

Meltzer Lippe – CLIENT ALERT

Expanded Anti-Harassment Requirements for Employers
in New York State and City - **SEPTEMBER/OCTOBER UPDATES**



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In furtherance of our prior alert regarding the recently-passed legislation prohibiting sexual harassment, New York State and City have recently published additional guidance and information for employers in advance of upcoming September and October compliance deadlines.

1. **New York State**: Model Training Program & Distribution of Harassment Policy

Effective October 9, 2018, all employers throughout New York State will be required to adopt either the model policy and anti-harassment training program developed by the New York State Department of Labor and New York State Division of Human Rights, or an alternative policy and training program which equals or exceeds the standards set forth in the model policy and training program. To that end, New York State published draft version of the model training program, model policy, and model employee complaint form, as well as minimum policy and training standards, all of which are available here: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>. As these documents are currently in “draft” form, the State is accepting comments on all proposed policies and standards through September 12, 2018. Comments may be left here: <https://www.ny.gov/content/sexual-harassment-prevention-policies>.

With respect to the model training policy, the seven (7) page model sexual harassment policy *significantly* departs from prior standard policies found in many employers’ employee handbooks. Among other things, the model policy:

- Provides specific examples of unlawful conduct;
- Sets forth detailed procedures for receiving and investigating sexual harassment complaints;
- Requires any investigation into any complaint to be completed **within 30 days** of the filing of a complaint;
- Informs employees of their legal avenues of redress through the New York State Division of Human Rights (“SDHR”) and the Equal Employment Opportunity Commission (“EEOC”), and provides employees with contact information for the EEOC and the SDHR.

Moreover, the model policy includes a model complaint form to be provided to employees who initiate sexual harassment complaints. The new model form includes two (2) optional questions which may prove helpful for employers in identifying potential litigation. Specifically, the form asks the employee to inform the employer (a) if the individual filed a prior complaint of sexual harassment with the employer; and (b) whether the employee has filed a claim with a federal, state, or local government agency.

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Next, with respect to the model training program, New York State has only released the “script” for employers to follow during the training session. However, in addition to this script, it appears New York State also intends to release a PowerPoint, a video presentation, and FAQs which will also be made available online and for download, to accompany the training.

Pursuant to the released guidance, among other things, the training must:

- be interactive;
- include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- include information concerning employees’ rights of redress and all available forums for adjudicating complaints.

All employers are required to complete sexual harassment prevention training on or before January 1, 2019. Thereafter, all new employees should complete sexual harassment prevention training within 30 calendar days of their start date.

2. **New York City**: Distribution of Model Notice & Poster

Effective September 6, 2018, the City is requiring all employers to display a poster and distribute an information sheet to all employees detailing employees’ and employers’ rights and responsibilities with respect to preventing sexual harassment in the workplace. In anticipation of this deadline, the New York City Commission on Human Rights (“Commission”) published a Stop Sexual Harassment Act Notice (the “Notice”) and Stop Sexual Harassment Act Factsheet (the “Factsheet”) for employers’ use, both of which are available here: <https://www1.nyc.gov/site/cchr/law/stop-sexual-harassment-act.page>.

First, with respect to the Notice, employers are required to post copies of the Notice in both English and Spanish. The Notice must be posted “in employee breakrooms or other common areas employees gather,” must be “at least 8 ½ by 14 inches” in size, and must be printed in color.

Next, the Factsheet must be distributed to *all* employees by no later than September 6, 2018. While the law does not specifically so require, Meltzer Lippe strongly recommends all employers keep a written record of distribution of the Factsheet by requiring employees to sign or otherwise indicate in writing they have received their copy of the document. Additionally, for any employees hired after September 6, 2018, the Factsheet must be provided to the employee at the time of hire. While the Commission has not yet published the Factsheet in any language other than English, it appears Factsheets in other languages are forthcoming, and employers should consult the Commission’s website when working with employees whose primary

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language is not English to determine whether the Commission has made the Factsheet available in the employee's primary language.

Finally, we note that, while the law itself requires the development of a “poster” to be posted in employee common areas and an “information sheet” to be provided directly to employees, the Commission’s recent guidance as issued on its website is somewhat vague, and can potentially be read to suggest employees should be provided with personal copies of *both* the Factsheet *and* the Notice. Accordingly, in an abundance of caution, employers subject to the New York City law may elect to provide copies of both documents to all employees.

In light of these new laws and impending deadlines, New York State and New York City employers should review their practices and policies with respect to sexual harassment, and develop a plan to ensure compliance with all upcoming City and State deadlines. For further information regarding the new laws and their requirements please contact Larry R. Martinez, Esq. lmartinez@meltzerlippe.com or Stephanie Suarez, Esq. ssuarez@meltzerlippe.com at Meltzer, Lippe, Goldstein & Breitstone, LLP.



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