

April 11, 2019

New York City Issues Guidance on Mandatory Anti-Sexual Harassment Training Requirements and Model Training

Employers Must Provide Training by December 31, 2019 and on an Annual Basis Thereafter

SUMMARY

Last year, as we previously reported, New York City enacted the Stop Sexual Harassment in New York City Act (the “Act”), a package of 11 bills aimed at combatting sexual harassment in the workplace. Among the Act’s provisions was the requirement that employers with 15 or more employees conduct an annual, interactive anti-sexual harassment training for all employees. The training requirement became effective on April 1, 2019. That same day, the New York City Human Rights Commission (the “Commission”) made available on its website a model online training that employers may adopt wholesale. On April 1, the Commission also released updated FAQs (available [here](#)) that provide guidance on the Act’s training requirement. The FAQs state that the Commission’s model training meets New York State’s requirements for sexual harassment training, which we summarized in memoranda available [here](#) and [here](#). Employers are required to retain a record of all trainings and signed employee acknowledgements.

SIGNIFICANT PROVISIONS IN THE “STOP SEXUAL HARASSMENT IN NYC ACT”

Apart from the training requirement, the Act extends the statute of limitations for gender-based harassment under the New York City Human Rights Law from one year to three years. New York City employers also must provide new hires with anti-harassment handouts and display an Anti-Sexual Harassment Rights and Responsibilities poster in English and Spanish in a conspicuous location. The handout and poster are available on the Commission’s website.

THE COMMISSION'S TRAINING PROGRAM

On April 1, the Commission issued, as previously promised, an online training that satisfies the mandatory training requirements of the Act. The training module, which was developed in coordination with the New York State Division of Human Rights and Department of Law, also meets New York State's training requirements. The online module training—which is approximately 45 minutes long—is accessible via a web-based link and has 164 click-through slides consisting of video and audio narration presented by a narrator and voice-over actors. The training states that most of the stories it uses as examples are “based on real cases of sexual harassment.” To satisfy the requirement that the training be interactive, the employee must answer several questions based on the examples used throughout the training. At the completion of the training, the employee receives a certificate that the employer is required to collect and maintain for three years.

THE COMMISSION'S FAQs

Which Employees Must Be Trained. “Employees” include short-term and part-time employees, as well as independent contractors, who have worked more than 80 hours in a calendar year and for at least 90 days for the employer. If an employee or independent contractor was trained at a different employer during the calendar year, they do not need to be retrained, but employers are required to maintain records to substantiate such training.

New York City Nexus. The FAQs state that if an employee “is connected to New York City in any way, they must be trained,” including employees who work or will work in New York City, employees who work “a portion of their time in New York City,” and employees who are “based elsewhere but interact[] with other employees in New York City, even if they are not physically present in the City.” This interpretation is notable given the statute does not expressly address the training requirements for employees who are located out-of-state. Instead, the statute provides that an “employer that is subject to training requirements in multiple jurisdictions may assert that it is compliant” by providing annual training that meets the minimum Act training requirements. While the Commission’s FAQs do not carry the force of law, they represent the current views of the Commission and bear consideration. An example in which the expanded reach of the FAQs might have some appeal to a court is a scenario in which a NYC-based employee has a New Jersey-based supervisor; if that person is harassing him or her, the employee may argue that the failure to train the New Jersey supervisor was unlawful. The Commission’s position is similar to that taken by the NYS Department of Labor, which FAQs state that “[e]mployers are required to ensure that *all* employees receive training,” including part-time, as well as “temporary [and] transient employees” who only “work[] for one day for the employer” or “work[] for just one day” in New York.

Deadlines for Completion of Annual Training Requirements. The FAQs state that “as of April 1, 2019, employers are required to train every employee each calendar year, and by December 31, 2019,

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employers must have provided initial training to all of their employees.” The annual training requirement “can be based on the calendar year, anniversary of the employee’s start date, or any other date the employer chooses.” The FAQs state that employers should provide training to new staff “as soon as possible upon hire.”

Vendor-Provided Training. Employers may use their own training content or that of a third-party vendor, provided that the training includes the elements outlined in NYC Local Law 96, which the FAQs summarize as: “1. An explanation of sexual harassment as a form of unlawful discrimination under local law; 2. A statement that sexual harassment is also a form of unlawful discrimination under state and federal law; 3. A description of what sexual harassment is, using examples; 4. Any internal complaint process available to employees through their employer to address sexual harassment claims; 5. A description of the complaint process available through the NYC Commission on Human Rights, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, including contact information; The prohibition of retaliation including examples; 6. [sic] Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention; and 7. The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that such employees may take to appropriately address sexual harassment complaints.” The Commission will not be certifying trainings by third parties as compliant with these requirements.

Three-Year Documentation Requirement. Employers must keep a record of all trainings, including a signed employee acknowledgement, for at least three years and such records must be made available to the Commission upon request. The signed acknowledgment may be electronic.

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