Don’t Miss the Train! NYC Releases Free Training Guide and Encourages Employers to Complete Sexual Harassment Training Requirement As Soon As Possible

On April 1, 2019, the New York City Human Rights Commission released its free online sexual harassment training that complies with the Stop Sexual Harassment in NYC Act (Local Law 96). As discussed in a prior alert on this topic, this Act requires New York City employers with 15 or more employees to provide annual interactive training to prevent sexual harassment for all employees, including interns and supervisory and managerial employees.

Under this City law, employers with 15 or more employees must conduct an annual interactive anti-sexual harassment training for all employees in New York City working 80 or more hours per year and at least 90 days. The interactive trainings must meet certain minimum requirements listed in more detail below. All employees subject to the City law must complete this training requirement by December 31, 2019 (and then on an annual basis thereafter).

To assist employers in complying, the Commission has released a free online training module on the Commission’s website, which can be found here: https://www1.nyc.gov/site/cchr/law/sexual-harassment-training.page. The training is designed to be taken by an individual and takes approximately 45 minutes to complete, and it does not allow for acceleration of the training module.

At the end of this online training, the employee will receive a “certificate of completion.” Employers should ensure that employees provide a copy of this certificate to the employer, as employers must keep a record of completed trainings for all employees (which may be in paper or electronic form) for at least three years. Group trainings can also be held using the City’s online training module but certificates will not be generated by the training module for everyone who attended, so employers should keep detailed records (e.g., signed and dated attendance sheets) of those who attended to meet its record keeping obligations.

Employers are not required to use the Commission’s free training. The Stop Sexual Harassment in NYC Act defines “interactive training” as “participatory teaching whereby the trainee is engaged in a trainer-trainee interaction, use of audio-visuals, computer or online training program or other participatory forms of training as determined by the commission.” The training is not required to be live or facilitated by an in-person instructor, but must be interactive and should involve “participatory teaching,” including trainer-trainee interactions, use of audio-visual aids, and computer and other online training programs. Any training will comply with the City mandates as long as it contains the mandatory elements listed below:

1. An explanation of sexual harassment as a form of unlawful discrimination under local law;
2. A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;
3. A description of what sexual harassment is, using examples;
4. Any internal complaint process available to employees through their employer to address sexual harassment claims;
5. A description of the complaint process available through the NYC Commission on Human Rights, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, including contact information;

6. The prohibition of retaliation, pursuant to subdivision 7 of section 8-107, and examples thereof;

7. Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention; and

8. The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that such employees may take to appropriately address sexual harassment complaints.

The City, however, stated that it does not certify whether or not anti-sexual harassment trainings provided by third-party vendors meet these requirements.

What Does This Mean For New York City Employers?

- To determine whether an employer has 15 or more employees, employers must consider the number of employees they have concurrently employed at any point during the current or prior calendar year. For example, if an employer had 15 employees in 2018 but three retired and in 2019 there are only 12 employees, the employer is still subject to the training requirement because it had 15 employees in 2018.
  
  - For purposes of determining whether the 15 employee threshold is met, (i) independent contractors – regardless of the number of days or hours they work – count as if they were employees and (ii) it appears from the guidance that there is no distinction in the method of counting a part-time employee versus a full-time employee (i.e., they appear to each count as one employee).

- Anyone who works more than 80 hours in a calendar year and works for at least 90 days must receive this training. If an employee or contractor has worked less than 90 days or less than 80 hours in a calendar year, they do not need to be trained.
  
  - Independent contractors are not required to be trained under the City law. The City, however, recommends that independent contractors who work any substantial amount of time on-site and interact with the employer’s staff should be trained as a best practices matter.

- Employers are not required to re-train their employees who have already received the mandated annual training elsewhere (e.g., at another job). However, employers do need to get from the employee a copy of the training certificate (or other verification) in order to meet their record keeping obligations under the law. Do not assume the training was done. Verify. If you cannot verify, re-train.

- With respect to employees of a NYC employer who are based outside of NYC, (i) if the employee ever works in NYC or will work in NYC, they must be trained and (ii) if the employee is not physically present in NYC but interacts with other employees based in NYC, it is recommended (but not required) that they also be trained.

- The NYC law requires that employers keep a record of completion of the training (which may be in the form of a training certificate, signed employee acknowledgement, or signed and dated attendance sheet in the case of a group training) for at least three years and such records must be made available for Commission inspection upon request. These records may be in paper or electronic format.
NYC does not require a separate training requirement for supervisors or managers. However, supervisors have unique responsibilities under the law; these responsibilities are covered in the model training.

**Does this Model Training Also Comply with the New York State Requirements?**

New York State also requires sexual harassment training, even if you have only one employee. In its FAQs, the NYC Commission notes that the training “meets both the New York City and New York State training requirements.” New York State, in separate FAQs, also confirmed this point, stating that it partnered with the City agency so that the City’s online training would meet the requirements of City and State law.

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Lisa E. Cleary  
212.336.2159  
lecleary@pbwt.com

Catherine A. Williams  
212.336.2207  
cawilliams@pbwt.com

Douglas L. Tang  
212.336.2844  
dtang@pbwt.com

Helen P. O’Reilly  
212.336.2739  
horeilly@pbwt.com

To subscribe to any of our publications, call us at 212.336.2813, email info@pbwt.com or sign up on our website, [https://www.pbwt.com/subscribe/](https://www.pbwt.com/subscribe/).

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