

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

JANUARY 23, 2023

### New York Releases Revised Sexual Harassment Prevention Model Policy for Public Comment

On Jan. 12, 2023, the New York State Department of Labor (DOL), in consultation with the New York State Division of Human Rights, released a [revised sexual harassment prevention model policy](#) for public review and comment. The agencies collected public input regarding the policy revision in late 2022, and DOL is providing a [30-day comment period](#) for feedback prior to the revision being finalized. The comment period will run through Feb. 11, 2023.

The proposed model policy is a revised version of the current sexual harassment prevention policy, which was released in 2018. At that time, Labor Law §201-g was enacted to require New York employers to either adopt the state's model policy or establish its own policy that meets or exceeds the standards in the model policy. Under the terms of that law, the DOL is required by law to evaluate its model policy every four years and issue a revision, and the first review was set to take place in 2022.

The proposed model policy is three pages longer than the current model policy, and the changes are substantial. Some of the notable revisions include the following:

- **Stronger Emphasis on Gender Identity Discrimination.** There is a new paragraph discussing the “gender spectrum,” and defining “the three most common ways people identify” as cisgender, transgender and non-binary. The new paragraph concludes by saying that “[r]especting an individual’s gender identity is a necessary first step in establishing a safe workplace.”
- **New Section on Bystander Intervention.** There is a new section entitled “Bystander Intervention.” This section encourages witnesses to report observed harassment and reminds supervisors that they are required to do so. The proposed policy also includes five examples of ways a bystander could intervene in a sexual harassment situation. These include methods such as interrupting the harassment, asking a third party to intervene, recording or taking notes for use in a future investigation, checking in with the victim after the fact and confronting the harasser.
- **Reference to Broader Discrimination.** The original model policy focused only on sexual harassment and retaliation, with no reference to other forms of unlawful discrimination or harassment. Although the revised model policy is still focused mainly on sexual harassment and gender discrimination, it also states that “the methods for reporting and investigating discrimination based on other protected identities are the same,” and includes language stating that “[d]iscrimination of any kind, including sexual harassment” is prohibited.
- **Expanded Discussion of New York’s Broadened Definition of Harassment.** The discussion of what constitutes harassment is more detailed, and explains the [broadened standard of harassment, which became law in 2019](#). The policy explains that “[i]n New York, harassment does not need to be severe or pervasive to be illegal,” and that employees “should not feel discouraged from reporting harassment because they believe it is not bad enough.”

- **New Retaliation Examples.** The retaliation section of the revised policy now includes six examples of retaliatory conduct. These examples range from termination to more minor acts, such as “moving an individual’s desk to a less desirable office location.”
- **Addition of Remote Work.** In recognition of the increased prevalence of remote work arrangements in the post-COVID era, the proposed policy references remote work in several places. It also includes that employees working remotely can be harassed over virtual platforms and messaging apps.
- **Reference to New Sexual Harassment Prevention Hotline.** As [previously reported](#), New York launched a hotline in 2022 for employees who believe they have been sexually harassed in the workplace. The revised model policy references the hotline (1-800-HARASS-3) and explains that the hotline can provide information about filing a complaint, including speaking with a volunteer attorney who can provide “limited free assistance.”
- **More Prominent Reference to External Remedies.** The 2018 model policy included instructions for how to file external complaints with the New York State Division of Human Rights and the Equal Employment Opportunity Commission but did so at the very end of the policy. The revised model policy provides links for filing complaints with these agencies on page one.

In its release of the latest revision, DOL reminds employers that they are “encouraged to tailor this policy to their individual needs,” but also warns that “no section in this policy should be omitted.”

Given the substantial changes to the revised model policy, employers should begin reviewing their existing policies, and be prepared to make revisions based on the state’s new model policy once it is finalized.

Bond attorneys are available to guide you through this process to ensure your policy remains fully compliant with state law. If you have any questions about the information contained in this memo, please contact [Kristen Smith](#), [Theresa Rusnak](#), any attorney in Bond's [labor and employment practice](#) or the attorney at the firm with whom you are regularly in contact.

