



Albany County

Sexual Harassment Prevention Training

S9-23-5 | September 2023

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Report Highlights

Albany County

Audit Objective

Determine whether County of Albany (County) employees and elected officials completed annual sexual harassment prevention training (SHP Training).

Key Findings

Although County officials provided employees and most elected officials annual SHP Training, they did not maintain reliable records of who completed the training or ensure everyone who should have completed the training did so.

Of the 315 total individuals we tested, including 267 selected employees and all 48 elected officials, we could not reliably verify that 308 of the individuals we tested (98 percent) completed SHP Training. Specifically:

- We question the SHP Training completion status of 278 individuals (235 selected employees and 43 elected officials) due to unreliable records.
- We determined 30 additional individuals (25 selected employees and five elected officials), did not take the annual SHP Training.

Key Recommendations

Ensure all employees complete annual SHP Training supported by complete, accurate and reliable records.

County officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix B includes our comments on issues raised in the County's response letter.

Background

The County, located in the Capital District region, is governed by an elected 39-member County Legislature (Legislature).

The elected County Executive is responsible for the overall administration of County government.

The Commissioner of Human Resources (Commissioner) is responsible for providing annual SHP Training. Department heads are responsible for ensuring their employees complete the training.

Quick Facts

	2021
Total Employees & Elected Officials	2,748
Total Tested^a	315
SHP Training Method	Online module (individual), model (individual or group), or online presentation (group)

a) See Appendix C for information on our sampling methodology.

Audit Period

August 24, 2021 - August 23, 2022

Sexual Harassment Prevention Training

Sexual harassment is a form of workplace discrimination, and may include harassment based on sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is unlawful when, among other things, it subjects an individual to inferior terms, conditions or privileges of employment.

Employees have a legal right to a workplace free from sexual harassment and are required to work in a manner that prevents sexual harassment. All employers and officials should be committed to maintaining such a workplace.

How Should Officials Help Prevent Sexual Harassment?

New York State (NYS) Labor Law Section 201-g requires employees to be provided with SHP Training on an annual basis. This obligation includes local government employees. While the law does not expressly require training for local elected officials, they should be encouraged to complete SHP Training as well.¹

NYS Department of Labor (DOL), in consultation with the NYS Division of Human Rights (DHR), has established a model for employers to use for this training.

Alternatively, employers may elect to develop their own training. Employers that do not use the model SHP Training program must ensure the SHP Training they use meets or exceeds the following minimum requirements. The SHP Training must:

- Be interactive,
- Include an explanation of sexual harassment consistent with guidance issued by DOL, in consultation with DHR,
- Include examples of conduct that would constitute unlawful sexual harassment,
- Include information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to targets of sexual harassment,
- Include information concerning employees' rights of redress and all available forums for adjudicating complaints, and
- Include information addressing conduct by supervisors and any additional responsibilities for such supervisors.

Employees have a legal right to a workplace free from sexual harassment and are required to work in a manner that prevents sexual harassment.

¹ See, e.g., chapter 139 of the Laws of 2022 (what was deemed effective as of the effective date of section 1 of Ch. 160 L. 2019) amending the Executive Law to clarify that a city, town, village or other political subdivision shall be considered an employer of any employee or official, including any elected official, for purposes of the Human Rights Law.

Furthermore, the annual training period may be based on any date the employer chooses, including, but not limited to, the calendar year or anniversary of each employee's start date. The guidance also recommends that new employees should receive the annual training as soon as possible after being hired.

SHP Training can be provided in different ways depending on the needs of the local government or school district, including in person, via webinar, an online interactive training module, or on another individual basis with a mechanism for feedback by the employee.

SHP Training Records Were Not Reliable and Employees and Elected Officials Did Not Complete Training

The County provided annual SHP Training that met the minimum requirements to employees and most elected officials during the 2021 training period, using three separate training methods:

- The NYS model training facilitated by the Departments and completed individually or in groups (NYS model),
- An online third-party vendor presentation to employees and elected officials attending in groups (group presentation), and
- An online training disseminated to all employees and elected officials with a county email address (online module).

Newly hired employees either received emails to complete the online module immediately in the module's training system or if they did not have County email addresses, were told to take the NYS model or group presentation training when next offered.

Although the records tracking the completion of the NYS model and group presentation training were reliable, the online module completion records were not. Changes were able to be made to the online module records to mark employees and elected officials as having completed the training in the system without any way to track what changes were made, who made them or substantiate the reasons for the changes, such as if an employee or elected official:

- Completed the online module and a technical issue prevented them from being marked as complete, or
- Completed either the NYS model or group presentation instead of the online module to prevent the employee or elected official from receiving automatic weekly reminder emails to complete the online module.

Therefore, changes to SHP Training completion records could be made to show an individual completed the online module training when they did not. We also noted that reported training completion times for five employees in our sample were less than a minute: ranging from zero to 19 seconds. Additionally, the system automatically deleted training records when an employee or elected official left County employment which creates a further records retention and reliability concern.

Of the 315 employees and elected officials that we tested to determine whether they completed the annual SHP Training, 278 individuals (235 selected employees and 43 elected officials) were assigned to take the online module. Due to the unreliable training records for the online module, we could not reliably verify the training completion for all 278 of these individuals. As a result, we could not reliably verify that 308 of the 315 total individuals we tested (98 percent) completed SHP Training.

There was no centralized tracking of SHP Training to monitor completion by all County employees and elected officials. Along with automatic reminder emails generated by the online module system to employees and elected officials who had not completed training, the Human Resources Department emailed Department Heads identifying which of their employees had not completed the online module training. For employees who were supposed to complete the NYS model or group presentation trainings the Commissioner relied on individual departments to track completion.

The Commissioner told us the five elected officials, including four Coroners and one Legislator, did not have County email addresses and were not provided the online module in the 2021 training period. Of the 25 employees without any record of SHP Training completion, 21 were new hires. For the other four employees, the Commissioner told us a correction officer was on leave, and a Department Deputy Commissioner told us two security guards and a building maintenance employee were scheduled for training but did not attend.

A lack of SHP Training is an ongoing risk to the County's ability to provide employees and other individuals in the workplace with an environment free from sexual harassment. Furthermore, the implications of sexual harassment in the workplace can have a far-reaching impact, from the County's finances to employee productivity, and to a safe work environment. Therefore, it is important that all employees and other individuals in the workplace complete the County's annual SHP Training.

...[W]e could not reliably verify that 308 of the 315 total individuals we tested (98 percent) completed SHP Training.

What Do We Recommend?

County officials:

1. Must provide annual SHP Training to all employees.
2. Should encourage elected officials to complete annual SHP Training.
3. Should monitor the completion of annual SHP Training by all employees and develop additional administrative procedures to help ensure all employees are provided with, and complete, the annual SHP Training.
4. Should establish procedures to ensure the SHP Training records are complete, accurate and reliable.

Appendix A: Response From County Officials



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DEPUTY COUNTY EXECUTIVE

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JENNIFER S. CLEMENT
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TYRELL GLADDEN
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April 14, 2023

Via email to
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Division of Local Government and
School Accountability
PSU – CAP Submission
110 State Street, 12th Floor
Albany, NY 12236

Re: SHPT Audit – Albany County Audit Response

Dear Office of the New York State Comptroller:

As the Commissioner of Human Resources for the County of Albany and the County official most familiar with Albany County’s training processes, I have been designated by the County Executive, who is the Chief Executive Officer of Albany County, to submit this response. I would like to take this opportunity to thank your office and your auditors for the professionalism and courtesies extended to my office during this audit. While we appreciate this opportunity to respond to this audit, this response should in no way be construed as an admission that we believe that our training was in any way deficient.

Albany County Provided Sexual Harassment Training to Albany County Employees and Elected Officials.

As you are aware, the County provided three separate means to take the SHP training based upon the unique circumstances of our individual employees. All data and methods were provided to the auditors. Notwithstanding these separate methods, the 315 employees that were included in the “test” group were almost entirely comprised of on-line takers. It seems that the test group was narrowly tailored to include on-line takers only, and is not a true representation of the population class of training takers. The population was specifically chosen for inclusion in the sample. We feel strongly that your sampling methodology is fundamentally flawed, which resulted in the misrepresentation of the actual training that occurred, thereby giving the appearance of 98% non-compliance.

See
Note 1
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On-Line Training Records Were Incorrectly Deemed Unreliable by NYS

It is worthy to note that content of Albany County’s On-line Training was deemed to be compliant with the NYS mandate. With respect to the argument that all on-line training records were deemed “unreliable” due to the concern that records could have been changed, I note that Albany County entrusted a limited group of four high ranking officials governed by an oath of office and the County’s Ethics Law to be responsible for edits. These edits were allowed under limited circumstances. **An unverified determination was made by NYS that the training records of 308 employees were unreliable without questioning any of those employees.** The mere fact that the system can be overridden, as an operational function for valid reasons, does not necessarily mean that the program or training in its entirety is invalid. On the contrary, Albany County provided clear written examples and instances when changes may need to be made. The assertion by NYS that all training received on-line is not valid, is categorically false.

See
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That being said, by the time the audit had concluded Albany County had implemented written procedures for mandatory system edits which included a two person written verification of all edits. The edit capability is only authorized for two individuals in the Division of Information Services and written verification/approval by the Director of Affirmative Action accompanied by a log and screen shot of each and every edit to satisfy the demand of NYS.

Albany County Has Centralized SHP Training Records

In addition, with respect to the concern that there was no centralized tracking of SHP Training to monitor completion by all County employees and elected officials, this is simply not accurate. The function of direct administration of the in-person training was delegated to the department heads of each County agency and during the audit, verification of in-person training was retrieved from the departments and provided to the auditors. Due to the fact, that the audit was conducted in such a close time frame to when the training had been completed, it was not reasonable to believe that the most up to date records could have already been provided to the Department of Human Resources. Additionally, the Department of Human Resources provided many examples of internal review and notices sent to the Departments advising them of employees who were still in need of training. **However, no notation of this fact was accounted for in the audit report.**

See
Note 2
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The department heads are the appointing authorities, pursuant to Civil Service Law, of the County employees and inherently the only ones who can enforce the training requirement. The Department of Human Resources provided the training to the employees and the respective departments, but does not have the power to impose discipline directly, which is why it was delegated to the department heads to ensure it occurred.

In Summary

Albany County does not dispute the necessity for SHP Training of our employees and elected officials. We recognize that Sexual Harassment is a form of workplace discrimination and we have put training in place to comply with the New York State Labor Law Section 201-g requiring sexual harassment prevention training on an annual basis. It is our position that the sampling methodology used in this audit was fundamentally flawed and does not represent a true random sample of the population of all employees who received SHP Training. Additionally, there exists a need to control the ability to edit the training records and we feel that Albany County acted in good faith and in full compliance with the SHP NYS training mandate when administering their SHP Training program through all methodologies.

See
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Thank you for your courtesies in this matter.

Very truly yours,


Jennifer Clement

Appendix B: OSC Comments on the County's Response

Note 1

The sample was based on professional judgment. The sample included a diverse range of employees in different roles/titles from various departments without consideration of the training option provided (see Appendix C) and the methodology used was discussed in detail with the Commissioner throughout the audit. We could not rely on the completion records from the online module system, as detailed in the report.

Note 2

The County's SHP Training tracking process described by officials during the audit is a decentralized system. While management determines how to monitor compliance with the law, there is no exception to the requirement that all employees complete annual SHP Training.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We used our professional judgment to select the County for audit based on geographic location across NYS applied to a list of counties, cities, towns, villages and school districts (excluding NYC), not currently in the OSC audit process at the time of selection.
- We interviewed County officials to gain an understanding of the process for creating, disseminating and monitoring sexual harassment prevention training for employees and elected officials.
- We reviewed relevant State laws and guidance from NYS, as well as County policies to gain an understanding of their sexual harassment prevention policy and training.
- We reviewed the County Legislature's meeting minutes for the 2021 calendar year to determine action taken related to sexual harassment prevention.
- We reviewed and assessed the sexual harassment prevention training materials provided by the County to determine whether the training met minimum required State law.
- We determined the total number of employees and elected officials employed at the County during our audit period by obtaining and reviewing an employee listing and reviewing the County Board of Election's election results.
- Of the 2,748 total County employees and elected officials, a sample of approximately 11 percent (or 315) was selected. Using the County's employee listing, all 48 elected officials were selected as part of the sample total, the remaining 267 employees were selected to include both supervisory and nonsupervisory titled employees. We used our professional judgment to select 134 supervisory employees and 133 nonsupervisory employees. Thirty-four of the 267 employees selected were new hires, including 14 supervisory and 20 nonsupervisory titles.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results

onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the County Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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