YOUNG & MA
LLP

575 Lexington Avenue
Fourth Floor
New York, NY 10022

P: 212-971-9773
F: 866-839-4306
E: tma@youngandma.com

EMPLOYMENT LAW UPDATE
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By Tiffany Ma and Lauren Rosenfeld

As a response to the #MeToo Movement, the New York State and New York City legislatures have recently enacted multiple new laws affecting employment. Some notable changes include:

Mandatory Sexual Harassment Prevention Policy, Complaint Form, and Training

Effective October 9, 2018, all employers in New York State must maintain a sexual harassment prevention policy with a complaint form and complaint procedure. The minimum requirements for the policy, complaint form, and procedure can be found, along with sample policies and complaint forms, on the New York State website:

https://www.ny.gov/programs/combating-sexual-harassment-workplace
https://www.ny.gov/sites/ny.gov/files/atoms/files/SexualHarassmentPreventionModelPolicy.pdf
https://www.ny.gov/sites/ny.gov/files/atoms/files/CombatHarassmentComplaint%20Form.pdf

Additionally, all New York employees must be provided sexual harassment prevention training by October 9, 2019; new employees must be trained as soon as possible. The training must be interactive, which means employee participation is necessary. All employees must be made aware of the mandatory reporter requirement that employees in supervisory roles have.

New York City employers must additionally display a poster to educate employees about their rights and distribute a fact sheet with similar information. Samples can be found here:

https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Notice-8.5x14.pdf
https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Factsheet.pdf

Non-Disclosure Clauses are Prohibited for Sexual Harassment Claims

The use of non-disclosure agreements when resolving sexual harassment claims is prohibited unless the employee prefers confidentiality. Employees must be given twenty-one (21) days to consider any settlement agreement containing a confidentiality/non-disclosure clause and then given an additional seven (7) days to revoke the agreement.

Mandatory Arbitration is Prohibited for Sexual Harassment Claims

Effective July 11, 2018, employers in New York with four (4) or more employees cannot require sexual harassment claims to be arbitrated.

Expansion of Workers Protected in Sexual Harassment Laws

The state Human Rights Law protecting employees against sexual harassment has been expanded to include contractors, subcontractors, vendors, consultants, or others providing

services in the workplace. Also, while city laws previously protected only employees of workplaces with four (4) or more employees, the city Human Rights Law has been modified with respect to sexual harassment claims to include all employers, even if the employer only has one (1) employee located in New York City.

Extended Statute of Limitations

Victims of sexual harassment in New York City now have three (3) years to file their complaint of harassment with the New York City Commission of Human Rights, whereas victims only had one (1) year from the last offending harassment in the past.

New Protections for Sexual and Other Reproductive Health/Fertility Decisions

Effective May 20, 2018, the protected classes under the NYC Human Rights law expanded to include sexual and other reproductive health decisions. The new law defines sexual and reproductive health decisions as "any decision by an individual to receive services which are arranged for or offered or provided to individuals relating to the reproductive system and its functions" and includes fertility-related medical procedures, sexually transmitted disease prevention, testing and treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.

An employee cannot be discriminated against or suffer retaliation for making reproductive health choices during their employment. This law provides protection against employers penalizing employees if they make decisions opposed to the employer's view, or if employees must take time off work to tend to reproductive health matters. For example, an employer cannot terminate or retaliate against an employee upon discovering or disagreeing with the employee's choice to undergo in vitro fertilization (IVF), have an abortion, or seek treatment for sexually transmitted infections. This protection does not require employers to provide reproductive health benefits, but solely requires employers to not take adverse employment actions against an employee participating in the protected activity.

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