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New York State Releases Proposed Changes to Model Sexual Harassment Prevention Policy

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On January 12, 2023 the New York State Department of Labor ("DOL") issued an updated Proposed Sexual Harassment Prevention Model Policy which, among other things, addresses remote work, gender identity and bystander intervention methods. The public has 30 days (until February 11) to comment on the proposed revisions prior to a final version being adopted.

As we previously reported, effective October 9, 2018, all New York State employers were required to adopt written sexual harassment prevention policies and institute annual anti-harassment training for employees. Following the enactment of the law, the DOL issued model forms that employers can use for compliance, including a model sexual harassment policy. Notably, the law includes a provision that the model policy be reviewed and revised every four years to account for changes to the workplace, prompting the DOL's current review.

Key proposed revisions to the model policy of which employers should take note include:

- Adding a provision clearly explaining that, in New York State, sexual harassment does not need to be severe or pervasive to be illegal.
- Defining sexual harassment as a form of "gender-based" discrimination, and providing an explanation of gender diversity (including definitions of cisgender, transgender and non-binary persons).
- Including a provision explaining that intent is irrelevant under the law, and referring to the New York State Human Rights Law in explaining that whether harassing conduct is considered "petty" or "trivial" is from the perspective of a "reasonable victim of discrimination with the same protected characteristics."
- Adding provisions making clear that harassing behavior can happen in the remote workplace.
- Providing an updated, non-exhaustive list of examples of sexual harassment and retaliation across many kinds of careers and industries.

- Including a provision in the section on Supervisory Responsibilities telling supervisors and managers to be mindful of the impact investigations into sexual harassment can have on victims, and stating that management must "accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive and free from relation during and after any investigation."
- Adding a new section on bystander intervention, including an explanation of five standard methods of intervention that can be used if employees witness harassment or discrimination.
- In the section on Legal Protections and External Remedies, making reference to the state's confidential hotline for complaints of workplace sexual harassment which, as we previously reported, launched in July 2022.
- In a new Conclusion section, clarifying that while the focus of the policy is on sexual harassment and gender discrimination, the New York State Human Rights Law protects against discrimination in other protected classes and the policy "should be considered applicable to all protected classes."

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