

Fast Approaching Deadlines for Sexual Harassment Prevention Training By Employers Under New York State and New York City Laws

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KEY POINTS

- The deadlines for employers to comply with New York State and New York City laws regarding sexual harassment prevention training are October 9, 2019 and December 31, 2019, respectively.
- By October 9, 2019, every employer must train employees who work in New York State for a portion of their time.
- By December 31, 2019, employers with 15 or more workers must train employees who work outside New York State but interact with their coworkers located in New York City.
- After the upcoming deadlines, employers must provide employees with sexual harassment prevention training once per year.
- Signed acknowledgements and records of annual sexual harassment prevention training must be maintained by employers.

In 2018, New York State (NYS) and New York City (NYC) each adopted laws that include measures to address and prevent sexual harassment in the workplace. Among other requirements, the laws – specifically, at 201-G of the NYS Labor Law (NYS Law) and NYC Local Law 96 of 2018 (“NYC Law” and, together with the NYS Law, the “Laws”) – require employers to provide annual sexual harassment prevention training to employees.¹ FAQs subsequently issued by NYS and NYC provide employers with guidance on the Laws, including clarification on which employees must receive training and dates by when initial training must be provided to current employees – October 9, 2019 for training required under the NYS Law and December 31, 2019 for training required under the NYC Law. Given these fast approaching deadlines, employers must ensure they timely provide compliant sexual harassment prevention training to employees and prepare to comply with the Laws moving forward. More information about the training requirements and recommendations on how to comply with the obligations are set forth below.

¹ Under the NYC Law, the term “employees” is defined to include interns. Under the NYS Law, it is unclear whether the term “employees” includes interns or not. The more conservative approach is to treat both employees and interns (paid and unpaid) as covered under the Laws.

Under the NYS Law, employers must train employees who perform work in NYS.

Employers with one or more employees who work at least “a portion of their time” in NYS must provide those employees with annual sexual harassment prevention training that complies with the NYS Law. No guidance has been issued as to what amount of time employees must work in NYS to be considered to have worked “a portion of their time” in the state. Katten recommends employers take a practical approach and provide training under the NYS Law to employees who perform work in NYS on a routine basis. Employers must train current employees by October 9, 2019.

While the NYS Law does not require that employers provide sexual harassment prevention training to independent contractors, NYS encourages employers to conduct such training for anyone providing services in the employer’s workplace.

Under the NYC Law, employers with 15 or more employees and independent contractors must train employees who perform work in NYC and those who interact with NYC employees.

To be subject to the sexual harassment prevention training requirements of the NYC Law, an employer must have had 15 or more employees and/or independent contractors² at any time in the current or previous calendar year, regardless of where those individuals performed work for the employer or how much work they performed (NYC Covered Employer). To be deemed a NYC Covered Employer, it does not matter if the 15 employees and independent contractors are located in NYC or elsewhere. For example, if an employer has nine employees and/or independent contractors located outside NYC and six employees and/or independent contractors located in NYC, the employer would be deemed a NYC Covered Employer.

NYC Covered Employers must provide sexual harassment prevention training that complies with the NYC Law to:

- 1) employees who are based in NYC, work more than 80 hours in a calendar year, and have been employed for at least 90 days;
- 2) employees who are *not* based in NYC but work or will work in NYC for more than 80 hours in a calendar year and for at least 90 days; and
- 3) employees who are *not* based in NYC but regularly interact with employees located in NYC.

The NYC Law’s requirement for training of employees who work outside its borders but interact with coworkers based in the boroughs significantly expands its reach and differentiates it from the NYS Law, which applies only to employees who spend some time working in NYS.

Notably, while the NYC Law counts independent contractors when determining an employer’s size for coverage under the NYC Law, it does not expressly require that independent contractors be trained. Still, the NYC Commission on Human Rights (NYC Commission) strongly advises employers to provide compliant training to independent contractors who work onsite at a NYC Covered Employer’s workplace, interact with the NYC Covered Employer’s employees located in NYC, and have worked or are expected to work more than 80 hours in a calendar year and for at least 90 days.

Training under the NYS Law and NYC Law must meet or exceed minimum standards.

Both the NYS Law and the NYC Law require that sexual harassment prevention training be interactive, meaning the training must require some participation on the part of the trainee such as asking questions, answering

² The NYC Law and FAQs do not define who qualifies as an “independent contractor” for counting purposes. This determination will depend on the totality of circumstances and will need to be made on a case-by-case basis.

questions, or providing feedback. Both Laws also require specific content be included in the training. While there is much overlap in the Laws' training content requirements, there also are some differences. For example, only the NYC Law requires that training include information about bystander intervention, including resources explaining how to engage in bystander intervention. A complete list of requirements for sexual harassment prevention training under the NYS Law is available [here](#). A complete list of requirements for sexual harassment prevention training under the NYC Law is available [here](#).

Employers have options for providing their employees with compliant training.

Employers subject to the NYS Law and/or NYC Law have a number of options for providing sexual harassment prevention training to their employees. Employers may develop their own training that meets the minimum standards of the Law(s), engage a third-party vendor that certifies its training meets the minimum standards of the Law(s) or utilize training modules offered by NYC and NYS.

The NYC Commission developed a free online sexual harassment prevention training program (NYC Training Module) that meets the minimum standards of the NYC Law *and* the NYS Law. The NYC Training Module takes approximately 45 minutes to complete and is available at [NYC Training Module](#).

The NYS Department of Labor and Division of Human Rights also developed model training materials (NYS Model Training), which are available at [NYS Model Training](#). The NYS Model Training, however, is not automatically interactive. Thus, if an employer chooses to train employees with the NYS Model Training, the employer must add interactive components. The NYS Model Training also does not meet the minimum standards of the NYC Law.

Newly hired employees should be trained as soon as possible after their start date.

Employees hired to work in New York should be provided compliant sexual harassment prevention training promptly; ideally in the first week of employment as part of the onboarding process. Newly hired employees who work outside New York who will be interacting with coworkers in New York City should be trained as soon as it becomes apparent that they will be retained by the employer for at least 90 days.

An employer may accept verification from new employees that they already received applicable sexual harassment prevention training for the year from previous employers. Still, the safer approach may be to provide sexual harassment prevention training to all new employees rather than rely on their representations of prior training.

Employees must be trained once per year.

Employees who must be provided sexual harassment prevention training under the NYS Law and/or the NYC Law must be provided compliant training once per year. Under both Laws, employers may provide training to employees annually using the calendar year, the anniversary of each employee's start date, or any other date the employer chooses.

Employers must keep training records under the NYC Law.

Under the NYC Law, employers must obtain signed acknowledgments from employees acknowledging that they received sexual harassment prevention training. These acknowledgements may be electronic. The NYC Law requires employers to retain the signed acknowledgements and other records of sexual harassment prevention training provided, for at least three years. While employers are not required to retain sexual harassment prevention training records under the NYS Law, we recommend employers obtain signed employee acknowledgements from all trained employees, and retain the acknowledgements and other records of sexual harassment prevention training for at least three years.

Employers must fulfill their additional obligations under the NYS and NYC sexual harassment prevention laws.

NYS and NYC employers also are reminded that there are a number of additional obligations already in place under the respective NYS and NYC sexual harassment prevention laws, in addition to the mandatory training programs, including: 1) under NYS law, every employer is required to have a written sexual harassment prevention policy that includes a sexual

harassment complaint form for its employees to report alleged incidents of sexual harassment; 2) under NYS law, every employer shall provide employees with a notice containing the policy and the information presented at the training; and 3) under NYC law, every employer is required to conspicuously display in a public area an anti-sexual harassment rights and responsibilities poster developed by the NYC Commission, in both English and Spanish, and to distribute to employees at the time of hire a factsheet on sexual harassment developed by the NYC Commission.

CONTACTS

For more information on the NYS and NYC sexual harassment prevention training requirements, or any of the other measures required by the NYS and NYC sexual harassment prevention laws, contact your Katten attorney or any of the following:



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