

New York Legislation Passes Significant Changes To Laws Combating Sexual Harassment in the Workplace

As part of the 2018-2019 New York State Budget, the Governor and the Legislature have agreed to legislation aimed at combating sexual harassment in the workplace (Part KK of S7507-C). The legislation, including the anti-sexual harassment provisions, has passed both the Senate and Assembly, and the Governor expects it to be signed into law soon.

Provisions on the prevention of sexual harassment in New York workplaces included in the Budget agreement affect state contracts, mandatory arbitration clauses, mandatory nondisclosure agreements, and other subjects.

State Contracts

All state contracts requiring competitive bidding for services performed or for goods sold must contain a statement affirming that the contracting organization or bidder has implemented a written policy addressing sexual harassment prevention in the workplace and that it provides annual training for all employees. State entities also may use the statement in contracts that do not require a competitive bid. This provision will take effect on January 1, 2019.

Mandatory Arbitration Clauses

Amendments to New York's Civil Practice Laws and Rules (CPLR) will prohibit all employers in the state from requiring

employees to sign contracts that mandate arbitration for sexual harassment claims. This provision takes effect 90 days after it is enacted. This prohibition may be preempted by the Federal Arbitration Act, as interpreted by the U.S. Supreme Court in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

Mandatory Nondisclosure Agreements

Amendments to the General Obligations Law and the CPLR will prohibit employers, their officers, and other employees from including nondisclosure agreements in sexual harassment claim settlements, agreements, or other resolutions, unless the provision of confidentiality is the complainant's preference.

The complainant will have 21 days to consider a confidentiality condition. If the condition of confidentiality is the complainant's preference after 21 days, it must be provided to and agreed upon by all parties. The complainant then will have seven additional days to revoke the agreement.

This provision will take effect 90 days after it is enacted.

Prevention of Sexual Harassment

The New York State Department of Labor must consult with the state Division of Human Rights to create and publish a model sexual harassment prevention guide and a

sexual harassment prevention policy. All employers in New York then will be required to adopt the prevention policy or to establish a policy that meets or exceeds the state prevention policy's minimum standards. This provision will take effect 180 days after it is enacted.

Sexual Harassment Relating to Non-Employees

It will be an unlawful discriminatory practice for an employer to permit the sexual harassment of a non-employee, independent contractor in its workplace. Current law has no explicit statutory protection for independent contractors, a loophole the new law closes. In reviewing cases related to non-employees, the extent of the employer's control and other legal responsibility with respect to the harasser's conduct will be considered. This provision will take effect immediately upon signing.

Reimbursement of Public Funds

Public employees who are found personally liable for intentional wrongdoing in a final judgment related to a claim of sexual harassment must reimburse the public for his or her proportionate share of the total award paid by any state or public entity to a plaintiff within 90 days of payment. The law applies to employees at every level and includes former and unpaid employees.

The anti-sexual harassment language in the Fiscal Year 2019 New York State Budget represents only part of sweeping changes to this area of the law in New York. On April 11, the New York City Council is expected to pass a package of bills that will also address sexual harassment issues in the workplace.

The Jackson Lewis Government Relations practice monitors and tracks all legislation introduced in New York State and New York City, advocates for client positions with New York's legislators, and helps clients oppose legislation that will be detrimental to their business interests. We have been involved in all phases of the New York State Budget process, from the Governor's Executive Budget Proposal through the Final Enacted State Fiscal Year Budget.

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