

NYS Issued Revised Sexual Harassment Model Policy & Training Materials

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Last month, the New York State Department of Labor ("NYSDOL") published a revised "Sexual Harassment Prevention Model Policy" and updated sexual harassment prevention training materials.

The revised model policy includes several key revisions that: (i) clarify the definitions of sexual harassment and discrimination to include gender identity and remote work arrangements, (ii) include additional examples of retaliation, (iii) provide the legal analysis for sexual harassment claims, (iv) address bystander intervention methods, and (v) include the state's hotline for reporting sexual harassment. We discuss each of these changes in more detail below.

Model Policy

The model policy was revised to:

- Explain that sexual harassment, in New York State, does not need to be severe or pervasive to be illegal and that the determination of whether harassing conduct rises above "petty" or "trivial" inconveniences, and is thus unlawful, is considered from the perspective of a "reasonable victim of discrimination with the same protected characteristics";
- Clarify that the impact of the behavior on the person, rather than the intent of the behavior, is key in assessing whether certain behavior is unlawful and whether the law has been violated;
- Elaborate on gender as a protected characteristic and clarify that sexual harassment based on sex stereotypes, gender expression, and perceived identity includes conduct beyond sexual contact or sexually suggestive conduct such as "creating different expectations for individuals based upon their perceived identities" and the "intentional misuse of an individual's preferred pronouns";
- State that sexual harassment can occur when employees are working remotely, especially on "virtual meeting platforms, in messaging apps, and after working hours between personal cell phones";
- Include a reminder for managers and supervisors that if they observe unlawful behavior, they should immediately act rather than waiting for an employee to file a complaint;
- Inform supervisors and managers that they should "accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive and free from retaliation for them during and after any investigation";
- Provide updated examples of retaliation including "publicly releasing personnel files" and "refusing to provide a reference or providing an unwarranted negative reference";
- Outline an explanation of five standard methods of bystander intervention for witnesses to use to assist potential victims; and
- Reference New York State's confidential hotline for reporting complaints of workplace sexual harassment.

Training Materials

The NYSDOL's website was also updated to include a revised script, slide deck, and new training video. The revisions to the training materials mirror the revisions to the updated model policy, which are outlined above.

How Does This Impact Employers?

Employers are required to adopt written sexual harassment prevention policies that meet or exceed the model policy's requirements.

Although the statutory minimum standards for the policy have not changed, these revisions indicate the NYSDOL's continued focus on preventing harassment and discrimination, including gender identity discrimination and harassment in remote work settings. Employers should consider updating their current policy and training materials to reflect these considerations.

Please contact an HNRK attorney with any questions on updating policies, training materials, and procedures based on the latest guidance.



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Amory represents employers and executives in all aspects of the employment relationship with a focus on counseling, litigation avoidance and, when necessary, litigation. Her counseling experience on behalf of a broad range of employers includes advice on issues ranging from discrimination and retaliation to wage-and-hour issues to compensation. She also regularly drafts, updates, and negotiates agreements and policies on behalf of clients concerning executive employment agreements, separation agreements, and other business arrangements.



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