
NEW YORK'S SEXUAL HARASSMENT LAWS



THE COPPOLA FIRM
Attorneys & Counselors At Law

**University at Buffalo School of Law
GOLD Group
December 10, 2018**

NYS 2019 BUDGET BILL: WHAT YOU NEED TO KNOW

- Non-Employee Claims
- Mandatory Policy
- Mandatory Training





NY Exec. Law § 296-d:

“It shall be an unlawful discriminatory practice for an employer to permit sexual harassment of **non-employees** in its workplace. An employer may be held liable to a non-employee who is a contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace, with respect to sexual harassment, when the employer, its agents or supervisors **knew or should have known** that such non-employee was subjected to sexual harassment in the employer’s workplace, and the employer **failed to take immediate and appropriate corrective action**. In reviewing such cases involving non-employees, the extent of the employer’s control and any other legal responsibility which the employer may have with respect to the conduct of the harasser shall be considered.” (emphasis added).

IMPACT ON NY EMPLOYERS

- Non-employee exposure
- Questionable EPL coverage
- More claims



EMPLOYER MUST-DO ACTIONS

- Written policy
- Annual training



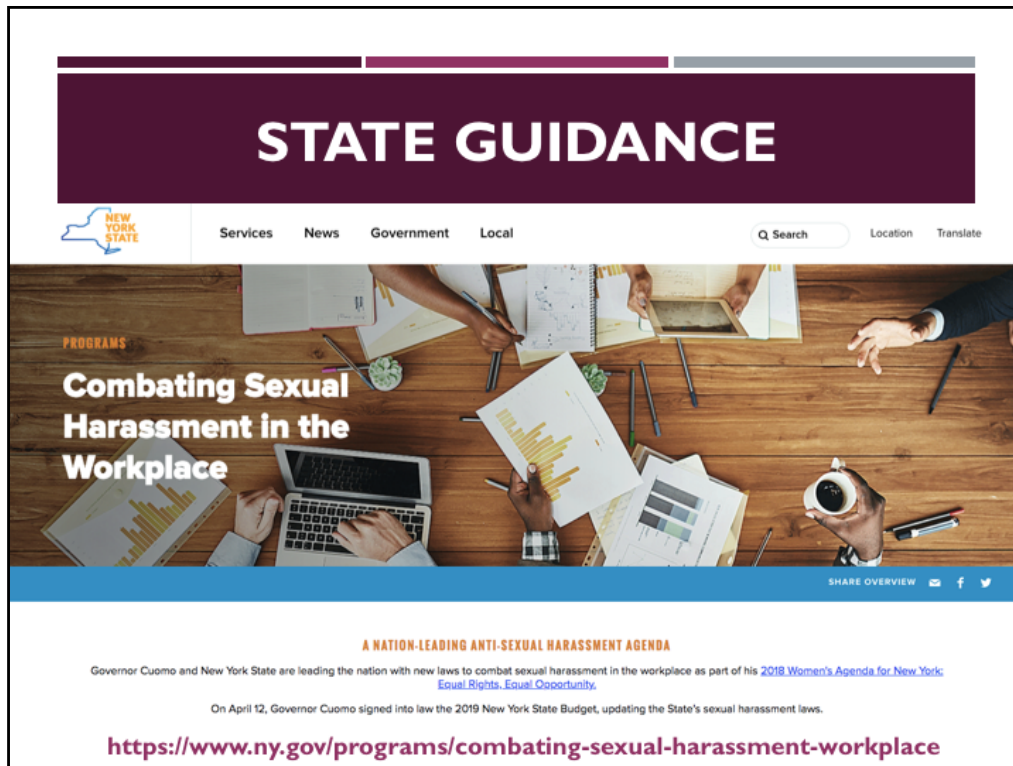
WRITTEN POLICY

Mandatory on October 9, 2018



NY Labor Law § 201-g(1)(b):

“Every employer shall **adopt the model sexual harassment prevention policy** promulgated pursuant to this subdivision **or** establish a sexual harassment prevention policy to prevent sexual harassment **that equals or exceeds the minimum standards provided by such model sexual harassment prevention policy.**” (emphasis added).



The State's Model Policy is available online. Clients should carefully consider any edits they make to the model policy. Remind your clients they must post the policy where they post other labor related notices.

Minimum requirements for the policy are:

- (i) prohibit sexual harassment as defined by the division of human rights
- (ii) include information about federal and state laws prohibiting sexual harassment and remedies available to victims
- (iii) include a standard complaint form
- (iv) include a procedure for the timely and confidential investigation of complaints
- (v) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;
- (vi) state that sexual harassment is considered a form of employee misconduct and that harassers and supervisors who knowingly permit harassment to occur will be disciplined
- (vii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

IMPLEMENTING THE WRITTEN POLICY FRONT END

- Identity of reporting recipient
- Signed acknowledgement
- Reporting form accessibility



IMPLEMENTING THE WRITTEN POLICY BACK END

- Practical & thorough investigation
- Vendor/consultant hold harmless





NY Labor Law § 201(g)(2):

“The department shall consult with the division of human rights and produce a model sexual harassment prevention training program to prevent sexual harassment in the workplace.

a. Such model sexual harassment prevention training program shall be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the department in consultation with the division of human rights; (ii) examples of conduct that would constitute unlawful sexual harassment; (iii) information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and (iv) information concerning employees’ rights of redress and all available forums for adjudicating complaints.

b. The department shall include information in such model sexual harassment prevention training program addressing conduct by supervisors and any additional responsibilities for such supervisors.

c. Every employer shall utilize the model sexual harassment prevention training program pursuant to this subdivision or establish a training program for employees to prevent sexual harassment that equals or exceeds the minimum standards provided by such model training. Such sexual harassment prevention training shall be provided to all employees on an annual basis.” (emphasis added).

TRAINING COMPONENTS

- What's sexual harassment?
- Relevant examples
- State and federal remedies



MORE TRAINING COMPONENTS

- How and where to report
- Supervisor reporting

Note: Training must “meet or exceed” the minimum standards of the model training.

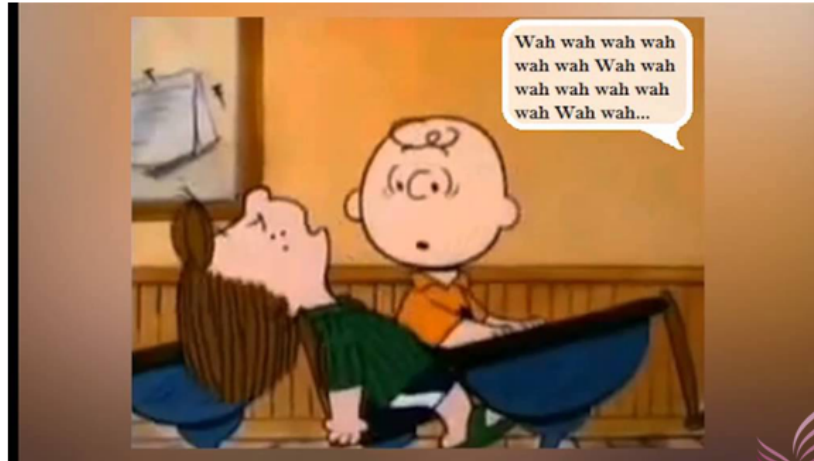


EVEN MORE TRAINING COMPONENTS

- Interactive
- Yearly
- New hires
- Attendance records
- Supervisor training



AVOID BORING TRAININGS




THE COPPOLA FIRM
Attorneys & Counselors At Law

PENALTIES FOR NON-COMPLIANCE



NY Labor Law § 201-g(3) gives the commissioner of labor authority to promulgate regulations “necessary for the purposes of carrying out the provisions of this section.”

To date, no punitive regulations have been promulgated.

Consider other penalties, however, particularly adverse inferences against an employer trying to defend against a sexual harassment claim.