

## Trials and TRIBULATIONS

# Deadline nears for employers to comply with new NYS sexual harassment laws

The 2019 New York State budget signed by Gov. Andrew Cuomo included new and enhanced sexual harassment laws, which have been extolled as the nation's strongest. It is incumbent upon every employer to become familiar with the requirements under the new laws to ensure compliance. Significantly, employers should be aware that the first compliance deadline is next week.

The new laws apply to every employer in the state — no matter how many employees they have. The new laws apply to not only the traditional employer-employee relationship, but also protect “contractors, subcontractors, vendors, consultants or others providing services in the workplace.” This means that employers can be liable for sexual harassment of non-employees and employees of non-employees.

The state has provided examples of situations in which the harassment laws apply to contractors, such as an employer being held liable for unlawful sexual harassment of individuals providing cleaning services or equipment repair. Moreover, state contractors are required to provide an affirmation that they have a sexual harassment policy in place and have trained their employees.

The new laws also impose two deadlines. First, by Oct. 9, 2018, employers must adopt and distribute a sexual harassment policy to all of their employees - both full-time and part-time. The laws require that an employer's sexual harassment policy must be provided



By **VICTORIA GLEASON**  
Daily Record  
Columnist

to all employees in writing. It can be provided electronically, but workers must be able to use work computers to view and print the policy. The laws do not require that an employee sign an acknowledgment of receipt of the policy, but this would be the best practice

to protect an employer from any subsequent claim that an employee never received the policy.

The New York State Division of Human Rights (NYSDHR) and the New York State Department of Labor (DOL), working in tandem, have created a sexual harassment policy employers can use. The policy was just finalized this week, as the comment period for the draft model policy recently ended. The finalized policy includes a model complaint form that employees can use to report sexual harassment.

Employers that have existing sexual harassment policies in place should consult their attorneys before simply replacing their current policy with the model policy. The model policy is just that — a model. All employers should keep in mind that it is not tailored to meet the needs of every company or potential circumstances in which sexual harassment is more likely to occur.

Employers are not required to use the model policy. However, they are required to meet certain minimum standards if they choose to implement their own policy. Examples of the minimum standards include that the policy must: 1) provide examples of what constitutes sexual harassment; 2) include or provide access to a complaint form; and 3) include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties. If an employer does not currently have a sexual harassment policy in place, the employer should work with its HR department, in-house counsel or an outside attorney to create one.

The second compliance deadline under the new laws is Oct. 9, 2019. By this date, all employees must receive anti-sexual harassment training, and thereafter must be trained on an annual basis. The safest practice is to provide the training as soon as an employee is hired, as the employer is liable for the employee's actions upon hire. The NYSDHR and the DOL have also recently finalized a model sexual harassment prevention training program. Employers are not required to use the model training program, but any training must meet certain minimum standards.

One of the requirements is that the training must be interactive. Some of the other minimum standards for the training program include (but are not limited to) explaining what constitutes unlawful sexual harassment and pro-

viding examples thereof and including information about how to seek help for those who experience harassment.

The NYSDHR and the DOL have created a PowerPoint presentation and case studies to aid with the training. They are also finalizing a video program that can be used in conjunction with the model training and expect to have this completed within the next few weeks. However, it is important to note

that the laws still require that the employee be able to ask questions to someone who is familiar with the law and the employer's policies.

The state is going to be offering workshops and webinar training sessions for employers, but the dates for these have yet to be announced. Information about the new laws, including access to the finalized sexual harassment policy and training programs and their relat-

ed materials, can be found on websites for both the NYSDHR (<https://dhr.ny.gov/>) and the DOL (<https://www.labor.ny.gov/home/>), as well as at <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

*Victoria S. Gleason is an associate at The Wolford Law Firm LLP, where she practices in the areas of commercial and employment litigation.*