

New Year, New Laws: Further Guidance on Complying With New York's Anti-Sexual Harassment Laws

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New York State and New York City passed sweeping laws aimed at combating sexual harassment in the workplace last year. While many requirements of these laws already went into effect in 2018, the annual anti-sexual harassment training requirement under the Stop Sexual Harassment in New York City Act goes into effect on April 1, 2019.

As we previously reported [here](#), [here](#), [here](#), and [here](#), New York State and New York City passed sweeping laws aimed at combating sexual harassment in the workplace last year. While many requirements of these laws already went into effect in 2018, the annual anti-sexual harassment training requirement under the Stop Sexual Harassment in New York City Act goes into effect on April 1, 2019. The New York City Commission on Human Rights has published a page of answers to [frequently asked questions](#) (FAQs) to provide some clarity about the law and the new training requirements. Below are some highlights from this guidance and discussion of other aspects of the New York City law and the New York State law.

New York City Anti-Sexual Harassment Training

In addition to complying with the New York State training requirements by October 9, 2019, New York City-based employers with 15 or more employees must also comply with the New York City annual training requirements effective April 1, 2019. New York City employers must provide this training each calendar year. The FAQs provide clarification concerning employer and employee coverage as follows:

- To determine whether an employer has 15 or more employees, the number of employees (including short-term or part-time employees) and independent contractors (regardless of the number of days or hours they work) employed or who performed work at any point within the prior calendar year must be considered.
- Employees, independent contractors, and interns who work more than 80 hours in a calendar year and work for at least 90 days need to be trained. However, employers are not required to retrain independent contractors who have already received the mandated annual training elsewhere.

The FAQs also note that the Commission is partnering with the New York State Division of Human Rights and the New York State Department of Labor to develop an online training program that complies with both the New York State and New York City training requirements. This online training will be available on the Commission's website on or before April 1, 2019. The training is expected to be interactive in that it will include quizzes and other components that would satisfy the interactive requirement under both the state and city laws. However, employers may choose to develop their own training programs so long as they meet the minimum requirements of the law.

Employers must keep a record of all trainings, including a signed employee acknowledgement, for at least three years.

New York City Posting and Notice Requirements

Effective September 6, 2018, all employers, regardless of size, were required to post the required notice in both [English](#) and [Spanish](#). The FAQs clarify that these notices may be posted in black and white, and:

may be posted virtually on an electronic bulletin board easily accessible to all employees if a convenient physical location is not available, or if electronic posting is the most effective method of reaching employees. For employers with multiple worksites, the notice must be posted at all sites. For employers with remote workers, [employers] may provide the notice via e-mail.

The FAQs reiterate that employers must give all new employees the [fact sheet](#) issued by the Commission at the time of hire. "This can be on or about the employee's first few days of work, but no later than the end of the employee's first week of work," according to the FAQs. Employers "may include the fact sheet in an employee handbook" and "distribute it by any print or electronic means that they ordinarily use to communicate with employees."

New York State Training Videos

In mid-October 2018, New York State published sexual harassment prevention training videos in English that meet all minimum training requirements, except for the interactive requirement. In January 2019, New York State published training videos in Chinese, Haitian-Creole, Korean, Italian, Polish, Russian, and Spanish. According to New York State's FAQs, employers are required to provide the training to employees in the language spoken by their employees. When a template training is not available from the state in an employee's primary language, the employer may provide that employee an English-language version.

Q&A

We have received many questions regarding employers' obligations to prevent sexual harassment in the workplace under New York State and New York City laws. Below are responses to some frequently asked questions.

Q: Does this law apply to out-of-state employers with employees in New York and New York City?

A: Yes. Where the employer is based is not relevant to the inquiry of whether the New York State and New York City laws apply. The New York State law applies to all employers in New York State, regardless of size. Under the New York City law, if the employer has 15 or more employees, it must train all employees, independent contractors, and interns employed or performing work within New York City for more than 80 hours in a calendar year and at least 90 days in a calendar year.

Q: Are employers required to provide training to out-of-state employees (i.e., employees of an employer based in other states)?

A: No. Under the New York State law, employers need to train only employees who work or will work in New York. However, if an individual works a portion of his or her time in New York, even if based in another state, the employer must train that individual. Under the New York City law, employees employed in New York City who work more than 80 hours in a calendar year and work for at least 90 days in a calendar year need to be trained.

Q: Is the requirement that the New York State law apply to those who “work in New York State” limited to those physically working within the state? Or does it also include those who supervise employees working in New York State or those who deliver work product in New York?

A: Under New York State law, employers must train individuals who are expected to work a portion of their time in New York State, even if they are based in another state. If an individual telecommutes, but is physically located in New York State, such individual should be trained. Although there is no specific

requirement to train employees who exclusively work outside of New York State and do not physically spend any time in New York State, employers may want to make such employees aware of the New York State (and, if applicable, New York City) laws if their work responsibilities entail interaction with employees or other individuals physically located in New York City or elsewhere within New York State.

Q: We have a large number of employees in California but fewer than 15 in New York City. Under the New York City law, how is the threshold of 15 employees counted? Are employees outside of New York City included in that count?

A: Both the law and the FAQs are silent on how the threshold of 15 employees is calculated. However, it is likely that the Commission would count employees outside of New York City to determine whether an employer meets the 15-employee threshold. At a minimum, employers must train any employees in New York City in compliance with the New York State law, which applies regardless of the number of the employer's employees.

Q: If a private business is expected to open its first location in New York City sometime after April 1, 2019, how soon must it start complying with the New York State and New York City laws?

A: Many requirements of the New York State and New York City laws went into effect in 2018. As such, any newly opened business must comply with the policy, notice, and posting requirements immediately upon commencement of operations in New York City. The business also must deliver training compliant with New York State law by October 9, 2019, and, if that training does not meet the New York City requirements, additional training compliant with New York City law by December 31, 2019.

Ogletree Deakins will continue to monitor these state and local legislative developments and will post updates on the [State Developments blog](#) as additional guidance becomes available.

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