KASOWITZ BENSON TORRES

New York Imposes Sweeping New Requirements on Employers in Connection with Sexual Harassment

The New York State Legislature has adopted new comprehensive legislation in response to increased attention to sexual harassment in the workplace (the "NYS Bill"). This legislation dramatically increases employers' obligations. The New York City ("NYC") Council has adopted even more expansive legislation governing NYC employers which Mayor Bill de Blasio is expected to sign (the "NYC Act"). New York employers must be familiar with the new state and local requirements and prepare to adopt new practices and policies to comply with each law. Key provisions impacting private sector employers are below.

New York State Employers

- **Mandatory Sexual Harassment Prevention Training and Policies.** Effective October 9, 2018, all New York State employers, regardless of size, must provide annual "interactive" sexual harassment prevention training sessions to their employees.[1] It is not yet clear whether live or in-person instruction will be required to satisfy the law's "interactive" requirement.

    - If the NYC Act is enacted, NYC employers with 15 or more employees (including interns) must provide annual "interactive" sexual harassment prevention training sessions to all employees within 90 days of hire, beginning on April 1, 2019. NYC employers must maintain a record of the trainings, including signed employee attendance records, for at least three years. Unlike the NYS Bill, the NYC Act is clear that employers do not need to conduct live or in-person trainings to comply with the law's interactive training requirement.

  Additionally, all New York employers, regardless of size, must provide their employees with written sexual harassment policies. Notably, an employer's sexual harassment policy must include a "standard complaint form" for use by employees and notify employees of all available forums for adjudicating sexual harassment claims.

- **Kasowitz Provides Training.** Our employment group partners have extensive experience in providing firm clients with sexual harassment prevention training sessions (typically one

[1] The New York State Department of Labor and the New York State Division of Human Rights are charged with developing model anti-sexual harassment policies and training programs. Employers may either adopt the model policies and training programs, or establish their own policies consistent with the law's requirements. The training must include: (1) an explanation of sexual harassment; (2) examples of conduct that would constitute unlawful sexual harassment; (3) information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to claimants; (4) information concerning employees' rights of redress and all available forums for adjudicating complaints; and (5) information addressing the conduct and additional responsibilities for supervisory personnel.

hour) for their employees and in assisting them with their sexual harassment policies and procedures. Please contact us to schedule training sessions or for assistance in preparing, implementing or bringing up to date your sexual harassment policies and procedures. Our contact information is below.

- **Expansion of Protections for Non-Employees.** Effective immediately, employers can now be liable under the New York State Human Rights Law for sexual harassment of their contractors, subcontractors, vendors, consultants, or any other person providing services to the employer if the employer knew or should have known that the non-employee was subjected to sexual harassment and failed to take immediate action.

- **Prohibition of Non-Disclosure Agreements.** Effective July 11, 2018, employers are prohibited from including non-disclosure clauses in settlement agreements involving claims of sexual harassment unless it is the settling claimant's "preference." An employer must provide a claimant with twenty-one (21) days to consider a non-disclosure clause along with a seven-day revocation period. Unlike the 21-day period under the Age Discrimination in Employment Act, this 21-day waiting period is not waivable, and a claimant's preference for confidentiality must be affirmed in writing after the 21-day period has expired. Non-disclosure agreements are still permitted for all other claims.

- **Arbitration Clauses.** Effective July 11, 2018, employers are prohibited from requiring claimants to submit sexual harassment claims to binding arbitration. The prohibition also renders existing mandatory arbitration clauses "null and void," except where it is inconsistent with federal law or a collective bargaining agreement. We expect to see litigation of this prohibition under the Federal Arbitration Act.

Additional Obligations for New York City Employers

If signed into law, the NYC Act will impose additional obligations on NYC employers. Key provisions impacting private sector employers are below.

- **Expansion of the NYCHRL.** The NYC Act expands the New York City Human Rights Law ("NYCHRL") to cover gender-based discrimination claims against all employers, not, as the law currently provides, only against employers with four or more employees. The NYC Act further amends the NYCHRL to extend the time for filing gender-based harassment complaints with the NYC Commission on Human Rights (the "Commission") from one year to three years.[2] These amendments will take effect immediately if the law is enacted.

- **Notice of Anti-Harassment Rights.** The NYC Act requires all NYC employers to conspicuously display an anti-harassment poster designed by the Commission in both English and Spanish. The poster will be available for download on the Commission's website. The Commission will also develop an information sheet on sexual harassment that employers must distribute to individual employees at the time of hire. As an alternative to the information sheet, employers may include the required information in its employee handbook so long as the handbook is issued to all new hires. These provisions will take effect 120 days after the law's enactment.

[2] Claimants continue to have three years to file civil actions under the NYCHRL.

- **Requirements for City Contractors.** The NYC Act amends the New York City Charter to require city contractors to report their practices, policies, and procedures "relating to preventing and addressing sexual harassment" as part of the existing reporting requirements for certain city contracts. This provision will take effect 60 days after the law's enactment.

Required and Best Practices:

1. Employers should contact employment counsel to review the increased obligations under this new legislation and implement a plan to revise their existing sexual harassment policies and schedule sexual harassment training sessions.

2. Employers should educate management about the new protections afforded to non-employees under the NYSHRL and revise existing sexual harassment policies to protect non-employees.

3. Prior to settling any sexual harassment claim, employers should determine whether a claimant prefers confidentiality. If a claimant elects to include a confidentiality or non-disclosure clause in the settlement agreement, employers should properly document the claimant's election.

4. Employers with mandatory arbitration clauses that encompass sexual harassment claims should consult with outside counsel in connection with any questions as to the appropriate forum as we expect this to be a widely litigated area of the new law.

We will continue to track this legislation and report any further developments. If you would like additional information regarding these laws, please contact partners Mark W. Lerner (212-506-1728) or Jessica T. Rosenberg (212-506-1789) in Kasowitz's Employment Practices and Litigation Group.