

## HR CONNECTION

# Is your training preventing sexual harassment or making it worse?

As a citizen, business owner and HR professional, I've taken a strong interest and active role in state and federal legislative advocacy for more than two decades. I've had the great fortune to meet and discuss regulatory issues with dozens of legislators and their staffs (as well as the unfortunate experience of being loudly chastised by a member of Congress outside his office because I respectfully disagreed with a bill he cosponsored). I've learned a great deal from my experiences. A relatively recent lesson is that the state's budget process has become a way to enact legislation on a wholesale basis without the benefit of the legislative process.

In 2018, we saw changes to the New York State Human Rights Law (NYSHRL) made as part of the fiscal 2019 budget act. The changes included requirements for all private employers to adopt a sexual harassment (prevention) policy and provide sexual harassment prevention training to all employees by Oct. 9, 2019, and then annually going forward. Now, eight months after the effective date, is a good time for employers to consider a few points:

- Has your organization implemented a sexual harassment prevention policy that meets or exceeds the state's minimum standards? If so, how has it worked? If not, what is delaying or preventing implementation?
- Has your organization provided sexu-



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al harassment prevention training to some or all employees? If so, how has it worked? If not, what is delaying or preventing it?

- What challenges are associated with providing this training annually to all employees (i.e. disruption of operations, work schedules, etc.)?

• What additional costs are associated with providing this training to all employees annually (i.e., training fees, additional wages and/or overtime, lost productivity, etc.)?

- Has there been an increase, decrease, or no change in the number of workplace harassment complaints (all forms of harassment) received since implementing the updated sexual harassment prevention policy and initial round of training?

- Has your organization experienced an increase, decrease, or had no change in harassing behaviors (all forms of harassment) since implementing the updated sexual harassment prevention policy and initial round of training?

Before going further, it's important to know that I explicitly support efforts to eliminate all forms of workplace harassment, including the implementation of effective employer policies and employee training. I also support employers tak-

ing the appropriate steps to investigate and address complaints of workplace harassment. That said, the state's current regulatory structure does nothing to accomplish those goals. The state mandates that employers have a written policy and provide sexual harassment prevention training annually. Both the policy and training must be interactive and clearly state: sexual harassment is unlawful; if you sexually harass someone, you'll be disciplined; and, if you are sexually harassed, here's how to contact the appropriate government agencies to file a complaint.

In response, employers typically rely on compliance-based training to limit the organization's liability if and when sexual harassment occurs. In the event of a government investigation or lawsuit, this type of "check-the-box" training shows the employer has taken reasonable steps to educate employees about what is considered unlawful sexual harassment and ensure workers are aware of how to report violations. To promote this approach, the state's Department of Labor created a model sexual harassment policy and companion training, which employers can adopt and implement with very little effort. If the goal is to simply meet the minimum requirements of the law — provide employees with a sexual harassment policy and training that covers each of the mandated points — using the model policy and training videos will

certainly do exactly that.

A closer look shows that the model policy contains eight pages of legalese, stern foreboding language, repetitive instructions on filing complaints of sexual harassment with state and federal agencies, and reminders that lawsuits are always an option for employees. The model training videos — totaling less than 45 minutes in length — begin with the state's Commissioner of Labor reading almost verbatim from the model policy for approximately 20 minutes in the first video. In the second video, we hear a voiceover of the commissioner reading a seemingly endless series of slides containing six "case studies" on sexual harassment. (Apparently, the "interactive" requirement is met when the employees get together to collectively complain about the training being a waste of time and to mock the videos.)

Unfortunately, according to adult learning experts and the Equal Employment Opportunity Commission (EEOC), this approach does not change employee behavior. What's worse, the American Psychological Association (APA) warns that ineffective training may exacerbate the issue of workplace harassment.

The only way to effect meaningful change in employee attitudes and workplace conduct is for employers to create and implement harassment prevention

policies and training that are in alignment with and support the behaviors and attitudes necessary to eliminate workplace harassment. To be successful, employers must:

--Commit to creating and providing policies and training with a clear intention of preventing workplace harassment rather than reducing employer liability after the fact. This paradigm shift will clearly communicate that the organization takes the issue of workplace harassment seriously.

--Ensure the policy and training represent the company; starting with a personal message from the president/CEO explaining the company's core values include a workplace free from all forms of harassment, that harassing behaviors should always be reported without fear of retaliation, and that the organization will take all allegations seriously and appropriately investigate regardless of who is involved.

--Create training that is relevant to the company and interesting to the employees. In addition to meeting regulatory requirements by reviewing the laws and reporting mechanisms, be sure to include company- and industry-specific examples employees can identify with and understand. Also, provide and discuss examples of respectful communication, individual differences related to diversi-

ty and cultural characteristics, positive employee interactions, bystander intervention, and de-escalating and resolving conflicts.

Although not a complete list, these steps will help move the company and employees in the right direction.

While it's clear there is no escaping the state's policy and training mandates, employers have complete control over how they fulfill those responsibilities. Although simply meeting the state's minimum requirements by using cookie cutter policies and short wholesale training videos may be the easiest and least expensive solution in the short term, this solution is ineffective at best. By educating employees, changing attitudes and behaviors, and preventing workplace harassment before it starts, employers will make great strides in protecting employees and minimizing potential liabilities.

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