

Originally published in

New York Law Journal

March 5, 2019

Sexual Harassment: 2018 Legislation and a Sneak Preview of 2019



By [Eva C. Talel](#)

Both the New York City Council and the New York State Legislature enacted significant and far-reaching 2018 legislation to specifically address the issue of sexual harassment in the workplace. This column discusses and provides an overview of these laws, their impact on co-ops and condominiums, and the steps that boards and managers should take in order to comply with the same and protect the entity and boards from liability. This column also previews enhanced anti-harassment legislation introduced in the NYS Legislature in 2019.

Workplace Anti-Sexual Harassment: Policy and Training (2018)

New York State and New York City adopted by far the most stringent and comprehensive legislation in the United States dealing with this issue—the first state to adopt such groundbreaking legislation.

New York State: On April 12, 2018, Governor Cuomo signed the New York State 2019 Budget Bill, which includes: requiring all employers to adopt a sexual harassment prevention policy that equals or exceeds the standards of a model policy to be created and published by the NYS Department of Labor (DOL) and the NYS Division of Human Rights (DHR) (the Model Policy); requiring all employers to establish a sexual harassment prevention training program that equals or exceeds a model program, to be created by DOL and DHR (the Model Training Program); largely banning mandatory arbitration for harassment claims; prohibiting non-disclosure agreements (unless requested by the employee); and imposing liability on employers for permitting sexual harassment, including for the actions of non-employees (such as contractors or vendors) providing services in the workplace. NYS 2018-2019 Budget A-7507.

In October 2018, DOL and DHR published materials and guidance on New York State's anti-sexual harassment laws, including a model sexual harassment prevention policy; a model sexual harassment complaint form; and model employee training modules. In addition, the DOL and DHR updated their websites with regard to the minimum standards required for employer sexual harassment prevention policies and training.

Under NYS law, employers must also ensure that all employees receive training that meets the minimum standards of the Model Training Program outlined on the DOL/DHR website by **Oct. 9, 2019**. The Program must be interactive (affording employees the opportunity to ask questions and having a live trainer conduct the program or make him/her available to answer questions), and include: an explanation of sexual harassment (including concrete examples of conduct constituting unlawful sexual harassment); information concerning the relevant federal and state laws concerning sexual harassment; and the remedies and redress available to victims of such harassment. The Program must also address conduct by supervisors and the responsibilities of such supervisors. Employers who provided training for employees in 2018 need only update the training to the extent necessary to meet the new minimum standards established by the DOL and DHR October 2019 guidance. New employees should receive training as soon as possible after being hired.

New York City: On May 9, 2018, Mayor de Blasio signed the Stop Sexual Harassment in NYC Act (the Act), a package of 11 bills which include provisions: requiring all private employers with 15 or more employees to conduct annual anti-sexual harassment training; permitting claims of gender-based harassment, regardless of the size and number of persons employed by the employer; extending the statute of limitations for filing complaints with the NYC Commission on Human Rights from one year to three years; and requiring employers to display a poster and distribute an information sheet on sexual harassment to all new hires.

The Act also requires employers with 15 or more employees to conduct annual interactive anti-sexual harassment training for all employees, which must: explain that sexual harassment is unlawful discrimination and provide examples thereof; describe internal complaint processes available to employees as well as complaint processes available through relevant City and Federal Commissions; discuss prohibited retaliation, including examples thereof; and specify the responsibilities of supervisory and managerial personnel in preventing sexual harassment and retaliation.

Recommendations: While State and City laws are not identical, for boards and managers their combined mandate is clear: anti-sexual harassment policies must be adopted by co-ops and condominiums and their boards and managers must be vigilant in ensuring that training is conducted in compliance with both State and City law. Boards and managers should maintain records of the training sessions held and of the employees attending them. In addition, boards should obtain Employment Practices Liability Insurance to protect the entity, its officers, directors and agents from the cost of defending sexual harassment litigation by past, present and future employees, as well as third parties, such as contractors and vendors. In all of these matters, the assistance of counsel to ensure compliance is both prudent and advisable.

A Preview of 2019: Enhanced Anti-Sexual Harassment Legislation

The NYS Legislature is currently considering extensive additional legislation in order to prevent workplace sexual harassment, including restrictions on legal defenses which employers can currently utilize to defend against sexual harassment claims and which allow an employer to

successfully defend a harassment claim by establishing that the employee did not follow the employer's policy for addressing the alleged harassment. Imposing a strict liability standard for such claims is also being proposed, as well as supervisor liability, which would put the burden of proof on the employer, not the employee. A new definition for sexual harassment under NYS law, comparable to the less stringent one used under NYC law, is also being considered—thus lowering the standard for liability from behavior which is “severe or pervasive” to behavior which makes the harassment complainant feel “less well”.

Conclusion

Clearly, curbing sexual harassment in the workplace will continue to receive considerable attention from NYS and NYC legislators, and boards and managers should be prepared to expect, monitor and comply with legislation and regulations which will certainly be forthcoming in 2019 and likely beyond.

Eva Talel is a partner at *Stroock & Stroock & Lavan* and an adjunct professor at New York Law School. *Stroock* partner **Howard S. Lavin** and legal research analyst **Margaret Jones** assisted in the preparation of this column. The firm is counsel to the Real Estate Board of New York.

Reprinted with permission from the March 5, 2019 edition of the NEW YORK LAW JOURNAL © 2019 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382 or reprints@alm.com. The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or ALM Media Properties, LLC, or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.