

NEW YORK STATE DEPARTMENT OF LABOR ADOPTS UPDATED MODEL SEXUAL HARASSMENT PREVENTION POLICY

Hodgson Russ Labor & Employment Alert
April 26, 2023

On April 11, 2023, the New York State Department of Labor (“NYSDOL”) adopted an updated model Sexual Harassment Prevention Policy. As we previously [reported](#), the NYSDOL first published a proposed revised version of the model policy for public comment in January 2023. The adopted model policy features several revisions from the model policy’s 2018 version, including many of the revisions originally proposed in January.

By way of background, New York Labor Law § 201-g, which was enacted in 2018, requires the NYSDOL, in consultation with the New York State Division of Human Rights (“NYSDHR”), to review and update the State’s model policy every four years. To that end, the NYSDOL has now adopted an updated model policy, which includes a host of revisions.

The following are key revisions set forth in the 2023 adopted model policy:

- Clarifies that harassment can occur remotely;
- Defines various gender identities (i.e., cisgender, transgender, non-binary);
- Defines sexual harassment as “gender-based” discrimination;
- Reaffirms that sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature;
- Establishes that gender stereotyping and treating employees differently based on their gender identity constitute gender-based harassment and discrimination;
- Clarifies that intent is not a defense to harassment and discrimination;
- Establishes that harassing conduct need not be severe or pervasive to constitute sexual harassment;
- Provides numerous examples of sexual harassment, discrimination, and retaliation across a broader spectrum of industries;
- Reaffirms that harassment exists where the improper conduct or behavior comprises more than “petty slights or trivial inconveniences”;
- Includes information about the new NYSDHR sexual harassment hotline;

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- Includes a new provision directing supervisors and managers to “accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive and free from retaliation,” both during the investigation, as well as after the investigation has concluded;
- Provides five methods for bystander intervention;
- Establishes that the model policy is applicable to all protected classes as defined under the New York State Human Rights Law;
- Clarifies that retaliation may include publicly releasing employee personnel files;
- Requires investigations to be handled with sensitivity toward those participating;
- Replaces the 30-day investigation timeframe with an obligation to complete the investigation “as soon as possible”; and
- Reaffirms the NYS Legislature’s expansion of the time to file a complaint with NYSDHR from within one year, to within three years, of the harassment.

While employers need not adopt the model policy precisely as written, they must ensure that the policy they adopt meets or exceeds the following minimum standards set forth by NYSDOL. These standards require each employer’s policy to:

- Prohibit sexual harassment consistent with NYSDOL guidance;
- 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; and
- 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.

In addition to announcing the updated model policy, the NYSDOL released new training materials that fulfill the New York Labor Law’s annual sexual harassment prevention training requirement. These materials include a 54-minute video that contains eight case studies, and a script and slide deck from the video, as well as a form that enables employees to answer questions regarding the case studies, so that the training will meet the statute’s “interactivity” requirement. The revisions to the training materials track the changes in the updated model policy.

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New York employers should review their sexual harassment prevention policies and consider whether to make any revisions in light of the updated model policy. Employers in New York should also review and consider any necessary updates to their annual sexual harassment prevention training based on the NYSDOL's revised training materials. If you have any questions about the NYSDOL's updated model policy, or would like counsel regarding necessary revisions to your current policy or training materials, 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](#).