

**SUMMARY OF NEW YORK STATE AND NEW YORK CITY LEGISLATION
REGARDING SEXUAL HARASSMENT APPLICABLE TO PRIVATE EMPLOYERS**

Jurisdiction	Required Sexual Harassment Training Program	Required Sexual Harassment Policy	Employer Coverage Expanded	Arbitration Agreements	Nondisclosure in Settlement Agreements	Notice or Posting Requirements
<u>New York State</u>¹	All employers in New York will be required to adopt a training program or establish a program that meets or exceeds the state model. The training must be provided to all employees on an annual basis. This provision is effective October 9, 2018 (i.e., 180 days from passage). ²	All employers in New York will be required to adopt the state’s sexual harassment prevention policy or establish a policy that meets or exceeds the state prevention policy’s minimum standards. This provision is effective October 9, 2018 (i.e., 180 days from passage). ³	It will be an unlawful discriminatory practice for an employer to permit the sexual harassment of a non-employee, independent contractor in its workplace. This provision is effective immediately .	Amendments to New York’s Civil Practice Laws and Rules (CPLR) will prohibit all employers in the state from requiring employees to sign contracts that mandate arbitration for sexual harassment claims, except where inconsistent with federal law. This provision is effective July 11, 2018 (i.e., 90 days after passage). ⁴	Amendments to the CPLR and General Obligations Law will prohibit the use of nondisclosure provisions in sexual harassment claim settlements, agreements, or other resolutions, unless the provision of confidentiality is the complainant’s preference. ⁵ This provision is effective July 11, 2018 (i.e., 90 days after passage).	N/A

¹ This law was signed by the Governor on April 12, 2018.

² The program must be interactive and include: (i) an explanation of sexual harassment; (ii) examples of conduct that would constitute unlawful sexual harassment; (iii) information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and (iv) information concerning employees' rights of redress and all available forums for adjudicating complaints.

³ The model policy must (i) prohibit sexual harassment consistent with guidance issued by the department in consultation with the division of human rights and provide examples of prohibited conduct that would constitute unlawful sexual harassment; (ii) include but not be limited to information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment and a statement that there may be applicable local laws; (iii) include a standard complaint form; (iv) include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties; (v) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (vi) clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and (vii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

⁴ We expect legal challenges to this portion of the law based on its possible preemption by the Federal Arbitration Act. Employers currently utilizing arbitration agreements that encompass sexual harassment claims should, at a minimum, ensure the agreements include appropriate severability language.

⁵ Where the inclusion of confidentiality language is preferred by the complainant, he or she must be given up to 21 days to consider the agreement and its terms, **and** up to seven days to revoke his or her acceptance of the agreement after signing it.

Jurisdiction	Required Sexual Harassment Training Program	Required Sexual Harassment Policy	Employer Coverage Expanded	Arbitration Agreements	Nondisclosure in Settlement Agreements	Notice or Posting Requirements
<u>New York City</u> ⁶	NYC employers with 15 or more employees (including interns) will be required to conduct annual sexual harassment “interactive training” for employees, including supervisory and managerial employees. “Interactive training” is not required to be live or facilitated by an in-person instructor. Training must be conducted after 90 days of initial hire and on an annual basis for incumbent employees. Employers are required to maintain records of compliance with the law, including signed employee acknowledgements (can be electronic). ⁷ This provision will be effective April 1, 2019 .	See state law. By August 7, 2018 (i.e., 90 days from passage), the New York City Commission on Human Rights will be required to make certain information about sexual harassment and other resources available online for the public (including an online training module that satisfied the aforementioned training requirements).	New York City Human Rights Law coverage of sexual harassment claims will include employers with fewer than four employees. In addition, the statute of limitations for filing harassment claims arising under the NYCHRL with the Commission will be expanded from one year to three years after the alleged conduct. These provisions will be effective May 9, 2018 (i.e., immediately upon passage).	See state law.	See state law.	Employers will be required to post an anti-sexual harassment rights and responsibilities poster, as well as provide an information sheet on sexual harassment to each employee at the time of hire. The poster and information sheet will be created and made available by the Commission. This provision will be effective September 6, 2018 (i.e., 120 days after passage).

⁶ This law was signed by the Mayor on May 9, 2018.

⁷ Training must include, but need not be limited to, the following: (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) The complaint process available through the commission, the division of human rights and the United States equal employment opportunity commission, including contact information; (6) The prohibition of retaliation, and examples thereof; (7) Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention; and (8) specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that such employees may take to address sexual harassment complaints.