

## **New York City Releases Guidance on Mandatory Sexual Harassment Training, Notice Requirements.**

The New York City Commission on Human Rights has released Frequently Asked Questions (FAQs) as guidance on the “Stop Sexual Harassment in NYC Act.”

New York City employers with at least 15 employees are required to conduct annual anti-sexual harassment training for all employees starting April 1, 2019. Posting and notice requirements went into effect September 6, 2018.

The following are highlights from the FAQs.

### **Employer Coverage**

In order to determine whether an employer has at least 15 employees, the employer must look back at the number of employees it employed at any point within the prior calendar year. If the employer determines it has or had at least 15 employees at any point during that time, it will be subject to the annual sexual harassment training requirements. The guidance does not specify if this count is limited to New York City employees.

Significantly, independent contractors must be counted as “employees” in this

calculation, regardless of the number of days or hours they work.

### **Employee Coverage**

The FAQs confirm that all employees, including short-term or part-time employees, as well as independent contractors, are subject to the training requirements if they:

1. Work more than 80 hours in a calendar year *and*
2. Work for at least 90 days.

Thus, if an employee has worked fewer than 90 days or 80 hours in a calendar year, they are not subject to the sexual harassment training requirements.

Whether this calculation is based on time worked or length of employment in New York City is unclear from the guidance.

Independent contractors who otherwise meet the above requirements need not be trained if they have already received the required sexual harassment training elsewhere.

### **Frequency of Training**

Those subject to the training requirements must be trained every calendar year, as opposed to within one year of their last training.

### **Agency Materials**

The Commission is developing materials, in partnership with the New York State Division of Human Rights and the New York

State Department of Labor, that will comply with state and city training requirements. These should be made available to employers before April 1, 2019. However, employers may choose to develop their own training, as long as the training meets the minimum requirements of the law (Local Law 96). The FAQs restate these minimum requirements.

It is important to note though that New York State has its own sexual harassment training requirements.

## Recordkeeping, Notice Requirements

Employers must keep a record of all trainings, including signed employee acknowledgements (which may be electronic), for at least three years.

Employers must post the required notice made available by the Commission in both English and Spanish. The Commission also will make the notice available in nine additional languages. However, employers must post the English and Spanish versions regardless of whether versions in other languages also are posted. The posters should be located in breakrooms or other common areas accessible to all employees. Virtual postings, such as on electronic bulletin boards, are permitted only in lieu of physical postings if a convenient physical location is not available or if electronic posting is the most effective method of reaching employees.

Finally, employers are required to distribute the fact sheet created by the Commission to new hires within the first week of work.

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Please contact a Jackson Lewis attorney with any questions related to harassment policies, training, and other preventive practices.

### For More Information Contact:

Timothy Domanick, Esq.  
Associate  
Jackson Lewis P.C.  
58 South Service Road, Suite 250  
Melville, NY 11747  
Email: [Timothy.Domanick@Jacksonlewis.com](mailto:Timothy.Domanick@Jacksonlewis.com)  
Phone: (631) 247-4630

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