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Sexual Harassment Prevention Policy and Training Now Required in New York State and New York City

Sexual harassment prevention is now a topic that employers in the construction industry must face head on. New York State and City recently enacted legislation to address sexual harassment in the workplace. Most importantly, the laws require employers to have a sex harassment prevention policy and training in place by set dates. Contractors experienced in complying with governmental regulations and in working with the State and City will recognize the need to adhere to the deadlines and requirements in the new laws and to document their efforts to do so.

Below is a summary of the new laws and corresponding effective dates that New York State and City employers should be aware of:

All New York State Employers

(1) Mandatory Anti-Harassment Policies: New York State employers must promulgate anti-harassment policies by October 9, 2018. According to the guidance released by the NYSDOL and the NYSDHR, employers must implement a policy that: (1) prohibits sexual harassment; (2) provides examples of prohibited conduct that would constitute unlawful sexual harassment; (3) includes information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws; (4) includes a complaint form; (5) includes a procedure for the timely and confidential investigation of complaints that ensures due process for all parties; (6) informs employees of their rights of legal redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (7) clearly states 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 (8) clearly states that retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

(2) Mandatory Sexual Harassment Training: Employers must implement a sexual harassment training program. Based on the State guidance, the training program must be interactive and at a minimum include: (1) an explanation of sexual harassment; (2) examples of conduct that constitutes unlawful sexual harassment; (3) information about the federal and state statutory provisions concerning sexual harassment and remedies available to victims; (4) information concerning employees' rights of legal redress and all available forums for adjudicating complaints; and (5) information addressing conduct by supervisors and any additional responsibilities of supervisors.

The training must be conducted annually and completed by all employees by October 9, 2019. Training for new employees should take place as soon as possible after hire.

(3) Mandatory Arbitration Clauses: Employers can no longer include provisions in contracts (i.e., employment agreements) subjecting sexual harassment claims to mandatory arbitration. Any portion of a contract (other than a collective bargaining agreement), that is entered into on and after July 11, 2018, requiring mandatory arbitration of sexual harassment claims, will be unenforcable. Notably, the new legislation does not appear to impact contracts containing mandatory arbitration provisions that are, or were, executed prior to July 11, 2018.

(4) Confidentiality Clauses: Pursuant to New York's General Obligation Law, employers (or its officers or employees) no longer have the authority to include a non-disclosure or confidentiality provision in any agreement or other resolution of a sexual harassment claim unless it is the complainant's "preference." Moreover, if a settlement agreement contains such a confidentiality provision, the complainant must be afforded twenty-one (21) days to review the agreement before executing it. Once the complainant executes the agreement, he/she will have seven (7) days to revoke his/her acceptance of same.

(5) "Non-employees": The New York State Human Rights Law has now been expanded to cover "non-employees." Non-employees include contractors, subcontractors, vendors, consultants, and other individuals hired to carry out services for an employer. With the new amendments, employers may now be liable for permitting sexual harassment of "non-employees" if the employer knew or should have known that sexual harassment was occurring and failed to take appropriate remedial actions.

New York City Employers

(1) Sexual Harassment Training: On May 9, 2018, Mayor Bill de Blasio signed into law the Stop Sexual Harassment in NYC Act (the "Act"). Pursuant to the Act, NYC employers with fifteen (15) or more employees will be required to provide interactive annual sexual harassment training to employees, including supervisory and managerial employees. In addition, both part-time and full-time employees, who work more than eighty (80) hours in a calendar year, will need to receive training within ninety (90) days of their initial date of hire, unless they received training within the same annual cycle from a prior employer.

At a minimum, the training must: (1) explain that sexual harassment constitutes discrimination under local, state and federal law; (2) provide a description, with examples, of what conduct does and does not constitute sexual harassment; (3) educate employees about their employer's internal complaint policies and procedures, as well as the complaint process available to them through the New York City Commission on Human Rights (the "Commission"), the NYSDHR, and the Equal Employment Opportunity Commission; (4) notify employees that local law prohibits retaliation; (5) include specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation; and (6) stress the importance of bystander intervention. The Act also requires employers to maintain training records for three (3) years and make those records available to the Commission upon request.

(2) Increased Statute of Limitations Period: The statute of limitations under NYC law (i.e. the time period in which a complainant must file a claim) concerning sexual harassment/gender-based claims has been extended from one (1) year to three (3) years.

(3) Expanded Coverage: The scope of the New York City Human Rights Law ("NYCHRL") will be expanded to cover all employers, regardless of the number of employees. Prior to the amendment, the NYCHRL only covered employers with four (4) or more employees.

(4) Anti-Harassment Poster: The Act also requires employers to conspicuously display in the workplace an anti-sexual harassment rights and responsibilities poster, which is available on the Commission's website at https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Notice-8.5×11.pdf.

TAKE AWAYS

Construction companies face a real and present specter of scrutiny and liability with respect to sexual harassment and the development of proper, complaint programs and training to prevent sexual harassment. State and City agencies will be looking closely at contractors to make sure that they follow the new rules. Prudent companies should be proactively looking to work with legal counsel and other professionals to make sure they develop and implement proper anti-harassment policies and training.

The above is only intended to give an overview of the recently enacted legislation in New York State and New York City. For more information about the new legislation, or this alert, please contact Erik Ortmann or Matthew R. Capobianco by email at

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