

LEGAL ALERT
COSTELLO, COONEY & FEARON, PLLC

NYS BUDGET BILL CREATES SIGNIFICANT NEW OBLIGATIONS REGARDING
SEXUAL HARASSMENT

The New York State Assembly passed a budget bill including a number of provisions aimed at sexual harassment. The budget bill, signed by Governor Cuomo on April 12, contains significant new obligations for both private and public employers, aimed at curtailing sexual harassment in the workplace.

Effective immediately, the new legislation expands the category of persons who may seek relief for workplace sexual harassment. Specifically, it permits non-employees, such as contractors, subcontractors, vendors or consultants to bring claims against an employer for sexual harassment by an employee when the employer knew or should have known that the complainant was subjected to sexual harassment and failed to act.

Also, effective immediately, the legislation amends the Public Officers Law to provide that any employee of a **public entity** who is subject to a final judgment of personal liability for intentional wrongdoing related to a claim of sexual harassment is obligated to reimburse the public entity who makes a payment to a plaintiff for an adjudicated award, for his or her proportionate share of such judgment. A public entity is defined as any commissioner, member of a public board or commission, trustee, director, officer, employee or any person holding a position by election, appointment or employment in the service of a public entity, whether or not compensated.

Effective July 11, 2018, the legislation prohibits the inclusion of non-disclosure clauses in court-approved settlement agreements of claims involving sexual harassment unless the complainant desires the condition of confidentiality. If the complainant requests a non-disclosure clause, the legislation requires a 21-day consideration and 7-day revocation period.

Also, effective as of July 11, 2018, the new law amends New York's CPLR to ban contractual provisions that mandate arbitration of sexual harassment claim, except where the ban is inconsistent with federal law, or with any collective bargaining agreement.

Effective October 9, 2018, the legislation requires the state Division of Human Rights and Department of Labor to develop a model sexual harassment policy that employers will be required to adopt unless they have already adopted a policy that meets or exceeds the minimum standards in the model policy. Such written policy must be provided to all employees. Employers will also be required to provide annual, interactive training using the state's model sexual harassment training or an equivalent program that covers the following:

-) An explanation of sexual harassment, consistent with state guidance;
-) Examples of conduct that constitute unlawful sexual harassment;
-) Information concerning federal and state statutory provisions concerning sexual harassment and remedies available to victims; and
-) Information concerning employees' rights and available forums for adjudicating sexual harassment complaints.

The policy and training requirements will go into effect 180 days after the bill is signed into law.

Finally, **beginning January 1, 2019**, New York state contractors bidding on projects will also be required to certify under penalty of perjury that they have implemented compliant anti-sexual harassment policies and training programs.

Should you have questions about, need assistance with or wish to discuss these new requirements, please contact any of the attorneys in our Labor and Employment practice group below.

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*This communication is not intended to serve as legal advice

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