Global Compliance Network

Sexual Harassment NY -- State Mandated

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New York State is a national leader in the fight against sexual harassment and is partnering with employers across the state to further their commitment to ending sexual harassment in the workplace. The 2019 New York State Budget includes the nation's strongest and most comprehensive sexual harassment package, including new resources and requirements for employers. There are two key components under this law: Policy and Training. All employees working in New York State must receive sexual harassment training annually.

Slide 1: Introduction

New York State is a national leader in the fight against sexual harassment and is partnering with employers across the state to further their commitment to ending sexual harassment in the workplace. Every employee in the State of New York is entitled to a working environment free from sexual harassment. The New York Sexual Harassment Prevention Policy provides provisions and guidance to employers including direction for reviewing and revising the workplace policy every four years.

Slide 2: Objectives

In this tutorial you will learn the following: -The latest major requirements of the New York State standards for sexual harassment in the workplace. -Having an Effective Sexual Harassment Policy -Recommended Content of Employer Sexual Harassment Policy -Investigations and Corrective Actions -Additional Protections and Remedies

Slide 3: Policy Standards for Sexual Harassment Prevention

The required policy must be provided to each employee in the language spoken by the employee. The policy must: ~Prohibit sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights ~Provide examples of prohibited conduct that would constitute unlawful sexual harassment. ~Include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws. ~Include a complaint form.

Slide 4: Policy Standards for Sexual Harassment Prevention

~Include a procedure for the timely and confidential investigation of complaints that ensures due process for all parties. ~Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially ~Clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue. ~Clearly state that

retaliation against individuals who complain of sexual harassment or who testify or assist in any investigation or proceeding involving sexual harassment is unlawful.

Slide 5: To Whom Does the Law Apply?

The anti-sexual harassment law applies to all employees, coworker, supervisors, a subordinate, applicants for employment, interns (paid or unpaid), contractors or independent contractors, vendors, client, customer, visitor, and persons conducting business without regard to immigration status.

Slide 6: What is Sexual Harassment?

Sexual harassment is a form of sex discrimination and is unlawful. It includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender and definitions of cisgender, transgender, and non-binary persons. Sexual harassment is not limited to the physical workplace as harassment can occur while traveling for business, at employer sponsored events and parties. Harassment can occur with phone calls, text messages, emails and/or social media.

Slide 7: What is Sexual Harassment? (cont.)

~Sexual harassment also includes any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance. In New York State, sexual harassment does not need to be severe or pervasive. Intent is irrelevant under the law. Whether harassing conduct is considered "petty" or "trivial" is from the perspective of a "reasonable victim of discrimination with the same protected characteristics."

Slide 8: Definitions Regarding Gender Identity

The following are definitions of cisgender, transgender and non-Binary. ~Cisgender is defined as having or relating to a gender identity that corresponds to the culturally determined gender roles for one's birth sex (i.e., the biological sex one was born with). ~Transgender is defined as having or relating to a gender identity that differs from the culturally determined gender roles for one's birth sex (i.e., the biological sex one was born with) or for one's sex as surgically assigned at birth. ~Non-Binary is used to describe someone whose gender identity can't be described as exclusively woman or man. Some people who are nonbinary experience their gender as both man and woman, and others experience their gender as neither man nor woman.

Slide 9: Hostile Environment

Sexual harassment is a form of sex discrimination in the form of a "hostile environment" consists of words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, or transgender. Sexual harassment can occur between any individuals, males, and females, or between persons of the same sex. Harassing behavior can happen in the remote workplace by way of messaging, texting, email, or other virtual platforms.

Slide 10: Quid Pro Quo

A type of sexual harassment known as "quid pro quo" harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. Only supervisors and managers are deemed to engage in this kind of harassment because co-workers do not have the authority to grant and withhold benefits.

Slide 11: What is Sexual Harassment? (cont.)

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful. A single incident of inappropriate sexual behavior may be enough to rise to the level of sexual harassment, depending on the severity of such incident. While one joke or comment may not be enough to be sexual harassment, the courts have held that a single incident could be considered sexual harassment depending on the circumstances.

Slide 12: What is Sexual Harassment? (cont.)

Sexual harassment includes unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: -Such conduct is made either explicitly or implicitly a term or condition of employment -Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or -Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Slide 13: Examples of Sexual Harassment

Acts that may be unlawful sexual harassment include: -Physical assaults of a sexual nature such as Rape, sexual battery, molestation, or attempts to commit these assaults. This can also include intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, or poking another employee's body.

Slide 14: Examples of Sexual Harassment

-Unwanted sexual advances, propositions, or other sexual comments such as: Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments; subtle or obvious pressure for unwelcomed sexual activities; sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which are sufficiently severe or pervasive to create a hostile work environment.

Slide 15: Examples of Sexual Harassment

Sexual or discriminatory displays or publications anywhere in the workplace such as: Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning, pornographic.

Slide 16: Examples of Sexual Harassment

Sex stereotyping is a type of sexual harassment and is often seen and done by others because that person does not conform to gender stereotypes. Harassing someone for performing a job that is or was generally performed by persons of a different gender is sex discrimination.

Slide 17: Scenario 1

Jon and Bob, both in the same sales department, sometimes make comments about what type of women they like. One day Jon says to Bob, "I like women with big round butts" in front of Sharon, a woman who works in their office. Bob laughed as usual. Sharon told them that she found such comments disgusting and asked them to stop. Both Jon and Bob apologized to Sharon. The next day, Sharon once again overheard Jon in a loud voice tell Bob a similar comment. Jon and Bob continued to ignore Sharon's confrontations. Sharon began to feel helpless and upset. She found it very difficult to concentrate at work and do her job. Is this sexual harassment? Yes, No or Maybe? ANSWER: Yes. Jon and Bob are guilty of sexual harassment. Even though the comments may not be offensive to every person, they are offensive to Sharon. Therefore, Jon and Bob are creating a hostile work environment" for Sharon. A hostile environment is when a person makes a situation very difficult for someone else to concentrate and do their work.

Slide 18: Scenario 2

A group of four women frequently whistle "wolf calls" at Gerrod when they see him at work. Initially, Gerrod thought it was kind of neat and enjoyed the special attention. After a while, when the women didn't stop, Gerrod began to feel embarrassed and uncomfortable. He no longer considered the attention special and began to also feel upset. He told them to please stop it and they would just laugh and continue. Gerrod didn't really know what to do. Gerrod just wanted to be left alone. Is the sexual harassment? Yes, No, or Maybe? ANSWER: Yes. At first Gerrod enjoyed the wolf calls and probably wanted the women to continue. However, there came a time when it was no longer neat or comfortable and he asked them to stop. At the point he no longer liked or consented to the wolf calls, and they continued, is when it became sexual harassment.

Slide 19: Scenario 3

Barbara recently hired Phillip as her personal secretary. In a recent meeting in Barbara’s office with Phillip, she sat on the arm of the chair Phillip was sitting in and leaned over and whispered to him she would like to meet with him outside of work to further discuss the party. Phillip told her he felt they could discuss it in the office as they were already in a meeting for the work party. Barbara told Phillip she felt it should be a more personal setting especially since he was not married. This made Phillip very uncomfortable. Barbara then touched Phillip on his hand and told him it would benefit both of them if he agreed to meet with her at the bar, and Barbara winked at him when she said this to him. Is this sexual harassment? Yes, No, or Maybe? ANSWER: Yes. This is sexual harassment in the form of a hostile work environment. Certain gestures in the workplace are unmistakably offensive and sexual. By joking, gestures, pictures, or offensive touching it becomes a hostile and abusive work environment, even if the conduct is not directed at the person who is offended.

Slide 20: Scenario 4

Bill's boss asks to sleep with him in exchange for a promotion and explains that if he does not, he will be overlooked whenever any position becomes available that Bill is qualified to apply for. Bill sleeps with his boss and gets the promotion. Is this sexual harassment? Yes, No or Maybe? ANSWER: Yes. Since Bill's agreeing to his boss' sexual demands as a condition of the promotion and future of his employment with the company, this is definitely sexual harassment.

Slide 21: What You Should Do if You Are Harassed

You can make an initial report verbally with your employer followed by filling out a complaint form to report harassment and file complaints. Your employer can fill out the form on your behalf after receiving a verbal report, and you will be provided a copy of that report found here: https://www.ny.gov/sites/ny.gov/files/atoms/files/CombatHarassmentComplaint%20Form.pdf You can also call the hotline at 1-800-Harass3 to file a verbal complaint where the caller can be assisted with filing a complaint and/or speaking with an attorney who could provide limited free assistance.

https://www.ny.gov/sites/ny.gov/files/atoms/files/CombatHarassmentComplaint%20Form.pdf

Slide 22: Steps to Consider If You are Being Sexually Harassed - Part I

Although you may wish to take the following actions, you may file a complaint with the Division of Human Rights even if you have not taken these steps. The steps include: ~Keep a Diary. Write down what is happening to you. Include direct quotes, patterns of the harassment, and names of witnesses. Save any letters, cards, emails sent to you. Keep both the diary and notes in a secure place, preferably at home. ~Speak to Your Supervisor. If the harasser is your supervisor, speak to his or her supervisor. Keep notes concerning this contact, including dates, nature of the conversation, and any follow-up.

Slide 23: Steps to Consider If You are Being Sexually Harassed - Part II

Report the Offensive Behavior. Report the conduct to your employer through the Affirmative Action Administrator, Personnel Director, EEO Officer, Union Representative, or any other person designated to handle the sexual harassment complaints. Keep notes concerning this Contact, including dates, nature of conversation, and any follow-up. ~Ask Other People. Find out from others who work with or near the harasser if they have ever been harassed, or if they know of anyone who has been or may have been harassed.

Slide 24: Filing a Complaint at the Division

If you believe you have been sexually harassed, you can file a complaint with the New York State Division of Human Rights. For harassment occurring prior to August 12, 2020, the complaint must be filed with the Division within one year of the alleged discriminatory act.

Slide 25: When is the Employer Liable for Sexual Harassment? - Part I

Under the Supervisory Responsibilities provision, supervisors and managers must be mindful of the impact investigations into sexual harassment can have on victims, and management must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation during and after any investigation.

Employers are strictly liable for harassment of an employee by an owner or high-level manager. This means if one owner or manager harasses an employee, even without the knowledge of the other owners or managers, the employer is nevertheless legally responsible.

Slide 26: When is the Employer Liable for Sexual Harassment? - Part II

Employers may be strictly liable for harassment by a lower-level manager, or by a supervisor if that supervisor has a sufficient degree of control over the working conditions of the victim. This means the employer may be legally responsible for such harassment, even if no owner or manager knew about it. By having a sexual harassment policy in place and used effectively, the liability may be avoided.

Slide 27: When is the Employer Liable for Sexual Harassment? - Part III

Employers may be liable for the harassment of an employee's co-workers if the employer knew or should have known about the harassment. This means the employer will be liable if the employer was negligent about preventing or stopping the harassment.

Slide 28: When is the Employer Liable for Sexual Harassment? - Part IV

If an employee complains of harassment to any supervisor or manager, the knowledge of the supervisor or manager will be considered to be the knowledge of the employer. Therefore, it is very important that the employer have a sexual harassment policy that requires supervisors and managers to report any complaint of sexual harassment, and any possible harassment that comes to their attention for any reason.

Slide 29: Bystander Intervention

Bystander intervention occurs when a witness, or bystander, steps in to diffuse harassment or inappropriate behavior. There are five standard methods of intervention that can be used if employees witness harassment or discrimination. ~Notice the event- That means recognizing what is or is not harassment. ~Interpret the situation as a problem- Knowing what is occurring is contrary to ethical or professional conduct, against workplace policy, and/or against the law. ~Assume personal responsibility- That means doing something to stop the behavior. ~Know how to help- Determining the best course of action to prevent the behavior without jeopardizing the health or safety of individuals involved. ~Step up- Act on resolution in a safe, appropriate, ethical, workplace policy or legal manner.

Slide 30: Examples of Bystander Intervention

There are five things a bystander could do intervene in a sexual harassment situation. These are: ~Interrupting the harasser ~Asking a third party to intervene ~Recording or taking notes for use in a future investigation ~Checking in with the victim after the fact ~Confronting the harasser

Slide 31: Retaliation is Unlawful - Part I

It is unlawful for any employer, or any agent or employee of the employer, to retaliate against an employee who has complained of sexual harassment. The Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

-Filed a formal written complaint of sexual harassment, either internally with management or human resources, or with any anti-discrimination agency.

Slide 32: Retaliation is Unlawful - Part II

The Human Rights Law also protects: -Any individual who has testified or assisted in a proceeding involving sexual harassment under the Human Rights Law -Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment -Complained that another employee has been sexually harassed, or -Encouraged a fellow employee to report harassment.

Slide 33: Retaliation is Unlawful - Part III

(For employers with four or more employees, retaliation also applies to opposition to any other actions forbidden by the Human Rights Law.) If the employee has participated in a proceeding before the Division of Human Rights (DHR), or in a court of law, that complainant or witness is absolutely protected against retaliation for any oral or written statements made to the Division or a court in the course of the proceedings, regardless of the merits or disposition of the underlying complaint.

Slide 34: Retaliation is Unlawful - Part IV

Even if the alleged harassment does not turn out to rise to the level of a violation of the Human Rights Law, the individual is protected if he or she had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Slide 35: What is Retaliation? - Part I

Retaliation consists of an adverse action or actions taken against the employee by the employer. The action need not be job-related or occur in the workplace. Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable worker from making or supporting a charge of harassment or any other practices forbidden by the Law. Actionable retaliation by an employer can occur after the individual is no longer employed by that employer. This can include giving an unwarranted negative reference for a former employee.

Slide 36: What is Retaliation? - Part II

A negative employment action is not retaliatory merely because it occurs after the employee engaged in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity. In order to make a claim of retaliation, the individual must be able to substantiate the claim that the adverse action was retaliatory.

Slide 37: Having an Effective Sexual Harassment Policy

Having a policy that recognizes that sexual harassment is unlawful, and that signals to all persons in the organization that sexual harassment will not be tolerated, is an important step in limiting the employer's liability by: -Preventing sexual harassment -Providing a means for employees to alert management if sexual harassment is occurring -Provides for investigation and effective

corrective action to be taken when sexual harassment has occurred. Supervisors or Employers, Supervisors or Employers, please review the document below for more information on creating your Sexual Harassment Policy. https://site.gcntraining.com/assets/documents/tutorials/Sexual Harassment NY Notes.pdf

Slide 38: Investigation and Corrective Action - Part I

Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action. An investigation of any complaint should commence immediately and be completed as soon as possible. The investigation will be kept confidential to the extent possible. Any employee may be required to cooperate as needed in an investigation.

Slide 39: Investigation and Corrective Action - Part II

During the investigative process: -The assigned person or office designated person will conduct an immediate review of the allegations and take any interim actions. -Relevant documents, emails or phone records will be requested, preserved, and obtained. -Interviews will be conducted -The individual who complained and the individual(s) accused of sexual harassment are notified of the final determination and that appropriate administrative actions have been taken.

Slide 40: Recent Updates to the New York State Human Rights Law

~Effective immediately, the Human Rights Law is to be liberally construed, under New York State Law, without reference to any federal law that may lead to a more restrictive result. ~Domestic workers are now also protected from harassment on all bases. ~In order to establish liability, the complainant does not have to identify a similarly situated person/employee that was treated more favorably. ~A complainant does not have to complain to their employer or file a formal grievance in order to establish liability.

Slide 41: Recent Updates to the New York State Human Rights Law (cont.)

~Effective January 1, 2020, under New York law, settlements of employment discrimination claims cannot prevent complainants from speaking to an attorney, the New York State Division of Human Rights, the U. S. Equal Employment Opportunity Commission, local human rights commissions, or any other form of law enforcement. ~The Human Rights Law apply to all employers within New York State, even those with fewer than four employees effective February 8, 2020. ~Effective August 12, 2020, the statute of limitations for filing a sexual harassment complaint with the Division of Human Rights is extended from one year to three years. The legislation gives victims of harassment a longer time period to file complaints with the Division of Human Rights.

Slide 42: Protections from Harassment

Punitive damages may be awarded against private employers. ~Attorney's fees may be awarded in all employment cases. ~Under New York law, settlements of employment discrimination claims can only include the conditions of confidentiality if it is the complainant's preference and agreements regarding nondisclosure must be "in writing to all parties in English, and, if applicable, the primary language of the complainant."

Slide 43: Additional Protections and Remedies

A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights or in New York State Supreme Court. -Complaints may be filed with DHR any time within one year of the alleged sexual harassment -You do not need to have an attorney to file -More information is available: www.DHR.ny.gov DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit the website listed above.

www.DHR.ny.gov

Slide 44: EEOC

United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 Federal Civil Rights Act. An individual can file a complaint with the EEOC anytime within 300 days from the alleged sexual harassment. -You do not need to have an attorney to file -A complaint must be filed with the EEOC before you can file it in federal court. -More information is available: www.EEOC.gov

www.EEOC.gov

Slide 45: EEOC (cont.)

The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820). You can also visit their site listed above or email them at info@eeoc.gov

Slide 46: Local Laws

Many localities enforce laws protecting individuals from sexual harassment and discrimination. You can contact your county, city, or town to find out if laws exist. Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement or coerced sex acts. If any of the above occurs, contact your local police department immediately.

Slide 47: A Final Word on New York Policy

While the focus of this tutorial is on the New York state sexual harassment and gender discrimination policy, the New York State Human Rights Law protects against discrimination in other protected classes and the policy should be considered applicable to all protected classes of individuals.

Slide 48: Additional Resources

Model Sexual Harassment Training Module https://www.ny.gov/sites/ny.gov/files/atoms/files/SexualHarassmentDRAFTModelTraining.pdf

Model Complaint Form for Reporting Sexual Harassment https://www.ny.gov/sites/ny.gov/files/atoms/files/CombatHarassmentComplaint%20Form.pdf

Sexual Harassment Policy for all Employers in New York

State https://www.ny.gov/sites/ny.gov/files/atoms/files/StatewideSexualHarassment_PreventionPolicy.pdf

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