

ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM



September 26, 2018

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

Cc: Terrence McCracken, Secretary
Robert J. Lichtenthal, Jr., Deputy Director
Karen Prendergast, Comptroller
Daniel J. NeMoyer, Director of Human Resources
Margaret A. Murphy, Attorney

From: Jacqueline Mattina, Deputy Associate Attorney

Subject: Revised Interim Sexual Harassment Policy #75

On April 12, 2018 the Governor signed into law as part of the New York State budget several bills designed to combat workplace sexual harassment. Legislative amendments on this topic resulted in changes to the State Finance Law, the CPLR, the Public Officers Law, the General Obligations Law, the Labor Law, and the Executive Law. Some of these changes affect the Authority's Employees Policies and Procedures Anti-Harassment Policy #75.

New York Labor Law §201-g now requires the New York State Department of Labor (DOL) and the New York State Department of Human Rights (DHR) to create and publish a sexual harassment prevention guidance document and a model sexual harassment prevention policy. The law requires every employer adopt either (a) the model policy; or (b) a policy that "equals or exceeds" the "minimum standards" for such policy as published by the DOL/DHR by October 9, 2018. I

have attached 1) the draft model policy and 2) the minimum standards document for your review.

Similarly, the DOL and DHR are also required to produce a model sexual harassment prevention training policy. Most notable on this training piece is that training must be provided to all employees on an “annual basis”. As of this writing, the proposed date for completion of the first annual training is January 1, 2019. It should be noted that while training is required, these specific requirements are not established in the budget bill and are only in DOL/DHR guidance documents.

Hodgson Russ LLP recently conducted a seminar entitled “The New Rules: New York’s Response to #Me Too”. I attended the seminar on September 21, 2018 in their Buffalo Office. Hodgson Russ LLP indicated that they had submitted to DOL/DHR numerous proposed changes and asked for clarification on a number of items in the DOL/DHR Draft Policy and Guidance. They indicate there has been no date given for when the final model policies and guidance will be published. Other notable takeaways from the seminar include Hodgson Russ LLP advice, that at this time, employers should adhere to the “minimum standards” requirements draft citing that the model policy far exceeds the requirements of the statute while the draft “minimum standards” guidance document mirrors the statute’s list of the required elements of the policy. They also have submitted comments to DOL/DHR indicating the employee training component of the policy should provide for a year to implement the training rather than a January 1, 2019 date.

In light of the fact that as of the date of this writing, DOL and DHR have yet to publish the final model polices along with the fact that the Authority is obligated to have a policy in effect by the deadline of October 9, 2018, I have drafted an interim sexual harassment policy that you should find equals or exceeds the minimum standards for such policy as published by DOL/DHR on September 12, 2018. I have used the “minimum standards” draft policy as my guidance but have also incorporated a good portion of the “model policy and guidance” into the revised policy #75.

I would recommend to the Board to adopt this revised policy #75 on an interim basis until final model policy and guidance has been issued by the DOL/DHR and legal has the opportunity to review said final policy and guidance. By adopting this interim policy the Authority will be in compliance with the October 9th deadline to have an employee policy in effect, but will also allow the opportunity to review final guidance before adopting a new more permanent policy and possibly also incorporate the training piece into this policy.

Finally as a result of the recent sexual harassment legislation there are some important dates for the Board to be made aware of and they are as follows:

- Effective April 12, 2018: employers may be held liable for harassment of non-employees in the workplace. This includes contractors, subcontractors, vendors, consultants, etc.
- Effective July 11, 2018: Rules regarding Mandatory Arbitration Clauses and non-disclosure Agreements took effect.
- August 23, 2018: Draft Model Policy, Model Training and Guidance issued by the State.
- September 12, 2018: comment period on Draft Policy and Guidance closes.
- TBD: Final Model Policy and Guidance issued??
- October 9, 2018: Employers must adopt NYS model sexual harassment policy or policy that equals or exceeds the minimum standards.
- January 1, 2019: *currently proposed* date for completion of first annual training of all employees.
- January 1, 2019: changes to the State Finance Law will require that state contractors bidding on contracts requiring competitive bidding certify they have in place a sexual harassment policy and provide annual employee training.