

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

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New York State Issues Draft Guidance on New Anti-Sexual Harassment Measures

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Key Points

- On August 23, 2018, New York State issued FAQs and other draft guidance regarding the recently passed New York State anti-sexual harassment laws.
- Firms must implement new anti-sexual harassment policies by **October 9, 2018**.
- Firms purportedly must complete new anti-sexual harassment training by **January 1, 2019**.
- Firms may submit comments regarding the draft guidance by **September 12, 2018**.

Brief Summary of Key Points

On August 23, 2018, the New York State Department of Labor, in consultation with the New York State Division of Human Rights, issued draft guidance regarding the new New York State anti-sexual harassment laws. As noted in our Hedge Up dated May 15, 2018, this legislation (1) prohibits certain contractual clauses requiring the arbitration of sexual harassment claims, (2) prohibits certain confidentiality clauses in agreements resolving sexual harassment claims, (3) requires firms to adopt anti-sexual harassment policies and training programs that meet certain minimum standards, and (4) provides a cause of action to certain nonemployee service providers (such as individual independent contractors) who claim to be victims of sexual harassment in the workplace.

The August 23 guidance was issued in **draft** form, and the state is accepting comments from employers, employees and the public through September 12, 2018. The draft guidance includes (1) **FAQs (Combating Sexual Harassment: Frequently Asked Questions)**; (2) **Minimum Standards for Sexual Harassment Prevention Training**; (3) **Minimum Standards for Sexual Harassment Prevention Policies**; (4) **a model Sexual Harassment Policy for All Employers in New York State**; (5) **a Model Sexual Harassment Prevention Training deck**; and (6) **a model internal Complaint Form for Reporting Sexual Harassment**.

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While we continue to review the draft guidance and accompanying documents, and to consider how this guidance may best be assimilated with both a firm's existing policies and training and the forthcoming guidance regarding the recently passed New York City anti-sexual harassment measures, a few of the key takeaways are as follows:

- Firms must implement new policies prohibiting sexual harassment, compliant with the new law, **by October 9, 2018**.
- According to the FAQs, firms must complete training regarding the prevention of sexual harassment, in a manner compliant with the new law, **by January 1, 2019**. This January 1, 2019, deadline is perhaps the most surprising element of the FAQs, since it seems wholly unsupported by the underlying legislation. Under the governing statute, training must be completed on only an "annual basis," meaning that firms expected to have until October 8, 2019 (through the end of the rolling one-year period beginning on the October 9, 2018, effective date) to complete such training.
- Firms also purportedly must provide training to any newly hired employees within 30 days of their start dates.
- Notably, the guidance purports to require training of all employees, no matter how many hours they work (including employees who work only "one day for the employer").
- Firms wishing to comment on the draft guidance must make such submissions no later than September 12, 2018. Comments can be submitted on the state's webpage, at <https://www.ny.gov/content/sexual-harassment-prevention-policies>.

Next Steps

We continue to review and consider the draft guidance, and consider best practices in light of it. We also will continue to monitor developments in this area, including the implementation of final rules regarding the current policy and training requirements. Firms wishing to submit comments regarding the draft guidance prior to the September 12 deadline should feel free to contact us.