



NYS Workplace Anti-Harassment Amendments (“NYS Act”) May 2018

On April 12, 2018, the New York State budget was signed by the Governor and included several measures regarding sexual harassment in the workplace that apply to private employers:

Independent Contractors and Vendors

<p>How does the NYS Act expand the definition of workplace sexual harassment?</p>	<p>Under the NYS Act, it is now an unlawful discriminatory practice for an employer to permit sexual harassment of non-employees in its workplace. Employers may be held liable to a “non-employee” for sexual harassment in its workplace when the employer, its agents or supervisors <u>knew or should have known</u> about the harassment and the employer failed to take “immediate and appropriate corrective action”.</p> <p>“Non-employees” include contractors, subcontractors, vendors, consultants or other persons providing services under a contract, or is an employee of such contractor, subcontractor, vendor, consultant or other person.</p> <p>The extent of the employer’s control with respect to the conduct of the harasser will be considered.</p> <p><i>This law is effective immediately.</i></p>
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Sexual Harassment Training

<p>Does the NYS Act now require private employers to conduct sexual harassment training?</p>	<p>Yes, the New York State Department of Labor (the “NYS DOL”) will produce an interactive sexual harassment prevention training program, which will include an explanation of sexual harassment, examples of prohibited conduct, information concerning federal and state law and remedies available to victims, and information on employees’ rights and available forums for adjudicating complaints.</p>
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	<p>The program will also address conduct by supervisors and any additional responsibilities for such supervisors.</p> <p>Employers must provide this sexual harassment prevention training program (or establish their own program that meets or exceeds these minimum standards) on an annual basis to all employees.</p> <p><i>This law is effective October 9, 2018.</i></p>
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Employee Notice Requirements

<p>What employee notices are required by the NYS Act?</p>	<p>The NYS DOL will create a model sexual harassment prevention policy (along with guidance documents) for employers, which will:</p> <ul style="list-style-type: none">▪ Prohibit sexual harassment and provide examples of prohibited conduct,▪ Include information concerning the federal and state law and remedies available to victims and state that there may be applicable local laws,▪ Include a complaint form,▪ Include a procedure for timely and confidential investigation that ensures due process for all parties,▪ Inform employees of their rights and available forums for adjudicating complaints,▪ Clearly state that sexual harassment is misconduct and that sanctions will be enforced against harassers and against supervisory and managerial personnel who knowingly allow such behavior to continue, and▪ Clearly state that retaliation is unlawful. <p>Employers must adopt this model policy or establish their own policy that meets or exceeds these minimum standards.</p> <p>The written policy must be provided to all employees.</p> <p><i>This law is effective October 9, 2018.</i></p>
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Claims of Sexual Harassment

<p>How does the NYS Act impact the settlement of a claim and severance agreements?</p>	<p>Employers are prohibited from requiring nondisclosure provisions in any settlement, agreement or other resolution of sexual harassment claims, unless the condition of confidentiality is the complainant’s preference (and such preference must be included in the agreement).</p> <p>A complainant must be given 21 days to consider such condition of confidentiality, and the complainant may revoke the agreement up to 7 days after signing the agreement. The agreement is not effective until the end of the 7-day revocation period.</p> <p><i>This law is effective July 11, 2018.</i></p>
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No Arbitration

<p>How else might the NYS Act impact an employer’s policies and/or agreements?</p>	<p>The new law generally prohibits the inclusion of a mandatory arbitration clause in any contract to resolve any allegation or claim of sexual harassment.</p> <p><i>This law is effective July 11, 2018.</i></p>
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NYS Contractors and Subcontractors

<p>How does the NYS Act affect NYS contractors and subcontractors?</p>	<p>Bidders for NYS contracts where competitive bidding is required by law, rule or regulation, or as requested by a department, agency or official, will now need to affirm “under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at minimum, meet the requirements of section 201(g) of the Labor Law.”</p>
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	<p>This statement will be deemed to have been authorized by the board of directors of the bidder.</p> <p>If a bidder cannot make the foregoing statement, the bidder will have to furnish with its bid a signed statement that details the reasons it cannot make the statement.</p> <p><i>This law is effective January 1, 2019.</i></p>
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