

Publications

Labor and Employment Alert: Delaware Mandates Sexual Harassment Training for Employers and Supervisors

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Delaware recently became the latest state to mandate sexual harassment training. Delaware's Discrimination in Employment Act was amended to address sexual harassment and to require training of employees and supervisors concerning sexual harassment and retaliation. The law takes effect on January 1, 2019.

Sexual Harassment

Sexual harassment of an "employee" (which includes unpaid interns, applicants, joint employees, and apprentices) is an unlawful employment practice when the employee is subjected to conduct that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission is made either explicitly or implicitly a term or condition of an employment; (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting an employee; or (3) such conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive working environment. This definition is identical to that under Title VII.

Employee Notification

The Delaware Department of Labor will create an information sheet on sexual harassment for employers that will provide notice to employees of the right to be free from sexual harassment in the workplace. The information sheet will contain a statement regarding the illegality of sexual harassment; the definition of sexual harassment under state law using examples; the legal remedies and complaint process available through the department; directions on how to contact the department, and the legal prohibition against retaliation. Every employer of four or more employees is required to distribute, physically or electronically, the information sheet to new employees when their employment begins; and to existing employees by July 1, 2019.

Mandatory Training for Employees and Supervisors

Employers with 50 or more employees in Delaware are required to provide interactive training and education to employees regarding the prevention of sexual harassment. In determining whether an employer meets the 50-employee threshold, applicants and independent contractors are not counted.

The training must be provided to (1) new employees within one year after employment begins and then every two years; and (2) existing employees by January 1, 2020, and then every two years. The training must include a statement regarding the illegality of sexual harassment; the definition of sexual harassment using examples; the legal remedies and complaint process available to the employee; directions on how to contact the Delaware Department of Labor, which administers the state's laws against discrimination and harassment; and the legal prohibition against retaliation.

Employers must also provide additional interactive training to their "supervisors." The new law broadly defines a "supervisor" as an individual who is empowered by the employer to take an action to change the employment status of an employee or who directs an employee's daily work activities. The training must be provided to (1) new supervisors within one year after employment as a supervisor begins and then every two years; and (2) existing supervisors by January 1, 2020, and then every two years. In addition to the topics covered in training given to all employees, supervisory training also must include the specific responsibilities of a supervisor regarding the prevention and correction of sexual harassment; and the legal prohibition against retaliation.

An employer that provided substantially similar training to employees or supervisors before January 1, 2019, is not required to provide additional training until January 1, 2020. Additionally, employers are not required to provide training to applicants, independent contractors, employees employed less than six months continuously, or employees placed with them through employment agencies.

Conclusion

Employers should review and update their training programs to ensure compliance with the new law's requirements and prepare to provide the necessary interactive training. Contact your Vorys lawyer if you have questions about best practices for addressing sexual harassment in your workplace.