

New York Department of Labor Issues Updated Model Sexual Harassment Policy—And Claims that the Model Policy Is Now a “Minimum Standard”



Employment

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The New York State Department of Labor recently issued a proposed updated model Sexual Harassment Prevention Policy (the “Proposed Policy”) to replace the original model policy issued approximately four years ago under New York Labor Law § 201-g. A copy of the proposed model Policy can be found [here](#).

According to the Department of Labor, the Proposed Policy was developed based on input from workers, employers and the public. The Proposed Policy is subject to final feedback during a 30-day comment period that ends on February 11, 2023. Interested parties may submit a comment to the Department of Labor via its website at the link above.

As a reminder, the New York Labor Law requires employers of all sizes to adopt a sexual harassment prevention policy that meets or exceeds the requirements of § 201-g, in addition to providing annual sexual harassment prevention training that also must meet or exceed standards established by law. When the Department of Labor created the original policy in 2018, the contents of the policy contained language and information that, in the view of many employers, exceeded the requirements of applicable law. Accordingly, many employers chose to adopt

policies that incorporated some, but not all, of the model policy's language based on the assumption that their policies would be deemed compliant so long as they met the minimum standards established by § 201-g.

All employers, including those who omitted any language from the original model policy, should monitor the Department of Labor's issuance of the Proposed Policy closely. While the Department of Labor's website continues to list a "Minimum Standards for Sexual Harassment Prevention Policies" document, the Proposed Policy contains a notation from the Department of Labor indicating that contents of the Proposed Policy represent a "minimum standard" and that "no section of the policy should be omitted." In other words, the Department of Labor appears to have taken the position that employers are required to include all the language of the Proposed Policy in any sexual harassment prevention policy adopted in the State of New York—including those provisions of the Proposed Policy that exceed the requirements of § 201-g. If the Department of Labor continues to stand by this interpretation, many employers will be required to revise their existing policies to include information that is not explicitly required by Labor Law § 201-g, including extensive information educating employees about how and where to file complaints of suspected harassment against their employer.

In addition to the potential conflict between the statute and guidance, the Proposed Policy also contains significant updates including:

- Adding new language to include remote workers (including the ability to submit complaints of harassment to their employer via email);
- Defining and explaining gender diversity;
- Expanding on gender discrimination;
- Providing additional and updated examples of discrimination and harassment;
- Including a section on "bystander invention" that provides methods by which workers can intervene when they witness suspected harassment in the workplace;
- Adding additional language to inform employees of the methods by which they can file complaints of discrimination against their employer
- Indicating that harassing behavior may extend to the "virtual or remote workspace" including having "materials visible in the background of one's home during a virtual meeting"—suggesting employers may be responsible for what employees and/or contractors display in their homes; and
- Providing additional examples of prohibited retaliation.

The Proposed Policy is still in a comment period, so employers are not required to take any immediate action. However, all employers—including those who have adopted Sexual Harassment Prevention policies that deviate from the original model policy—should carefully monitor this development and begin taking steps that will allow them to roll out a revised policy shortly after February 11, 2023.

If you have any questions about the proposed updated Sexual Harassment Prevention Policy, please contact [Amy Habib Rittling](#) (716.853.5100 x1276), [Andrew Drilling](#) (716.853.5100 x1253), or any other member of our [Employment Practice](#) team.

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