Engage PEO Client Alert:

Various New York State/City Employment Law Updates

Sexual Harassment:

As explained in a recent Engage client alert, the state of New York and New York City have recently passed laws that require annual training regarding sexual harassment.

New York state recently released the final rules, model training and model policy.

New York State Law:

- **Many of the New York State requirements go into effect on October 9, 2018.**
- **Required distribution by October 9, 2018 under the *state* law – Policy and Complaint Form:**
  - **View/Download the compliant sexual harassment prevention policy here**
  - **View/download the Complaint Form here**

You may distribute the policy and form electronically as long as the employee can print a copy or receive a printed copy on request. You may also distribute this policy to vendors providing services in your workplace, even if a non-employee, since the law covers these individuals; however, distribution to vendors is not a requirement.

Engage has included the Complaint Form in the Harassment policy for convenience but you may remove that if you prefer to distribute the Complaint Form separate from the handbook.

Optional: A NY State Sexual Harassment poster is also available for display and can be downloaded here.

Important Changes to theTraining Requirement: Extended For 10 Months to 10/9/2019

The compliance period for initial training for all employees (including interns) is now extended from January 1, 2019 to October 9, 2019, giving clients additional time to ensure their employees are properly trained. In addition, employers will no longer be required to train their new employees within 30 days of hire, although the state encourages this standard.

The previous guidance was vague as to whether non-employee, such as independent contractors needed to be trained, but the new guidance has clarified that only employees (including temporary employees) need to be trained. Employers must remember that any employees who work in NY should be trained, even if these employees are based out of state, provided they spend a portion of their time in NY.

Employees should still receive the training during their first year of employment. For those situations where a new hire will not coincide with your annual training, the new hire can provide verification that they completed the training during the prior year from another employer or other provider.

Employers must consider the time spent in this training as time worked for work time calculations, and it must be paid.

The model training and policy will be available from the state in Spanish and several other languages including Chinese, Korean, Bengali, Russian, Italian, Polish and Haitian-Creole. If the employees in your workplace speak these languages, then the training should be provided in that language.

Engage will be offering a compliant training in English. Please contact your Engage Human Resources Consultant to discuss scheduling.

New York City Law

As noted in the previous Client Alert, New York City also will require employers with 15 or more employees to provide annual training starting April 1, 2019. NYC has not yet issued guidance or models regarding this training.

Records and Posters

- The best practice is to maintain records of the training. In NYC, records also are required to be maintained for three years from the date of the training.
- **Effective September 6, 2018, NYC employers were required to display specific posters and provide a notice to new hires:**
    - NYC developed a poster which must be conspicuously displayed in a common area as of September 6, 2018. Download the poster here: **https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Notice-8.5x11.pdf**
    - In addition, new hires will also need to receive a fact sheet by the same date; download it here: **https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/SexHarass_Factsheet.pdf**

New York City "Cooperative Dialogue" Law

New York City has further amended the NYC Human Rights Law to require a "Cooperative Dialogue" when an employee requests an accommodation related to his or her religious beliefs, disability, pregnancy, childbirth or related condition, or because the employee was a victim of domestic violence, sexual violence or stalking. This is something many NYC employers have already been doing in practice, under federal law, state law, or their own best practices and policies.

The law now requires certain procedures to be followed in these situations:

- Employers must "engage in good faith in written or oral dialogue" when an accommodation is requested. If an employer cannot provide the specific accommodation request, then it must discuss the challenges and hardships posed by the request and suggest potential alternatives that are responsive. This good faith dialogue (written or verbal) must continue until resolution, either granted or denied. Upon completion, the employer must memorialize the determination, whether the accommodation was

provided or denied, and provide a copy of such written report to the person requesting the accommodation.

- NYC has also made it a violation not to engage in this cooperative dialogue in good faith or to fail to provide the written determination of the cooperative dialogue. This law goes into effect on October 15, 2018.

New York City Ban the Box (Fair Chance Act) – Reminder

It is important to remember that the New York City Fair Chance Act (FCA) prohibits employers with four (4) or more employees from making any criminal inquiries or conducting searches of public records and consumer reports containing criminal background information, until after extending a conditional job offer. Employers who violate the FCA could be subject to punitive damages.

Home Health Care Clients – 13-hour Rule

Engage Home Health Care Industry clients in New York have long followed the NY DOL's interpretation of the 13-hour rule, which essentially stated that home care workers only had to be paid 13 hours of a 24-hour live-in shift, as long as they received the required sleep and meal periods. After a few court decisions that clouded the rule, the NY DOL codified the rule through its emergency rule making power, which puts the rule into effect for a period of 90 days. The NY DOL then also renewed the emergency rule.

Last week, the New York Supreme Court for NY County ruled that the emergency rulemaking amendment to the "13-hour rule" was "null, void and invalid." Importantly, the court was not ruling on the validity of the rule but only that the method used (the "emergency regulation") was not the appropriate vehicle for codifying this rule. The NY DOL has been taking steps to amend its Wage Order including holding a mandatory hearing last July which with hope will lead to a codification of this longstanding 13-hour rule interpretation.

If you have any questions, please contact your Engage HR Consultant.

IMPORTANT DATES	
September 6, 2018	Reminder: The NYC Poster should have been displayed and the NYC Fact Sheet should have been provided to all new hires by this date.
October 9, 2018, or sooner	Distribute the NY State Policy and Complaint Form.
October 15, 2018	Employers must comply with NYC "Cooperative Dialogue" requirements.
October 9, 2019	Deadline to train all employees on Sexual Harassment Prevention; this is now an annual requirement.
Ongoing	**Before hire**: Provide a copy of the NY State Sexual Harassment Policy. **At hire:** Provide the NY City Fact Sheet to the new employee; if applicable you may ask which language version is preferred.