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New York State Releases Updated Model Sexual Harassment Prevention Policy and Training

Law and the Workplace on **April 13, 2023**

The New York State Department of Labor ("DOL") has released its long-awaited updated model sexual harassment prevention policy that addresses issues such as gender identity, remote work, and bystander intervention. As we previously reported, the DOL published proposed changes to the model policy in January of this year, and the updated policy largely mirrors those proposals. These changes arise from 2018 amendments to the New York State Labor Law, which require employers to adopt written sexual harassment prevention policies that meet or exceed the model policy's requirements. As part of this legislation, the State must review and revise the State's model policy every four years, which led to the recent updates.

These are the major revisions to the model policy of which employers should be aware:

- 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 not a defense under the law, and that impact is what matters in assessing whether the law has been violated. The provision also refers to the New York State Human Rights Law to explain 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. Some of the new examples include "Intentional misuse of an individual's preferred pronouns" and "Creating different expectations for individuals based on their perceived identities."

- Including a provision in the section on Supervisory Responsibilities informing supervisors and managers that they should 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 retaliation for them 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."

In addition, the DOL updated its model training materials (a script and slide deck) on preventing sexual harassment and discrimination. The revisions to the training materials echo the updated model policy, and some key changes include:

- Instructing employers in the model training script to provide a content warning to those attending training, stating:
    - *"This subject matter can be sensitive or difficult for some employees, including those that might have experienced harassment, discrimination or violence in the past. If the training is being facilitated in a group (whether in person or virtually), trainers should make clear to those attending that anyone needing to step out briefly on behalf of their mental health may do so. All employees do need to complete the training. The employee is allowed to complete the training at a later time if need be."*
- Adding a "What is Gender Identity?" slide using the same language to define gender identity as the model policy.
- As in the model policy, providing that harassing conduct only needs to rise above the level of a "petty slight" or "trivial inconvenience" to be unlawful and explaining that intent does not affect whether conduct is considered harassment.
- Including an exercise that asks participants to identify examples of sex stereotyping from a list of scenarios.

- Providing an overview of the five methods of bystander intervention, which are described in a new section of the model policy.
- Updating the case scenarios, with new examples covering subjects such as the remote work environment and harassment based on gender identity.

The DOL's "Combating Sexual Harassment in the Workplace" webpage also includes a new training video and other resources to help employers navigate the updated policy requirements.

Employers should review and update their policy and training materials as soon as possible. We will keep track of further developments on Proskauer's Law and the Workplace blog.

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