

Legislative Solutions to Combat Workplace Sexual Harassment

FEBRUARY 2019

Workplace sexual harassment is a persistent and pervasive issue, but legislation at the state and federal levels can help combat sexual harassment and improve the lives of working people. In 2018, a multitude of states introduced legislation that took various approaches, including prevention, expansion of protections for those who report harassment, and addressing the use of non-disclosure clauses in settlements agreements. Legislators who want to be part of the solution can craft bills that include one or more of the approaches described in this fact sheet.

Sexual Harassment by the Numbers

- ▶ A 2016 U.S. Equal Employment Opportunity Commission (EEOC) study showed that approximately **one in four women** have experienced sexual harassment in the workplace. And in some industries, the number is as high as 85 percent.¹
- ▶ An estimated 87 to 94 percent of victims do not report their harassment or file any claims for fear of retaliation.²
- ▶ Approximately 75 percent of victims experienced some form of retaliation when they reported harassment.³
- ▶ Between 2012 and 2016, Black women filed nearly three times as many sexual harassment charges as white, non-Hispanic women per 100,000 workers.⁴
- ▶ Eighty percent – of charges of sexual harassment to the EEOC between 2005 and 2015 were reported by women.⁵

Legislation is Part of the Solution

Legislation can help change workplace cultures to reduce incidents of sexual harassment. Below are ways legislation can help in the fight against sexual harassment, and examples of how some states are taking critical steps forward.

Preventing Sexual Harassment

Legislation that requires employers to take proactive steps to prevent harassment can help. For example, laws can require employers to adopt policies that are clearly written and, in plain language, define what harassment is, what employees can do if they experience it, how to report it and what the process is when they do. Legislation can also require employers to hold mandatory, effective workplace training on harassment for *all* employees.

Finally, legislation can require employers to conduct employee climate surveys, which offer insight into a company from an organization-wide perspective. In 2018, a number of state legislatures introduced bills aimed at prevention, including:

- ▶ **New York** introduced and passed legislation to establish sexual harassment prevention training protocols within the private sector.⁶ The law requires any company in New York – regardless of size – to adopt a sexual harassment prevention policy, implement a training program and conduct the training annually. It also requires employers to provide the policy and training to interns, contractors, and others who have typically not been classified as employees.
- ▶ **California** passed a law requiring employers with five or more employees to provide sexual harassment prevention training to all employees (supervisory and non-supervisory) by January 1, 2020. Part-time and temporary workers are included. It also requires that all new employees receive prevention training within six months of starting the position.⁷

Expanding Current Laws to Protect Vulnerable Workers

As it stands, Title VII of the Civil Rights Act of 1964 only applies to employees whose workplace has 15 or more workers. That means that working people whose employer has fewer than 15 employees have no federal legal protection from workplace sexual harassment. Independent contractors and interns are also not protected. States can expand protections through legislation to cover all workers, which provides recourse for some of the most vulnerable workers.

- ▶ **Pennsylvania** introduced a bill that would have expanded protections against harassment to all employees, covering workers at small businesses who otherwise did not have legal protection.⁸
- ▶ **Domestic Worker’s Bill of Rights** is legislation that protects some of the most vulnerable workers in the country. There are millions of domestic workers in the United States – and the vast majority of these workers are not protected under current labor laws. Nannies, housekeepers, and home health care aides are typically the only employee in a household, so they are not protected by Title VII. Workers in this industry also report higher than average rates of sexual harassment and assault, with one study finding that 36 percent of live-in workers have suffered some form of harassment.⁹ Domestic workers’ laws extend traditional employment protections to domestic workers. As of 2018, eight states had enacted their own Domestic Worker’s Bill of Rights that extend labor protections and make sexual harassment and assault against domestic workers illegal.

Increasing Transparency

Most women will experience harassment in the workplace. Deciding whether to come forward about an incident of harassment is not easy as the negative consequences can be severe. In such circumstances, knowing the experiences of others who have faced harassment can be critical to a worker’s decision to report. Non-disclosure agreements chill the reporting of harassment, permit the damaging behavior to continue, and put workers at great risk. Over one-third of workers are bound by non-disclosure agreements, barring them from discussing any claims or settlements related to sexual harassment.¹⁰ In 2018, at least 16 states introduced legislation and at least six states passed laws that ban the use of non-disclosure agreements in pre-employment contracts or their use in sexual harassment settlements. Allowing for greater transparency between the employer and the employees makes the

workplace safer for everyone: it tells would-be harassers that the behavior will not be tolerated, and it tells potential victims that their allegations will be taken seriously and thoroughly investigated.

- ▶ **New York's** previously mentioned sexual harassment law also prohibits the use of non-disclosure agreements in settlements for sexual harassment unless the person who brought the complaint wishes to have such a provision included.¹¹
- ▶ **Vermont** passed a law eliminating non-disclosure agreements in employment contracts that prohibit employees from “disclosing, reporting, or participating in an investigation of sexual harassment.”¹²
- ▶ **Washington** also passed a law prohibiting the use of non-disclosure agreements in employment contracts.¹³

Mandatory arbitration provisions in employment agreements are another barrier for victims of sexual harassment as they force victims into an arbitration procedure controlled by the employer, barring them from accessing the courts. Over 60 million American workers are subject to these provisions, with the agreements being more common in low-wage workplaces and disproportionately affecting women workers.¹⁴ Several states have passed legislation prohibiting these agreements in employment contracts in an effort to further protect workers.

- ▶ **New York's** sexual harassment law prohibits mandatory arbitration of sexual harassment claims.¹⁵
- ▶ **Maryland** passed a law voiding any employment contract, policy or agreement that waives an employee's rights in court for a claim of sexual harassment. The law also prohibits employers from requiring employees to submit to mandatory arbitration for sexual harassment or retaliation claims.¹⁶
- ▶ **Vermont's** previously mentioned sexual harassment law also prohibits the use of mandatory arbitration agreements in cases of sexual harassment.¹⁷

Eliminating the Tipped Minimum Wage to Make Workers Safer

Workers who rely on tips, such as restaurant workers, are particularly vulnerable to sexual harassment or assault. Because 70 percent of workers in the restaurant industry are women, and a living wage is not guaranteed under the two-tier wage system (which allows tipped workers to be paid at a lower minimum wage), women are often forced to withstand sexual harassment from customers and co-workers to maintain their economic stability. Requiring tipped workers to be paid the regular minimum wage before tips – eliminating the tipped minimum wage – will go far in helping workers feel they do not have to tolerate sexual harassment to make ends meet. You can learn more about the One Fair Wage campaign [here](#).

- ▶ **Currently, seven states have passed laws eliminating the tipped minimum wage.** Nevada, Hawaii, Alaska, California, Minnesota, Montana, Oregon and Washington have the same minimum wage for all workers.

Improving Enforcement of Existing Laws

Legislation that establishes new streams of funding for enforcement agencies to more effectively investigate and enforce nondiscrimination and anti-retaliation laws means stronger protections for victims. Additional funding will allow agencies to add more staff, engage in more proactive enforcement measures, collect better and more accurate data on sexual harassment and fully investigate claims made by workers.

Conclusion

Legislation can address sexual harassment by crafting legislation that includes one or more of the provisions described above. The workplace should be safe from discrimination and harassment of all types. By passing and enforcing laws that protect working people and hold employers accountable, we can make workplaces safer for everyone.

1 U.S. Equal Employment Opportunity Commission (2016, June). *Select Task Force on the Study of Harassment in the Workplace*, Page 16. Retrieved 7 January 2019, from https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

2 Ibid.

3 Ibid.

4 Rossie Barroso, A. (2018, August 2). *We Need to Bring the Disproportionate Sexual Harassment of Black Women and Low Wage Workers Out of the Shadows* [Blog post]. Retrieved 18 January 2019 from National Women's Law Center website: <https://nwlc.org/blog/we-need-to-bring-the-disproportionate-sexual-harassment-of-black-women-and-low-wage-workers-out-of-the-shadows/>

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7 Employers: sexual harassment training: requirements, Cal. Govt. Code. § 12950.1 (2018) Retrieved 9 January 2019, from <https://legiscan.com/CA/text/SB1343/id/1819377/California-2017-SB1343-Enrolled.html>

8 Pennsylvania House Bill No. 2280, (2018). Retrieved 9 January 2019, from

<https://www.legis.state.pa.us/CFOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=H&billTyp=B&billNbr=2280&pn=3404>

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10 Thomas, R., Bishara, N. & Martin, K. (2014, February 28). An Empirical Analysis of Non-Competition Clauses and Other Restrictive Post-Employment Covenants. *Vanderbilt Law Review*, 68(1). Retrieved 9 January 2019, from https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2401781.

11 See note 6.

12 Landes, J. M., Gross Sholinsky, S., & Gunzenhauser Popper, N. (2018, June 8). Vermont Enacts Sweeping Sexual Harassment Prevention Law [Blog post]. Epstein Becker Green. Retrieved 6 January 2019, from <https://www.retailaborandemploymentlaw.com/sexual-harassment/vermont-enacts-sweeping-sexual-harassment-prevention-law/>; An Act Relating to the Prevention of Sexual Harassment, 21 Vt. Stat. Ann. § 495h (2018). Retrieved 18 January 2019, from <https://legiscan.com/VT/text/H0707/id/1796432>

13 Concerning an employee's right to file a complaint or cause of action for sexual harassment or sexual assault in mandatory employment contracts and agreements, Wash. Rev. Code §49.44 (2018). Retrieved 22 January 2018, from <https://app.leg.wa.gov/bills/summary?BillNumber=6313&Year=2017#documentSection>

14 Colvin, A. J. S. (2018, April 6). *The Growing Use of Mandatory Arbitration*. Retrieved 18 January 2019 from Economic Policy Institute website: <https://www.epi.org/files/pdf/144131.pdf>

15 See note 6.

16 Disclosing Sexual Harassment in the Workplace Act of 2018. 2018 Md. Laws Ch. 739 (2018). Retrieved 18 January 2019, from http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_739_sb1010E.pdf

17 An Act Relating to the Prevention of Sexual Harassment, 21 Vt. Stat. Ann. § 495h (2018). Retrieved 18 January 2019, from <https://legiscan.com/VT/text/H0707/id/1796432/Vermont-2017-H0707-Enrolled.pdf>

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at NationalPartnership.org.

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