

BE HEARD: An Act to End Harassment in the Workplace

APRIL 2019

Discrimination and harassment in the workplace affect millions of people across the country. One in four women report experiencing sexual harassment at work.¹ And between 2005 and 2015, women filed 80 percent of the charges of sexual harassment received by the Equal Employment Opportunity Commission (EEOC).² Since 2010, more than one million workers have filed claims with the EEOC alleging discrimination – based on race, religion, sexual orientation and more.³ While civil rights laws prohibit discrimination and harassment, we need expanded protections, particularly for workers who have been historically excluded from legislation.

Sen. Patty Murray (D-Wash.) and Reps. Katherine Clark (D-Mass.) and Ayanna Pressley (D-Mass.) have introduced the Bringing an End to Harassment by Enhancing Accountability and Rejecting Discrimination (BE HEARD) in the Workplace Act to enhance accountability in the workplace and strengthen protections for workers against discrimination and harassment.

What Would the BE HEARD Act Do?

The BE HEARD Act is a comprehensive approach to protecting workers from discrimination and harassment. It will make workplaces safer, especially for women workers. Among other things, the Act would:

Prohibit mandatory arbitration and pre-dispute nondisclosure agreements in employment contracts.

The BE HEARD Act would prohibit pre-dispute nondisclosure agreements and mandatory arbitration agreements, bolstering protections for survivors and making workplaces more safe. More than one-third of workers in this country are bound by nondisclosure agreements.⁴ More than 60 million workers are subject to mandatory arbitration provisions in their employment contracts, most commonly in low-wage jobs and disproportionately affecting women workers.⁵ These provisions chill the reporting of harassment and prevent survivors from taking steps to protect themselves and others. Prohibiting the use of these provisions allows for greater transparency and safer workplaces.

Clarify the standard workers must meet to prove discrimination and harassment claims in court and extend the statute of limitations for workers to file harassment claims with the EEOC.

Over the years, courts have misapplied the “severe or pervasive” standard used in harassment cases, making it incredibly hard for survivors to bring a case forward, much less to win. These interpretations have made the standard too high for workers to bring their claims, creating yet another deterrent and leaving workers without recourse for what they have endured. BE HEARD clarifies the standard and provides factors to help determine whether a practice constitutes harassment, allowing for more consistent application of the standard and thereby providing survivors with meaningful access to justice.

BE HEARD would also extend the statute of limitations for a worker to file a claim with the EEOC. Currently, workers have 180 days or 360 days in some states to file a charge of harassment with the EEOC. The Act would extend the statute of limitations to four years. Workers may not know what types of behavior constitute discrimination and harassment and may only recognize they have been subject to harassment long past 180 or 360 days. Extending the statute of limitations for reporting a charge will allow survivors more time to learn about their rights and how to file a claim with the EEOC.

Expand workplace protections against discrimination and harassment to all workers.

Currently, Title VII of the Civil Rights Act of 1964 only protects workers whose employers have 15 or more employees from harassment and discrimination. This threshold excludes millions of workers from protection, including domestic workers and agricultural workers, who already face low wages and sometimes precarious working conditions. The Act would eliminate this threshold so that all working people benefit from the protections of Title VII, regardless of the size of their employer. Expanding these protections to historically excluded workers will make workplaces safer for everyone.

Protect LGBTQ workers.

In FY 2015, the EEOC received nearly 1,500 claims of workplace discrimination on the basis of a worker’s sexual orientation.⁶ Yet, currently, Title VII does not explicitly and clearly protect against sexual harassment or gender identity discrimination and harassment. The BE HEARD Act would provide greater protections for LGBTQ workers, clarifying that discrimination on the basis of one’s sexual orientation or gender identity is sex discrimination and unlawful. The Act uses provisions similar to those in the Equality Act (H.R.5).

Eliminate the tipped minimum wage.

Relying on tips as a primary source of income makes tipped workers – particularly women – disproportionately likely to be sexually harassed. Two-thirds of tipped restaurant workers are women⁷ and 90 percent of female restaurant workers report experiencing some level of sexual harassment at work.⁸ These workers withstand harassment from managers, customers and other workers for fear of losing out on tips. Eliminating the tipped minimum wage would empower workers to report harassment without fear of losing income in the form of tips.

Ensure businesses have resources to prevent discrimination and harassment in the workplace.

Eliminating workplace discrimination and harassment requires employers to change workplace culture so that everyone feels safe. The BE HEARD Act would require employers with 15 or more employees to adopt and maintain a comprehensive harassment and nondiscrimination policy that meets certain standards. It would also provide resources to help employers prevent and address harassment and discrimination such as model policies and trainings, industry-specific best practices and model workplace climate surveys designed by the EEOC. Educating workers at every level helps all employees be aware of what constitutes harassment and discrimination. This baseline knowledge, along with continued training, allows workers to identify, call out and report harassment and discrimination, making the workplace safer for everyone.

It Is Past Time for the BE HEARD Act

The BE HEARD Act would provide critical and long overdue changes to the federal protections people have from workplace discrimination and harassment. Harassment has long lasting effects on a woman's economic stability and professional trajectory. The BE HEARD Act would provide women with more protections when faced with harassment at work. Everyone deserves to feel safe at work and the BE HEARD Act would be a step towards all workers being treated fairly and with dignity.

¹ U.S. Equal Employment Opportunity Commission. (2016, June). *Select Task Force on the Study of Harassment in the Workplace* (p. 16). Retrieved 4 April 2019, from https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

² Frye, J. (2017, November 20). *Not Just the Rich and Famous: the Pervasiveness of Sexual Harassment Across Industries Affects All Workers*. Retrieved 4 April 2019, from Center for American Progress website: <https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/>

³ Jameel, M., Shapiro, L., & Yerardi, J. (2019, February 28). The Numbers Behind Workplace Discrimination. *The Washington Post*. Retrieved 4 April 2019, from https://www.washingtonpost.com/graphics/2019/business/discrimination-complaint-outcomes/?utm_term=.796bc7a1f71f (To report this story, the Center for Public Integrity analyzed more than 3.7 million records of alleged discriminatory actions filed with the Equal Employment Opportunity Commission and state and local fair employment practices agencies. Each record represents a single discriminatory action. The data is current as of January 2018 and encompasses complaints filed between Oct. 1, 2009 and Sept. 30, 2017.)

⁴ Thomas, R. S., Bishara, N. D., & Martin, K. J. (2014, February 28). An Empirical Analysis of Non-Competition Clauses and Other Restrictive Post-Employment Covenants. *Vanderbilt Law Review*, 68(1). Retrieved 3 April 2019, from https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2401781

⁵ Colvin, A. J. S. (2018, April 6). *The Growing Use of Mandatory Arbitration*. Retrieved 3 April 2019, from Economic Policy Institute website: <https://www.epi.org/files/pdf/144131.pdf>

⁶ U.S. Equal Employment Opportunity Commission. (n.d.). *What You Should Know About the EEOC and the Enforcement Protections for LGBT Workers*. Retrieved 4 April 2019, from https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm#charges

⁷ Restaurant Opportunities Centers United, et al. (2012, July). *Tipped Over the Edge: Gender Inequity in the Restaurant Industry*. Retrieved 3 April 2019, from https://rocunited.org/wp-content/uploads/2012/02/ROC_GenderInequity_F1-1.pdf

⁸ Restaurant Opportunities Centers United, et al. (2014, October 7). *The Glass Floor: Sexual Harassment in the Restaurant Industry*, (p. 23). Retrieved 3 April 2019, from https://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf; Restaurant Opportunities Centers United. (2014, October 14). *New Report: 90% of Female Restaurant Workers Experience Sexual Harassment* [Press release]. Retrieved 3 April 2019, from <https://rocunited.org/2014/10/new-report-90-female-restaurant-workers-experience-sexual-harassment/>

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

© 2019 National Partnership for Women & Families. All rights reserved.