

Know Your Rights, New York:

Sexual Harassment

OCTOBER 11, 2019

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Introduction

In August 2019, Governor Andrew Cuomo signed a groundbreaking law expanding sexual harassment protections for employees in the workplace. As an organization committed to safe, fair, and dignified work for women of all kinds, TIME'S UP partnered with the Governor's office and state advocacy organizations to call for real legislative change to end sexual harassment and empower workers, resulting in the New York Safety Agenda.

This know your rights guide provides an overview of your rights as an employee, a workplace safety checklist, the provisions of the [new law](#) and how they are different from previous laws, and what you can do if you or someone you know is facing harassment at work.

New York Safety Toolkit

Know Your Rights, New York

As of October 11, 2019, workers in New York have an expanded set of rights and protections from sexual harassment. Here is what you should know about your rights in New York:

- **The New York State Human Rights Law makes it illegal for an employer to discriminate against an employee** based on age, creed, race, color, sex, sexual orientation, national origin, marital status, disability, military status, domestic violence victim status, criminal or arrest record, or predisposing genetic characteristics. This law now applies to all employers in New York, including state agencies and private employers.
- **If you are a domestic worker, independent contractor or other “non-employee,”** you are covered by the law as of October 11, 2019. The law also protects paid or unpaid interns.
- **If you sign a nondisclosure agreement, you can still testify and/or discuss your sexual harassment claim** with local, state, and federal agencies.
- **You do not have to agree to mandatory arbitration** for a discrimination and/or sexual harassment claim, including a retaliation claim, as of October 11, 2019.
- **Your employer has a legal obligation to provide a written sexual harassment policy,** a process for addressing complaints, and sexual harassment training.
- **You are protected from retaliation** for filing a complaint about an experience of sexual harassment or discrimination.

New York Workplace Safety Checklist

- Make sure that you have your company/organization's sexual harassment policy in writing.** New York State law requires every employer to provide the policy in plain English and in the primary language of the employee.
 - New York State has a [model sexual harassment](#) policy that meets minimum standards for a good policy, according to state requirements. It includes information on what sexual harassment is and a process for filing a complaint.
- Take your company's sexual harassment training or review [Part 1](#) and [Part 2](#) of the model training** developed by the New York State Department of Labor.
- Keep a record of the harassment.** For more information on what this means, see [this resource](#) from the National Women's Law Center.
- Know your rights against retaliation.** You are protected from retaliation if you make a complaint about harassment or suspected harassment, provide information during an investigation, or testify in connection with a complaint.
- File a complaint if you believe that you have been sexually harassed in the workplace.** You can file a complaint with the New York State Division of Human Rights or with the U.S. Equal Employment Opportunity Commission (EEOC). More information on how to do this can be found on page 18.

Spread the word and stay in touch

- Text NYSAFE to 306-44 to download the full toolkit.
- [Click here](#) to share this toolkit on Twitter.
- [Visit timesupnow.org](https://www.timesupnow.org) to learn more about what TIME'S UP is doing to ensure safe, fair, and dignified work for women.

About the Law

At a Glance

The new law will protect millions of New Yorkers by:

- Making it easier to bring and win lawsuits for harassment discrimination claims by **eliminating the “severe or pervasive” standard** that kept all but the most egregious claims out of court;
- Clarifying that the New York State Human Rights Law **applies to all employers** in New York, including state and private employers as well as employers with fewer than four employees, **for all forms of discrimination and harassment¹**;
- Clarifying that employees who sign **non-disclosure agreements** may participate in investigations into sexual harassment claims and voiding any non-disclosure clauses related to any future claims of discrimination unless a worker is notified that they may still talk to a reporting agency; and
- **Extending broader protections to more workers**, including domestic workers and independent contractors.

¹ Protected statuses include: age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status.

Most of the provisions of the new law will go into effect on October 11, 2019, and will apply to claims accrued on or after that date. These provisions include the expanded definition of “private employer,” new behaviors by private employers that are considered unlawful, and the extension of protections to domestic workers, among others. Some provisions go into effect at later dates:

- **February 8, 2020:** All discrimination² claims accrued on or after this date can be brought against all employees under New York Human Rights Law, regardless of employer size or public sector employment.
- **August 12, 2020:** The law will extend the statute of limitations for filing sexual harassment complaints with the New York State Division of Human Rights to three years.

² Sexual harassment claims can currently be brought against employers, regardless of size.

1. Changes in the Sexual Harassment Standard

If you believe that you have experienced sexual harassment, your claim is now more likely to be investigated.

Under the previous standard, workplace harassment had to be “severe or pervasive” in order to constitute an unlawful discriminatory practice on the part of the harasser or employer. “Severe or pervasive” was defined as repeated, egregious discriminatory behaviors that create a hostile work environment. The result was that only a quarter of claims were investigated, and many legitimate claims that employees believed would be considered sexual harassment were often dismissed.

Now, as an employee, you only have to show that you have been [subjected to](#) “inferior terms, conditions, or privileges of employment.”

What is sexual harassment?

Sexual harassment is unwelcome verbal or physical behavior based on a person's sex or gender. This can [include](#):

- Unwanted touching
- Offensive and suggestive gestures or comments
- Asking about a person's sex life or making sexualized remarks about a person's appearance
- Conditioning promotions or other opportunities on sexual favors
- Sexualizing the work environment with imagery or other items, including on computers, emails, cell phones, bulletin boards, etc.
- Telling sexual jokes. Even making a joke about not being able to make a gender-based or sexual comment is considered sexual harassment.

2. Who Does the New Sexual Harassment Law Cover?

The law expanded protections to cover all employees, including:

- State employees
- Private employees, regardless of size
- Domestic workers
- Independent contractors, subcontractors, vendors, and consultants or anyone who is an employee of a contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a contract

If you are working as an independent contractor, subcontractor, or vendor, the company you are contracted with is liable for any sexual harassment or discrimination you experience at the location where you are working. Though it is not required, your employer is encouraged to provide a written sexual harassment policy and training, regardless of the number of hours you work.

3. Nondisclosure and Mandatory Arbitration Agreements

If you have signed a nondisclosure agreement, you may still testify and/or discuss your sexual harassment claim as part of an investigation by a local, state, or federal agency.

The new law makes it clear that employers may not prohibit an employee from disclosing underlying facts and circumstances -- as a term of a settlement, agreement, or resolution -- as part of a nondisclosure agreement. However, an employee may still choose to maintain confidentiality if that is their preference.

Under the law, an employee who has resolved their claim may still:

- Respond to or comply with a subpoena;
- Participate in an investigation by local, state, or federal law enforcement or agency; and
- Disclose facts of their situation to receive public benefits.

You do not have to agree to mandatory arbitration to resolve a sexual harassment claim.

The law also prohibits employers from requiring employees that submit to mandatory arbitration to resolve any discrimination claim³⁴. Though not every survivor chooses to have their case heard in open court, survivors deserve to have the option if their employer violates the law.

³ The law already mandated this for sexual harassment claims, but as of October 11, 2019, this will apply to all discrimination claims.

(continued on next page)

Have I signed a non-disclosure or mandatory arbitration agreement?

Here are some terms and phrases you should look out for to see if you've previously signed a nondisclosure or mandatory arbitration agreement:

Nondisclosure agreement

- “Confidentiality agreement”
- “Unauthorized disclosure”
- “Disclosure of confidential information”

Mandatory arbitration agreement

- “All disputes or conflicts arising out of the present contract shall be settled according to the rules of arbitration”
- “Settled by final and binding arbitration by a single arbitrator”

⁴ There is an open question as to whether the prohibition of mandatory arbitration of sexual harassment and other discrimination claims will be enforceable, given that at least one Court has found that these provisions conflict with Federal Arbitration Laws which have a strong policy of enforcing such agreements.

Additional Provisions of the Law

- An employee bringing forth a sexual harassment claim does not need a point of comparison to prove that they have been harassed. This means that an employee does not need to demonstrate the existence of an individual to whom the employee's treatment must be compared.
- An employee does not need to report the conduct internally before bringing a claim of harassment.
- Employers of all sizes are now covered for all harassment claims, not just sexual harassment, which is critical for employees who may be discriminated against based on one or more factors. The updated standard also applies to all harassment claims.
- Employees may receive punitive damages as well as attorneys' fees.

What to Do if You've Been Sexually Harassed at Work

If you are experiencing sexual harassment, it is not your fault. Sexual harassment is a form of discrimination, and it happens in all industries and to all types of workers— it is about abuse of power in the workplace. This new law is a step forward in ensuring that working people in New York no longer face sexual harassment on the job.

If you believe that you have been sexually harassed in the workplace, you can take any of the following actions:

- You can talk to your supervisor or file a complaint directly with Human Resources at your company.
- If you want to make a complaint outside of your employer, you have several options:
 - You can [file a complaint](#) with the New York State Division of Human Rights within one year of the alleged sexual assault prior to August 12, 2020 and within three years of the alleged sexual harassment on or after August 12, 2020. You do not need an attorney to file a charge.
 - Note: You may not file a complaint with the Division of Human Rights if you have already brought a claim to court.

- You can [file a complaint](#) with the **U.S. Equal Employment Opportunity Commission (EEOC)** within 300 days of the alleged sexual harassment. You do not need an attorney to file a charge.
 - Note: If you are interested in filing a claim based on federal law, Title VII of the Civil Rights Act, you must first file an administrative complaint with the EEOC. Title VII only applies to employers with more than 15 employees. You don't have to file a charge before bringing a case under New York law.

- You can **file a case in state court** within three years of the alleged sexual harassment.
 - Note: You may not bring a claim to court if you have already filed a complaint with the Division of Human Rights.

How can the TIME'S UP Legal Defense Fund help?

The TIME'S UP Legal Defense Fund helps connect workers with lawyers and bring cases of workplace sexual harassment and related retaliation – regardless of industry, rank or role.

Here's how the TIME'S UP Legal Defense Fund works:

1. You fill out a [form](#) online.
2. If your case involves sexual harassment and/or related retaliation at work, the TIME'S UP Legal Defense Fund staff will email you information about lawyers in our network. If your case is about something else, we will provide you with resources to find help.
3. You contact the lawyers. Lawyers in our network provide a free consultation.
4. Your attorney can apply for funding for cases that qualify and you can ask for public relations assistance, as well.

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TIME'S UP™ Foundation

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