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Real estate salespersons must receive sexual harassment trainings - by Andrew Lieb

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There are two different laws applicable to real estate salespersons and associate real estate brokers in New York City, which require sexual harassment prevention trainings. There is the New York State law and the New York City law.

The New York State law, as set forth at Labor Law 201-g, applies to employers with any number of employees and the training must be conducted annually from October 9, 2018. The New York City law, as set forth at Local Law 96 of 2018, only applies to employers who have 15 or more employees and the training must be conducted annually from April 1, 2018. While these two laws have many similarities, there are also differences and neither preempts the other so both must be satisfied. A key difference between these laws concerns their applicability to real estate brokerage firms in New York City because these firms primarily associate with independent contractors as their real estate salespersons and associate real estate brokers. Specifically, the laws differ as to whether independent contractors must be trained.

Under the state law, independent contractors are not required to be trained. Specifically, the New York State Department of Labor advises that "[e]mployers do not have to provide any policy to independent contractors…as such individuals are not employees of the employer. However, the State Human Rights Law imposes liability on the employer for their actions, and you are encouraged to provide the policy and training…" In contrast, the New York City Commission on Human Rights has advised that "independent contractors – regardless of the number of days or hours they work – are considered employees for the purposes of determining whether an employer is obligated to provide the annual sexual harassment training." Moreover, the Commission advises that "[a]n employer is required to train independent contractors who have performed work in the furtherance of the business for more than 90 days and more than 80 hours in a calendar year."

For simplicity's sake, real estate brokerage firms should train every employee and independent contractor who is associated with the firm. This is particularly true because the failure to provide training may result in the brokerage firm's license revocation pursuant to 19 NYCRR 175.17(b), which states as follows:

No real estate broker or salesperson shall engage in an unlawful discriminatory practice, as proscribed by any federal, state or local law applicable to the activities of real estate licensees in New York State. A finding by any federal, state or local agency or court of competent jurisdiction that a real estate broker or salesperson has engaged in unlawful discriminatory practice in the

performance of licensed real estate activities shall be presumptive evidence of untrustworthiness and will subject such licensee to discipline, including a proceeding for revocation.

It is acknowledged that the regulation is unclear as to whether the failure to train constitutes “an unlawful discriminatory practice… applicable to the activities of real estate licensees in New York State,” but such a position would not be a huge stretch if taken by the Division of Licensing Service. Regardless, violators can also be held accountable with civil penalties of up to $250,000 in the case of a willful violation. So, brokerage firms must train all of their salespersons regardless of employment status.

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