

Sexual Harassment in the Wake of "Me Too"

With this year's national spotlight on the "Me Too" movement, VLCT members may be wondering whether there may be particular implications for them. It's important to be aware that, in response to "Me Too", Vermont's laws prohibiting sexual harassment have been strengthened effective July 1, 2018.

The law requires that all employers ensure a workplace free of sexual harassment. In addition to employees, this protection now applies to other types of workers such as volunteers, interns, and independent contractors, thanks to the addition of 21 V.S.A. §495h(a)(2): "All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment."

It is important for members to note that specific new actions are required. Employers now must:

1. upon hire, provide new employees with an individual, written copy of the sexual harassment policy (21 V.S.A. § 495h(c)(1))
2. if changes are made, provide all employees with an individual, written copy of the updated policy (21 V.S.A. § 495h(c)(2)).

Whenever you provide a policy to employees, it is prudent to have them sign a form to acknowledge receipt and understanding.

Additionally, this newly augmented law:

- encourages employers to conduct an annual education and training program for all employees
- encourages employers to conduct an education and training program for new employees within a year of hire
- encourages employers to provide additional training to new supervisors and managers within a year of hire regarding expected supervisory or managerial actions to ensure immediate and corrective action in addressing complaints

- prohibits employment contracts that contain provisions to prevent an employee or prospective employee from opposing, disclosing, or reporting sexual harassment or participating in an investigation of sexual harassment, or that waive an employee's rights or remedies with respect to a claim of sexual harassment
- precludes sexual harassment-related settlement agreements from including provisions that prohibit, prevent, or otherwise restrict an employee from working for the employer or an affiliate of the employer in the future
- requires any sexual harassment-related settlement agreement to state that it does not prohibit, prevent, or otherwise restrict the employee from
 1. making a complaint of sexual harassment to an appropriate governmental agency
 2. complying with a valid discovery request in relation to civil litigation or testifying at a hearing or trial related to a sexual harassment claim
 3. testifying, assisting, or participating in any manner with an investigation related to a sexual harassment claim
 4. exercising his or her right under state or federal labor laws to engage in protected concerted activity

Further, the Vermont Attorney General's Office (AGO) and Human Rights Commission have been charged with creating an online portal so individuals may more easily file complaints of sexual harassment. The deadline to establish this portal is December 15, 2018. The AGO has also been given new powers to assess legal compliance. With 48 hours' notice, they may inspect a place of employment, question managerial employees, and examine employer records in regard to a complaint of sexual harassment.

Finally, the Vermont Commission on Women will develop and implement a public education and outreach campaign to educate employers, employees, and the general public.

Jill Muhr, Human Resources Consultant
VLCT-PACIF