

New Legislation Focused on Preventing Sexual Harassment Included in the 2019 New York State Budget

The unveiling of New York State's 2019 budget made it clear that the state has maintained its focus on curbing sexual harassment in the workplace. Included in the legislation, which was delivered to the Governor on April 2, 2018, are numerous new requirements impacting both private and public employers.

Here are some of the highlights:

- State Contractors:
 - Bids for state contracts, including public departments or agencies thereof, where competitive bidding is required by law, will require the bidder and each signatory to certify under penalty of perjury that they have a written policy (that meets the requirements of the model sexual harassment policy promulgated by the Division of Human Rights) addressing sexual harassment and that they provide annual sexual harassment prevention training. This new law will be effective January 1, 2019.
- All Employers:
 - Effective 90 days from signature by the Governor, except where inconsistent with federal law, no written contract shall contain a clause or provision requiring the parties to submit any allegation or claim of sexual harassment to mandatory arbitration. Any such provision in a written contract will be deemed null and void.
 - Settlements, agreements, or resolutions of sexual harassment claims cannot include a non-disclosure provision unless the confidentiality provision is the complainant's preference. Complainants shall have 21 days to consider such terms or conditions. Even if a complainant chooses to include such confidentiality provisions, he or she shall be afforded at least 7 days to revoke the agreement. This provision will be effective 90 days from signature by the Governor.
 - Employers must adopt and provide to all employees, within 180 days of the Governor's signature, a written sexual harassment prevention policy that meets or exceeds the minimum standards of a model policy to be drafted and published by the New York State Division of Human Rights.
 - Also within 180 days of the Governor's signature, employers are also required to utilize, on an annual basis, a model sexual harassment training program to be developed by the Division of Human Rights or a program that equals or exceeds the minimum standards provided by the Division of Human Rights' model training.
 - Effective immediately upon signature by the Governor, the Human Rights Law will be amended to cover sexual harassment of non-employees (contractors, subcontractors, vendors, consultants, or others providing services under a contract) at its workplace. Employers will be held liable for sexual harassment of non-employees when it, its

agents, or supervisors knew or should have known that the non-employee was subject to such harassment and did not take immediate and appropriate corrective action. The extent of the employer's control over the non-employee and other legal responsibility which the employer has with respect to the harasser will be considered.

- State Employees:
 - Effective immediately upon the Governor's signature, any individual elected, appointed, or employed by the State of New York and who has been subject to a final judgment of personal liability for intentional wrongdoing related to an adjudicated award that resulted in a judgment in a sexual harassment claim shall reimburse any state agency or entity that made a payment to a plaintiff on the individual's behalf for his/her share of the judgment within 90 days of such payment. The law contains a similar provision for commissioners, members of public boards or commissions, trustees, directors, officers, employees, or any other person holding a position by election, appointment, or employment in a public entity.

In light of this pending legislation, employers are encouraged to review their anti-harassment policies and determine what revisions might need to be made in order to comply with the new requirements. Employers should also consider what changes might need to be made in the frequency and content of their sexual harassment training programs. Employers should continue to investigate every report of sexual harassment thoroughly, and take prompt, effective action to address incidents of sexual harassment.

If you have any questions about this Information Memo, please contact [Megan M. Collelo](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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