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New York City Council Passes the Stop Sexual Harassment in NYC Act

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The New York City Council has passed the Stop Sexual Harassment in NYC Act (the "Act"), a package of bills aimed at addressing and preventing sexual harassment in the workplace. The legislation is now awaiting the signature of Mayor Bill de Blasio.

As we previously discussed in an earlier post, the Act would amend the New York City Human Rights Law ("NYCHRL") and the New York City Charter. While the Act as passed by the Council largely reflects the content of the bills that were first introduced on February 28, 2018, there are several noteworthy changes.

The passing of the Act coincides with the April 12, 2018 signing of the New York State Budget, which includes several significant mandates aimed at addressing sexual harassment in the workplace on a statewide level. New York City employers must be familiar with both the state and city requirements and, where such requirements may overlap, ensure they are meeting the requirements of both laws.

Mandatory Anti-Harassment Training

The new City law requires employers with 15 or more employees (including interns) to conduct annual anti-sexual harassment training for all employees, including supervisory and managerial employees. As discussed in our previous post, the required training must cover a number of topics, including definitions and examples of sexual harassment, education on bystander intervention, and explanations of how to bring complaints both internally and with the applicable federal, state and city administrative agencies.

The enacted version of the bill clarifies that, while such training must be “interactive,” it need not be live or conducted by an in-person instructor to satisfy the interactivity requirement. The training must be conducted on an annual basis for incumbent employees, and new employees who work 80 or more hours per year on a full or part-time basis in New York City must receive the training after 90 days of initial hire. If an employee has received training at one employer within the training cycle, he or she would be not required to receive additional training at a different employer until the next annual cycle. The enacted version also clarifies that if an employer is subject to training requirements in multiple jurisdictions, it will be in compliance with the Act so long as any annual training that is provided to employees addresses, at a minimum, the substantive requirements of the Act.

Additionally, the enacted bill requires employers to obtain from each employee a signed acknowledgment that he or she attended the training, which may be electronic.

The NYC Commission on Human Rights (“City Commission”) will be required to develop publicly available online sexual harassment training modules for employers’ use. The enacted bill specifies that use of the modules will satisfy the requirements of the Act so long as the employer supplements the module with information about the employer’s own internal complaint process to address sexual harassment claims.

If signed by the Mayor, the bill will take effect on April 1, 2019, as opposed to the prior version’s effective date of September 1, 2018.

While the recently enacted New York State Budget will also require employers to provide training, and mandates that the State Department of Labor and Division of Human Rights develop a model sexual harassment prevention training program, it remains to be seen what both the State and City’s training programs will look like when finalized. That said, NYC employers will need to ensure that any training they are providing satisfies the elements of both laws.

The State Budget also requires the State Department of Labor and Division of Human Rights to develop a model sexual harassment prevention policy. All New York employers will be required to distribute this policy or an equivalent policy in writing to employees. This state requirement would be in addition to the City's mandate that NYC employers distribute an anti-harassment information sheet to new hires (discussed further below). It is also worth noting that the state policy and training requirements will take effect on October 9, 2018, well in advance of the City law's proposed effective date of April 1, 2019.

Notice of Anti-Harassment Rights and Responsibilities

The new City law requires employers to conspicuously display an anti-sexual harassment rights and responsibilities poster and distribute an information sheet on sexual harassment to new hires, both of which will be designed by the City Commission. If signed, this bill would take effect 120 days after signing.

The law also requires the City Commission to post resources about sexual harassment on its website, including an explanation about sexual harassment as a form of unlawful discrimination, specific examples of sexual harassment and retaliation, information on bystander intervention, and information about filing a complaint through the City Commission and other government agencies. If signed, this bill would take effect 90 days after signing.

Expansion of Anti-Discrimination Protections under the NYCHRL

The City law amends the NYCHRL to permit claims of gender-based harassment by all employees, regardless of the size of the employer. Currently, the anti-discrimination provisions of the NYCHRL apply only to employers with four or more employees.

The law, as revised, also extends the statute of limitations for filing complaints with the City Commission of "claim[s] of gender-based harassment" under the City Human Rights Law from one year to three years after the alleged harassing conduct occurred—making the limitations period for administrative charges coextensive with the limitations period for filing claims in court.

The law, as revised, also amends the policy statement of the NYCHRL to state that "gender-based harassment threatens the terms, conditions and privileges of employment."

If signed, these bills would take effect immediately.

Requirements for City Contractors

The new law also amends the New York City Charter to require city contractors to include their practices, policies, and procedures "relating to preventing and addressing sexual harassment" as part of an existing report required for certain contracts pursuant to the City Charter and corresponding rules. If signed, this bill would take effect 60 days after signing.

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