

NEW YORK EMPLOYMENT LAW

Stop Sexual Harassment in New York City Act



The Coyle Group
RISK MANAGEMENT

In May 2018, the city of New York (NYC) enacted a series of 11 local laws that strengthen the city's existing protections against workplace sexual harassment. These laws, which are collectively known as the **Stop Sexual Harassment in New York City Act** (NYC-SSHA), impose new requirements on employers in the city. In addition, the New York State Legislature enacted new, statewide employer requirements related to workplace sexual harassment in its [2019 budget law](#) in April 2018.

This Employment Law Summary provides an overview of the NYC-SSHA and includes information about related provisions under the new state law.

STATE RESOURCES

New York City (NYC) Commission on Human Rights [website](#)

NYC Workplace Poster
Effective Sept. 6, 2018, employers in NYC must display this [poster](#) in their employees' breakrooms or other gathering places.

NYC Information Sheet
Effective Sept. 6, 2018, employers in NYC must provide this [fact sheet](#) to each new employee when he or she is hired.

New York State Department of Labor [website](#)

New York State Human Rights Division [website](#)

OVERVIEW OF CHANGES

Under NYC's existing [Human Rights Law](#) (NYC-HRL) employers in the city are prohibited from discriminating against, harassing or allowing others to harass job applicants and employees based on certain protected traits, which include gender and sexual orientation. Most of the NYC-HRL's prohibitions apply only to employers with four or more employees, and most claims under the law must be filed within one year after an alleged violation. Effective **May 9, 2018**, however, the NYC-SSHA amended the NYC-HRL to allow **gender-based harassment claims** to be filed:

- Against any NYC employer, regardless of its size; and
- Within three years after any alleged harassment occurs.

Other changes made by the NYC-SSHA will require:

- All private employers in NYC to display a **poster** about sexual harassment in their employees' workplaces and to provide an **information sheet** about sexual harassment to each employee, effective Sept. 6, 2018; and
- Private employers with 15 or more employees in NYC to provide **annual sexual harassment training** to their employees, effective April 1, 2019.

New York State's [2019 budget law](#) also requires **all employers in the state** to provide annual sexual harassment training to their employees, effective Oct. 9, 2018. In addition, both the state law and the NYC-SSHA make other changes that affect private employers in NYC. The table below provides a summary of the changes under both laws, in order of when they apply. More details about some of the NYC-SSHA changes follow.

NEW YORK EMPLOYMENT LAW

Stop Sexual Harassment in New York City Act



Effective date	Law	Affected employers	New Provision
April 12, 2018	State	All employers in the state of New York	<ul style="list-style-type: none"> Subject to sexual harassment claims by nonemployees (previously, only employees could file these claims against an employer).
May 9, 2018	Local	Employers with 1-3 employees in NYC	<ul style="list-style-type: none"> Subject to gender-based harassment claims (previously, these claims were allowed only against employers with four or more employees in NYC).
		All NYC employers	<ul style="list-style-type: none"> Subject to gender-based harassment claims for up to three years after alleged harassing conduct occurs (previously, these claims could be filed for only one year after the alleged harassing conduct).
July 8, 2018		NYC contractors and subcontractors	<ul style="list-style-type: none"> Must include their practices, policies and procedures relating to preventing and addressing sexual harassment as part of a report required for certain contracts.
July 11, 2018	State	All employers in the state of New York	<ul style="list-style-type: none"> Prohibited from including nondisclosure requirements within any settlement or other agreement to resolve a sexual harassment claim, unless the complainant prefers to include one. Prohibited from including mandatory arbitration requirements for sexual harassment claims within any written contract.
Sept. 6, 2018	Local	All NYC employers	<ul style="list-style-type: none"> Must display a workplace poster about sexual harassment. Must provide a fact sheet about sexual harassment to new hires.
Oct. 9, 2018	State	All employers in the state of New York	<ul style="list-style-type: none"> Must have a written sexual harassment policy. Must distribute the written policy to all employees. Must provide annual, interactive sexual harassment training to all employees. The policy and program must meet minimum standards provided under models to be established by the New York State Department of Labor and the New York State Human Rights Division.
April 1, 2019	Local	Employers with 15 or more employees in NYC	<ul style="list-style-type: none"> Must provide annual, interactive sexual harassment training after 90 days of initial hire to all employees (including interns) who work more than 80 hours in a calendar year. Must keep a record of all trainings for at least three years. May establish own training program that meets minimum legal requirements or use an online interactive training module to be established by the NYC Commission on Human Rights (NYC-CHR).

NYC GENDER-BASED HARASSMENT CLAIMS AND EMPLOYER LIABILITY

Under the NYC-SSHA, the term "gender-based harassment" means any unwelcome conduct that is either:

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.

NEW YORK EMPLOYMENT LAW

Stop Sexual Harassment in New York City Act



- Of a sexual nature; or
- Based on an individual's actual or perceived **sex, gender identity or gender expression**, including actual or perceived gender-related self-image, appearance, behavior, expression or other gender-related characteristic, regardless of the sex assigned to a person at birth.

As of **May 9, 2018**, the NYC-SSHA imposes an affirmative legal obligation on **all NYC employers**, regardless of size, to prevent and address gender-based harassment in the workplace. Because that obligation already existed for larger employers, this change only affects NYC employers with **up to three employees**. Like their larger counterparts, these employers may now be held liable for gender-based, workplace harassment committed by their employees, agents and independent contractors.

In general, an employer may be held liable for gender-based harassment committed by any of its employees or agents if:

- The employee or agent exercised managerial or supervisory responsibility;
- The employer (or any of its managers or supervisors) knew of the conduct and either acquiesced in it or failed to take immediate and appropriate corrective action; or
- The employer should have known of the conduct and failed to exercise reasonable diligence to prevent it.

For gender-based harassment committed by an independent contractor, an employer may be held liable if:

- The conduct occurred while the independent contractor was working for the employer; and
- The employer had actual knowledge of and acquiesced in the conduct.

Also as of **May 9, 2018**, the NYC-SSHA extends the time limit for individuals to file claims of gender-based harassment against any NYC employer. While the NYC-HRL's existing, one-year limit still applies for claims of harassment based on other protected traits, individuals who believe they have been harassed based on gender may now file claims with the NYC-CHR within **three years** of the alleged harassment.

NYC POSTING AND INFORMATION REQUIREMENTS

Effective **Sept. 6, 2018**, the NYC-SSHA requires every employer in NYC to post a notice and provide written information about sexual harassment to its employees.

To satisfy the NYC-SSHA's posting requirements, employers must use the NYC-CHR's anti-sexual harassment rights and responsibilities [poster](#) and display both English and Spanish versions of it in their employees' breakrooms or in other common areas where their employees gather. The posters must be at least 8 1/2 by 14 inches in size.

To satisfy the NYC-SSHA's information requirements, employers must use the NYC-CHR's anti-sexual harassment rights and responsibilities [fact sheet](#) and give a copy of it to each employee at the time he or she is hired. The fact sheet may be distributed by including it in an employee handbook.

NYC AND STATE TRAINING REQUIREMENTS

Because the new training requirements enacted under New York State's 2019 budget bill will apply to all New York employers as of Oct. 9, 2018, every employer in NYC should have already established and implemented a state-compliant training program by the time the NYC-SSHA's new training requirements go into effect on **April 1, 2019**.

However, **employers with 15 or more employees working in NYC** should be aware that, as of that date, additional

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.

NEW YORK EMPLOYMENT LAW

Stop Sexual Harassment in New York City Act



training-related obligations will apply to them under the NYC-SSHA. Specifically, the NYC-SSHA will require these employers to:

- Keep records, including a **signed employee acknowledgment** from each employee (which may be electronic), of the training they provide; and
- Maintain their training records (and make them available for the NYC-CHR's inspection upon its request) for **at least three years**.

Many of the other training requirements are similar under both new laws. For example, both laws require an employer's training program to be:

- Interactive; and
- Provided annually.

Under both laws, the term "interactive" is generally defined as participatory teaching that allows trainees to interact with a trainer. This may be through the use of audio-visuals, computer- or online-training programs, or other participatory forms of training. The NYC-SSHA specifies that a training program does not necessarily have to be live or facilitated by an in-person instructor in order to be interactive.

Also, while the state law directs every employer to provide the required training to "all employees on an annual basis," the NYC-SSHA specifies that its training requirements apply **90 days after each employee who works more than 80 hours in a calendar year is initially hired**. This includes any interns, regardless of whether an employer pays them a salary or wage.

Finally, the state law directs the New York State Department of Labor and the New York State Human Rights Division to develop a model training program with standards that all employers in the state must either meet or exceed. Similarly, the NYC-SSHA directs the NYC-CHR to develop an online, interactive training module that employers may use to comply with the city's training requirements. NYC employers that are subject to the local training requirements may develop their own training programs as long as they comply with minimum standards outlined in the NYC-SSHA. In particular, an NYC employer's training program must include, at a minimum:

- An explanation of sexual harassment as a form of unlawful discrimination under local law;
- A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;
- A description of what sexual harassment is, using examples;
- Any internal complaint process available to employees through their employer to address sexual harassment claims;
- The complaint process available through the NYC-CHR, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, including contact information;
- An explanation of the NYC-HRL's prohibition against retaliation, using examples;
- Information about bystander intervention, including (but not limited to) any resources that explain how to engage in bystander intervention; and
- The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that these employees may take to appropriately address sexual harassment complaints.