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New York Updates Sexual Harassment Prevention Model Policy and Training Materials

In 2018, New York became one of the first states to enact legislation requiring employers to provide all employees with annual sexual harassment prevention training and to maintain a sexual harassment prevention policy that meet or exceed certain minimum statutory standards. The New York State Department of Labor (NYSDOL), in consultation with the New York State Division on Human Rights (NYSDHR), recently made significant revisions to its model Sexual Harassment Prevention Policy and training materials, making it necessary for employers to take action.

Updated Model Policy

While the underlying statutory requirements have not changed, the NYSDOL recently finalized revisions to its model Sexual Harassment Prevention Policy, making substantial changes to its old model. Key revisions in the recently published model policy include:

- adding language that explains that sexual harassment does not need to be severe or pervasive to be illegal;
- defining sexual harassment as a form of "gender-based" discrimination, and explaining gender diversity (including definitions of "cisgender," "transgender" and "nonbinary");
- explaining that the intent of behavior is not a defense and that conduct is evaluated objectively from a reasonable victim's standpoint;
- adding a section on bystander intervention;
- addressing harassment in the remote workplace;
- updating examples of conduct that may constitute sexual harassment, including those in the context of the remote workplace and relating to gender expression;
- outlining the responsibility of supervisors and managers to report harassment and discrimination and to be mindful of the impact of investigations;
- supplementing examples of retaliation (e.g., labeling an employee "difficult" or excluding an employee from projects);
- providing information about the NYSDHR's new sexual harassment hotline; and
- clarifying that the New York State Human Rights Law protects against discrimination based on all protected classes.

Updated Training Materials

In addition to updating its model harassment prevention policy, the NYSDOL enhanced its mandatory training toolkit to align with the revised model policy. The updated training materials include new case studies and examples of how sexual harassment is affected by remote work and other issues. Other key revisions to the model training materials include:

- instructing trainers to provide a warning that the "subject matter can be sensitive or difficult for some employees, including those that might have experienced harassment, discrimination or violence in the past";

- recommending that trainers make clear to those attending that anyone needing to step out briefly on behalf of their mental health may do so;
- adding a section addressing gender identity that includes defining "cisgender," "transgender" and "nonbinary";
- setting forth additional case scenarios that focus on sex stereotyping, remote work and gender identity; and
- providing examples of potential methods of bystander intervention.

As part of its revisions to the training materials, the NYSDOL also issued a new training video, which employers can use when conducting their annual trainings. Employers should note, however, that the video alone is not considered interactive and would not satisfy New York's requirement that the training be interactive.

What Should Employers Do Now?

The NYSDOL's revisions to its model policy and training materials are significant. As such, employers should review their handbooks and consider whether they should update their anti-harassment policies. In addition, employers should review their harassment prevention training materials, make sure they comply with New York's requirements and, most importantly, ensure that employees are timely trained on an annual basis. Employers with any questions about how the NYSDOL's revisions affect their policies and training materials should speak with legal counsel for guidance.

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