



ISSUES IN BRIEF

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“Sexual Harassment”

The new state budget for FY 2019 contains several provisions intended to address sexual harassment in the workplace (see S.7507-C/A.9507-C, Part KK). Among other things, the new law will require all employers to adopt a sexual harassment policy and provide sexual harassment training to all employees on an annual basis. Key provisions of the new law include:

Mandated Employee Training: Employers of all size will be required to adopt sexual harassment prevention policies and “effectively communicate” such policies to all employees. All employers will also be required to provide all employees with annual sexual harassment training. The state labor department is required to develop a model policy and model training program, and employers will be required to either use the DOL models or implement policies and training programs that exceed the provisions of DOL models. These provision takes effect 180-days after the bill’s approval.

Sexual Harassment Relating to Non-Employees: The state human rights law is amended to make it an unlawful practice for an employer to permit sexual harassment of non-employees. An employer may be held liable to a non-employee (contractor, subcontractor, vendor, consultant, etc.) if the employer or its agents knew or should have known that the non-employee was subject to sexual harassment and failed to take immediate and appropriate action. This new liability takes effect immediately upon the Governor’s signature.

Attestation for State Contractors: Beginning January 2019, any business submitting a bid for public work, whether in a competitive bidding process or not, shall be required to affirm the following:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."

Note that this provision also requires that all such bidders have a written sexual harassment policy and provide annual sexual harassment training to their employees.

Prohibition of Mandatory Arbitration: The state’s civil practice law is amended to prohibit mandatory arbitration clauses for use in addressing unlawful discriminatory practices related to sexual harassment in the workplace. Effective 90 days after the Governor’s approval of this legislation, employers are prohibited from requiring arbitration for sexual harassment claims. This legislation would also invalidate existing clauses to that effect. It is to be determined how this provision will be implemented in light of the Federal Arbitration Act and recent Supreme Court rulings that seem to indicate that federal law would preempt this prohibition.

Nondisclosure Agreements: The general obligations law is amended to prohibit any employer from including a nondisclosure agreement in any settlement involving sexual harassment unless the condition of confidentiality is the complainant’s preference. In that case, the complainant will have 21-days to consider such an agreement and, even after signing such an agreement, will have seven days to revoke such an agreement. This provision would be effective 90-days after signed into law.

Employees of State Agencies and Public Entities: The public officers law has been amended to require employees of state agencies and other public entities who have been subject to a final judgement of personal liability for intentional wrong-doing related to a claim of sexual harassment to reimburse the state or public entity for any award. This would be effective immediately.

The Business Council will work with the Department of Labor with the intent of crafting a model policy and training program that is both effective in preventing sexual harassment in the workplace and flexible enough to be practicable for employers of all sizes.

In addition, we will be offering compliance information and guidance to Business Council members.

We welcome your questions and comments.

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