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New York Fights Workplace Sexual Harassment – Does Massachusetts Stack Up?

BY CHELSIE A. VOKES • MAY 8, 2018

New York has been busy cracking down on sexual harassment in the workplace. First, on April 12, 2018, Governor Andrew Cuomo signed the [New York State Budget Bill for Fiscal Year 2019](#) (“Budget Bill”) into law. One month later, on May 11, 2018, Mayor Bill de Blasio signed the [Stop Sexual Harassment in NYC Act](#) (“NYC Act”) into law.

Following this surge of legislation in New York, here is an overview of how Massachusetts stacks up:

SEXUAL HARASSMENT TRAINING:

New York: Under the Budget Bill, by October 9, 2018, N.Y. State employers must provide “interactive” sexual harassment prevention training to all N.Y. State employees. While “interactive” is not defined, certain forms of in-person and computer-based training will likely satisfy this requirement. N.Y. State plans to release a model training, which employers will have the option to adopt. The NYC Act adds additional mandatory training requirements for all employees and interns, including required bystander intervention training.

Massachusetts: Under [M.G.L. c 151B](#), Massachusetts employers are “encouraged,” but not mandated, to provide sexual harassment training.

SEXUAL HARASSMENT POLICIES:

New York: Under the Budget Bill, the N.Y. State Department of Labor and the N.Y. State Division of Human Rights will collaborate to develop a model sexual harassment prevention policy (“Model Policy”). On or before October 9, 2018, all State employers must adopt the Model Policy or develop one that is consistent with its terms. The policy must contain, among other things, examples of prohibited conduct which would constitute sexual harassment, a standard complaint form, and an explanation of prohibited conduct.

Massachusetts: Under [G.L. c. 151B](#), Massachusetts employers must adopt a sexual harassment policy whose content

closely mirrors those required under the Budget Bill. While Massachusetts employers are not required to provide employees with a standard complaint form, they must describe the process for filing a complaint with the employer, as well as federal and state agencies.

NON-DISCLOSURE & ARBITRATION AGREEMENTS:

New York: It is routine for the parties settling a sexual harassment dispute to include a provision in the Settlement Agreement which prohibits the parties from discussing the facts of the case (a “Non-Disclosure Provision,” or “NDA”). The Budget Bill restricts the use of NDAs in agreements settling or resolving claims involving sexual harassment. As of July 11, 2018, NDAs can only be used in these scenarios when the settling party has 21 days to decide whether to sign the agreement and 7 days after they sign to revoke their agreement to the NDA. For those who are familiar with the [Federal Age Discrimination in Employment Act](#), this requirement mirrors the Federal requirement to seek a release of an age discrimination claim from an employee over 40. Further, the Budget Bill bars employers from requiring employees to sign agreements that require sexual harassment cases go through arbitration instead of the courts (“Arbitration Provision”).

Massachusetts: Massachusetts does not currently ban NDAs or arbitration provisions in employment-related agreements unless the provisions are unconscionable. However, [House Bill 4058](#) seeks to bar non-disclosure, non-disparagement and arbitration agreements in cases involving, among other things, claims of sexual harassment. This Bill is currently being considered by the Labor and Workforce Development Committee, whose deadline to report on the bill has been extended through July 2, 2018.

Client Tips:

- *New York’s new laws are part of a broader movement pushing back on non-disparagement and non-disclosure agreements and emphasizing the importance of training and sexual harassment policies. Take this opportunity to review your own policies and practices to make sure that they are in line with current law.*
- *Stay tuned for future developments in Massachusetts law, including the status of House Bill 4058.*