

NEW YORK STATE DEPARTMENT OF LABOR PUBLISHES PROPOSED CHANGES TO SEXUAL HARASSMENT PREVENTION MODEL POLICY

Hodgson Russ Labor & Employment Alert
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The New York State Department of Labor (“NYSDOL”) recently published an updated model Sexual Harassment Prevention Policy. The public has until February 11, 2023, to provide comments on the proposal, after which NYSDOL will adopt a final version of the policy.

As we previously reported, effective October 9, 2018, all New York employers were required to adopt and disseminate written sexual harassment prevention policies that meet or exceed the minimum standards set forth in §201-g of the New York Labor Law, or adopt and disseminate the model policy published by the NYSDOL. Under the terms of the statute, the NYSDOL is required to review and revise its model policy every four years to account for changes in the law and workplace.

There are some significant additions and/or revisions contained in the 2023 draft model policy (as compared to the 2018 version), and include the following:

- Clarifies that harassment can happen remotely.
- Defines different gender identities (cisgender, transgender, and non-binary).
- Reaffirms that gender-based harassment and discrimination are not limited to sexual contact or suggestive conduct, and includes gender stereotyping and treating employees differently because of their gender identity.
- Provides many additional examples of sexual harassment, discrimination, and retaliation across a broader spectrum of industries.
- Includes bystander intervention methods to encourage employees to intervene if they witness harassment in the workplace.
- Explains that harassment does not need to be severe or pervasive (the federal standard) to be unlawful.
- Clarifies that intent is not a defense to harassment and discrimination.
- Clarifies that whether conduct or behavior is unlawful is based on an objective standard – viewed from the standpoint of a reasonable victim.
- Clarifies that harassment exists where the conduct or behavior rises above “petty slights and trivial inconveniences.”

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- Adds information regarding the New York State Division of Human Rights' (NYSDHR) sexual harassment hotline.
- Clarifies that retaliation may include the public disclosure of personnel files in retribution for engaging in protected activities.
- Revises the "Investigation" section to provide that employers (and/or their investigators) must exercise "sensitivity" in handling complaints, and replaces a 30-day investigation timeframe with an obligation to complete the investigation "as soon as possible."
- Updates the time to report a claim to the NYSDHR from one to three years.
- Clarifies that discrimination based on any of the protected classes is prohibited.
- Explains that complaints to the NYSDHR can be completed online.
- Re-emphasizes supervisors' and managers' obligation to report harassment and discrimination.
- Provides an expanded explanation that the policy applies to both employees and non-employees (independent contractors, vendors, gig workers, consultants and other service providers).

New York employers will need to revisit their sexual harassment policies once the NYSDOL adopts a final revision of the proposed model policy. As was the case in 2018, employers will have the option of either adopting the model policy or drafting an individual policy that meets or exceeds the minimum standards contained in the NYSDOL's final version model policy.

If you have any questions about the NYSDOL's draft model policy or how your harassment prevention policy will need to be revised, please contact [Glen P. Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), [Kinsey A. O'Brien](#) (716.848.1287), or any other member of our [Labor & Employment](#) Practice.