

e-Alert: Delaware Expands Sexual Harassment Protections and Mandates Workplace Training

Delaware becomes the fifth state to statutorily mandate sexual harassment training in the workplace with passage of a new law effective January 1, 2019. The law, which mandates employers with 50 or more employees to provide antiharassment training to employees and supervisors, also requires employers with four or more employees to issue an information sheet on sexual harassment.

Summary of law

The new law specifically addresses the prohibition against sexual harassment under the Delaware Discrimination in Employment Act (DDEA) and clarifies that sexual harassment involves:

“conduct that includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employee’s employment; (2) submission to or rejection of such conduct is used as the basis of employment for employment decisions affecting an employee; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive work environment.”

Under the law, employers will be responsible for sexual harassment of an employee when:

1. A supervisor’s sexual harassment results in a negative employment action towards an employee;
2. The employer knew or should have known of a nonsupervisory employee’s sexual harassment of an employee and failed to take appropriate corrective measures; or
3. A negative employment action is taken against an employee in retaliation for the employee filing a discrimination charge, participating in an investigation of sexual harassment, or testifying in any proceeding or lawsuit about the sexual harassment of an employee.

Training requirements

While many states have laws encouraging employers to provide antiharassment training, Delaware now joins the short list of states that *require* sexual harassment training. Employers covered by the training mandate (i.e., have 50 or more employees) must do the following:

- Provide employees with interactive training and education on the prevention of sexual harassment.
- Conduct training for new employees within one year of the start of their employment. Existing employees must receive sexual harassment training within one year of the effective date of the statute (that is, by January 1, 2020).
- Provide training that: (1) addresses the illegality of sexual harassment; (2) defines sexual harassment, with examples; (3) describes the legal remedies and complaint process available to the employee; (4) directs employees how to contact the Delaware Department of Labor; and (5) instructs employees that retaliation is prohibited.
- Provide new supervisors with additional interactive training within one year of the start of their employment in a supervisory role. This supplemental training must cover the specific responsibilities



of a supervisor in preventing and correcting sexual harassment as well as the legal prohibition against retaliation. Existing supervisors must receive training by January 1, 2020.

- Repeat these employee and supervisor training programs every two years.

Notice requirements

Under the new law, covered Delaware employers must notify employees of their right to be free from harassment at work, via an information sheet to be created by the Delaware Department of Labor. The notice will address the same five topics to be covered in the mandatory employee training, described above. Employers must distribute the information sheet, either physically or electronically, to new hires at the start of their employment and to existing employees by July 1, 2019.

Employer next steps

1. Delaware employers should review their sexual harassment prevention policies to ensure they are consistent with the new law.
2. Employers should watch for the Delaware Department of Labor's Notice information sheet that will need to be distributed.
3. Employers subject to the training requirements should consider revisiting and updating any existing training protocols; or if none existing in place; identifying a training program that satisfies all of the statute's requirements.
4. HR Knowledge is currently developing a "Delaware Sexual Harassment Prevention Program." If you are interested in learning more, [email us](#).

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