of its employees. Where competitive bidding is not required, the language may nevertheless be required in bids as determined by the applicable state agency or official. Failure to include the required language in a bid will result in the bid not being considered.

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This provision is to take effect on January 1, 2019.

If you have any questions concerning these requirements, or if you would like our attorneys to provide harassment and discrimination training to your workforce, please contact any one of our Labor and Employment attorneys.

