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**GRIST**

## NEW YORK EXPANDS PROTECTION AGAINST DISCRIMINATION, HARASSMENT

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Employers in New York will face liability for harassment on any protected grounds — even if the harassment was not severe or pervasive — under a recently enacted [measure](#) (2019 Ch. 160, S 6577) that amends the New York [Human Rights Law](#). The legislation expands protections for contractors, strengthens the ban on nondisclosure agreements that interfere with discrimination complaints, and immediately requires employers to provide a written copy of their sexual harassment prevention policy and training program to every employee at hire and annually thereafter. Effective dates of the reforms — some of which were flagged in the state 2019 budget — vary, but many will take effect Oct. 11.

### HIGHLIGHTS

The legislation features the following changes:

- Starting Feb. 8, 2020, the Human Rights Law applies to all private employers, regardless of their workforce size. The current law exempts employers with fewer than four employees from liability, with the exception of sexual harassment claims.
- Effective immediately, employees based in New York must receive a copy of their employer's anti-sexual harassment policy and information from the annual training program to prevent sexual harassment. Employers must provide the policy at hire and during the annual anti-harassment training program in an employee's primary language. The state human rights commissioner will publish [policy templates](#) in appropriate languages.
- For discrimination, harassment or retaliation claims filed on or after Oct. 11, employees won't have to show that they have experienced "severe or pervasive" harassment or less favorable treatment than a comparable employee. Employees also can bring a harassment claim without first using the employer's complaint procedure.
- Starting Oct. 11, employers face liability for not only sexual harassment but also any unlawful discrimination experienced by contractors, subcontractors, vendors or service providers. In

determining an employer's liabilities, a court can take into account how much control the employer had over the discriminating parties.

- The current prohibition on mandatory arbitration of sexual harassment claims will expand on Oct. 11 to include all discrimination or retaliation claims.
- For discrimination claims settled on or after Oct. 11, the settlement or agreement can't include a nondisclosure requirement, unless an employee requests confidentiality and the nondisclosure terms meet certain criteria. Current law prohibits nondisclosure terms only in sexual harassment settlements.
- Employment contracts entered on or after Jan. 1, 2020, can't restrict employees from disclosing discrimination-related information to law enforcement; federal, state or local nondiscrimination enforcement agencies; and attorneys retained by employees.
- For sexual harassment claims filed under state law after Aug. 12, 2020, employers will have three years — up from one year — from the date of the alleged offense to bring a complaint before an agency or a court. Other types of discrimination claims still have a one-year statute of limitations.
- For discrimination, harassment or retaliation claims filed on or after Oct. 11, courts may award punitive damages. Effective immediately, courts must award payment of attorney fees to the prevailing party — these awards are no longer discretionary. Employers seeking payment of attorney fees must show that the employee's claim was frivolous.

## RELATED RESOURCES

### Non-Mercer Resources

- [2019 Ch. 160, S 6577](#), Increased Protections for Protected Classes and Special Protections for Employees Who Have Been Sexually Harassed (New York Senate, Aug. 12, 2019)
- [Governor Cuomo Signs Legislation Enacting Sweeping New Workplace Harassment Protections](#) (New York Governor's Office, Aug. 12, 2019)
- [New York State Human Rights Law](#) (New York Division of Human Rights)
- [Model Sexual Harassment Policy](#) (New York State)

### Mercer Law & Policy Resources

- [US: New York Expands Equal Pay Laws, Bans Salary History](#) (July 17, 2019)
- [New York State Prohibits Discrimination Based on Gender Identity or Expression](#) (Feb. 1, 2019)

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