

MEMBER QUESTION

Topic: Shared Resources for Newly Mandated Sexual Harassment Training?

Date submitted: September 20, 2018

WNYLRC ATTORNEY'S "RECENTLY ASKED QUESTIONS" RESPONSE

From: Stephanie A. Adams, Esq.

Date: September 26, 2018

Member: Southern Tier Library System

The member is right: New York State has taken the huge step of requiring ALL employers—whether they employ one, or one thousand—to train their people to recognize and report sexual harassment and illegal retaliation.

But this training requirement does not stand alone. Also as part of the amped-up law:

- All employers must have a sexual harassment policy meeting new content requirements.
- All employers must have a sexual harassment reporting form meeting new content requirements.
- All new employees must be trained about the sexual harassment policy within 30 days.
- Liability now extends to complaints by independent contractors and “gig” workers¹.
- Sexual Harassment claims cannot be resolved via mandatory arbitration and non-disclosure clauses (with some exceptions).

The resulting need to revise policies, adopt reporting forms, and organize trainings has hit many strategic plans and budgets hard.² Libraries, who always feel budget pressure, are among the not-for-profits feeling the pinch.

Since this law passed along with the budget this spring, I have been counselling clients that this training requirement should not be viewed as simply another unfunded mandate (although it is), but an opportunity. What kind of opportunity? An opportunity for library leadership to gather and train their valued people to recognize and reject discriminatory behavior right from the start.

¹ Uber drivers who transport your interlibrary loans, for example.

² The State's late issuance of required guidance—released less than 2 months before the effective date—didn't help, either.

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But at the end of the day, no matter how worthy the topic, convening personnel and hiring a qualified trainer **costs money**. Which brings us to the member's great questions (underlined below).

First Question: Can we provide training centrally for the employees of member libraries, as long as the training itself meets the minimum training standards?

My answer to this is...**Hold on. Before we talk about resource-sharing, let's talk about scope:**

Trustees, interns, and volunteers should be part of this training. ³

Why trustees? When a small institution has a concern related to sexual harassment, trustees become front-line decision-makers. Further, trustees are generally the “supervisors” of directors—and the new law specifically requires that supervisors be trained. And finally—but most critically—library trustees set the tone for mission and leadership at the library. You cannot change or evolve a library's culture without trustee involvement.

Why interns and volunteers? This new law comes with liability for harassment directed even at “gig” workers. This liability can be caused by any person acting on behalf of the library—even a volunteer. So every person⁴ who works at the direction of your institution should know this law, and how to work within it, together.

With that scope of attendance in mind, based on the guidance from the state thus far⁵, if the policy and reporting form track the model policies provided by the state: my answer is YES.

Second Question: Do different levels of employees need to be provided with different training sessions, for instance do library staff persons need to be provided a training space free of the library director?

NO! In fact, I believe a library would lose much of the value of the sessions if it did so.

³ I know, that's not really the question. But this is very, very important.

⁴ Yes, some of those volunteers might be very young! It will be the job of your trainer to train your employees both well, and appropriately.

⁵ September 26, 2018. As I write this, they are assessing thousands of public comments—including some submitted by me—and that may change the basis of my advice. So if you are reading this in 2019, please check for updates.

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Why is that? While the stark requirement of the policy is to review the law, a side benefit of such a training is creating an *esprit de corps* for combatting bad behavior together. That can best happen if each level of authority—from trustee, to supervisor, to employee to intern or volunteer—hears and honors the obligations of the other.⁶

If the different authority levels are balkanized into different trainings, a valuable opportunity to build trust and accountability in service to the library's mission of equal access is lost.

Third Question: Do trustees serving on a library (or any non-profit) board need to participate in this training and if so, do they need their own session?

The new law does not mention training trustees or directors specifically⁷. But since boards generally supervise the Director or Executive Director, and are responsible for a library's legal compliance in all matters, it is my conclusion that library trustees must be trained.

And—although my comments above recommend against it—they can be trained separately.⁸

There is a related area, however, where separate training might be appropriate *and* warranted. In this day and age, governing boards should know: 1) the library's insurance coverage for sexual harassment/discrimination claims, 2) the procedure for notifying the insurance carrier of a claim, and 3) how and when to call in third-party investigator to look into a complaint. Having trustees aware of these things, before a mandatory training under the new law, would be optimal.

Fourth Question: It is my understanding that training can only be shared if all the institutions have agreed to the state version of the policy AND been given the state-created training module. Is that true?

Let's start this answer with what a library is looking for when arranging the required training—a required element of which is a live, in-person trainer that attendees can ask questions of.

⁶ Just so you know, “my firm belief” is based on years of conducting anti-discrimination trainings, ten years as an in-house counsel at a university, and time as an Interim HR Director. I am not just going with my gut here.

⁷ Nor does the current model policy, report form, or training materials. Considering that New York is a hive of corporations, this void is rather mind-boggling, but these State resources were compiled with haste. I imagine this will be addressed in later versions.

What does the library need from this trainer? At bare minimum, the trainer needs to provide a session that meets the requirements of the law. Therefore, my guidance to those arranging trainings for a single entity is that the contract or hire letter contain assurance such as:

On [DATE/S], [PROVIDER] will provide [SINGLE INSTITUTION] with an interactive session based on the State of New York's "Model Sexual Harassment Prevention Training" guidance and [Institution's] Sexual Harassment Policy and Reporting Form. When the training is complete, trainer will certify that all elements for sexual harassment trainings required by applicable NYDOL and NYDHR guidance, and the laws of New York, have been met.

For a multi-institution training organized by a membership alliance or network, I suggest that the contract or hire letter contain some extra details, such as:

On [DATE], [Provider] will provide [Institution]'s members with an interactive session based on the State of New York's "Model Sexual Harassment Prevention Training" guidance and [Institution's] Sexual Harassment Policy and Reporting Form. When the training is complete, trainer will certify to each institution that all elements required by applicable NYDOL and NYDHR guidance, and the laws of New York, have been met.

As this is a multi-institutional training, to enable certification for each attending institution, the following practices will be observed:

- *Registration must be complete no more than [one week] before the session.*
- *[Institution] must provide trainer with a copy of each participating institution's sexual harassment policy and reporting forms, no later than [one week] before the session.*
- *Each attendee shall register and sign in on a form that notes if they have a supervisory role.*
- *When signing in, each attendee shall be given a copy of their institution's sexual harassment policy and reporting form, and shall sign to acknowledge receipt.*
- *When signing in, each attendee shall be given a name tag that notes their institution, and if they are a supervisor.*
- *During the training, each attendee shall be addressed by name and given at least one opportunity to role-play or rehearse recognizing or reporting harassment or retaliation.*

Attendance is limited to 5 institutions, 60 attendees.⁹

⁹ Or some other reasonable number. This is just a recommendation. Basically, you don't want the number of institutions or attendees to make the "interactive" requirement arguably meaningless.

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I based this guidance on what will no doubt be the next chapter in this legal saga: allegations of liability due to failure to properly update policies and train personnel.

The “certification” approach I am suggesting above is not required by the new law. Rather, it is designed to help your members, or your institution, *create a record that will easily demonstrate* that they endeavored to follow that law. It is designed to show that, even if a system or group had to share resources and do a mass training, a truly interactive and meaningful experience was intended. This is a key element of limiting liability.¹⁰

Conclusion

Of course, in a perfect world, people attend sexual harassment trainings not only to limit liability and because they are compelled to, but to learn how to ensure such behavior is rare, quickly called out, and immediately corrected.

The importance of such training cannot be over-stated. When I was a 16-year-old page at a public library in the 1990’s, I was harassed by a patron. I was too young and inexperienced to know my rights, or what to do. Fortunately, I had the good luck to be on shift with an amazing assistant director¹¹. When the bad behavior started, this graceful woman walked over to the patron, and simply said, “This has to stop now.” And despite his displeasure, it did.¹²

Many decades later, her unambiguous, dignified, and immediate action inspires me, as I hope it does you.

Done right, these mandatory trainings are an opportunity for your library’s team to practice this type of skillful handling. It is also a chance for supervising staff—who now have the term “mandatory reporter” in their job descriptions—to be assured that they are supported and backed up by informed and committed trustees.

Finding ways to collaborate and share resources to make such training and practice as accessible and rewarding as possible is a great initiative. Thank you for this excellent array of questions.

¹⁰ But by no means the only element. The most important one will be following the new law, and documenting that you are following it!

¹¹ Bernice Cosgrove.

¹² The patron was quite upset. In retrospect, he may have had some mental health concerns. These matters often come with complications that require tact, diplomacy, and compassion.

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