

States Require Employers To Conduct Sex Harassment Training

Now that the tax season is in the rear view mirror, many employers are turning their attention back to HR matters and the evolving landscape of #MeToo initiatives. Not only has the movement emboldened women to report sex harassment in the workplace, it has also caused state legislatures to respond with additional legal requirements. Case in point: requiring employers to conduct sex harassment training.

For a long time, HR professionals and employment lawyers have counseled employers to offer sex harassment training to supervisors and employees. Across-the-board training educates supervisors on appropriate conduct and reporting requirements, and aims to give employees an understanding of actual unlawful harassment and an avenue to report misconduct. Based on the important rulings by the U.S. Supreme Court in 1998 [1] [2], employment lawyers have advised clients to embrace a sex harassment policy and reporting procedure so that they can protect employees from harassment and protect themselves from liability for the sexually harassing misconduct of their employees.

In some states, however, these judicially created standards are no longer sufficient. A number of states and municipalities are passing laws that create stand-alone legal obligations for employers to conduct sex harassment training for supervisors and employees. Most of the state requirements appear in California and in the Northeast.

Connecticut has required employers with 50 or more employees to train managers since 1993. Effective January of this year (2019) Delaware requires employers with 50 or more employees to conduct “interactive” sex harassment training for all employees. Maine employers with 15 or more employees must train all employees within one year of their start date. The penalty for a first violation in Maine is \$1000 and increases to \$2500 and \$5000 for subsequent violations.

Both the state and city of New York have recently implemented additional requirements. The State of New York requires all employers (regardless of number of employees) to provide all employees interactive sex harassment training by October 9, 2019, and annually thereafter. In addition, New York specifies that the training must include examples of sex harassment and reporting methods. New York City has added to those requirements by requiring employers with more than 15 employees to train any employee within 90 days of their hiring. The law, which became effective April 1, 2019, requires that training must cover, among other things, an explanation of sexual harassment, information on both the employer’s internal complaint process and how to file with state and federal authorities, bystander intervention, and the “specific” responsibilities of supervisors and managers.

On the opposite coast and effective January 2019, California amended its sex harassment training statute to apply to employers with as few as five employees. (Previously, it applied only to employers with 50 or more.) California requires two hours of training for supervisors and one hour for regular employees every two years—the first training must be provided by January 1, 2020. By way of penalty, California provides that a court may find an employer failed to comply with the law and order the employer to comply.

Employers in the named states should consult legal counsel and make changes to their policies and procedures immediately. They should also be aware that such broad training requirements can have *unintended or unforeseen consequences*. Consultation with an attorney can help employers understand the requirements and explore how best to implement them in their own organization. Employers outside the above states can anticipate that similar laws may be making their way through their own legislatures. If you have questions about the requirements of your state, contact Christine Lambrou Johnson.

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