

Hedge Up: A Heads-Up on Employment Issues Confronting the Investment Management Industry

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New Mandatory Harassment Training Requirements Go into Effect for NYC Firms

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Key Points

- The training requirements of the Stop Sexual Harassment in NYC Act went into effect on April 1, 2019. The new requirements add to those already in place for New York City firms under the New York Labor Law (NYLL).
- Covered employees must receive the training by **December 31, 2019**; firms also must obtain written acknowledgments confirming employees' participation in the training and must maintain such acknowledgements for at least **three (3) years**.
- Firms also must post a **notice** about sexual harassment, in English and Spanish, in a conspicuous location in the workplace and must distribute a **fact sheet** about sexual harassment to new employees.

The Stop Sexual Harassment in NYC Act

On April 1, 2019, the mandatory harassment training requirements of the Stop Sexual Harassment in NYC Act (the "Act") went into effect. On that same date, the New York City Commission on Human Rights (the "Commission") issued FAQs (which can be found [here](#)) that provide guidance on the new law. The Act adds to the training requirements already imposed on New York City-based firms under the NYLL, which went into effect last October (see our Hedge Up regarding the amendments to the NYLL and other #MeToo legislation [here](#)). Among the key aspects of the new New York City law are the following:

- **Covered Firms:** The Act covers firms that have at least fifteen (15) employees or other service providers, including full-time, part-time and temporary employees; interns; and/or individual independent contractors (and all firms that had at least fifteen (15) employees or other service providers at any point in the previous calendar year).
- **Individuals to be Trained:** All employees and interns must receive training if they work more than ninety (90) days and eighty (80) hours in a calendar year. According to the Commission, the training requirement extends not only to employees based in New York City, but also to employees "who work[] a portion of their time" in New York City or who even "interact[] with" employees in New York

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City. This interpretation could impose considerable new training obligations on firms with large staffs located outside of New York City. We anticipate future litigation over the purported extraterritorial reach of the Act.

- **Employees Who Previously Received Training:** Employees need to be trained only once during each annual training cycle. Thus, if an employee has received adequate training from another employer, he or she does not need to be retrained by a new employer until the following year. It is the new firm's responsibility to ensure the employee's previous training was sufficient to comply with the Act.
- **Independent Contractors:** Individual independent contractors do not need to be trained, but the Commission "strongly advise[s]" such training if the contractors are regularly in the workplace and will meet the ninety (90) day and eighty (80) hour thresholds. Also, as noted above, individual contractors **do** count in determining whether a firm has the requisite fifteen (15) employees or other service providers to be covered by the Act's training requirements.
- **Required Elements of the Training:** At a minimum, training must (i) explain sexual harassment as a form of unlawful discrimination under New York City law; (ii) explain that sexual harassment is a form of unlawful discrimination under New York State and federal law; (iii) describe what constitutes sexual harassment, using examples; (iv) discuss the firm's internal complaint process; (v) describe how to file a complaint with the Commission, the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission, and include the relevant contact information for each; (vi) discuss the prohibition on unlawful retaliation under the Act; (vii) provide information about bystander intervention (such as how bystanders can confront harassers and assist victims); and (viii) discuss the responsibilities of supervisory and managerial employees in preventing sexual harassment and retaliation and discuss how such employees should address sexual harassment complaints. The training must be "interactive," meaning that it must be participatory, including the use of audio-visuals, trainer-trainee interaction, and/or an interactive computer or online program.
- **Commission Training Module:** In accordance with the Act, the Commission has developed an anti-sexual harassment training module that firms can use to comply with the new law. The module (available [here](#)) comes at no cost and satisfies the training requirements imposed by the NYLL. But, the module is not targeted to the investment management industry and its subject matter is limited to harassment based on gender, gender identity and sexual preference (without addressing discrimination and harassment based on race, religion, ethnicity, national origin, age, family status or any other protected categories). The Commission's module also has limited functionality; errant keystrokes can send a user back to the first slide, forcing him or her to repeat the entire training, and users cannot save their progress, meaning they must complete the training all in one sitting.
- **Timing of Training:** According to the Commission, covered firms must provide training to covered employees by December 31, 2019. This guidance appears to conflict with the statutory language itself, which requires the training to be "annual[]," and, thus, would appear to allow firms until March 31, 2020, to complete the first cycle of training.
- **Record of Training:** Firms must obtain signed acknowledgments from employees who attend such training (which can be in hard copy or electronic form), and must save such records for at least three (3) years.

- **Notice Posting Requirement:** The Act also requires all firms (regardless of size) to post a notice about sexual harassment, in both English and Spanish, in a conspicuous location in the workplace. The notice can be found [here](#) (English) and [here](#) (Spanish). The FAQs propose posting these notices in break rooms, in common areas or in an electronic posting that employees can easily access.
- **Fact Sheet:** All firms (regardless of size) also must distribute a fact sheet (available [here](#)) to all new employees no later than the end of the employee's first week of work. The fact sheet can be appended to an employee handbook, contained within other onboarding materials or distributed in another manner.

What Now?

- To the extent firms have not already done so, they should post the required notice (in both English and Spanish), and should begin distributing the required fact sheet to new hires. The notice and fact sheet requirements have been in place since September 2018, so if firms have not made the fact sheet available to employees onboarded since that time, they should consider doing so.
- Firms should determine whether they have (or in the previous year had) fifteen (15) employees or other service providers, such that the firm is covered by the Act's training requirements. If not, and if a firm already has provided the training required by the NYLL, then it will have no further harassment training obligation until the NYLL's next cycle (2019-2020).
- If the Act applies, firms must determine which employees must receive the training. As noted above, this may include employees based outside of New York City.
- Firms should determine **when** they are going to provide the required training. For firms that have not yet provided training under the NYLL, the "sweet spot" for training sessions is between now and the end of the first NYLL cycle (i.e., October 9, 2019), such that the training can satisfy the first annual training requirement under both the state and city laws.
- Firms also should determine **how** they are going to provide the training. The lowest cost option is to have all employees view the Commission's module, despite its subject-matter and technological limitations. Firms will have to weigh the advantages of such an approach (largely, the cost savings) against its risks (including the risk of future allegations that the firm failed to treat discrimination and harassment based on race, religion, ethnicity, national origin, age, family status and other protected categories as seriously as it treats gender-based discrimination and harassment).
- By December 31, 2019, firms should have all applicable employees complete the training; firms also must obtain signed acknowledgements from the employees completing the training and retain them for at least three (3) years.

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