



Employee Benefits Compliance Alert



April 11, 2019

Employers with New York-Based Workers Face New Sexual Harassment Training Duties

In the wake of numerous, high-profile workplace sexual harassment allegations, elected bodies around the country have sought to bolster employee protections. New or enhanced training initiatives are often featured as a key element of these legislative protections.

Employers with New York City-based workers are facing a dual training obligation because both state and local authorities have separately introduced their own specific training obligations. **The following HUB bulletin, which was previously released, addresses the various New York State and City rules/deadlines: [“New York 2019 Sexual Harassment Training Requirements”](#)**

The New York State training deadline was originally slated for October 9, 2018, but has since been extended by one year (to October 9, 2019). In addition and as more fully explained below, the New York City training rule takes effect on April 1, 2019 – but employers have through the end of the year (December 31, 2019) to have their workforce complete the training. (Interestingly, the city previously indicated that employers would get one full year in which to complete this training but, according to its [newly published FAQ](#), the city has now reduced the training period deadline to approximately nine months.)

As a practical matter, most employers will still likely target New York State’s **October 9, 2019** deadline as the magic date to satisfy *both* obligations.

NYC Issues Long-Anticipated Guidance

Last week, the New York City Commission on Human Rights released a training module and an accompanying FAQ implementing the City’s *Stop Sexual Harassment in NYC Act*. The FAQ spells out important information explaining how training should be handled, including the following key provisions:

- **WHICH EMPLOYERS MUST COMPLY?** Employers with at least 15 employees at any point during the previous calendar year (including independent contractors) must train their employees.
- **WHICH EMPLOYEES MUST BE TRAINED?** All employees who work at least 80 hours in the previous year and at least 90 days for the same employer. Any employees who fall below this threshold need not be trained. This is true regardless of how the employee is classified (e.g., full-time, part-time, or temporary).

(Note: Although the FAQ requires that independent contractors be included in the “count” to determine size, an entity using such independent contractors is not directly required to train such individuals. Nevertheless, the same FAQ still “strongly recommends” training for independent contractors who regularly interact with an employer’s workforce.)

- **WHEN MUST EMPLOYEES BE TRAINED?** The mandate went into effect on April 1, 2019 and all employees must complete this year’s training by December 31, 2019. Employees must complete this training at least once per year. After 2019, the “year” may be a calendar year, the employee’s start date anniversary, or any other (consistent, ongoing) designated date.

- **WHAT RECORDS MUST EMPLOYERS KEEP?** Employers must have records showing that each of their employees have been trained for the year. These records must be kept for at least three years.
- **WHEN MUST NEW EMPLOYEES BEGIN ANNUAL TRAINING?** Any employee hired after April 1st must be trained as soon as possible, but there is no specific date.

The Commission has released its own model training module that employers may use to satisfy the New York City requirement. Should an employer choose to forego the Commission's training module and use their own (or a third party's), the employer **must include the following features** in that training:

- **Formal definition:** The entity's official definition of sexual harassment. Included in that definition must be language underscoring that such behavior constitutes "unlawful discrimination" under local, state, and federal law;
- **Meaningful examples:** Specific examples of what constitutes sexual harassment;
- **Designated process for resolution:** The internal complaint process for an employee who believes he or she has been sexually harassed;
- **Government complaint options highlighted:** The complaint process available through the NYC Division of Human Rights, and the United States Equal Employment Opportunity Commission (EEOC), including contact information;
- **Employer "retaliation" unlawful:** An explanation highlighting the prohibition on employer retaliation against anyone reporting sexual harassment. This must include specific examples of illegal retaliatory organizational conduct;
- **Bystander duties:** Information about bystander intervention. This includes examples describing ways bystanders can intervene in a difficult situation;
- **Proactive management responsibilities:** Specific managerial responsibilities to intervene in sexual harassment incidents. This includes proactive actions management must undertake to address complaints.

Employer Next Steps

Employers in New York City now find themselves subject to two separate sexual harassment training mandates: one for the city, and one for the state. The NYC FAQ makes it clear that the training offered by the Commission to satisfy the city mandate will also satisfy the state mandate. Consequently, employers with obligations as a NYC based-entity should treat their training as if it were any other third party training and broadly ensure incorporation of all elements required for a compliant city sexual harassment training module (listed above).

You can read the NYC FAQ at the following link: <https://www1.nyc.gov/site/cchr/law/sexual-harassment-training-faqs.page>

HUB International is now working to develop meaningful "training solutions" for our clients. We will announce details as soon as they become available, but employers should be reassured that HUB's final product will be structured to offer a single program simultaneously addressing both sets of rules.