



**2020 PROGRESS  
UPDATE:  
METOO  
WORKPLACE  
REFORMS IN  
THE STATES**

**NATIONAL WOMEN'S LAW CENTER | 20 STATES BY 2020**

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## INTRODUCTION

Three years after #MeToo went viral, the unleashed power of survivor voices has led to more than **230 bills** being introduced in state legislatures to strengthen protections against workplace harassment and a remarkable **19 states** enacting new protections. Although many of these laws are just starting to take effect, initial reports from the ground show both that they are making a difference in many crucial ways, but that this progress is incomplete. Indeed, states have been slow to adopt some of the reforms that promise to make the biggest difference for those most marginalized by harassment and for preventing workplace harassment.

**As state legislative sessions began in 2020, energy remained high for advancing Me Too reforms.**

Nearly 400 state legislators from 42 states and the District of Columbia—from both sides of the aisle—joined the #20StatesBy2020 pledge declaring their commitment to supporting and working with survivors to strengthen protections against sexual harassment in 20 states by 2020.<sup>1</sup>

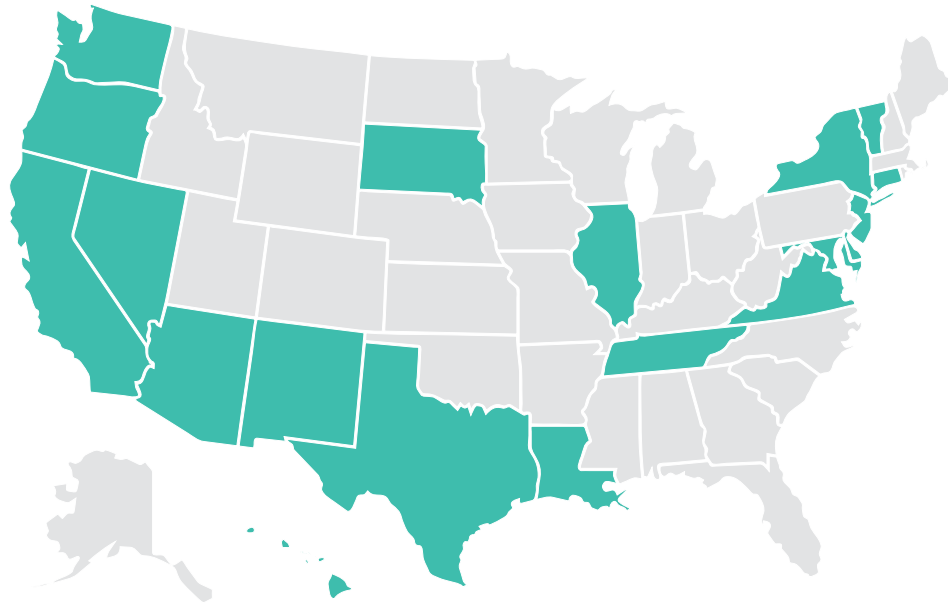
**The onset of the COVID-19 pandemic stalled much of this momentum** as many state legislatures abruptly shut down or shifted to emergency relief efforts just three months into 2020. **At the same time, the need for strong workplace anti-discrimination and anti-harassment laws is clearer and more urgent than ever.** COVID-19 unleashed an economic recession that hit women hardest, with especially high levels of job

loss for Black women and Latinas.<sup>2</sup> And the Movement for Black Lives has shined a light on the many forms of oppression that Black women, Indigenous women, and other women of color continue to face at work, often including shockingly low wages and poor working conditions—inequities that the COVID-19 crisis has further exacerbated. Without a safety net or optimism about their chances of finding another job, workers are more desperate to keep a paycheck at any cost and less willing to report workplace abuses, increasing their vulnerability to harassment, discrimination, exploitation, abuse, and retaliation at work. Recognizing this, legislators in states like **North Carolina**<sup>3</sup> have continued to introduce legislation to strengthen workplace anti-discrimination and anti-harassment laws as part of the effort to rebuild from COVID-19.<sup>4</sup>

This report provides an updated overview of the progress that has been made in advancing workplace anti-harassment reforms in the states from October 2017 to September 2020, as well as in New York City which has been especially active in strengthening its anti-harassment laws. The report also highlights some of the stories of how survivors have led the push for these important state law reforms.

### **CLOSING IN ON WORKPLACE HARASSMENT LAW REFORM IN #20STATESBY2020**

At a time when partisan politics seems to have reached a fever pitch, the Me Too movement has seen conservative and progressive state legislators alike, in states from



Tennessee to Oregon, speaking out and pushing for long overdue reforms to anti-harassment laws, many of them motivated and united by their own Me Too stories. Many of the Me Too workplace reforms have passed with bipartisan support. Major trends in the new reforms include the following:

- **15 STATES LIMITED OR PROHIBITED EMPLOYERS** from requiring employees to sign nondisclosure agreements as a condition of employment or as part of a settlement agreement.
- **11 STATES AND NEW YORK CITY IMPLEMENTED OR STRENGTHENED ANTI-HARASSMENT TRAINING** requirements for certain employers.
- **7 STATES ENACTED MEASURES TO REQUIRE OR ENCOURAGE EMPLOYER ANTI-HARASSMENT POLICIES**
- **7 STATES LIMITED EMPLOYERS' USE OF FORCED ARBITRATION**, though several of these laws are being challenged in court.
- **6 STATES EXPANDED WORKPLACE HARASSMENT PROTECTIONS** to include independent contractors, interns, and/or volunteers for the first time.

### **PROGRESS SLOW ON REFORMS THAT WOULD HAVE HIGHEST IMPACT FOR WORKERS MOST IN NEED OF PROTECTIONS**

Workers in low-wage jobs—who are disproportionately women of color and immigrant women—experience some of the highest rates of workplace harassment and most severe repercussions for speaking out.<sup>5</sup> They should be the priority focus of workplace policy reforms, and yet, since #MeToo went viral, only Illinois, Maryland, New York, and Vermont have been able to pass the most basic and crucial reform—ensuring that the many low-paid gig workers, domestic workers, home healthcare workers, and other workers who work for smaller employers or as independent contractors have legal protections against workplace harassment

Likewise, only California, Oregon, and New York meaningfully extended their statute of limitations for bringing a workplace harassment claim to three or more years, even though initial reports from jurisdictions that recently enacted this reform emphasize that it has been especially important for workers in low-wage jobs, who otherwise are often forced to choose between using their time to get another job to support their family or finding legal counsel, bringing a harassment claim, and seeking justice. The necessity of this reform has grown even more urgent with the COVID-19 crisis limiting access to courts and agencies and increasing the economic instability of so many workers.

In some states, important protections for low-wage workers were actually rolled back. In D.C. and Michigan, measures that raised the tipped minimum wage so tipped workers would no

longer have to tolerate harassment from customers to make ends meet were repealed.<sup>6</sup>

Reforms that would more fundamentally shift employers' incentive and ability to prevent harassment have also proven challenging. Since #MeToo went viral, only California and New York have succeeded in updating the standard for what constitutes illegal workplace harassment and only Maryland, Delaware, and New York have updated standards for when employers are liable for that harassment. Existing standards have for too long allowed employers and courts to minimize and ignore the impact and reality of workplace harassment and power dynamics, especially in low-paid workplaces. And only Virginia, New York, and Connecticut have increased the financial relief available to harassment victims to an amount that would meaningfully incentivize employers to address and prevent harassment.

Only Vermont and New York City have taken steps to require climate surveys in more workplaces, despite the importance of such surveys in helping employers understand the prevalence of harassment in their workforce and providing an important anonymous channel for workers to raise concerns. And even the policies passed by Vermont and New York City are relatively modest.

Finally, while much progress was made in 2019 and 2020 in response to workers and survivors demanding broad policy solutions to address workplace harassment, too many reform efforts remain narrowly focused on sexual harassment, undercutting protections for women of color, immigrants, people with disabilities, and others who experience harassment based on multiple identities.

## **ME TOO WORKPLACE POLICY REFORMS MUST BE FURTHER STRENGTHENED AND EXPANDED**

**POLICY CHANGE MUST BE DRIVEN BY AND CENTERED ON THOSE MOST HARMED BY HARASSMENT.** Workers and survivors should be shaping policy solutions to harassment. Their engagement will help ensure these policies actually meet the needs of those who experience sexual violence and other forms of harassment. In particular, policy change efforts should include and center workers in low-wage jobs; women of color; queer, transgender, intersex, and gender non-binary folks; immigrant workers; people with disabilities; and those who are currently or formerly incarcerated.

## **THE BE HEARD IN THE WORKPLACE ACT: A FEDERAL BILL AND A MODEL FOR STATE ACTION**

In April 2019, U.S. Representative Katherine Clark and Senator Patty Murray introduced in Congress the Bringing an End to Harassment by Enhancing Accountability and Rejecting Discrimination (BE HEARD) in the Workplace Act—a landmark, comprehensive workplace anti-harassment bill.<sup>8</sup> This bicameral bill has the support of 169 members of congress and over 50 civil rights, women's rights, and worker's rights organizations. While Congress has yet to move the great majority of anti-harassment reforms that have been introduced since #MeToo went viral, BE HEARD can serve as a legislative model for states looking to carry the torch of Me Too workplace policy reform in the face of congressional inaction.

Specifically, the BE HEARD in the Workplace Act would:

- extend protections against harassment and other forms of discrimination to all workers;
- remove barriers to access to justice, such as short statutes of limitations and restrictively interpreted legal standards;
- promote transparency and accountability, including by limiting the use of abusive NDAs and forced arbitration and requiring companies bidding on federal contracts to report any history of workers' rights violations;
- and require and fund efforts to prevent workplace harassment and discrimination, including by requiring employers to adopt a nondiscrimination policy, requiring the EEOC to establish workplace training requirements and provide a model climate survey to employers, and ensuring that tipped workers are entitled to the same minimum wage as all other workers.

Lawmakers must craft solutions that don't just benefit those with the most privilege, financial resources, and access to legal systems, but take into account how workplace power dynamics, workers' financial insecurity or immigration status, and employers' and courts' stereotyped assumptions about who is credible and who is not can make it impossible to report harassment, much less settle or file a claim. Policy reforms should also focus on preventing harm before it ever happens, rather than only after it occurs, and on shifting workplace structures to build worker power, like raising the minimum wage, and ensuring equal pay, paid leave, and fair work schedules.

**WORKPLACE HARASSMENT REFORMS SHOULD NOT BE LIMITED TO SEXUAL HARASSMENT.** Like sexual harassment, workplace discrimination and harassment based on race, disability, color, religion, age, or national origin all undermine workers' equality, safety, and dignity—and these forms of harassment and discrimination often intersect in working people's actual experiences. The sexual harassment a Black woman experiences, for example, may include racial slurs and reflect racial hostility. Indeed, Equal Employment Opportunity Commission (EEOC) charge data indicate that women of color—and Black women in particular—are disproportionately likely to experience sexual harassment at work, highlighting how race and sexual harassment can be intertwined.<sup>7</sup> Legislation that focuses exclusively on sexual harassment has the odd and impractical result of providing a worker who experiences multiple, intersecting violations with only partial protection. Lawmakers should craft solutions that recognize these intersections.

**“I don't think you can talk about the history of sexual harassment without talking about race. The early history of this country thrived off the sexual harassment and assault of Black women. Slavery was dependent on the rape of Black women, who became pregnant and gave birth to children who would become slaves. When slavery was no longer legal, Black women's sexuality was then vilified and even criminalized. Current sexual harassment laws reflect that complicated history. The law needs to recognize that race and sex are inevitably intertwined. Attempting to ask plaintiffs/victims to separate race and sex is requesting an impossible feat.”**

- PHILLIS RAMBSY, RAMBSY LAW AND SPIGGLE LAW FIRM, TENNESSEE, KENTUCKY, AND D.C., MARYLAND, VIRGINIA

**“The extension of anti-harassment protections in New York to cover protected characteristics like race, ethnicity, and gender identity is an important victory. Through our helpline and worker focus groups, we regularly hear from women, including domestic workers and house cleaners, who are subjected to intersectional forms of harassment. While it often relates to their gender, it also overlaps with their ethnicity and the languages they speak. By eliminating special carve-outs and streamlining protections, we get closer to addressing discrimination as it actually occurs and ensuring that the law is more inclusive and accessible for all.”**

- SEHER KHAWAJA, LEGAL MOMENTUM, NEW YORK

**“It isn't just white women who are getting sexually harassed, so it is an artificial construct to not include race, national origin, religion, etcetera [when strengthening anti-harassment protections]. Looking forward, we have a moment of opportunity that should be grasped to fill in these gaps on a national and state-wide basis.”**

- WENDY MUSELL, LAW OFFICES OF WENDY MUSELL; LEVY VINICK BURRELL HYAMS LLP, CALIFORNIA

**ME TOO REFORMS SHOULD NOT JUST FOCUS ON THE WORKPLACE.** Sexual harassment doesn't just happen in the workplace, and it doesn't just affect adults. Too many students experience sexual violence and other forms of harassment in elementary and secondary schools and in college. And just as in the workplace, often the sexual harassment students experience is entwined with other forms of harassment and discrimination. To prevent harassment at work, we must start by addressing it in schools, as the treatment and behavior students experience from their peers, teachers, and administrators ultimately shapes workplace norms about gender, race, respect, and accountability. States can help schools prevent harassment and assault by promoting the use of regular school climate surveys, requiring age-appropriate consent and healthy relationship education in K-12, requiring educators to receive ongoing training to recognize implicit biases and implement trauma-informed approaches in the classroom, restricting schools' use of strict and gendered dress codes, requiring amnesty policies for students who may fear reporting harassment or an assault when doing so would reveal they violated a student code, and ensuring harassment investigations and disciplinary hearings are fair and equitable for both those alleging harassment and those who are the subject of complaints, including Black and brown students, LGBTQ students, and students with disabilities.



# #20STATESBY2020 ADVANCES

## ENSURING ALL WORKING PEOPLE ARE COVERED BY HARASSMENT PROTECTIONS

**PROTECTING MORE WORKERS:** *Legal protections against harassment extend only to “employees” in most states and under federal law, leaving many people unprotected. States have been working to extend protections against harassment and discrimination to independent contractors, interns, and volunteers.*

### 2020

**SOUTH DAKOTA** enacted legislation extending protections against workplace discrimination to interns.<sup>9</sup>

### 2019

**ILLINOIS** enacted legislation to extend protections against all forms of harassment to contractors, consultants, and other individuals who are contracted to directly perform services for the employer.<sup>10</sup>

**MARYLAND** enacted legislation to extend discrimination and harassment protections to independent contractors and the personal staff of elected officers.<sup>11</sup>

**NEW YORK** expanded upon its 2018 legislation by passing legislation to ensure subcontractors, vendors, consultants, and others providing contracted services are protected not just from sexual harassment, but from all forms of discrimination in the workplace.<sup>12</sup>

### 2018

**DELAWARE** enacted legislation to expand employees covered by its sexual harassment protections to include state employees, unpaid interns, applicants, joint employees, and apprentices.<sup>13</sup>

**NEW YORK** enacted legislation to protect contractors, subcontractors, vendors, consultants, and others providing contracted services from sexual harassment in the workplace.<sup>14</sup>

**VERMONT** enacted legislation to prohibit sexual harassment of all people engaged to perform work or services, expanding protections against harassment to independent contractors, volunteers, and interns.<sup>15</sup>

**“The expansion of New York’s law to cover independent contractors and those who work for smaller employers has been critical. It has made it possible to assist more women who come to us through our helpline. Prior to this amendment, we saw too many vulnerable women falling through the cracks—women who equally deserved anti-discrimination protections yet who were arbitrarily excluded based on their employment situation.”**

**- SEHER KHAWAJA, LEGAL MOMENTUM, NEW YORK**

**COVERING MORE EMPLOYERS.** *In many states, harassment laws do not cover smaller employers, and federal law does not reach employers with fewer than 15 employees. Since October 2017, states have been working to extend anti-harassment protections to all employers, regardless of size.*

## 2019

**ILLINOIS** enacted legislation extending protections against discrimination to all employers, regardless of size. Previously, Illinois' workplace anti-discrimination law covered employers of all sizes for sexual harassment, pregnancy, and disability discrimination claims, but all other antidiscrimination protections extended only to employers with 15 or more employees.<sup>16</sup>

**MARYLAND** enacted legislation to extend protections from all forms of harassment to all employers, regardless of the employer's size.<sup>17</sup>

**NEW YORK** enacted legislation to extend protections against discrimination to all employers, regardless of the employer's size. Previously, New York had only extended anti-sexual harassment protections to all employers regardless of size.<sup>18</sup>

## 2018

**NEW YORK CITY** enacted legislation to amend its Human Rights Law to extend gender-based anti-harassment protections to all employers, regardless of the number of employees.<sup>19</sup>

## ¡YA BASTA! COALITION: ENDING SEXUAL VIOLENCE AGAINST JANITORS

The ¡Ya Basta! movement developed in response to a 2015 documentary, *Rape on the Night Shift*, that brought into public consciousness what too many janitorial staff already knew: industry conditions, including isolated work environments and language barriers, made these workers – many of whom are immigrant women – especially vulnerable to abuse.

The documentary brought these issues to the attention of the Service Employees International Union-United Service Workers West (SEIU-USWW), which represents janitors in California. The union surveyed its members and found that approximately half had been sexually harassed or assaulted at work.<sup>20</sup> Janitorial workers with SEIU-USWW who identify as survivors formed the worker-led ¡Ya Basta! Coalition, composed of an array of labor and survivor advocacy organizations, including Worksafe, UC Berkeley's Labor and Occupational Health Program (LOHP), Equal Rights Advocates, Futures Without Violence, and the California Coalition Against Sexual Assault.

Workers from the ¡Ya Basta! Coalition and Immigrant Women Rising – a movement of janitors and allies mobilized by SEIU-USWW – organized to push for legislation (AB 1978) requiring janitorial industry

employers to register with the state and provide biennial in-person sexual harassment prevention training with worker input, or risk losing their ability to operate in California. Workers testified in support of the bill, organized rallies across the state, put up billboards, and participated in a hunger strike in front of the state capitol. In September 2016, the Governor signed the legislation into law.

Unfortunately, it soon became clear that more was needed to ensure that trainings were trauma-informed, culturally-aware, industry-specific, and effective. The workers got back to work: they organized to push for legislation that would strengthen the training requirements by requiring that trainings be conducted through a peer-to-peer, or promotoras, education model. In September 2018, 100 janitors marched 100 miles to Sacramento to pressure the Governor to sign AB 2079, which would require employers to conduct the trainings through peer education.<sup>21</sup>

Although Governor Brown vetoed the legislation that year, the workers did not relent. They continued to pressure the government to act and the following year, Governor Brown signed the Janitor Survivor Empowerment Act (AB 547) into law.<sup>22</sup> The new legislation requires the state to curate, with the input of a training advisory committee, a list of qualified organizations and peer trainers to provide the required anti-sexual harassment training. The training advisory committee is required to include representatives from a collective bargaining agent that represents janitorial workers and sexual assault victim advocacy groups. Employers are also required to submit a report confirming training completion to the state.



# RESTORING WORKER POWER AND INCREASING EMPLOYER TRANSPARENCY AND ACCOUNTABILITY

**LIMITING NONDISCLOSURE AGREEMENTS (NDAs).** *NDAs can silence individuals who have experienced harassment and empower employers to hide ongoing harassment, rather than undertake the changes needed to end it. Some employers require employees to enter into NDAs when they start a job that prevent them from speaking up about harassment or discrimination. Other times, NDAs are imposed as part of a settlement of a claim. States have been working to limit employer power to impose NDAs in both contexts while still supporting survivors who may want an assurance of confidentiality. The effectiveness of states' different policy approaches remains to be seen, but in California, at least, several employee rights attorneys report initial positive impacts.*

## 2020

**HAWAII** enacted legislation prohibiting employers from requiring employees, as a condition of employment, to enter into NDAs preventing them from disclosing or discussing sexual harassment or assault occurring in the workplace or at work-related events. It also prevents employers from retaliating against employees for reporting or discussing sexual harassment or assault.<sup>23</sup>

**NEW MEXICO** enacted legislation prohibiting private employers from requiring employees to sign an NDA in settlement agreements related to sexual harassment, discrimination, or retaliation or from preventing employees from disclosing sexual harassment, discrimination, or retaliation occurring in the workplace or at a work-related event. The legislation does allow for confidentiality about the amount of the settlement or, at the employee's request, facts that could lead to the identification of the employee or factual information related to the underlying claim. No such confidentiality provisions, however, can preclude employees from testifying in judicial, administrative, or other proceedings pursuant to a valid subpoena or legal order.<sup>24</sup>

## 2019

**ILLINOIS** enacted legislation to render void any contract provision that would, as a unilateral condition of employment or continued employment, prevent employees or prospective employees from disclosing truthful information about discrimination, harassment, or retaliation. However, these contract provisions are allowed when they are a mutual condition of employment negotiated in good faith and the agreement is in writing; demonstrates actual, knowing, and bargained-for consideration from both parties; and acknowledges the employee's right to report allegations to the appropriate government agency or official, participate in agency proceedings, make truthful statements required by law, and request and receive legal advice.

The legislation also prohibits an employer from unilaterally imposing such an NDA in a settlement or termination agreement, unless including such a provision is the documented preference of the employee and is mutually beneficial to both parties; the employer notifies the employee of their right to have an attorney review the settlement or termination agreement; there is valid, bargained for consideration in exchange for the confidentiality; the provision does not waive any future claims of harassment, discrimination, or retaliation; and the employee is given 21 days to consider the agreement and seven days to revoke the agreement.<sup>25</sup>

**LOUISIANA** enacted legislation prohibiting settlements of workplace sexual harassment or sexual assault claims against the state that use public funds from containing an NDA preventing the claimant from disclosing the underlying facts and terms of the claims.<sup>26</sup>

**NEVADA** enacted legislation to render void and unenforceable provisions in settlement agreements that prevent a party from disclosing factual information relating to a civil or administrative action for a felony sexual offense, sex discrimination by an employer or a landlord, or retaliation by an employer or landlord for reporting sex discrimination. The law also prohibits courts from entering an order that would prevent disclosure of this information. The amount of a settlement agreement may still be kept confidential and claimants can request a confidentiality provision to protect their identity, unless a government agency or public official is a party to the settlement agreement.<sup>27</sup>

**NEW JERSEY** enacted legislation to make NDAs in employment contracts or settlement agreements that prevent the disclosure of details relating to a claim of discrimination, retaliation, or harassment unenforceable against employees. If the employee publicly reveals sufficient information to identify the employer, the employee will not be able to enforce the employer's nondisclosure obligations. Every settlement agreement must include a notice specifying that although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable. The legislation also prohibits retaliation against an employee who refuses to enter into an agreement with an unenforceable provision.<sup>28</sup>

**NEW YORK** enacted legislation to render void and unenforceable any provision in an agreement between an employer and an employee or potential employee that prevents the disclosure of factual information related to discrimination, unless the provision provides notice that it does not prohibit the employee from speaking with law enforcement, the Equal Employment Opportunity Commission, a state division or local commission on human rights, or an attorney.<sup>29</sup>

New York also enacted legislation to extend its 2018 law limiting NDAs in sexual harassment settlement agreements to more broadly limit NDAs in settlements relating to all discrimination claims. This legislation also added additional protections for complainants choosing to enter into an NDA, including requiring the provision be written in plain English and in the primary language of the employee and providing that the provision is void if it prevents the employee from participating in an agency's investigation or from disclosing facts necessary to receive public benefits.<sup>30</sup>

**OREGON** enacted legislation to prohibit employers from requiring an employee or prospective employee as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits to enter into an agreement preventing the disclosure of discrimination (including harassment) or sexual assault that occurred in the workplace, at a work-related event, or between an employer and an employee off the employment premises. An employer may enter into a settlement, separation, or severance agreement with a nondisclosure or a nondisparagement provision preventing the disclosure of factual information

relating to discrimination, harassment, or sexual assault only if the employee claiming to be discriminated against requests it and is given seven days to revoke the agreement.<sup>31</sup>

Oregon also enacted legislation prohibiting candidates, political committees of campaigns, and public office holders from using campaign funds and public funds to make payments in connection with a nondisclosure agreement relating to workplace discrimination, including harassment and sexual assault.<sup>32</sup>

**TENNESSEE** enacted legislation to make void and unenforceable any provision in a settlement agreement entered into by a governmental entity that prohibits the parties from disclosing the details of the claim or the identities of people related to the claim. However, victims of sexual harassment, sexual assault, and other offenses, including sexual exploitation and domestic abuse, retain the ability to keep their identities confidential.<sup>33</sup>

**VIRGINIA** enacted legislation to prohibit employers from requiring an employee or prospective employee to sign, as a condition of employment, a nondisclosure or confidentiality agreement that has the purpose or effect of concealing the details relating to sexual assault.<sup>34</sup>

## 2018

**ARIZONA** enacted legislation to allow an individual who is bound by an NDA to break the NDA if asked about criminal sex offenses by law enforcement or during a criminal proceeding. The legislation also prohibits public officials from using public funds to enter into a settlement with an NDA related to sexual assault or sexual harassment.<sup>35</sup>

**CALIFORNIA** enacted legislation to prohibit employers from requiring an employee to sign, as a condition of employment or continued employment, or in exchange for a raise or a bonus, a release of a claim or a right, a nondisparagement agreement, or other document that prevents the employee from disclosing information about unlawful acts in the workplace, including sexual harassment. The law clarifies that these provisions do not apply to NDAs or releases in settlement agreements that are voluntary, deliberate, and informed, and provide consideration of value to the employee, and where the employee was given notice and opportunity to retain an attorney or was represented by an attorney.<sup>36</sup>

California also enacted legislation to prohibit confidentiality provisions in settlement agreements that prevent the disclosure of factual information related to claims of sexual assault, sexual harassment, or other forms of sex-based workplace harassment, discrimination, and retaliation filed in a civil or administrative action. Claimants can request a confidentiality provision to protect their identity, unless a government agency or public official is a party to the settlement agreement. This prohibition does not apply to confidentiality provisions regarding the amount paid under a settlement agreement.<sup>37</sup>

**MARYLAND** enacted legislation to make unlawful NDAs and other waivers of substantive and procedural rights related to sexual harassment or retaliation claims in an employment contract or policy. The law also protects employees from retaliation for refusing to enter into such an agreement.<sup>38</sup>

**TENNESSEE** enacted legislation to make it unlawful to require an employee or prospective employee, as a condition of employment, to execute or renew an NDA regarding sexual harassment. Employees covered by an NDA cannot be fired as retaliation for breaking the NDA.<sup>39</sup>

**VERMONT** enacted legislation to prohibit employers from requiring any employee or prospective employee, as a condition of employment, to sign an agreement that prevents the individual from opposing, disclosing, reporting, or participating in a sexual harassment investigation. The legislation also requires a settlement agreement relating to sexual harassment explicitly state that it does not prohibit the claimant from: filing a complaint with any state or federal agency; participating in an investigation by a state or federal agency; testifying or complying with discovery requests in a proceeding related to a claim of sexual harassment; or engaging in concerted activities with other employees under state or federal labor relations laws. The agreement must also state that it does not waive any rights or claims that may arise after the settlement is executed.<sup>40</sup>

**WASHINGTON** enacted legislation to prohibit employers from requiring an employee, as a condition of employment, to sign an NDA, waiver, or other document that prevents the employee from disclosing sexual harassment or assault occurring in the workplace, at work-related events, or between employees, or an employer and an employee, off the employment premises.<sup>41</sup> Washington also enacted a separate law providing that NDAs cannot be used to limit a person from producing evidence or testimony related to past instances of sexual harassment or sexual assault by a party to a civil action.<sup>42</sup>

**NEW YORK** enacted legislation to prohibit employers from using NDAs in settlement agreements or other resolutions of a claim that prevent the disclosure of the underlying facts and circumstances of sexual harassment claims, unless the condition of confidentiality is the complainant's preference. The complainant must be given 21 days to consider the provision and seven days to revoke the agreement.<sup>43</sup>

**“California’s new law limiting the use of NDAs in settlements “has really allowed people to step into their own power and feel their own voice and make that choice themselves, which has been hugely impactful in regaining some of what was stolen by the harasser.”**

**- BARBARA FIGARI, THE FIGARI LAW FIRM, CALIFORNIA**

**PROHIBITING NO-REHIRE PROVISIONS.** *No-rehire provisions in settlement agreements bar employees from ever working for their employer again. Such provisions may impact the individual’s ability to be employed and disincentivize others from coming forward when they experience harassment. To address this problem, states are limiting the use of no-rehire provisions.*

## 2019

**CALIFORNIA** enacted legislation to prohibit no-rehire provisions in agreements to settle employment disputes that prevent an employee who has filed a claim against the employer from working again for the employer, or any parent company, subsidiary, division, affiliate, or contractor of the employer. The new law does not prohibit, however, the employer from including a no-rehire provision in a settlement with an employee if the employer has made a good faith determination that the employee engaged in sexual harassment or sexual assault.<sup>44</sup>

**OREGON** enacted legislation to prohibit no-rehire provisions in agreements resolving claims of discrimination (including harassment) or sexual assault, unless the employee requests it and is given seven days after signing to revoke the agreement. The new law does not prohibit, however, the employer from including a no-rehire provision in a settlement with an employee if the employer has made a good faith determination that the employee engaged in discrimination (including harassment) or sexual assault.<sup>45</sup>

## 2018

**VERMONT** enacted legislation to prohibit no-rehire provisions in sexual harassment settlements that prevent an employee from working again for the employer, or any parent company, subsidiary, division, or affiliate of the employer.<sup>46</sup>

**“The prohibition on no rehire clauses in settlements “has been so important. It was awful to have clients sign these because they could basically be locked out of an entire industry. It has been very helpful to have really clear guidance on no-rehire clauses because it was so bad for workers in low-wage jobs and so potentially retaliatory.”**

-ELIZABETH KRISTEN, LEGAL AID AT WORK, CALIFORNIA

**STOPPING FORCED ARBITRATION.** *Many employers compel their employees to waive their right to go to court to enforce their rights to be free from harassment and other forms of discrimination. They require employees instead to arbitrate any such disputes. Forced arbitration provisions funnel harassment claims into often secret proceedings where the deck is stacked against employees and can prevent employees from coming together as a group to enforce their rights. While federal law limits states’ ability to legislate in this area, some states are working to limit employers’ ability to force their employees into arbitration. Many of these provisions are being challenged by employers in the courts.*

## 2019

**CALIFORNIA** enacted legislation providing that applicants or employees cannot be forced to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment. The law prohibits employers from threatening, retaliating or discriminating against, or terminating any applicant or employee for refusing to consent to waiving any right, forum, or procedure for a violation of any provision of the FEHA.<sup>47</sup> **Note:** In 2020 a federal district court

enjoined California from enforcing this law on the basis that it is preempted by the Federal Arbitration Act. That decision has been appealed to the 9th Circuit.<sup>48</sup>

**ILLINOIS** enacted legislation to render void any provision that requires, as a condition of employment or continued employment, an employee or prospective employee waive, arbitrate, or diminish any claim of discrimination, harassment, or retaliation, unless the agreement is in writing; demonstrates actual, knowing, and bargained-for consideration from both parties; and acknowledges the employee’s right to report allegations to the appropriate government agency or official, participate in agency proceedings, make truthful statements required by law, and request and receive legal advice.<sup>49</sup>

**NEW JERSEY** enacted legislation to make unenforceable provisions in employment contracts that waive any substantive or procedural right or remedy relating to discrimination, retaliation, or harassment claims. The legislation also specifically provides that no right or remedy under the New Jersey Law Against Discrimination or any other statute or case law can be prospectively waived. Retaliation against an employee who refuses to enter into an employment contract with an unenforceable provision is prohibited.<sup>50</sup> **Note:** this law is currently being challenged in federal court as preempted by the Federal Arbitration Act.<sup>51</sup>

**NEW YORK** enacted legislation to extend its 2018 prohibition on forced arbitration to all discrimination claims.<sup>52</sup> **Note:** This law has been challenged in court with federal district courts finding it preempted by the Federal Arbitration Act and a state court finding that it was not preempted.<sup>53</sup>

## 2018

**MARYLAND** enacted legislation to render void, except as prohibited by federal law, any provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy related to a future claim of sexual harassment or retaliation for reporting sexual harassment.<sup>54</sup>

**NEW YORK** enacted legislation to prohibit mandatory arbitration to resolve allegations or claims of sexual harassment.<sup>55</sup> **Note:** This law has been challenged in court with federal district courts finding it preempted by the Federal Arbitration Act and a state court in finding that it was not preempted.<sup>56</sup>

**VERMONT** enacted legislation to prohibit employers, except as otherwise permitted by state or federal law, from requiring any employee or prospective employee to sign an agreement or waiver as a condition of employment that waives a substantive or procedural right or remedy available to the employee with respect to a sexual harassment claim.<sup>57</sup>

**WASHINGTON** enacted legislation to make void and unenforceable any provisions requiring an employee to waive their right to publicly pursue a cause of action, or to publicly file a complaint with the appropriate state or federal agencies, relating to any cause of action arising under state or federal anti-discrimination laws, as well as any provision that requires an employee to resolve claims of discrimination in a confidential dispute resolution process.<sup>58</sup>

**PROTECTING THOSE WHO SPEAK UP FROM DEFAMATION LAWSUITS.** *When survivors of workplace harassment and assault speak up, they are often not believed and face retaliation. Increasingly, defamation lawsuits are being weaponized by sexual harassers as another retaliatory tactic to silence survivors and others who speak up about harassment. Many states have “anti-SLAPP” (anti-Strategic Lawsuit Against Public Participation) laws to protect individuals who are “slapped” with a meritless defamation lawsuit seeking to silence their exercise of free speech and petition rights regarding matters of public interest. In the last few years, states have strengthened their anti-SLAPP and related laws to provide greater protection to those who speak up about sexual harassment and assault.*

## 2020

**NEW YORK** passed legislation, currently awaiting signature by the governor, strengthening its “anti-SLAPP” law by expanding the definition of “public interest” to cover “any subject other than a purely private matter” and requiring an award of attorneys’ fees and costs for an individual who defeats a SLAPP lawsuit.<sup>59</sup> The bill sponsor and advocates spoke of this legislation as protecting those who speak out against sexual harassment, abuse, and assault from being “slapped” with defamation lawsuits.<sup>60</sup>

**LOUISIANA** enacted legislation providing that non-profit organizations cannot be held liable for disclosing to a prospective employer, in good faith, information about a former employee, volunteer, or independent contractor engaging in sexual harassment, assault, abuse, trafficking, or misconduct.<sup>61</sup>

## 2019

**TEXAS** enacted legislation providing that charitable organizations, or such an organization’s employee, volunteer, or independent contractor, cannot be held liable for disclosing to a current or prospective employer, in good faith, information reasonably believed to be true about a former employee, volunteer, or independent contractor engaging in sexual harassment, assault, abuse, trafficking, or misconduct.<sup>62</sup>

## 2018

**CALIFORNIA** enacted legislation amending their “anti-SLAPP” law to include among communications that cannot be subject to a defamation lawsuit complaints of sexual harassment made by an employee, without malice, to an employer based on credible evidence as well as communications between the employer and interested persons regarding a complaint of sexual harassment. The legislation also authorizes an employer to answer, without malice, whether the employer would rehire a former employee and whether a decision to not rehire is based on the employer’s determination that the employee engaged in sexual harassment.<sup>63</sup>

**TRANSPARENCY ABOUT SEXUAL HARASSMENT CLAIMS.** *When employers resolve harassment claims out of public view, the lack of transparency can prevent accountability for broader reform. To remedy this, several jurisdictions have passed laws requiring the reporting or inspection of claims, complaints, investigations, resolutions, and/or settlements involving workplace harassment.*

## 2019

**ILLINOIS** enacted legislation to require every employer to disclose to the Department of Human Rights the total number of adverse judgements or rulings regarding sexual harassment or discrimination against it during the preceding year; whether any relief was ordered against the employer; and the number of rulings or judgements broken down by protected characteristic. This information will be published in an annual report available to the public, but the names of individual employers will not be disclosed. If the Department is investigating a charge of harassment or discrimination, it may request the employer provide the total number of settlements from the preceding five years relating to harassment or discrimination. Employers may not report the name of any victims of harassment or discrimination as part of these disclosures. These requirements remain in effect through January 1, 2030.<sup>64</sup>



## 2018

**ILLINOIS** enacted legislation to require reporting of discrimination, harassment, sexual harassment, and retaliation claims involving executive branch employees, vendors and others doing business with state agencies in the executive branch, board members and employees of the Regional Transit Boards, and all vendors and others doing business with the Regional Transit Boards. The reports must be made publicly available on each office's website.<sup>65</sup>

Illinois also enacted legislation requiring local governments, school districts, community colleges, and other local taxing bodies to report whenever they approve a severance agreement with an employee or contractor because the employee or contractor was found to have engaged in sexual harassment or discrimination. These reports must be made available on the internet and to the local press within 72 hours.<sup>66</sup>

**LOUISIANA** enacted a law requiring each state agency to make available to the public every year the number of sexual harassment complaints received by the agency, as well as the number of complaints which resulted in a finding that sexual harassment occurred, the number which resulted in discipline or corrective action, and the amount of time it took to resolve each complaint.<sup>67</sup>

**MARYLAND** enacted legislation to require employers with 50 or more employees to complete a survey from the Maryland Commission on Civil Rights on the number of settlements made by or on behalf of the employer after an allegation of sexual harassment by an employee; the number of times the employer has paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment; and the number of sexual harassment settlements that included a provision requiring both parties to keep the terms of the settlement confidential. The aggregate number of responses from employers for each category of information will be posted on the Maryland Commission on Civil Rights' website. The number of times a specific employer paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment will be retained for public inspection upon request. Employers are required to submit these surveys by July 1, 2020, and July 1, 2022.<sup>68</sup>

Another new law requires each unit of the executive branch of the state government to submit information about its sexual harassment policies and prevention training and a summary of sexual harassment complaints filed, investigated,

resolved, and pending in an annual report to the state Equal Employment Opportunity Coordinator and the Maryland Commission on Civil Rights.<sup>69</sup>

**NEW YORK CITY** enacted legislation to require all city agencies, as well as the offices of the Mayor, Borough Presidents, Comptroller, and Public Advocate, to annually report on complaints of workplace sexual harassment to the Department of Citywide Administrative Services. The Department is required to report the number of complaints filed with each agency; the number resolved; the number substantiated and not substantiated; and the number withdrawn by the complainant before a final determination. Information from agencies with 10 employees or less will be aggregated together. This information will be reported to the Mayor, the Council and the Commission on Human Rights, which will post it on its website.<sup>70</sup>

## LIMITING THE USE OF PUBLIC FUNDS IN SETTLEMENTS.

***When elected officials make taxpayers foot the bill for their harassment, they can avoid real accountability. Like Congress did in its 2018 reforms to the Congressional Accountability Act, several states have been changing their laws to prohibit elected officials and candidates from using public funds to pay for sexual harassment judgements or settlements.***

## 2019

**CALIFORNIA** enacted legislation prohibiting the use of campaign legal defense funds and campaign funds to pay or reimburse a candidate or elected officer for a penalty, judgment, or settlement related to a claim of sexual assault, sexual abuse, or sexual harassment.<sup>71</sup>

**LOUISIANA** enacted legislation making state employees and elected officials found to have engaged in sexual harassment responsible for all or a portion of the amount of the settlement or judgment. The amount a state employee shall be responsible for depends on several factors including their ability to pay; whether they were performing their official duties at the time the harassment occurred; the severity of the harassment; and the stage of litigation.<sup>72</sup>

## 2018

**NEW YORK** enacted legislation requiring state government officials and employees who have a judgment against them for sexual harassment to personally reimburse the state within 90 days for any payment the state made to the plaintiff.<sup>73</sup>

## FORMER NEW YORK LEGISLATIVE STAFFERS BRING ABOUT SWEEPING STATEWIDE REFORM

In 2018, seven former New York State legislative employees who experienced, witnessed, or reported sexual harassment while working in the legislature came together to demand change. Emboldened by #MeToo, their passions for public service, and their desire to no longer remain silent, they formed the Sexual Harassment Working Group.<sup>74</sup>

In March 2018, the Working Group issued a press release urging the legislature and Governor to conduct a transparent review of the state's sexual harassment laws. Unfortunately, the legislature passed reforms without adequate input from survivors and other experts – reforms that fell short of what was truly needed to address the broken system that had failed survivors for too long.<sup>75</sup>

New York's 2018 elections for state Senate seats and an open state attorney general seat provided another opportunity for the advocates to leverage. Many candidates were eager to demonstrate their support for women. The Working Group ensured that harassment was part of the discussion by sending questions about the issue to the attorney general debate moderators.<sup>76</sup>

The Working Group held group strategy sessions, conducted research, and brought together a broad

coalition of civil rights organizations, women's rights and girls' rights advocacy groups, transgender rights advocates, and workers' rights litigators. From that organizing, the Working Group published public policy recommendations for protecting New York employees—both public and private—from harassment. The Working Group also called for a public hearing to provide stakeholders, especially survivors, an opportunity to utilize the most powerful tool of all to push for change – their lived experiences.<sup>77</sup>

Their efforts were successful. On February 13, 2019, the New York legislature held its first joint legislative public hearing on sexual harassment in over 27 years. Dozens of witnesses signed up to testify, including the Working Group, and the hearing lasted 11 hours.<sup>78</sup> Members of the Working Group recall the power of being able to confront the legislature with their vulnerability and the trauma they had experienced in a public and formal way. While the legislative process often involves negotiations behind closed doors, the public hearing created a unique kind of accountability. Following the hearing, when legislators brought solutions to the table, advocates and the public eye were watching to ensure that proposals were responsive to the powerful lived experiences the survivors had shared in such a public way.

This hearing, followed by a second hearing that May, a lobby day in Albany, press conferences, and a roundtable discussion of the proposed reforms with legislators organized by the Working Group and other advocates, led to the passage in August 2019 of a suite of groundbreaking reforms to prevent and respond to discrimination in the workplace. These reforms are detailed in this report.

# EXPANDING ACCESS TO JUSTICE

**EXTENDING STATUTES OF LIMITATIONS.** *Short statutes of limitations can hamper the ability of individuals to bring harassment complaints, especially given the trauma of assault and other forms of harassment, which can impact the ability of individuals to take prompt legal action.*

## 2019

**CALIFORNIA** enacted legislation to extend from one to three years the statute of limitations for filing employment discrimination complaints with the Department of Fair Employment and Housing.<sup>79</sup>

**CONNECTICUT** enacted legislation to allow employees who have been subjected to discrimination, including harassment, 300 days to submit a complaint to the Connecticut Commission on Human Rights and Opportunities where previously they had only 180 days.<sup>80</sup>

**MARYLAND** enacted legislation to extend the statute of limitations for filing workplace harassment claims with the Commission on Human Relations from six months to two years, and from two years to three years for filing workplace harassment claims in court.<sup>81</sup>

**NEW YORK** enacted legislation to extend the statute of limitations for filing workplace sexual harassment complaints with the Division of Human Rights from one to three years.<sup>82</sup>

**OREGON** enacted legislation to give employees who have experienced discrimination (including harassment) five years, instead of one, to file a complaint with the Bureau of Labor and Industries or a civil suit.<sup>83</sup>

## 2018

**NEW YORK CITY** enacted legislation to extend the statute of limitations for filing claims of gender-based harassment with the New York City Commission on Human Rights from one year to within three years after the alleged harassing conduct occurred.<sup>84</sup>

**“Extending California’s statute of limitations has been “extremely helpful for low-wage workers, who . . . often need to make very difficult decisions: how you pay rent, put food on the table, versus making a complaint. Having the additional time to stabilize their economic situations before they proceed is very important, and I think is one of the greatest positive moves for low-income survivors of harassment.”** -

WENDY MUSELL, LAW OFFICES OF WENDY MUSELL; LEVY VINICK BURRELL HYAMS LLP, CALIFORNIA

**ESTABLISHING DISCRIMINATION AND HARASSMENT HELPLINES.** *Survivors and bystanders often do not speak up about workplace harassment because they fear retaliation for reporting and/or it is unclear to whom they should report and what their options are. Workers need multiple, trusted avenues for reporting, including anonymously. Confidential hotlines or helplines that are independent of an employer can play an important role in increasing reporting and stopping harassment.*

## 2020

**NEW JERSEY** enacted legislation requiring the Civil Service Commission—an independent body that hears and rules on appeals filed by civil service employees and candidates—to set up a confidential hotline for state employees to report incidents of workplace harassment and discrimination, and to receive information about relevant laws, policies, and procedures, as well as referrals for further assistance and counseling, if requested. The Commission is required to produce an annual report to the public on the number and types of calls received.<sup>85</sup>

## 2018

**ILLINOIS** enacted legislation requiring the Department of Human Rights to establish a sexual harassment and discrimination helpline to which individuals in public and private employment can report, including anonymously, and

receive help with finding resources, including counseling services, and assistance in filing sexual harassment and discrimination complaints with the Department or other applicable agencies. The Department must annually report the number and type of calls received.<sup>86</sup>

**ENSURING RIGHTS TO BE FREE FROM HARASSMENT CAN BE ENFORCED.** *Some state laws declare that workplace discrimination, including harassment, is unlawful, but do not provide a meaningful—or any—mechanism for an employee to enforce their right to a discrimination and harassment-free workplace in court. This lack of a meaningful “cause of action” to enforce the law seriously undermines survivors’ ability to pursue justice and hold their employers accountable as well as employers’ incentive to prevent harassment from occurring to begin with.*

## 2020

**VIRGINIA** enacted legislation strengthening its cause of action for employment discrimination, which previously only provided relief for a narrow set of employees working for an employer with more than 5 but less than 15 employees and only when an employee was discriminatorily discharged. Virginia’s new law provides a cause of action for all types of discrimination, not just discrimination ending in discharge, and protects employees whose workplace has 15 or more employees, or 5 or more employees in the case of unlawful discharge. The new law also explicitly prohibits discrimination on the basis of sexual orientation or gender identity.<sup>87</sup>

**REVISING THE “SEVERE OR PERVASIVE” LIABILITY STANDARD.** *The requirement under federal law and most state laws that harassment be “severe or pervasive” in order to establish a hostile work environment claim has been interpreted by courts in such an unduly restrictive manner that only the most egregious conduct qualifies. These interpretations minimize and ignore the impact of harassment and severely undermine harassment victims’ ability to pursue claims, hold employers accountable, and obtain relief for the harm they have suffered. Two states have passed legislation seeking to address and correct these harmful interpretations.*

## 2019

**NEW YORK** enacted legislation to explicitly remove the restrictive “severe or pervasive” standard for establishing a hostile work environment claim. Under the new standard, harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions, or privileges of employment because of the individual’s membership in one or more protected categories. The law provides that an employee need not compare their treatment to that of another employee in order to state a claim. Employers can assert a defense to such a claim if they can show that the harassing conduct did not rise above what a reasonable person in the same protected class would consider petty slights or trivial inconveniences.<sup>88</sup>

**“The change to California’s severe or pervasive standard has been especially important for our low-wage worker clients. Being able to tell them that one incident of harassment can be enough to state a claim and that they do not have to show some heightened standard of harm and instead that they need only show “disruption of emotional tranquility” is very meaningful. I have found that for my transgender clients subjected to workplace harassment based on misuse of name and gender pronouns, these two changes make their claims easier to explain to a factfinder and more in line with how my clients experience the harassment – one incident of misgendering is devastating.”** — ELIZABETH KRISTEN, LEGAL AID AT WORK, CALIFORNIA

## 2018

**CALIFORNIA** enacted legislation to clarify the “severe or pervasive standard.” The law states that a single incident of harassment is sufficient to create a hostile work environment if the harassment has unreasonably interfered with the employee’s work performance or created an intimidating, hostile or offensive working environment. Moreover, a victim need not prove that their productivity declined due to the harassment; it is sufficient to prove that the harassment made it more difficult to do the job. Additionally, the new law clarifies that a court must consider the totality of the circumstances in assessing whether a hostile work environment exists and that a discriminatory remark may contribute to this environment even if it is not made by a decision maker or in the context of an employment decision. Courts are to apply these standards to all workplaces, regardless of whether a particular occupation has been historically associated with a higher frequency of sexually related comments and conduct than other occupations.<sup>89</sup>

**CLOSING A LOOHPOLE IN EMPLOYER LIABILITY.** *Under federal law and many state laws, employers can avoid liability for a supervisor’s harassment of subordinates if the employer can show that it took steps to prevent and address the harassment and that the employee did not take advantage of the employer’s available preventative or corrective measures, like reporting the harassment to the employer. In practice, this means that employers are able to evade liability by showing little more than they provide training or have a policy on the books, regardless of quality or efficacy. States have been working to close this judicially created loophole that is blocking harassment victims from obtaining justice.*

## 2019

**NEW YORK** enacted legislation to provide that the fact that an individual did not make a complaint to the employer about harassment does not determine whether the employer is liable for the harassment.<sup>90</sup>

**ENSURING EMPLOYER LIABILITY FOR SUPERVISOR HARASSMENT.** *The Supreme Court’s 2013 decision in Vance v. Ball State University limited victims’ ability to obtain redress under federal law when they experience sexual harassment by low-level supervisors. That case held that when employees with the authority to direct daily work activities—but not the authority to hire, fire, and take other tangible employment action—harass their subordinates,*

*their employers are no longer vicariously liable for that harassment. The Vance decision is grossly out of touch with the realities of the workplace, as supervisors with the authority to direct daily work activities can wield a significant amount of power over their subordinates. Many state courts follow federal law interpretations—and thus the Vance case—in interpreting their own state anti-harassment laws. Several states have been working to expand employer accountability for harassment by lower-level supervisors.*

## 2019

**MARYLAND** enacted legislation to make employers liable for harassment by individuals who have the power to make decisions regarding employees’ employment status or by those who direct, supervise, or evaluate employees. An employer is also liable if its negligence led to the harassment or allowed the harassment to continue.<sup>91</sup>

## 2018

**DELAWARE** enacted legislation to hold employers responsible for sexual harassment by supervisors when the sexual harassment negatively impacts the employment status of an employee. A supervisor includes any individual who is empowered by the employer to take an action to change the employment status of an employee or who directs an employee’s daily work activities.<sup>92</sup>

**REDRESSING HARM TO VICTIMS OF HARASSMENT.** *Compensatory damages can compensate victims of harassment for out-of-pocket expenses and emotional harm caused by harassment, and punitive damages awarded to victims punish employers who acted maliciously or recklessly in engaging in harassment. However, compensatory and punitive damages are capped in harassment and other discrimination cases under federal law and many state laws; in some states, they are not available at all. Limiting these damages means that individuals who have experienced egregious sexual harassment may not be fully compensated for their injuries, and employers are less incentivized to prevent harassment before it happens.*

## 2020

**VIRGINIA** enacted legislation allowing victims of employment discrimination to recover uncapped compensatory and punitive damages to address their injury. The law had previously only provided victims up to 12 months of back pay.<sup>93</sup>



## 2019

**CONNECTICUT** enacted legislation permitting a court to award punitive damages to a victim of employment discrimination, overturning a Connecticut Supreme Court ruling disallowing such damage awards. Uncapped compensatory and punitive damages are now available.<sup>94</sup>

**NEVADA** enacted legislation allowing victims of employment discrimination to be awarded the same remedies as available under federal law, which includes compensatory and punitive damages, capped based on the employer size. Previously Nevada's anti-discrimination law had only allowed victims to recover two years of back pay and benefits and to be

reinstated.<sup>95</sup> While this legislation increased the relief available under Nevada law by bringing it into line with the relief available under federal law, the damages available under Title VII are themselves in need of reform and the damage caps need to be removed.

**NEW YORK**, which previously provided for uncapped compensatory damages in discrimination claims, but did not authorize punitive damages, enacted legislation authorizing punitive damages, without limitation on the amount, for all employment discrimination actions brought against a private employer.<sup>96</sup>

## HOTEL WORKERS DEMAND PANIC BUTTONS

Some industries may require unique solutions for addressing sexual harassment and violence responsive to the particular nature of their work. For many years, hotel and hospitality workers across the country have been organizing and demanding that their employers address widespread sexual harassment and violence by customers. For example, after finding that 58% of women hotel workers and 77% of women casino workers surveyed had been sexually harassed by a guest,<sup>97</sup> workers with UNITE HERE Local 1 in Chicago pushed for the passage of

the "Hands Off Pants On" ordinance, which was passed in 2017 and requires hotels to provide a panic button to hotel workers assigned to clean or restock guest rooms or restrooms alone and requires hotels to develop a written anti-sexual harassment policy.<sup>98</sup> Since #MeToo went viral, several states, including Washington, Illinois, and New Jersey in 2019, have passed legislation requiring hotels to provide employees panic buttons. Illinois' law also covers employees who work in casinos and Washington's law also applies to janitors and security guards who work in isolated conditions. Illinois' and Washington's laws require employers to adopt an anti-sexual harassment policy and Washington's law also requires employers to provide anti-sex discrimination and harassment training.<sup>99</sup>

# PROMOTING PREVENTION STRATEGIES

***While Title VII has been interpreted to provide employers with an incentive to adopt sexual harassment policies and training, it has created a situation where employers effectively are able to shield themselves from liability by having any anti-harassment policy or training, regardless of quality or efficacy. Employer anti-harassment training and policies have been largely ineffective in preventing harassment in the first instance in part because they are not mandatory, and because they are focused on compliance with the law, instead of preventing harassment.***

**REQUIRING ANTI-HARASSMENT TRAINING.** *Effective training, especially when tailored to the specific workplace and workforce, can reduce workplace harassment. Several jurisdictions have passed legislation requiring training for employees and in some cases mandating the content.*

## 2020

**NEW JERSEY** enacted legislation requiring state employees responsible for managing and investigating complaints of harassment and discrimination to receive additional training every three years conducted by the New Jersey Attorney General's Advocacy Institute, or another organization with expertise in response to and prevention of sexual violence, in consultation with the New Jersey Coalition Against Sexual Assault.<sup>100</sup>

**VIRGINIA** enacted legislation requiring all government contractors with more than 5 employees and a contract over \$10,000 to provide annual training on the employer's sexual harassment policy to all supervisors and employees.<sup>101</sup>

## 2019

**CONNECTICUT**, which previously only required employers with 50 or more employees to train supervisory employees, enacted legislation to require all employers with three or more employees to provide sexual harassment training to every employee and to require those with fewer than three employees to provide training to supervisory employees. Employers must also provide employees with supplemental

training at least every 10 years. The Connecticut Commission on Human Rights and Opportunities is required to create and make available at no cost to employers an online training and education video or other interactive method of training that fulfills these requirements.<sup>102</sup>

**ILLINOIS** enacted legislation to require the Department of Human Rights to produce a model sexual harassment prevention training program to be made available to employers and to the public online at no cost. The program must include an explanation of sexual harassment; examples of conduct that qualifies as sexual harassment; a summary of relevant state and federal provisions and remedies; and a summary of employers' responsibility in preventing, investigating, and correcting sexual harassment. All private employers in the state must use this model or create their own program that equals or exceeds the model's standards. Employers must provide this training at least once a year to all employees. Illinois also amended its sexual harassment training requirement for public employees to expand it to a "harassment and discrimination" prevention training.<sup>103</sup>

## 2018

**CALIFORNIA**, which previously only required employers with 50 or more employees to provide sexual harassment training to supervisory employees once every two years, enacted legislation expanding the requirement so that employers with five or more employees are now required to provide at least two hours of interactive sexual harassment training and education to all supervisory employees, and at least one hour of such training to all nonsupervisory employees in California within six months of their assumption of a position, by January 1, 2021. After January 1, 2021, employers must provide the required training to each employee once every two years.<sup>104</sup> California also enacted legislation that authorizes, but does not require, employers to provide bystander intervention training.<sup>105</sup>

**DELAWARE** enacted legislation to require employers with 50 or more employees to provide interactive sexual harassment prevention training and education to employees and supervisors within one year of beginning employment and every two years thereafter. Employers are required to provide additional interactive training for supervisors addressing their specific responsibilities to prevent and correct sexual harassment and retaliation.<sup>106</sup>

**LOUISIANA** enacted a law requiring each public employee and elected official to receive a minimum of one hour of sexual harassment training each year. Supervisors and employees designated to accept or investigate complaints must receive additional training. Each agency must also maintain public records of each employee and official's compliance with the training requirement.<sup>107</sup>

**MARYLAND** enacted legislation requiring all state employees to complete at least two hours of in-person or virtual, interactive training on sexual harassment prevention within six months of hire and every two years thereafter. Additional training is required for supervisors.<sup>108</sup>

**NEW YORK** enacted legislation to require New York's Department of Labor to develop a model sexual harassment prevention training program, and to require all employers to conduct annual interactive training using either the state model or a model that meets state standards.<sup>109</sup>

**NEW YORK CITY** enacted legislation to require employers with 15 or more employees to conduct annual anti-sexual harassment interactive trainings for all employees, including supervisory and managerial employees. The training must include information concerning bystander intervention and the specific responsibilities of supervisory and managerial employees in addressing and preventing sexual harassment and retaliation.<sup>110</sup> New York City also now requires all city agencies, the offices of Mayor, Borough Presidents, Comptroller, and Public Advocate to conduct annual anti-sexual harassment trainings for all employees.<sup>111</sup>

**VERMONT** enacted legislation to allow the state Attorney General or the Human Rights Commission to inspect employers for compliance with sexual harassment laws and, if the Attorney General or Commission deems it necessary, require an employer, to provide an annual education and training program to all employees or to conduct an annual, anonymous climate survey, or both, for a period of up to three years.<sup>112</sup>

**REQUIRING STRONG ANTI-HARASSMENT POLICIES.**  
*Anti-harassment policies are merely encouraged, not required, by federal law. As a result, many employers lack anti-harassment policies, particularly smaller organizations without the resources to engage legal and human resource experts to develop them. In response, several jurisdictions*

*passed legislation requiring public and/or private employers to have anti-harassment policies or directing state agencies to develop model policies for broader use.*

## 2020

**VIRGINIA** enacted legislation requiring all government contractors with more than 5 employees and a contract over \$10,000 to post their sexual harassment policy in a conspicuous public place and publish it in the employee handbook.<sup>113</sup>

**WASHINGTON** enacted legislation (SB 6205) requiring employers of long-term care workers to develop and disseminate a written policy on how to handle workplace discrimination and abusive conduct, including sexual harassment or assault. The policy must be available in English and each of the three languages spoken most by long-term care workers and must be reviewed and updated annually. Among other provisions, employers must also implement plans to prevent and protect employees from discrimination and abusive conduct to be developed, monitored, and updated at least every three years by a workplace safety committee of employee-elected members, employer-selected members, and at least one service recipient.

## 2019

**CONNECTICUT** enacted legislation to require an employer to either provide its employees, within three months of their start date, with a copy of its sexual harassment policy via email, or to post the policy on their website and provide employees with a link to the Connecticut Commission on Human Rights and Opportunities' sexual harassment website.<sup>114</sup>

**NEW YORK** enacted legislation requiring employers to provide employees their sexual harassment prevention policy at the time of hire and at every annual training, in English and in the employee's primary language if the commissioner on labor offers model policies in the employee's primary language. The legislation also required the Department of Labor to evaluate the impact of its current model sexual harassment prevention guidance document and sexual harassment prevention policy every four years and update as needed.<sup>115</sup>

**OREGON** enacted legislation to require all employers to adopt a written policy to reduce and prevent discrimination (including harassment) and sexual assault. The policy must provide, among other things, a process for an employee

to report discrimination and sexual assault and statements outlining the statute of limitations and the prohibition on NDAs. Additionally, the law requires the Bureau of Labor and Industry to make model procedures and policies available on its website, which employers may use to establish their own policies.<sup>116</sup> Oregon enacted similar requirements for public employers.<sup>117</sup>

## 2018

**ILLINOIS** enacted legislation to require companies bidding for state contracts to have a sexual harassment policy.<sup>118</sup>

**LOUISIANA** enacted a law requiring each state agency to develop and institute a sexual harassment policy that, among other minimum requirements, contains a clear prohibition against retaliation and an effective complaint process that includes taking immediate and appropriate action when a complaint is received and details the process for making a complaint and alternative designees for receiving complaints.<sup>119</sup>

**NEW YORK** enacted legislation to require its Department of Labor to create and publish a model sexual harassment prevention guidance document and sexual harassment prevention policy that employers may utilize in their adoption of a sexual harassment prevention policy.<sup>120</sup> It also enacted legislation to require bidders on state contracts to certify as part of the bidding process that the bidder has implemented a written policy addressing workplace sexual harassment prevention and provides annual sexual harassment prevention training to all of its employees. If a bidder is unable to make this certification, they must provide a signed statement explaining why.<sup>121</sup>

**WASHINGTON** enacted legislation to establish a state women's commission to address several issues, including best practices for sexual harassment policies, training, and recommendations for state agencies to update their policies.<sup>122</sup> Additionally, the state equal employment opportunity commission is required to convene a working group to develop model policies and best practices to prevent sexual harassment in the workplace, including training, enforcement, and reporting mechanisms.<sup>123</sup>

**REQUIRING NOTICE OF EMPLOYEE RIGHTS. No workplace anti-harassment or anti-discrimination law will be truly effective if working people are unaware of the laws and their protections. The stark power imbalances that often exist between an employee and the employer can make it difficult**

**for working people to feel safe enough to speak up about workplace abuses. Requiring employers to post or otherwise share with employees information about their rights can help employees better assert those rights.**

## 2018

**CALIFORNIA,<sup>124</sup> DELAWARE,<sup>125</sup> ILLINOIS,<sup>126</sup> NEW YORK CITY,<sup>127</sup> and VERMONT<sup>128</sup>** all enacted legislation to require employers to post or otherwise share with employees information about employees' rights to be free from sexual harassment.

**LOUISIANA** enacted legislation to require establishments that have been licensed by the state to serve or sell alcohol to distribute an informational pamphlet to their employees with information on identifying and responding to sexual harassment and assault.<sup>129</sup>

**REQUIRING CLIMATE SURVEYS. A climate survey is a tool used to assess an organization's culture by soliciting employee knowledge, perceptions, and attitudes on various issues. Anonymous climate surveys can help management understand the true nature and scope of harassment and discrimination in the workplace, inform important issues to be included in training, and identify problematic behavior that may be addressed before it leads to formal complaints or lawsuits.**

## 2018

**NEW YORK CITY** enacted legislation to require all city agencies, as well as the offices of the Mayor, Borough Presidents, Comptroller, and the Public Advocate, to conduct climate surveys to assess the general awareness and knowledge of the city's equal employment opportunity policy, including but not limited to sexual harassment policies and prevention at city agencies. Additionally, the new law requires all New York City agencies and the offices of the Mayor, Borough Presidents, Comptroller, and Public Advocate to assess workplace risk factors associated with sexual harassment.<sup>130</sup>

**VERMONT** enacted legislation to allow the state Attorney General or the Human Rights Commission to inspect employers for compliance with sexual harassment laws and, if the Attorney General or Commission deems it necessary, require an employer, to provide an annual education and training program to all employees or to conduct an annual, anonymous climate survey, or both, for a period of up to three years.<sup>131</sup>

# THE FIGHT FOR JUSTICE AND ACCOUNTABILITY IS FAR FROM OVER

As the Me Too movement has made clear, the laws and systems in place designed to address harassment have been inadequate. While much progress has been made in the last three years, policymakers must continue to strengthen protections and fill gaps in existing law and policy to better protect working people, promote accountability, and prevent harassment.

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