

MAKING PROGRESS

Sexual harassment protections are strengthened in our city and state

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AS MANY READERS remember, the December 2017 issue of *Allegro* featured a courageous cover story by Local 802 member Camille Thurman, who wrote about overcoming sexual harassment as a female musician. In my own article in that same issue, I wrote about how New York City Law attempts to provide some protections against sexual harassment. In 2005, the New York City Administrative Code was strengthened in this regard, and over the years, favorable judicial decisions have increased its protections.

I am now happy to report further positive developments. New legislation in New York will extend the reach of both the remedies and the protections afforded to workers in New York City and

New York State. Earlier this year, Mayor Bill de Blasio signed into law a package of legislation known as the "Stop Sexual Harassment in NYC Act" (Local Laws 95 and 96), which extends the legal protections afforded to employees far beyond what is available in other states. This progressive law became effective on Sept. 6.

While some of this legislation is geared towards public sector employees and employer reporting requirements, significant portions address private sector workers. Every musician should study up on this new legislation and learn how it can reduce sexual harassment in the workplace.

Under the new laws, all NYC employers will be required to prominently display a poster developed by the New York City Commission on Human Rights that reviews and highlights what sexual harassment is, what legal remedies there are for it and how an affected employee may pursue those remedies. The poster is required to be displayed in common work areas in both English and Spanish. (The English version is reproduced above.)

Further, New York City employers are now required to distribute to all employees a fact sheet detailing the new law, which parallels the information contained in the poster.

The new laws also require employers who have 15 or more employees (including interns, supervisors and managerial employees) as of April 1, 2019 to conduct annual anti-sexual harassment training. The training must cover topics such as the definition of sexual harassment and how to bring a sexual harassment complaint both internally and through administrative agencies such as the NYC Commission on Human Rights.

While this training is meant to be interactive, it need not be conducted in person by a live instructor. The commission is currently developing an online version.

The training must be conducted on an annual basis for current employees. New employees who work 80 hours a year on a full or part-time basis in New York City must receive training within the first 90 days of their employment. Employers are required to obtain from

each employee a signed acknowledgement that they attended the training. This acknowledgement may be provided electronically. Employers will also be required to maintain documentation and records related to the trainings they have conducted.

Finally the law amends the New York City Human Rights Law to permit claims of gender-based harassment by all employees regardless of how many employees their employer has. Prior to the amendment, the law did not apply to employers that employed less than five employees. The law also extends the statute of limitations for claims of sexual harassment to three years (from the previous one year).

New York State has added a provision to the New York State Human Rights Law prohibiting sexual harassment of non-employees in the workplace, meaning that state law will now prohibit discrimination (including sexual harassment) against "contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace or an employee of any of these." Furthermore, as of July 11, New York State prohibits settling sexual harassment cases with non-disclosure agreements (agreements that require the terms and existence of a settlement to be held in confidence) unless the claimant affirmatively prefers non-disclosure.

This new legislation places New York far ahead of other municipalities in its effort to eradicate workplace sexual harassment. It serves as a welcome addition to the panoply of other progressive legislation that New York has sponsored and brought to fruition.

STOP SEXUAL HARASSMENT ACT NOTICE

All employers are required to provide written notice of employees' rights under the Human Rights Law both in the form of a displayed poster and as an information sheet distributed to individual employees at the time of hire. This document satisfies the poster requirement.

The NYC Human Rights Law

The NYC Human Rights Law, one of the strongest anti-discrimination laws in the nation, protects all individuals against discrimination based on gender, which includes sexual harassment in the workplace, in housing, and in public accommodations like stores and restaurants. Violators can be held accountable with civil penalties of up to \$250,000 in the case of a willful violation. The Commission can also assess emotional distress damages and other remedies to the victim, require the violator to undergo training, and mandate other remedies such as community service.

Sexual Harassment Under the Law

Sexual harassment, a form of gender-based discrimination, is unwelcome verbal or physical behavior based on a person's gender.

Some Examples of Sexual Harassment

- unwelcome or inappropriate touching of employees or customers
- threatening or engaging in adverse action after someone refuses a sexual advance
- making lewd or sexual comments about an individual's appearance, body, or style of dress
- conditioning promotions or other opportunities on sexual favors
- displaying pornographic images, cartoons, or graffiti on computers, emails, cell phones, bulletin boards, etc.
- making sexist remarks or derogatory comments based on gender

Retaliation Is Prohibited Under the Law

It is a violation of the law for an employer to take action against you because you oppose or speak

out against sexual harassment in the workplace. The NYC Human Rights Law prohibits employers from retaliating or discriminating "in any manner against any person" because that person opposed an unlawful discriminatory practice. Retaliation can manifest through direct actions, such as demotions or terminations, or more subtle behavior, such as an increased work load or being transferred to a less desirable location. The NYC Human Rights Law protects individuals against retaliation who have a good faith belief that their employer's conduct is illegal, even if it turns out that they were mistaken.

Report Sexual Harassment

If you have witnessed or experienced sexual harassment inform a manager, the equal employment opportunity officer at your workplace, or human resources as soon as possible.

Report sexual harassment to the NYC Commission on Human Rights. Call 718-722-2131 or visit www.nyc.gov/HumanRights to learn how to file a complaint or report discrimination. You can file a complaint anonymously.

State and Federal Government Resources

Sexual harassment is also unlawful under state and federal law, where statutes of limitations vary.

To file a complaint with the New York State Division of Human Rights, please visit the Division's website at www.dhr.ny.gov.

To file a charge with the U.S. Equal Employment Opportunity Commission (EEOC), please visit the EEOC's website at www.eeoc.gov.

NYC Commission on Human Rights
@NYCCHRR
www.nyc.gov/HumanRights

NYC Commission on Human Rights
BILL DE BLASIO Mayor
CARMELO F. MALAIS Commissioner/Chair

This new anti-sexual harassment notice must be posted in all NYC workplaces. The full-size version is available for download at www.NYC.gov/HumanRights