



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

August 3, 2018

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
E. Thomas Jones, Treasurer

Cc: Terrance McCracken, Secretary
Robert J. Litchenthal, Jr., Deputy Director
Karen Prendergast, Comptroller
Daniel J. NeMoyer, Director of Human Resources
Jacqueline Mattina, Deputy Associate Attorney

From: Margaret A. Murphy, Attorney

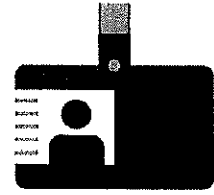
Subject: Updating Sexual Harassment Policy

Phillips Lytle LLP recently hosted a continuing educational seminar entitled, "From Jcope to #Metoo: Helping Municipalities Stay Ahead of Today's Changing Environment" at its One Canalside Office in downtown Buffalo. Deputy Associate Attorney Darlene Sikowski-Petritz attended the seminar and provided the Legal Department with materials from the seminar.

James D. Donathen, a partner at Phillips Lytle, discussed recent legislation to combat workplace sexual harassment. Legislative amendments relating to this topic can now be found in the State Finance Law, the CPLR, the Public Officers Law, the General Obligation Law, the Labor Law, and the Executive Law. These amendments take effect on October 9, 2018.

With the permission of Phillips Lytle, I have enclosed the "Phillips Lytle LLP Alert," outlining these recent changes, along with the newly, enacted state legislation and the Authority's current policy.

Daniel NeMoyer is already aware of these recent changes. The Legal Department will work with Mr. NeMoyer to propose amendments to the Authority's Anti-Harassment Policy (Policy No. 75.0) for the Board's Governance Committee. A proposal will be submitted to the Governance Committee in September.



New York State Enacts Sweeping Legislation to Combat Workplace Sexual Harassment

On April 12, 2018, New York Governor Andrew Cuomo signed into law as part of the New York State budget several bills designed to combat workplace sexual harassment. The new laws were part of the Governor's Women's Agenda and a response to the issues and concerns raised by the #MeToo movement. Among other things, the new laws will:

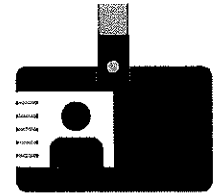
- Require employers to adopt and distribute a written policy prohibiting sexual harassment and implement annual sexual harassment prevention training for all employees;
- Extend the protections of the New York Human Rights Law against sexual harassment to "nonemployee" service providers, including contractors, subcontractors, vendors, consultants and others providing services pursuant to a contract;
- Bar mandatory arbitration clauses for workplace sexual harassment claims;
- Prohibit nondisclosure clauses in any settlement or agreement relating to a claim of sexual harassment, unless it is the preference of the complainant to include such a clause;
- Require that state contractors bidding on contracts requiring competitive bidding certify that they have in place a sexual harassment policy and provide annual employee training; and
- Require public employees to reimburse their public employer for the employee's proportionate amount of any judgment the public employer is required to pay that is related to a claim of sexual harassment for which the employee is adjudged liable.

Mandatory Sexual Harassment Policy and Training

As the result of an amendment to the New York Labor Law, effective October 9, 2018, all employers in New York State will be required to adopt and distribute a sexual harassment prevention policy and implement annual sexual harassment prevention training for all employees. The law also directs the New York State Department of Labor ("DOL") and New York State Division of Human Rights ("SDHR") to develop a model sexual harassment prevention policy and a model sexual harassment prevention training program for use by employers. Employers will have to adopt and use the model policy and training program, or develop and use their own, which must equal or exceed the minimum standards established by these agencies.

The model policy will:

- Prohibit sexual harassment consistent with the guidance issued by the DOL and provide examples of conduct that would constitute unlawful sexual harassment;
- Include information regarding the federal and state statutory provisions concerning sexual harassment and the remedies available to victims of sexual harassment, as well as a statement that there may be applicable local laws;
- Include a standard complaint form and a procedure for the timely and confidential investigation of complaints that ensures due process for all parties;
- Inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially;



- State that sexual harassment is considered a form of employee misconduct, and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and
- State that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

Liability for Sexual Harassment of Nonemployees

Effective immediately, the New York Human Rights Law has been amended to extend employer liability for sexual harassment to contractors, subcontractors, vendors, consultants or other persons providing services in the workplace pursuant to a contract. An employer may now be held liable if the employer or its agents or supervisors knew, or should have known, that a nonemployee was being subjected to sexual harassment in the employer's workplace and failed to take immediate and appropriate corrective action. The extent of the employer's control over the conduct of the harasser will be a factor in determining liability.

Mandatory Arbitration of Sexual Harassment Claims Prohibited

Effective July 11, 2018, the New York Civil Practice Law and Rules ("CPLR") is amended to prohibit the inclusion in any written contract of any clause that requires final and binding arbitration of any claim based on sexual harassment. Arbitration clauses in collective bargaining agreements are exempted from this prohibition, and the legislation expressly states that nothing in it prohibits the inclusion of any other mandatory arbitration provision that the parties agree upon. However, the effect of this provision may be limited, as an arbitration clause subject to the Federal Arbitration Act included in a contract may possibly

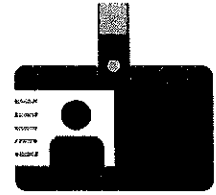
still be enforceable as a matter of federal preemption of state law.

Nondisclosure Agreements Restricted

As the result of amendments to the General Obligations Law and CPLR, effective July 11, 2018, nondisclosure clauses will be prohibited in any agreement settling or resolving any claim or court action, "the foundation of which involves sexual harassment," unless it is the "complainant's preference" to include such a clause in the settlement. Notice of the clause must be given to all parties, and the complainant must receive 21 days to consider whether to accept or reject the clause. If the complainant accepts the nondisclosure clause, he or she will then have seven (7) days to change his or her mind and revoke it. The nondisclosure clause will not become effective or enforceable until the revocation period has expired. (Employers should also be aware that under a provision of the recently enacted federal Tax Cuts and Jobs Act, any amounts paid to settle a sexual harassment claim, including attorneys' fees, are no longer deductible from federal taxes if the claim is subject to a confidentiality clause.)

State Contractor Certification

Effective January 1, 2019, changes to the State Finance Law will require that every bid made to New York State or any public department or agency where competitive bidding is required, contain a certification, signed under the penalty of perjury, stating that the bidder has implemented a written sexual harassment policy and provides annual sexual harassment prevention training to all of its employees. Bids lacking such certification will not be considered, unless the bidder states why it cannot make the required certification and provides a signed statement with the bid setting forth in detail the reason. Where competitive bidding is not required, the State, public department or agency may, at its discretion, impose the same certification requirement.



APRIL 2018

Reimbursement by Public Employees

Effective immediately, the Public Officers Law requires any public employee adjudged personally liable for sexual harassment to reimburse his or her public employer for the employee's proportionate share of any judgment that the public employer is required to pay related to the employee's conduct. If the public employee does not reimburse his or her public employer within 90 days of the employer paying the judgment, the public employer is required to obtain a judgment against the employee and garnish his or her wages. For purposes of this statute, "employee" includes any person holding a position by election, appointment or employment, and any commissioner, member of a public board or commission, trustee, director or officer, whether or not compensated.

New York City Proposed Legislation

In addition to the above changes enacted into law at the state level, on April 11, 2018, the New York City Council passed 11 bills entitled the *Stop Sexual Harassment in NYC Act* addressing sexual harassment, which Mayor Bill de Blasio is expected to sign shortly. Several of the bills are directed at private employers in New York City and, if enacted into law, would:

- Extend the prohibition against gender-based harassment under the New York City Human Rights Law ("NYCHRL") to all employers, rather than only employers with four (4) or more employees;

- Require that as of April 1, 2019, all private employers with at least 15 employees provide annual sexual harassment training that meets codified minimum standards. New employees would have to receive training within 90 days of hire, and employers would have to obtain signed employee acknowledgements and keep training records for at least three (3) years. The New York City Commission on Human Rights would also be directed to create a free online training module for employer use;
- Require that 120 days after becoming law employers display an "anti-sexual harassment rights and responsibilities" poster in English and Spanish in a conspicuous place. Employers would also have to inform new employees of their rights and responsibilities under the law by providing them with either a separate information sheet or a handbook containing the information upon hire; and
- Extend, immediately upon becoming law, the statute of limitations for filing gender-based harassment claims under the NYCHRL from one (1) to three (3) years.

Additional Assistance

Should you have any questions regarding New York State's legislation to combat workplace sexual harassment, please contact any of the attorneys on our Labor & Employment Practice Team. ■

STATE OF NEW YORK

S. 7507--C

A. 9507--C

SENATE - ASSEMBLY

January 18, 2018

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to rate methodology for capital expenditures to hospitals and residential nursing facilities; to amend the social services law, in relation to standard coverage for physical therapy services under medical assistance for needy persons programs; to direct a review of the feasibility of a burn center in Kings county; and in relation to rates of reimbursement for certain residential health care facilities (Part A); to amend the public health law, in relation to payments to residential health care facilities; to amend the social services law and the public health law, in relation to assisted living program providers licensed in the state; to amend the social services law, in relation to payments for certain medical assistance provided to eligible persons participating in the New York traumatic brain injury waiver program; to amend the public health law, in relation to limitations on licensed home care service agency contracts and registration of licensed home care services agencies; to amend the social services law, in relation to advertising by fiscal intermediaries; and in relation to medicaid reimbursement rates for hospice providers (Part B); to amend the social services law and the public health law, in relation to health homes and penalties for managed care providers (Part C); to amend the

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD12671-05-8

1 § 5. The executive law is amended by adding a new section 214-f to
2 read as follows:

3 § 214-f. Emergency situations involving people with autism spectrum
4 disorder and other developmental disabilities. The superintendent shall,
5 for all members of the state police:

6 1. Develop, maintain and disseminate, in consultation with the commis-
7 sioner of the office for people with developmental disabilities, written
8 policies and procedures consistent with section 13.43 of the mental
9 hygiene law, regarding the handling of emergency situations involving
10 individuals with autism spectrum disorder and other developmental disa-
11 bilities. Such policies and procedures shall make provisions for the
12 education and training of new and veteran police officers on the handl-
13 ing of emergency situations involving individuals with developmental
14 disabilities; and

15 2. Recommend to the governor, rules and regulations with respect to
16 establishment and implementation on an ongoing basis of a training
17 program for all current and new police officers regarding the policies
18 and procedures established pursuant to this subdivision, along with
19 recommendations for periodic retraining of police officers.

20 § 6. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law; provided, however, that the commissioner of
22 the office for people with developmental disabilities may promulgate any
23 rules and regulations necessary for the implementation of this act on or
24 before such effective date.

25

PART KK

26 Section 1. This Part enacts into law major components of legislation
27 which are necessary to combat sexual harassment in the workplace. Each
28 component is wholly contained within a Subpart identified as Subparts A
29 through F. The effective date for each particular provision contained
30 within such Subpart is set forth in the last section of such Subpart.
31 Any provision in any section contained within a Subpart, including the
32 effective date of the Subpart, which makes a reference to a section "of
33 this act," when used in connection with that particular component, shall
34 be deemed to mean and refer to the corresponding section of the Subpart
35 in which it is found. Section three of this Part sets forth the general
36 effective date of the Part.

37

SUBPART A

38 Section 1. The state finance law is amended by adding a new section
39 139-1 to read as follows:

40 § 139-1. Statement on sexual harassment, in bids. 1. (a) Every bid
41 hereafter made to the state or any public department or agency thereof,
42 where competitive bidding is required by statute, rule or regulation,
43 for work or services performed or to be performed or goods sold or to be
44 sold, shall contain the following statement subscribed by the bidder and
45 affirmed by such bidder as true under the penalty of perjury:

46 "By submission of this bid, each bidder and each person signing on
47 behalf of any bidder certifies, and in the case of a joint bid each
48 party thereto certifies as to its own organization, under penalty of
49 perjury, that the bidder has and has implemented a written policy
50 addressing sexual harassment prevention in the workplace and provides
51 annual sexual harassment prevention training to all of its employees.

1 Such policy shall, at a minimum, meet the requirements of section two
2 hundred one-g of the labor law."

3 (b) Every bid hereafter made to the state or any public department or
4 agency thereof, where competitive bidding is not required by statute,
5 rule or regulation, for work or services performed or to be performed or
6 goods sold or to be sold, may contain, at the discretion of the depart-
7 ment, agency or official, the certification required pursuant to para-
8 graph (a) of this subdivision.

9 2. Notwithstanding the foregoing, the statement required by paragraph
10 (a) of subdivision one of this section may be submitted electronically
11 in accordance with the provisions of subdivision seven of section one
12 hundred sixty-three of this chapter.

13 3. A bid shall not be considered for award nor shall any award be made
14 to a bidder who has not complied with subdivision one of this section;
15 provided, however, that if the bidder cannot make the foregoing certifi-
16 cation, such bidder shall so state and shall furnish with the bid a
17 signed statement which sets forth in detail the reasons therefor.

18 4. Any bid hereafter made to the state or any public department, agen-
19 cy or official thereof, by a corporate bidder for work or services
20 performed or to be performed or goods sold or to be sold, where such bid
21 contains the statement required by subdivision one of this section,
22 shall be deemed to have been authorized by the board of directors of
23 such bidder, and such authorization shall be deemed to include the sign-
24 ing and submission of such bid and the inclusion therein of such state-
25 ment as the act and deed of the corporation.

26 § 2. Subdivision 7 of section 163 of the state finance law, as amended
27 by section 10 of part L of chapter 55 of the laws of 2012, is amended to
28 read as follows:

29 7. Method of procurement. Consistent with the requirements of subdivi-
30 sions three and four of this section, state agencies shall select among
31 permissible methods of procurement including, but not limited to, an
32 invitation for bid, request for proposals or other means of solicitation
33 pursuant to guidelines issued by the state procurement council. State
34 agencies may accept bids electronically including submission of the
35 statement of non-collusion required by section one hundred thirty-nine-d
36 of this chapter, and the statement of certification required by section
37 one hundred thirty-nine-l of this chapter, and, starting April first,
38 two thousand twelve, and ending March thirty-first, two thousand
39 fifteen, may, for commodity, service and technology contracts require
40 electronic submission as the sole method for the submission of bids for
41 the solicitation. State agencies shall undertake no more than eighty-
42 five such electronic bid solicitations, none of which shall be reverse
43 auctions, prior to April first, two thousand fifteen. In addition, state
44 agencies may conduct up to twenty reverse auctions through electronic
45 means, prior to April first, two thousand fifteen. Prior to requiring
46 the electronic submission of bids, the agency shall make a determi-
47 nation, which shall be documented in the procurement record, that elec-
48 tronic submission affords a fair and equal opportunity for offerers to
49 submit responsive offers. Within thirty days of the completion of the
50 eighty-fifth electronic bid solicitation, or by April first, two thou-
51 sand fifteen, whichever is earlier, the commissioner shall prepare a
52 report assessing the use of electronic submissions and make recommenda-
53 tions regarding future use of this procurement method. In addition,
54 within thirty days of the completion of the twentieth reverse auction
55 through electronic means, or by April first, two thousand fifteen,
56 whichever is earlier, the commissioner shall prepare a report assessing

1 the use of reverse auctions through electronic means and make recommen-
2 dations regarding future use of this procurement method. Such reports
3 shall be published on the website of the office of general services.
4 Except where otherwise provided by law, procurements shall be compet-
5 itive, and state agencies shall conduct formal competitive procurements
6 to the maximum extent practicable. State agencies shall document the
7 determination of the method of procurement and the basis of award in the
8 procurement record. Where the basis for award is the best value offer,
9 the state agency shall document, in the procurement record and in
10 advance of the initial receipt of offers, the determination of the eval-
11 uation criteria, which whenever possible, shall be quantifiable, and the
12 process to be used in the determination of best value and the manner in
13 which the evaluation process and selection shall be conducted.

14 § 3. This act shall take effect on the first of January next succeed-
15 ing the date on which it shall have become a law; provided, however,
16 that the amendments to subdivision 7 of section 163 of the state finance
17 law made by section one of this act shall not affect the repeal of such
18 section and shall be deemed repealed therewith.

19

SUBPART B

20 Section 1. The civil practice law and rules are amended by adding a
21 new section 7515 to read as follows:

22 § 7515. Mandatory arbitration clauses; prohibited. (a) Definitions. As
23 used in this section:

24 1. The term "employer" shall have the same meaning as provided in
25 subdivision five of section two hundred ninety-two of the executive law.

26 2. The term "prohibited clause" shall mean any clause or provision in
27 any contract which requires as a condition of the enforcement of the
28 contract or obtaining remedies under the contract that the parties
29 submit to mandatory arbitration to resolve any allegation or claim of an
30 unlawful discriminatory practice of sexual harassment.

31 3. The term "mandatory arbitration clause" shall mean a term or
32 provision contained in a written contract which requires the parties to
33 such contract to submit any matter thereafter arising under such
34 contract to arbitration prior to the commencement of any legal action to
35 enforce the provisions of such contract and which also further provides
36 language to the effect that the facts found or determination made by the
37 arbitrator or panel of arbitrators in its application to a party alleg-
38 ing an unlawful discriminatory practice based on sexual harassment shall
39 be final and not subject to independent court review.

40 4. The term "arbitration" shall mean the use of a decision making
41 forum conducted by an arbitrator or panel of arbitrators within the
42 meaning and subject to the provisions of article seventy-five of the
43 civil practice law and rules.

44 (b) (i) Prohibition. Except where inconsistent with federal law, no
45 written contract, entered into on or after the effective date of this
46 section shall contain a prohibited clause as defined in paragraph two of
47 subdivision (a) of this section.

48 (ii) Exceptions. Nothing contained in this section shall be construed
49 to impair or prohibit an employer from incorporating a non-prohibited
50 clause or other mandatory arbitration provision within such contract,
51 that the parties agree upon.

52 (iii) Mandatory arbitration clause null and void. Except where incon-
53 sistent with federal law, the provisions of such prohibited clause as
54 defined in paragraph two of subdivision (a) of this section shall be

1 null and void. The inclusion of such clause in a written contract shall
2 not serve to impair the enforceability of any other provision of such
3 contract.

4 (c) Where there is a conflict between any collective bargaining agree-
5 ment and this section, such agreement shall be controlling.

6 § 2. This act shall take effect on the ninetieth day after it shall
7 have become a law.

8

SUBPART C

9 Section 1. The public officers law is amended by adding a new section
10 17-a to read as follows:

11 § 17-a. Reimbursement of funds paid by state agencies and state enti-
12 ties for the payment of awards adjudicated in sexual harassment claims.

13 1. As used in this section, the term "employee" shall mean any person
14 holding a position by election, appointment, or employment in the
15 service of the state of New York, whether or not compensated. The term
16 "employee" shall include a former employee or judicially appointed
17 personal representative.

18 2. Notwithstanding any law to the contrary, any employee who has been
19 subject to a final judgment of personal liability for intentional wrong-
20 doing related to a claim of sexual harassment, shall reimburse any state
21 agency or entity that makes a payment to a plaintiff for an adjudicated
22 award based on a claim of sexual harassment resulting in a judgment, for
23 his or her proportionate share of such judgment. Such employee shall
24 personally reimburse such state agency or entity within ninety days of
25 the state agency or entity's payment of such award.

26 3. If such employee fails to reimburse such state agency or entity
27 pursuant to subdivision two of this section within ninety days from the
28 date such state agency or entity makes a payment for the financial
29 award, the comptroller shall, upon obtaining a money judgment, withhold
30 from such employee's compensation the amounts allowable pursuant to
31 section fifty-two hundred thirty-one of the civil practice law and
32 rules.

33 4. If such employee is no longer employed by such state agency or
34 entity such state agency or entity shall have the right to receive
35 reimbursement through the enforcement of a money judgment pursuant to
36 article fifty-two of the civil practice law and rules.

37 § 2. The public officers law is amended by adding a new section 18-a
38 to read as follows:

39 § 18-a. Reimbursement of funds paid by a public entity for the payment
40 of awards adjudicated in sexual harassment claims. 1. As used in this
41 section:

42 (a) The term "public entity" shall mean (i) a county, city, town,
43 village or any other political subdivision or civil division of the
44 state; (ii) a school district, board of cooperative educational
45 services, or any other governmental entity or combination or association
46 of governmental entities operating a public school, college, community
47 college or university; (iii) a public improvement or special district;
48 (iv) a public authority, commission, agency or public benefit corpo-
49 ration; or (v) any other separate corporate instrumentality or unit of
50 government; but shall not include the state of New York or any other
51 public entity the employees of which are covered by section seventeen-a
52 of this article.

53 (b) The term "employee" shall mean any commissioner, member of a
54 public board or commission, trustee, director, officer, employee, or any

1 other person holding a position by election, appointment or employment
2 in the service of a public entity, whether or not compensated. The term
3 "employee" shall include a former employee or judicially appointed
4 personal representative.

5 2. Notwithstanding any law to the contrary, any employee who has been
6 subject to a final judgment of personal liability for intentional wrong-
7 doing related to a claim of sexual harassment, shall reimburse any
8 public entity that makes a payment to a plaintiff for an adjudicated
9 award based on a claim of sexual harassment resulting in a judgment, for
10 his or her proportionate share of such judgment. Such employee shall
11 personally reimburse such public entity within ninety days of the public
12 entity's payment of such award.

13 3. If such employee fails to reimburse such public entity pursuant to
14 subdivision two of this section within ninety days from the date such
15 public entity makes a payment for the financial award, the chief fiscal
16 officer of such public entity shall, upon obtaining a money judgment,
17 withhold from such employee's compensation the amounts allowable pursu-
18 ant to section fifty-two hundred thirty-one of the civil practice law
19 and rules.

20 4. If such employee is no longer employed by such public entity, such
21 public entity shall have the right to receive reimbursement through the
22 enforcement of a money judgment pursuant to article fifty-two of the
23 civil practice law and rules.

24 § 3. This act shall take effect immediately.

25

SUBPART D

26 Section 1. The general obligations law is amended by adding a new
27 section 5-336 to read as follows:

28 § 5-336. Nondisclosure agreements. Notwithstanding any other law to
29 the contrary, no employer, its officers or employees shall have the
30 authority to include or agree to include in any settlement, agreement or
31 other resolution of any claim, the factual foundation for which involves
32 sexual harassment, any term or condition that would prevent the disclo-
33 sure of the underlying facts and circumstances to the claim or action
34 unless the condition of confidentiality is the complainant's preference.
35 Any such term or condition must be provided to all parties, and the
36 complainant shall have twenty-one days to consider such term or condi-
37 tion. If after twenty-one days such term or condition is the
38 complainant's preference, such preference shall be memorialized in an
39 agreement signed by all parties. For a period of at least seven days
40 following the execution of such agreement, the complainant may revoke
41 the agreement, and the agreement shall not become effective or be
42 enforceable until such revocation period has expired.

43 § 2. The civil practice law and rules is amended by adding a new
44 section 5003-b to read as follows:

45 § 5003-b. Nondisclosure agreements. Notwithstanding any other law to
46 the contrary, for any claim or cause of action, whether arising under
47 common law, equity, or any provision of law, the factual foundation for
48 which involves sexual harassment, in resolving, by agreed judgment,
49 stipulation, decree, agreement to settle, assurance of discontinuance or
50 otherwise, no employer, its officer or employee shall have the authority
51 to include or agree to include in such resolution any term or condition
52 that would prevent the disclosure of the underlying facts and circum-
53 stances to the claim or action unless the condition of confidentiality
54 is the plaintiff's preference. Any such term or condition must be

1 provided to all parties, and the plaintiff shall have twenty-one days to
2 consider such term or condition. If after twenty-one days such term or
3 condition is the plaintiff's preference, such preference shall be memo-
4 rialized in an agreement signed by all parties. For a period of at least
5 seven days following the execution of such agreement, the plaintiff may
6 revoke the agreement, and the agreement shall not become effective or be
7 enforceable until such revocation period has expired.

8 § 3. This act shall take effect on the ninetieth day after it shall
9 have become a law.

10

SUBPART E

11 Section 1. The labor law is amended by adding a new section 201-g to
12 read as follows:

13 § 201-g. Prevention of sexual harassment. 1. The department shall
14 consult with the division of human rights to create and publish a model
15 sexual harassment prevention guidance document and sexual harassment
16 prevention policy that employers may utilize in their adoption of a
17 sexual harassment prevention policy required by this section.

18 a. Such model sexual harassment prevention policy shall: (i) prohibit
19 sexual harassment consistent with guidance issued by the department in
20 consultation with the division of human rights and provide examples of
21 prohibited conduct that would constitute unlawful sexual harassment;
22 (ii) include but not be limited to information concerning the federal
23 and state statutory provisions concerning sexual harassment and remedies
24 available to victims of sexual harassment and a statement that there may
25 be applicable local laws; (iii) include a standard complaint form; (iv)
26 include a procedure for the timely and confidential investigation of
27 complaints and ensure due process for all parties; (v) inform employees
28 of their rights of redress and all available forums for adjudicating
29 sexual harassment complaints administratively and judicially; (vi)
30 clearly state that sexual harassment is considered a form of employee
31 misconduct and that sanctions will be enforced against individuals
32 engaging in sexual harassment and against supervisory and managerial
33 personnel who knowingly allow such behavior to continue; and (vii)
34 clearly state that retaliation against individuals who complain of sexu-
35 al harassment or who testify or assist in any proceeding under the law
36 is unlawful.

37 b. Every employer shall adopt the model sexual harassment prevention
38 policy promulgated pursuant to this subdivision or establish a sexual
39 harassment prevention policy to prevent sexual harassment that equals or
40 exceeds the minimum standards provided by such model sexual harassment
41 prevention policy. Such sexual harassment prevention policy shall be
42 provided to all employees in writing. Such model sexual harassment
43 prevention policy shall be publicly available and posted on the websites
44 of both the department and the division of human rights.

45 2. The department shall consult with the division of human rights and
46 produce a model sexual harassment prevention training program to prevent
47 sexual harassment in the workplace.

48 a. Such model sexual harassment prevention training program shall be
49 interactive and include: (i) an explanation of sexual harassment
50 consistent with guidance issued by the department in consultation with
51 the division of human rights; (ii) examples of conduct that would
52 constitute unlawful sexual harassment; (iii) information concerning the
53 federal and state statutory provisions concerning sexual harassment and
54 remedies available to victims of sexual harassment; and (iv) information

1 concerning employees' rights of redress and all available forums for
 2 adjudicating complaints.

3 b. The department shall include information in such model sexual
 4 harassment prevention training program addressing conduct by supervisors
 5 and any additional responsibilities for such supervisors.

6 c. Every employer shall utilize the model sexual harassment prevention
 7 training program pursuant to this subdivision or establish a training
 8 program for employees to prevent sexual harassment that equals or
 9 exceeds the minimum standards provided by such model training. Such
 10 sexual harassment prevention training shall be provided to all employees
 11 on an annual basis.

12 3. The commissioner may promulgate regulations as he or she deems
 13 necessary for the purposes of carrying out the provisions of this
 14 section.

15 § 2. This act shall take effect on the one hundred eightieth day after
 16 it shall have become a law. Effective immediately, the department of
 17 labor, in consultation with the division of human rights, is authorized
 18 to create the model sexual harassment prevention policy and the model
 19 sexual harassment prevention training program required to be created and
 20 published pursuant to section 201-g of the labor law as added by section
 21 one of this act.

22

SUBPART F

23 Section 1. The executive law is amended by adding a new section 296-d
 24 to read as follows:

25 § 296-d. Sexual harassment relating to non-employees. It shall be an
 26 unlawful discriminatory practice for an employer to permit sexual
 27 harassment of non-employees in its workplace. An employer may be held
 28 liable to a non-employee who is a contractor, subcontractor, vendor,
 29 consultant or other person providing services pursuant to a contract in
 30 the workplace or who is an employee of such contractor, subcontractor,
 31 vendor, consultant or other person providing services pursuant to a
 32 contract in the workplace, with respect to sexual harassment, when the
 33 employer, its agents or supervisors knew or should have known that such
 34 non-employee was subjected to sexual harassment in the employer's work-
 35 place, and the employer failed to take immediate and appropriate correc-
 36 tive action. In reviewing such cases involving non-employees, the extent
 37 of the employer's control and any other legal responsibility which the
 38 employer may have with respect to the conduct of the harasser shall be
 39 considered.

40 § 2. Subdivision 4 of section 292 of the executive law, as amended by
 41 chapter 97 of the laws of 2014, is amended to read as follows:

42 4. The term "unlawful discriminatory practice" includes only those
 43 practices specified in sections two hundred ninety-six, two hundred
 44 ninety-six-a [and], two hundred ninety-six-c and two hundred
 45 ninety-six-d of this article.

46 § 3. This act shall take effect immediately.

47 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
 48 sion, section or subpart of this act shall be adjudged by any court of
 49 competent jurisdiction to be invalid, such judgment shall not affect,
 50 impair, or invalidate the remainder thereof, but shall be confined in
 51 its operation to the clause, sentence, paragraph, subdivision, section
 52 or subject thereof directly involved in the controversy in which such
 53 judgment shall have been rendered. It is hereby declared to be the

1 intent of the legislature that this act would have been enacted even if
2 such invalid provisions had not been included herein.
3 § 3. This act shall take effect immediately; provided, however, that
4 the applicable effective dates of Subparts A through F of this Part
5 shall be as specifically set forth in the last section of such Subparts.

6 PART LL

7 Section 1. The public health law is amended by adding a new section
8 1114-a to read as follows:

9 § 1114-a. Voluntary public water system consolidation study. 1. There
10 shall be established in the department, by the commissioner, a voluntary
11 public water system consolidation study designed to evaluate the feasi-
12 bility of the joining of public water systems in order to improve water
13 quality. Such study shall include:

14 (a) the feasibility of joining of two or more public water systems to
15 form one water system;

16 (b) the feasibility of the consolidation of one or more public water
17 systems into a larger public water system;

18 (c) the appropriate technical, managerial and financial capacity
19 necessary for consolidation, including state funding mechanisms and
20 incentives that could be utilized;

21 (d) potential public health impacts of consolidation, including abili-
22 ty to meet legally required water quality standards and the impact on
23 monitoring, reporting and enforcement of drinking water standards;

24 (e) appropriate and sufficient guidance from the department necessary
25 for those public water systems interested in consolidation; and

26 (f) recommendations for public water systems interested in voluntary
27 consolidation.

28 2. The department shall prepare and submit a report and supporting
29 materials to the governor, the temporary president of the senate and the
30 speaker of the assembly setting forth the information gathered and
31 recommendations to the legislature by January first of the following
32 year.

33 § 2. This act shall take effect immediately.

34 PART MM

35 Section 1. The public health law is amended by adding a new section
36 280-c to read as follows:

37 § 280-c. Pharmacy audits by pharmacy benefit managers. 1. Defi-
38 nitions. As used in this section, the following terms shall have the
39 following meanings:

40 (a) "Pharmacy benefit manager" shall have the same meaning as in
41 section two hundred eighty-a of this article.

42 (b) "Pharmacy" shall mean a pharmacy that has contracted with a phar-
43 macy benefit manager for the provision of pharmacy services.

44 2. When conducting an audit of a pharmacy's records, a pharmacy bene-
45 fit manager shall:

46 (a) not conduct an on-site audit of a pharmacy at any time during the
47 first three calendar days of a month;

48 (b) notify the pharmacy or its contracting agent no later than fifteen
49 days before the date of initial on-site audit. Such notification to the
50 pharmacy or its contracting agent shall be in writing delivered either
51 (i) by mail or common carrier, return receipt requested, or (ii) elec-
52 tronically with electronic receipt confirmation, addressed to the super-

**ERIE COUNTY WATER AUTHORITY
HR Policies/Procedures**

Re: ANTI- HARASSMENT	Policy No.: 75.0
Application: All Employees	Amended: 05/03/05 01/26/12

PURPOSE

To provide a work and business environment free from all forms of harassment and discrimination on the basis of race, color, religion, creed, age, sex, gender, sexual orientation, gender identity, national origin, ancestry, marital status, disability or perceived disability status, Vietnam era or special disabled veteran status, genetic information or any other characteristic protected under state, federal or local law. The purpose of this policy is not to regulate employees' personal morality, but to ensure that in the workplace, no individual is subjected to unlawful harassment or discrimination..

POLICY

It is the policy of the Authority to provide a work environment free of sexual and other unlawful harassment and a process to address employee harassment complaints. The Authority will also enforce this policy to prevent inappropriate harassing conduct even if it is not unlawful.

DEFINITIONS

1. *Sexual harassment* is generally defined as any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of sexual nature when:
 - Submission to such conduct is made a term or condition, either explicitly or implicitly, of an individual's employment; or
 - Submission to or rejection of such conduct by an individual is used as a factor in decisions affecting that individual's employment; or
 - Such conduct has the purpose or effect of interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
 - *Other unlawful harassment* is generally defined as any unwelcome verbal or physical conduct which denigrates or shows hostility or aversion to a person because of his or her race, color, religion, creed, age, sex, gender, sexual orientation, gender identity, national origin, ancestry, marital status, disability or perceived disability status, Vietnam era or special disabled

veteran status, genetic information or any other characteristic protected by law, or because of such characteristics of his or her relatives, friends or associates, and which:

- Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
- Has the purpose or effect of unreasonably interfering with a person's work performance; or
- Otherwise adversely affects a person's employment opportunities.

2. Examples of conduct prohibited by this policy include, but are not limited to:

- Unwelcome sexual flirtation, advances, or propositions;
- Verbal comments, obscene gestures, jokes or practical jokes, electronic communication, or displaying cartoons related to an individual's race, color, religion, creed, age, sex, gender, sexual orientation, gender identity, national origin, ancestry, marital status, disability or perceived disability status, Vietnam era or special disabled veteran status, genetic information or any other characteristic protected under state, federal, or local law;
- Explicit or degrading verbal comments about another individual or his/her appearance or legally protected characteristic(s);
- The display of sexually suggestive pictures or objects in any workplace location including transmission or display via computer;
- Any sexually offensive or abusive physical conduct;
- The taking of or the refusal to take any personnel action based on an employee's submission to or rejection of sexual overtures.

PROCEDURE

1. A copy of this policy shall be distributed to each current employee and given to each new employee at his/her orientation meeting. Additionally, a copy shall be posted on bulletin boards at each Authority facility, as well as in paycheck inserts.
2. An employee who believes he/she has been subjected to conduct which violates this policy, whether by an Authority employee, vendor or customer, should immediately tell the harasser that his or her actions are not welcome and they must stop. In addition, the employee should report the alleged act immediately to the Director of the Human Resources, the Secretary of the Authority, or an individual designated in writing by the Authority's Commissioners.

In the event that an employee believes he/she has been the subjected to conduct which violates this policy by an Authority Commissioner, the employee may report the alleged act immediately to another Authority Commissioner. A report may be made to an Authority Commissioner by inner office or electronic mail.

3. A formal record of every report of sexual or other unlawful harassment shall be maintained by the Authority.

4. Every report of harassment will be promptly and thoroughly investigated and corrective action will be taken where appropriate. Such investigations may include separate interviews with both complainant and the accused, as well as other witnesses where appropriate.
5. Upon completion of the investigation and review by the Secretary of the Authority or a majority of Authority Commissioners, the complainant will be advised of the findings, including the action, if any, to be taken against the accused. If it is determined that a violation of this policy has occurred, appropriate disciplinary action up to and including termination will be taken.
6. Complaints and actions taken to resolve complaints will be handled as confidentially as possible, given the Authority's obligation to investigate and act upon reports of such harassment. Confidentiality cannot be guaranteed, however.
7. Retaliation of any kind or discrimination against an employee who reports unwelcome conduct or who cooperates in an investigation of such reports in accordance with this policy is prohibited.
8. An employee who violates this policy or retaliates against an employee in any way will be subject to disciplinary action up to and including immediate termination.
9. If a complainant is not satisfied with the Authority's investigation or disciplinary decision, he/she may present a complaint to the Authority's Commissioners for final review.

RETALIATION PROHIBITED

Any and all forms of retaliation against any individual that makes a good faith complaint under this policy or who provides information during the course of an investigation is strictly **PROHIBITED**.

Any employee that believes that he or she is the subject of retaliation for the employee's good faith filing of a complaint or the employee's participation in an investigation is encouraged to report this to the Director of Human Resources or any individual designated by the Authority's Commissioners for this purpose.