

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

APRIL 18, 2023

### New York Releases Final Revised Sexual Harassment Prevention Model Policy & Training

On April 11, 2023, the New York State Department of Labor (DOL), in consultation with the New York State Division of Human Rights, released a revised sexual harassment prevention model policy. The policy is a final version of one that was first proposed on Jan. 12, 2023, and follows a period of public comment that ran through Feb. 11, 2023. At the same time, the DOL released a revised model sexual harassment training, which includes changes similar to those made to the policy.

#### The Model Policy

The final model policy does not significantly differ from the proposed version, and the DOL appears to have adopted nearly all of its initial revisions. The only notable difference comes at the end of the final policy, where the DOL added language about the ability of the Equal Employment Opportunity Commission (EEOC) to reach settlements and mediate on behalf of complainants. However, importantly for employers, there are substantial differences between the new model policy and the policy released in 2018 that has been in use up until now.

The final policy places a strong emphasis on gender identity discrimination as a type of sexual harassment claim. There is a new paragraph discussing the “gender spectrum,” which sets forth “the three most common ways people identify” as cisgender, transgender and nonbinary. This is in keeping with a broader emphasis throughout the policy on different types of discrimination. While the original model policy focused only on sexual harassment and retaliation, the revised model policy states that “the methods for reporting and investigating discrimination based on other protected identities are the same,” and that “[d]iscrimination of any kind, including sexual harassment” is prohibited.

The final policy includes new sections on bystander intervention and the way sexual harassment can impact the remote workplace. The bystander section encourages witnesses to report observed harassment and reminds supervisors that they are required to do so. The policy also includes five examples of ways a bystander could intervene in a sexual harassment situation. These include: interrupting the harassment; asking a third party to intervene; recording or taking notes for use in a future investigation; checking in with the victim after the fact; and confronting the harasser. Additionally, in recognition of the increased prevalence of remote work arrangements in the post-COVID era, the proposed policy references remote work in several places. It also includes that employees working remotely can be harassed over virtual platforms and messaging apps.

The final policy also addresses New York’s broadened definition of harassment, and includes more examples of retaliatory behavior. The policy explains that “[i]n New York, harassment does not need to be severe or pervasive to be illegal,” and that employees “should not feel discouraged from reporting harassment because they believe it is not bad enough.” This is in contrast to the federal standard for harassment, which requires “severe or pervasive” conduct. Along with the inclusion of the State’s standard are six examples of retaliatory conduct, which range from termination to more minor acts, such as “moving an individual’s desk to a less desirable office location.”

Finally, the model policy includes stronger emphasis on external remedies for employees. As previously reported, New York launched a hotline in 2022 for employees who believe they

have been sexually harassed in the workplace. The revised model policy references the hotline (1-800-HARASS-3), and explains that the hotline can provide information about filing a complaint, including speaking with a volunteer attorney who can provide “limited free assistance.”

### **The Training**

The release of the new model policy was accompanied by new training materials designed to meet the state’s annual training requirement. The training materials include a 54-minute video containing eight case studies with answers, as well as the slide deck and script from the video. DOL also provides a form for employees to answer the true/false questions in the case studies, which can be completed by attendees and submitted to the employer to meet the requirement that the training be interactive. This replaces the two-part video released in 2018, which included a 19-minute instructional video and a separate 22-minute video with case studies. The content of the training mirrors the new model policy, and includes case studies addressing topics such as the State’s broadened definition of harassment, gender identity and remote work.

### **Conclusion**

Despite these broad changes, employers are not required to adopt the DOL’s model policy or training in part or in full. Rather, the DOL sets forth “minimum standards” for the policies and trainings that it requires of employers. These “minimum standards” are unchanged from 2018, but do note that employers must adopt policies and training consistent with the DOL’s guidance. Therefore, while employers may make modifications to the model policy and training, they should ensure that their own policies and trainings are consistent with both the law and the DOL’s guidance.

If you have any questions about on the information presented in this information memo, please contact [Kristen Smith](#), [Theresa Rusnak](#), any attorney in Bond’s [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

**Join us for a complimentary Zoom webinar on Thursday, April 27 from 8:30 - 9:15 a.m. to discuss further. [Click here to register.](#)**

