



## < Combating Sexual Harassment in the Workplace

# Combating Sexual Harassment: Frequently Asked Questions

## For Workers

### Q1. I think I've been sexually harassed. What should I do?

A1. If you believe that you have been sexually harassed, you should report the conduct to your employer, temporary agency or placement agency. If your employer is your harasser, or you do not trust how your employer will react, you may contact the New York State Division of Human Rights. The Division of Human Rights can take complaints and investigate.

You can also, simultaneously or subsequently, file a complaint with the New York State Division of Human Rights. Please note: a complaint must be filed with the Division of Human Rights within one year of the alleged discriminatory act. For more information, see the Division's brochure entitled "[Sexual Harassment](#)."

### Q2. How can I file a complaint with the Division of Human Rights?

A2. There are several ways to file a complaint with the Division:

- For information on how to file a complaint, visit: [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint)
- You can call 1-888-392-3644
- You can visit a Division of Human Right office and file a complaint in person: <https://dhr.ny.gov/contact-us>

### Q3. Can my employer retaliate against me if I complain?

A3. New York's Human Rights Law prohibits retaliation for making an internal complaint to your employer, or for filing a complaint with the Division of Human Rights. If you feel you are being retaliated against, you should contact the Division and file a complaint.

### Q4. Is my employer covered by the Human Rights Law?

A4. Yes. The Human Rights Law requires ALL employers in New York State, regardless of the number of employees, to provide a workplace free from sexual harassment.

## Non-Employees in a Workplace

### Q1. I am not directly employed by the company where I was harassed, am I still covered?

**A1.** As of April 12, 2018, non-employees, such as contractors, subcontractors, vendors, consultants or anyone providing services in the workplace, are also protected from harassment at a location where they are working. Protected non-employees include persons commonly referred to as independent contractors, “gig” workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the employer.

**Q2.** I work for a maintenance contractor and I clean the offices of a business. An employee of the building, who is not employed by the business I clean for, is asking me repeatedly for dates. I don't like this behavior. What can I do?

**A2.** Your employer and the business that operates in your worksite are both required to provide you a harassment-free workplace. You should report the conduct to the worksite business, and also to your own employer. Both are responsible to address the problem. If your employer is your harasser, or you do not trust how your employer will react, you may also file a complaint with the Division of Human Rights.

**Q3.** The copier repair person always makes sexual jokes which are upsetting to me. My boss says that she can't do anything about it.

**A3.** Your employer is required to provide a workplace free from sexual harassment, regardless of who the harasser is. Your employer is required to take appropriate action based on your complaint. If you do not trust how your employer will react, you should file a complaint with the Division of Human Rights.

**Q4.** A temporary worker tells me sexually explicit stories about his “dates” regularly. I complained, but my supervisor says he doesn't have any authority over the temps.

**A4.** Your supervisor is required to take your complaint to someone who can investigate and take corrective action. You can complain to another supervisor or manager at your employer, or you can file a complaint with the Division of Human Rights, or you can do both.

**Q5.** I perform work as an independent contractor, and much of my work is performed off the premises of the business. However, when I come into the office to meet with the person who oversees my work, he tries to start an unwelcome sexual relationship with me. He is the only person at the business that I have any contact with, and I don't know how to complain.

**A5.** Employers are encouraged to post and make available their Sexual Harassment Prevention policies. You can complain to a supervisor or manager at the employer, file a complaint with the Division of Human Rights, or both.

## **For Employers**

**Q1.** Will the State offer workshops and webinars?

**A1.** Yes. Dates for training sessions will be announced on this website.

**Q2.** What type of records must employers maintain to verify compliance?

**A2.** No signed acknowledgement of having read the policy is required, but employers are encouraged to keep a signed acknowledgement and to keep a copy of training records. These records may be helpful in addressing any future complaints or lawsuits.

**Q3.** Does this law apply to New York City employers?

**A3.** Yes. It applies to all employers in New York State, including New York City.

## Languages

### **Q1. Will New York State make resources available for training in languages other than English?**

A1. Yes. Finalized materials will be translated into Spanish, Chinese, Korean, Bengali, Russian, Italian, Polish and Haitian-Creole as quickly as possible and available on this website. Additional languages may be added in the future.

### **Q2. Am I required to provide the policy and training in languages other than English?**

A2. Yes. Employers should provide employees with training in the language spoken by their employees. Model materials will be translated in accordance with Executive Order 26, Statewide Language Access Policy. When a template training is not available from the State in an employee's primary language, the employer may provide that employee an English-language version. However, as employers may be held liable for the conduct of all of their employees, employers are strongly encouraged to provide a policy and training in the language spoken by the employee.

## Policy

### **Q1. How can employers provide their policy to employees?**

A1. Employers must provide employees with their policy in writing or electronically. If a copy is made available on a work computer, workers must be able to print a copy for their own records.

### **Q2. Is there any employer responsibility to train third-party vendors or other non-employees who interact one-time or regularly in an office located in New York State?**

A2. No. However, posting a copy of your policy in an area that is highly visible further communicates your effort as a responsible employer.

### **Q3. What should I do if a temporary employee is being harassed by an employee of another company?**

A3. In such circumstances, you should inform both the company and the temporary employee's firm. However, if you are able to take action in order to prevent or end such harassment you should do so, as outlined in the policy.

### **Q4. What policy, if any, must be provided to contractors, subcontractors, vendors and consultants?**

A4. Employers do not have to provide any policy to independent contractors, vendors or consultants as such individuals are not employees of the employer. However, the State Human Rights Law imposes liability on the employer for their actions, and you are encouraged to provide the policy and training to anyone providing services in the workplace.

### **Q5. If an employer already has established investigative procedures which are similar, but not identical to those provided in the model, can the employer deviate from these specific requirements and remain compliant with the law?**

A5. Yes. But the investigative procedures that the employer will be using should be outlined in the employer's policy.

### **Q6. Does the complaint form need to be included, in full, in the policy?**

A6. No. Employers should, however, be clear about where the form may be found, for example, on a company's internal website.

## Training

### **Q1. Who is considered an Employee for the training requirement? And when does the training need to be completed?**

A1. "Employee" includes all workers, regardless of immigration status. Employee also includes exempt or non-exempt employees, part-time workers, seasonal workers, and temporary workers. All employees must complete the model training or a comparable training that meets the minimum standards by Oct. 9, 2019.

### **Q2. How often must employees receive sexual harassment training?**

A2. Employees must be trained at least once per year. In subsequent years, this may be based on the calendar year, anniversary of each employee's start date, or any other date the employer chooses.

### **Q3. How soon do new employees need to be trained?**

A3. As employers may be liable for the actions of employees immediately upon hire, the State encourages training as soon as possible. Employers should distribute the policy to employees prior to commencing work and should have it posted.

### **Q4. If an employer has previously provided training that meets or exceeds the requirements, must employees be retrained?**

A4. Employees must receive training on an annual basis. If employees have already received training this year, but it did NOT meet all new requirements, employers need only provide supplemental training to ensure all requirements are met.

### **Q5. Is there a minimum number of training hours employees must complete each year?**

A5. No, as long as they receive training that meets or exceeds the minimum standards.

### **Q6. What are the obligations of employment agencies? What about employees who received the same training from another employer within the past year?**

A6. The law requires that employers provide a sexual harassment prevention policy and training on an annual basis to all employees. An employer may choose to deem the training requirement satisfied if a new employee can verify completion through a previous employer or through a temporary help firm.

An agency or any other worker organization (e.g. labor union) may choose to provide training to workers, however, the employer may still be liable for the employee's conduct and understanding of policies and should train the employee on any nuances and processes specific to the company or industry.

### **Q7. I am an employer based in New York State but also have employees who only work in other states. Do they need to be trained as well?**

A7. No. Only employees who work or will work in New York State need to be trained. However, if an individual works a portion of their time in New York State, even if they're based in another state, they must be trained.

### **Q8. Are minor employees (e.g., child actors) required to take sexual harassment training?**

A8. Yes. However, those employing children under the age of 14 may opt to simplify the training and policy while still meeting the minimum requirements.

**Q9. What does “interactive training” mean?**

A9. New York State law requires all sexual harassment training to be interactive. Training may be online, so long as it is interactive. Examples of employee participation include:

- If the training is web-based, it has questions at the end of a section and the employee must select the right answer;
- If the training is web-based, the employees have an option to submit a question online and receive an answer immediately or in a timely manner;
- In an in-person or live training, the presenter asks the employees questions or gives them time throughout the presentation to ask questions;
- Web-based or in-person trainings that provide a Feedback Survey for employees to turn in after they have completed the training

An individual watching a training video or reading a document only, with no feedback mechanism or interaction, would NOT be considered interactive.

**Q10. Is a live trainer required and does a trainer need to have a certification?**

A10. While a best practice for effective and engaging trainings, a live trainer is not specifically required. Live trainers may appear in person or via phone, video conference, etc. No certification is required and the State does not currently certify or license training providers.

**Q11. May I use a third-party vendor to provide training? How do I ensure it meets the standards?**

A11. You may use a third-party vendor or organization, or deliver the training by existing employees or managers. You should review any third-party training to ensure it meets or exceeds the minimum standards required under the law.

**Q11. Are there different training requirements for employees in managerial/supervisory roles?**

A11. Employers must make managers and supervisors as well as all employees aware of the extra requirements for those in managerial/supervisory roles. The model training does address the additional requirements, and employers may choose to provide additional or separate training to supervisors and managers.

**Q12. What happens if some employees fail to take the training despite an employer’s best efforts to make it available, and to require everyone to take it?**

A12. Employers are required to ensure that all employees receive training on an annual basis. Employers may take appropriate administrative remedies to ensure compliance.

**Q13. Are businesses required to pay workers for the time spent in training, for instance, during the onboarding process before their actual assignment begins?**

A13. Employers must follow federal regulations (*see e.g.*, 29 CFR 785.27-785.32), which generally require that employer-provided training time is counted as regular work hours.

**Q14. How does the Sexual Harassment Prevention training time impact the Hospitality Wage Order's 80/20 rule?**

A14. Like other mandatory trainings, this does not impact the percentage in the Order and should be treated in line with other employer trainings. It should be either added in line with the existing proportion or training hours should be excluded from the 80/20 calculation.

**Q15. Are sections in the model training materials that are not expressly required in the law mandatory?**

A15. No, but they are strongly recommended. In addition, employers are encouraged to exceed the minimum training requirements.

## Mandatory Arbitration

**Q1. What is a mandatory arbitration clause in the context of the new law concerning sexual harassment?**

A1. A mandatory arbitration clause is a requirement in any written contract that: (1) when faced with contract disputes, compels parties to seek arbitration before going to court and (2) makes facts found at arbitration final and not subject to review by the courts. More precisely, in the words of the statute:

*The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging an unlawful discriminatory practice based on sexual harassment shall be final and not subject to independent court review.*

**Q2. What is a prohibited clause?**

A2. Under the new law, a prohibited clause means any requirement in any contract that requires mandatory arbitration to resolve any sexual harassment claim. Specifically, as stated in the statute:

*The term "prohibited clause" shall mean any clause or provision of any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment.*

The ban on prohibited clauses does not "prohibit an employer from incorporating a non-prohibited clause or other mandatory arbitration provision within such contract, that the parties agree upon."

**Q3. What does the new law say about such mandatory arbitration clauses?**

A3. The law generally bans new contracts from containing any prohibited clause, and makes such prohibited clauses null and void, with certain exceptions summarized below.

**Q4. When will that new ban on mandatory arbitration clauses take effect?**

A4. The new ban will apply to contracts entered into on or after July 11, 2018.

**Q5. What are the exceptions to the ban?**

A5. The law expressly recognizes that: (1); “the provisions declaring prohibited clauses null and void do not apply “where inconsistent with federal law;” and (2) collective bargaining agreements will be controlling in cases where there is a conflict between the such agreement and the new law.

**Q6. Is the law limited to employers with four or more employees?**

A6. No, the law’s ban on prohibited clauses applies to all contracts. The law defines the term employer by reference to the state Human Rights Law, which defines employers to include all employers in cases involving sexual harassment.

**Q7. Where can I find the text of the new ban on prohibited mandatory arbitration clauses?**

A7. The relevant provisions of the new law can be found at Civil Practice Law and Rules § 7515, which is quoted below:

§ 7515. Mandatory arbitration clauses; prohibited. (a) Definitions. As used in this section:

1. The term "employer" shall have the same meaning as provided in subdivision five of section two hundred ninety-two of the executive law.
2. The term "prohibited clause" shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment.
3. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging an unlawful discriminatory practice based on sexual harassment shall be final and not subject to independent court review.
4. The term "arbitration" shall mean the use of a decision-making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

(b) (i) Prohibition. Except where inconsistent with federal law, no written contract, entered into on or after the effective date of this section shall contain a prohibited clause as defined in paragraph two of subdivision (a) of this section.

(ii) Exceptions. Nothing contained in this section shall be construed to impair or prohibit an employer from incorporating a non-prohibited clause or other mandatory arbitration provision within such contract, that the parties agree upon.

(iii) Mandatory arbitration clause null and void. Except where inconsistent with federal law, the provisions of such prohibited clause as defined in paragraph two of subdivision (a) of this section shall be null and

void. The inclusion of such clause in a written contract shall not serve to impair the enforceability of any other provision of such contract.

(c) Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

## **Nondisclosure Agreements**

### **Q1. What is a nondisclosure agreement in the context of the new law concerning sexual harassment?**

A1. Under the new law, a nondisclosure agreement is defined to include any resolution of any claim involving sexual harassment that would prevent the person who complained from disclosing the underlying facts and circumstances of the harassment.

### **Q2. What will the new law do about such nondisclosure agreements?**

A2. The new law will generally ban such nondisclosure agreements, except for those where the person who complained prefers such a nondisclosure agreement. Specifically, the new law takes away the authority of employers to include, or agree to include, any term or condition that would prevent the disclosure of the underlying facts and circumstances of the harassment unless the condition of nondisclosure is the preference of the person who complained.

### **Q3. When will the ban on nondisclosure agreements take effect?**

A3. On July 11, 2018. That is the date when employers will lose their authority to include, or agree to include, such terms or conditions of nondisclosure of the underlying facts and circumstances of the harassment.

### **Q4. How do the parties establish that confidentiality is the complainant's preference?**

A4. The law requires that "such preference shall be memorialized in an agreement signed by all parties."

### **Q5. Is there a particular process that must be followed for memorializing the complainant's preference?**

A5. Yes, the law spells out and requires the following three-step process and timeframe:

1. Any such term or condition must be provided to all parties, and the person who complained shall have 21 days from the date such term or condition is provided to consider such term or condition.
2. If after 21 days, such term of condition is the preference of the person who complained, such preference shall be memorialized in an agreement signed by all parties.
3. For a period of 7 days following the execution of an agreement containing such a term, the person who complained may revoke the agreement and the agreement shall not become effective or be enforceable until such revocation period has expired.

### **Q6. Can the employer initiate the process by suggesting a term or condition of confidentiality?**

A6. As long as the statutory process and timeline summarized above is followed, the law does not prohibit the employer from initiating that process.



**Q7. Does the process established under the law mean that the parties will need to enter into two separate documents providing for nondisclosure: 1) an agreement that memorializes the preference of the person who complained, and 2) whatever documents incorporate that preferred term or condition as part of a larger overall resolution between the parties?**

A7. Yes, as summarized above, starting July 11, 2018, employers will lose the ability to include or agree to include such nondisclosure language in documents resolving sexual harassment matters unless the complainant's preference for that language has been memorialized in an agreement signed by all parties after following the three-step procedure summarized above.

**Q8. Can the 21-day period be waived, shortened, or calculated to overlap with the 7-day revocation period?**

A8. No. The text of the new law requires that the 21-day period expire before the plaintiff's preference can be memorialized in an agreement signed by all parties, and the minimum 7-day period does not start to run until after that agreement is executed.

**Q9. Are the new law's provisions for memorializing a plaintiff's preference for confidentiality intended to track federal provisions for waiving age discrimination rights?**

A9. While both the new law and federal age discrimination laws reference 21-day consideration periods and 7-day revocation periods, the context, language and purposes of the state and federal provisions are not the same. Specifically, while the practice of some under the federal law is to fold waivers into standard representations and warranties provisions of settlement agreements that can be presented and executed on the spot, in a single agreement, without waiting for the 21-day consideration period to expire, the new state law requires a separate agreement to be executed after the expiration of the 21-day consideration period before the employer is authorized to include confidentiality language in a proposed resolution.

**Q10. Where can I find the text of the new ban on nondisclosure agreements in cases involving sexual harassment**

A10. The relevant provisions of the new law are identified and quoted below:

CPLR§ 5003-b. Nondisclosure agreements.

Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves sexual harassment, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

General Obligations Law 5-336. Nondisclosure agreements.

Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves sexual harassment, any term or condition that would prevent the

disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference. Any such term or condition must be provided to all parties, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the complainant's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.