

Committee on Health, Education, Labor, and Pensions

United States Senate

115th Congress



“...So I Tolerated It”

How Workplaces Are Responding to Harassment and the Clear
Need for Federal Action

Minority Staff Report

December 2018

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December 19, 2018

Dear Readers:

In 2006, civil rights activist Tarana Burke first used the phrase “Me Too” as a way to support survivors of sexual violence and shed light on common experiences that survivors often do not speak about publicly. The phrase reappeared on October 15, 2017, after allegations of abuse surfaced against film producer Harvey Weinstein. Workers, especially women, organized and demanded change; they took to social and traditional media to share their stories, using the hashtag “#MeToo” to demonstrate the pervasiveness of sexual harassment in the workplace. In the past year, high-profile cases of sexual harassment and assault have transformed the #MeToo rallying cry into a watershed cultural moment and a worldwide movement, the time for which is long past due.

Over 19 million tweets using #MeToo have been posted since October 15, 2017, and in the year since the hashtag went viral, brave women and men of all races, income levels, and industries have spoken out to share their personal stories of harassment on the job. Their bravery and determination to reject the status quo have not only shed light on the epidemic of sexual harassment across the country, but also sparked a robust nationwide conversation about workplace harassment and predatory behavior. In high-profile cases, stories of accused harassers—in Hollywood, in sports, in business, in the military, in government, and beyond—have made headlines and engrained in the national consciousness an increased awareness of this problem and a desire for change.

We have long known that harassment in the workplace is systemic, pervasive, and longstanding. In 1981, the federal government published a landmark survey indicating that 40 percent of female federal employees reported experiencing harassment, and other reporting at the time emphasized that the problem was similarly pervasive in the private workforce. In 1991, Professor Anita Hill’s testimony at the hearings for Justice Clarence Thomas’s nomination to the Supreme Court introduced a wider national audience to the issue of workplace harassment and the rights of workers to be free from that harassment. In 2018, the drumbeat of stories highlighting the pervasiveness of harassment in the workplace confirms this continues to be a widespread problem.

As the Ranking Member of the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP), I asked my staff to reach out to workers, industry associations, unions, lawyers, academics, and other stakeholders to gain a greater understanding of workplace harassment across industries—especially for low-wage workers whose stories have too often

been left out of the national conversation. I also asked my staff not to consider the issue of sexual harassment alone. Rather, conversations and solutions should address all forms of harassment, including harassment based on race, sex (including sexual orientation, gender identity, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, and a sex stereotype), national origin, age, disability, and genetic information.

It is clear we are still far from ensuring all workers have a safe work environment, free from harassment and discrimination. The following report also shows that there is a serious need for federal action to address areas where federal support and legal protections fall short. More must be done to prevent harassment and empower workers to seek and secure justice. As we look to next Congress and beyond, I hope this report will help us all to further advance these goals.

Sincerely,

A handwritten signature in blue ink that reads "Patty Murray". The signature is fluid and cursive, with the first name "Patty" and last name "Murray" clearly distinguishable.

Patty Murray
United States Senator
Ranking Member, Senate Committee on
Health, Education, Labor, and Pensions

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Introduction

In October 2017, the *New Yorker* and *New York Times* reported that a number of women who had worked with or had aspired to work with Harvey Weinstein had accused the famous movie executive of sexual harassment and assault.¹ The allegations were stunning and included stories of horrifying rapes and other sexual abuse. According to the *New Yorker*, Weinstein's criminal behavior was well-known among colleagues, with 16 different executives and assistants confirming they knew of "unwanted sexual advances and touching" at work-related events.²

Many of the women Weinstein assaulted explained they had not reported the abuse for fear of retaliation. These were apparently well-founded fears, as the articles revealed that women who had rejected Weinstein believed they had been fired and blacklisted from projects.³ Some of the survivors of Weinstein's assaults and harassment confirmed they were speaking out in violation of nondisclosure agreements they were forced to sign in order to keep his behavior a secret, putting them in potential legal jeopardy for telling their stories.⁴

The Weinstein stories of horrifying criminal assault, complicit executives and cover-ups, and a reign of fear in the entertainment industry sent shockwaves through the country. While the details of workplace harassment in the entertainment industry—populated by Hollywood stars and celebrities—felt extraordinary, in many ways the stories told by Weinstein's accusers could not have been more typical. As the country wondered how Weinstein could have gotten away with his behavior for so long, many workers across the country easily recognized the inherent power dynamics that allowed a powerful executive to prey on workers hoping to advance in their careers, the fear of retaliation and of not being believed, the nondisclosure clauses that forced survivors into decades of silence, and the passive complicity of Weinstein's colleagues.

Following a tweet from actor Alyssa Milano, women and men across the globe used the hashtag "#MeToo" to identify that they, too, had experienced harassment or assault. Originally coined by activist Tarana Burke to show support for other women and girls who have experienced assault, "#MeToo" exploded into a movement, as individuals of all income levels, industries, and backgrounds revealed their own stories.⁵ Inspired by the movement and hopeful for the first time their stories might be believed, individuals working in business, construction, technology, food services, media, hospitality, agriculture, politics, and countless other industries spoke out about their own experiences with harassment and assault. While many of the stories involved sexual harassment, workers also spoke out about their experiences being harassed because of their race, national origin, disability, sexual orientation, gender identity, or age.

Methodology and Structure of the Report

The sheer number of stories shared has made clear that workplace harassment is an epidemic that cannot be ignored. As part of her work to elevate these stories and ensure they inform debate in Congress, Senator Murray directed the HELP Committee Democratic staff to undertake an effort to learn more about workplace harassment and make recommendations on what Congress and others can do to address it. Staff extensively reviewed relevant literature and federal court decisions; analyzed state and federal data on harassment and discrimination; and consulted with

more than 50 workers, law professors, legal experts, advocacy groups, research organizations, and labor unions. Senator Murray wrote to 17 industry associations, representing the interests of employers in some of the largest sectors of the American economy. These industries include sectors with some of the highest known rates of harassment. The letters to the industry associations and their responses are available in Appendix I. Senator Murray and the HELP Committee Democrats also sent letters to three federal departments, including the U.S. Department of Education (ED), U.S. Department of Health and Human Services (HHS), and U.S. Department of Labor (DOL), in order to learn more about the experiences of federal workers and federal agencies in responding to and addressing harassment. The letters to the three departments and their responses are available in Appendix II. Senator Murray's staff also obtained harassment charge data from the Equal Employment Opportunity Commission (EEOC) and information from the Legal Services Corporation (LSC) about services grantees provide to low-income workers bringing employment discrimination cases. That data are available in Appendices III and IV.

This report lays out what information staff learned from that effort and identifies a clear need for action to reduce rates of harassment and expand and secure workers' rights. The report begins with some short background, follows with a discussion of preventing and addressing workplace harassment, then examines the need to expand workplace protections and ensure all workers can enforce their rights, and finally identifies specific recommendations that can be implemented at the federal level. Given the breadth, depth, and countless manifestations of this issue in the lives of so many, no single report or analysis can capture the totality of the dire problem at hand. Accordingly, this report is not intended to be, nor can it be, a truly comprehensive assessment of the state of harassment and assault in the workplace. For example, it does not include an in-depth discussion of workplace harassment in the military. Rather, it is intended to reveal and contextualize background research on the topic in order to inform and continue the broader discussion occurring in the government, workplaces, and at kitchen tables across the country.

Throughout this report, there are stories of workers who have experienced harassment on the job and who chose to share their stories with the HELP Committee Democratic staff as evidence of the need for change and work that remains to be done. Workers across industries and income levels, however, consistently expressed fears that sharing their stories publicly would result in their current or former employers or coworkers retaliating against them for speaking out. Accordingly, in some cases, workers' names have been disguised, and many of the details of the stories shared remain confidential. The pervasive fear of retaliation expressed by many of the workers interviewed by the Democratic staff suggests that more than one year after the #MeToo movement began, there is still a tremendous amount of progress that must be made.

Background and Definitions

For most of American history, men and women endured harassment in the workplace without any legal protections or recourse. In 1941, at the urging of labor leader A. Philip Randolph, President Franklin D. Roosevelt took steps to address employment discrimination by issuing an executive order to ban discrimination based on "race, color, creed, and national origin" in the federal government and in defense industries—which he later extended to apply to all federal contractors.⁶

Presidents Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson all issued executive orders strengthening and expanding these protections.⁷

Starting in the 1960s and continuing through 2008, Congress passed a series of laws to more broadly prohibit discrimination in employment, including harassment, on the basis of specific characteristics. These laws included:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination on the basis of race, color, religion, national origin, and sex;⁸
- the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits employment discrimination on the basis of age (protecting people who are 40 or older);⁹
- Title I of the Americans with Disabilities Act of 1990 (ADA) and sections 501 and 505 of the Rehabilitation Act of 1973 (Rehabilitation Act), which prohibit employment discrimination on the basis of disability;¹⁰ and
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination on the basis of genetic information.¹¹

These laws generally apply broadly to both private and government employees, though notably Congress did not extend some of these protections to its own workforce prior to passage of the Congressional Accountability Act in 1995.¹² The federal laws that prohibit workplace harassment as unlawful forms of discrimination will be collectively referred to throughout this report as the “federal anti-discrimination laws.”

Definitions of Workplace Harassment

The U.S. Equal Employment Opportunity Commission (EEOC) defines harassment as “unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.”¹³ For the purposes of this report, the term “sex” includes sexual orientation, gender identity, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, and a sex stereotype. Harassment is a form of discrimination prohibited by federal anti-discrimination laws and is described by the EEOC as when:

- 1) “Enduring the offensive conduct becomes a condition of continued employment, or
- 2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.”¹⁴

Harassment can include a range of actions, from offensive jokes and name-calling, to physical assaults or threats, to interference with work performance.¹⁵

Sexual harassment is a type of workplace harassment that involves “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”¹⁶ “Hostile work environment” or “hostile workplace” harassment occurs when conduct makes the workplace “intimidating, hostile, or offensive.”¹⁷ In addition to prohibiting harassment, federal law also prohibits retaliation. Workers cannot be demoted, reprimanded, transferred, or otherwise have an adverse employment action taken against them because they assert their rights under federal law.¹⁸

Federal Anti-Discrimination Laws

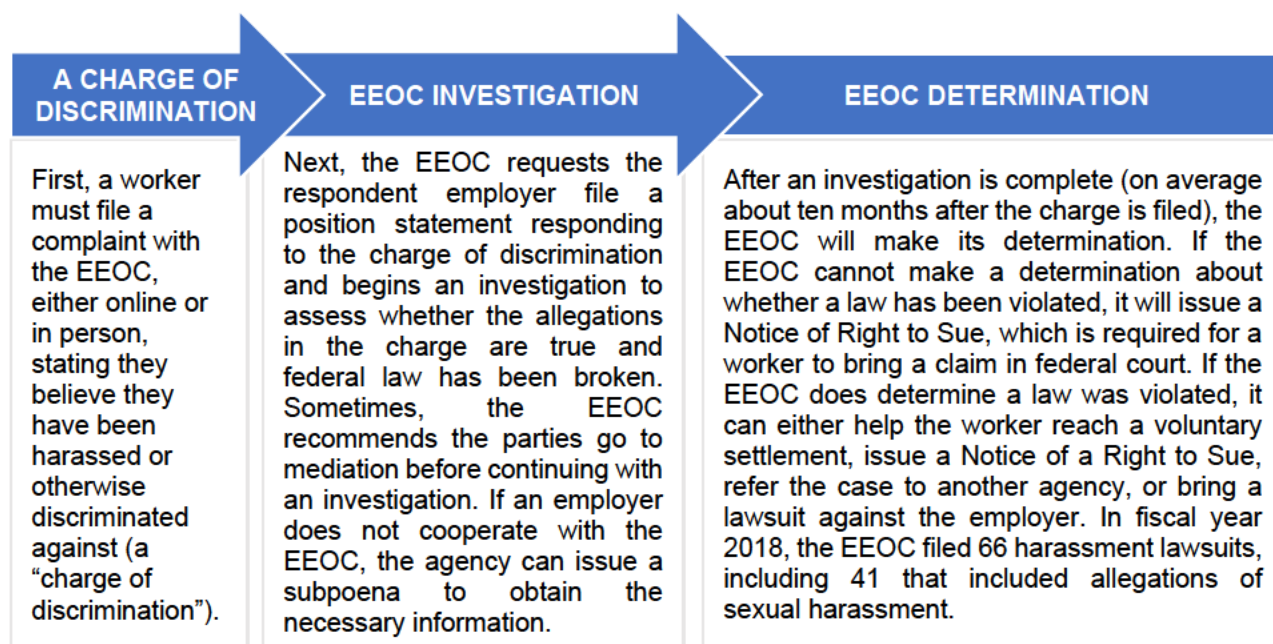
Federal anti-discrimination laws are designed to make employers responsible for ensuring their workplaces are free from discrimination, including harassment, and are not meant to be used directly to hold individuals accountable. In other words, these laws place responsibility for any workplace harassment directly on the employer.¹⁹ Employers' liability can differ depending on the role the harasser holds in the workplace. If the harasser is a supervisor and some tangible action is taken against the worker, then liability is automatic. Otherwise, an employer is liable for any hostile work environment harassment unless the employer "reasonably tried to prevent and promptly correct the harassing behavior" and "the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer."²⁰ If the harasser is not a supervisor, but is an individual such as a coworker or third party, an employer is liable if "it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action."²¹

How the Law is Enforced: The Equal Employment Opportunity Commission

Congress initially created the EEOC in 1964 to enforce the new prohibition against employment discrimination on the basis of race, color, religion, national origin, and sex.²² Since then, Congress has granted the EEOC enforcement authority over the prohibition against employment discrimination on the basis of age, disability, and genetic information.²³ The EEOC remains the primary federal agency that enforces federal anti-discrimination laws. The EEOC enforces these laws by investigating charges of discrimination against employers, engaging in outreach and prevention to reduce discrimination, and providing technical assistance to federal agencies and employers.²⁴

The leadership of the EEOC consists of five bipartisan members including a Chair, Vice Chair, and three Commissioners, as well as a General Counsel, all of whom are appointed by the President and confirmed by the Senate.²⁵ The Commissioners set EEOC policy and determine when to issue a charge of discrimination or authorize certain lawsuits, while the General Counsel supervises the litigation program.²⁶ In addition to its headquarters in Washington, D.C., the EEOC has 53 field offices across the country that employ about 2,000 people to help carry out its responsibilities.²⁷

Workers who wish to file a claim in federal court against their employer for discrimination, including harassment, must first engage with the EEOC's formal process. Private sector and state employees must file a charge of discrimination with the EEOC and receive a right to sue letter from the EEOC before they can bring a claim of discrimination in federal court.²⁸ Workers can receive a "Notice of Right to Sue" either after the EEOC has investigated a claim or if the EEOC is unable to finish its investigation within 180 days.²⁹ Federal employees have a separate process and must start by contacting their agency's equal employment opportunity office before proceeding to the EEOC for relief.³⁰ The following graphic explains the process for private sector employees as well as state and local employees.



Source: Equal Employment Opportunity Commission

Unfortunately, the EEOC is under-resourced given the significant number of incoming charges it receives—in fiscal year 2018, the EEOC “received over 554,000 calls and emails and over 200,000 inquiries regarding potential discrimination claims.”³¹ With just under 800 investigators, supervisors, and managers on staff at the end of fiscal year (FY) 2018, the agency faces significant operational challenges.³² On average, private and federal sector workers filing a complaint with the EEOC in 2017 waited 295 and 543 days for a resolution respectively.³³ Though the EEOC has worked diligently to reduce its backlog of cases to the lowest levels in more than 10 years, the EEOC still has over 49,500 private and public sector charges pending.³⁴

In addition to investigating charges and bringing cases, the EEOC may issue regulations and guidance to implement federal anti-discrimination laws.³⁵ The EEOC also provides training and outreach to educate employers on the law and may convene task forces to study particular enforcement issues. For example, in 2015, the EEOC convened the Select Task Force on the Study of Harassment in the Workplace, which issued a comprehensive report summarizing its findings in June 2016.³⁶

Understanding, Preventing, and Addressing Workplace Harassment

Over the past year, workers across the country have shared heartbreaking stories about their experiences with workplace harassment. Yet, harassing behavior in the workplace has not been sufficiently studied; there is little robust and comprehensive prevalence data available or information about workers’ and employers’ attitudes and beliefs about harassment. The EEOC tracks information about formal charges filed with the agency; however, it is likely most workers do not choose to file charges with the EEOC. Reliable and detailed data about harassment is helpful

for policymakers and researchers to best target resources to address harassment and measure the effectiveness of interventions over time.

What is certain is that workers have a right to a workplace free of harassment, employers should respond promptly and appropriately when harassment does happen, and, ultimately, employers and policymakers should be doing everything they can to prevent harassment before it starts. Over the past few decades, many employers have worked to develop nondiscrimination and anti-harassment policies and procedures to help them comply with civil rights laws. These efforts, however, have been met with varying levels of success and have not done enough to ensure harassment-free workplaces.

In order to understand more about factors that contribute to workplace harassment and current workplace harassment prevention efforts, the HELP Committee Democratic staff spoke with workers, unions and other advocates, employers of varying sizes, and experts in training and prevention, and collected information from federal government agencies. Staff also met with representatives from 17 industry associations representing employers across a diverse range of sectors. These associations were selected because they represent industries with some of the highest known rates of harassment as measured by the percent of harassment charges filed with the EEOC over the past decade, industries with low representation of women, and industries with large numbers of workers of color, young workers, immigrant workers, and workers with limited English proficiency among others.

This section of the report explores what we know about best practices for preventing harassment, what steps employers are taking to prevent harassment in the workplace, and where gaps remain.

There is insufficient and inconsistent data regarding workplace harassment.

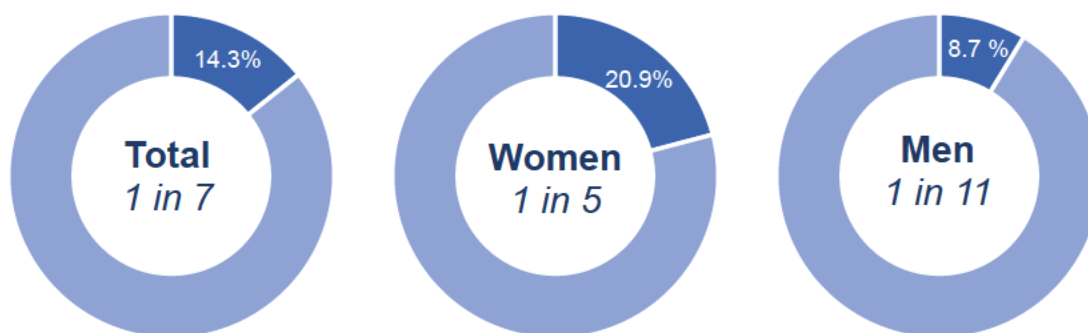
The federal government often uses data collection tools to gain insight into systemic problems and to learn more about factors related to the issue. For example, the Centers for Disease Control and Prevention established the National Intimate Partner and Sexual Violence Survey to collect data to inform violence prevention efforts;³⁷ the Department of Justice collects data on sexual victimization and perceptions of sexual harassment and assault on college campuses through the Campus Climate Survey Validation Study;³⁸ pursuant to requirements in the FY 2009 National Defense Reauthorization Act, the Department of Defense collects and studies data on sexual assault involving service members;³⁹ and ED conducts the Civil Rights Data Collection to analyze leading civil rights indicators over periods of time in order to assess barriers to educational opportunity.⁴⁰

No similar data collection about the prevalence of workplace harassment or workers' experiences facing this type of discrimination exists. Even estimates of sexual harassment, which is the most studied form of harassment, vary wildly. For example, a CNBC All-America Economic Survey of 800 adults nationwide conducted at the end of 2017 found that one in five American adults have experienced sexual harassment at work.⁴¹ Another nationwide survey conducted by "Stop Street Harassment" found that 38 percent of women and 13 percent of men reported experiencing sexual harassment at work.⁴² Finally, a survey of over 2,000 full-time and part-time female employees

found that one in three women ages 18 to 34 had been sexually harassed at work.⁴³ The EEOC has concluded that “anywhere from 25 [percent] to 85 [percent] of women report having experienced sexual harassment in the workplace.”⁴⁴

There have been some efforts to understand certain types of workplace harassment in specific contexts. For example, the Merit Systems Protection Board (MSPB) began administering surveys regarding federal employees’ perception of sexual harassment in the federal government in the 1980s.⁴⁵ The latest MSPB survey update was published in March 2018 and found that while prevalence has significantly decreased over the past few decades, nearly one in seven federal employees reported experiencing sexual harassment at work within the last two years, and twice as many women reported experiencing harassment than men.⁴⁶ To date, no similar effort has been made to collect information about workers outside of the federal government.

**FEDERAL EMPLOYEES EXPERIENCING SEXUAL HARASSMENT
IN THE PREVIOUS TWO YEARS, 2016**



Source: Merit Systems Protection Board

The National Academies of Sciences, Engineering, and Medicine (NASEM) recently conducted a study about “the influence of sexual harassment on the career advancement of women in the scientific, technical, and medical workforce.”⁴⁷ Among other findings, the NASEM study found that sexual harassment has resulted in a costly loss of talent in scientific, technical, and medical fields. While the NASEM study offered useful insight into potential policy solutions to address sexual harassment in higher education, it did not provide recommendations to specific industries and workplaces beyond academia.

The NASEM study and MSPB survey are critically important tools in understanding workplace sexual harassment and in highlighting significant gaps in harassment research. However, the majority of existing research has focused on the sexual harassment experiences of white heterosexual women rather than harassment based on race, disability, national origin, sexual orientation, gender identity, or other characteristics of people’s identities. Additionally very little data include perspectives and analyses of individuals with intersecting characteristics, including whether rates of sexual harassment vary based on one’s race, national origin, disability, sexual orientation, or gender identity. After conducting a search for data about the prevalence of harassment, the EEOC Task Force on the Study of Harassment in the Workplace concluded there

were few nationally representative surveys of harassment against LGBTQ workers, that race- and ethnicity-based harassment are “significantly understudied,” and that information on the prevalence of disability-based harassment is “even harder to find.”⁴⁸

EEOC and federal agency data provides some information about formal charges filed.

Each year, the EEOC publishes data on the charges of employment discrimination it receives and on how each charge is resolved.⁴⁹ The agency publishes national and state data across a number of different categories, including discrimination based on race, color, religion, sex, national origin, age, disability, and genetic information. The number of workplace harassment charges filed with the EEOC has been fairly stable over the last ten years, peaking at 28,688 in FY 2016 and falling just slightly to 26,767 in FY 2018,⁵⁰ and workplace harassment charges have constituted between 28 and 32 percent of all charges filed with the EEOC.⁵¹ Democratic staff analyzed data provided by the EEOC, available in Appendix III, and identified some clear patterns, including:

➤ *Women file the majority of workplace harassment and sexual harassment charges with the EEOC*

According to EEOC data, women have consistently reported harassment at far higher rates than men, for both sexual harassment and workplace harassment broadly.⁵² Since FY 1997, women have filed over 82 percent of all sexual harassment charges and over 65 percent of all workplace harassment charges with the EEOC.⁵³ Additionally, the comparative rate at which women and men have reported sexual and workplace harassment charges has remained steady even as the number of total charges has fluctuated.⁵⁴

In FY 2018, women filed more workplace harassment charges than men in almost all categories for which the EEOC enforces federal law prohibiting discrimination. Of the total charges made where gender of the filer was known, women filed more charges than men for harassment based on race (54 percent), religion (51 percent), national origin (52 percent), gender (80 percent), retaliation (68 percent), age (60 percent), and disability (62 percent).⁵⁵ Men filed more often for charges based on color and genetic information, although women still account for 44 percent of charges in each of those two categories.⁵⁶

JUNE'S STORY

June, a homecare worker, worked as a live-in caregiver to a male employer. On her very first night on the job, he asked her to get into bed with him. Over the course of the next several months he groped her repeatedly. June explains that she felt she could not tell the agency she worked for because she knew they would take her off the job, and June needed the income to pay for her medication and rent. She described feeling isolated and alone and did not know where to turn for help. She left as soon as she could find another job, and it wasn't until months later that she learned her employer had been harassing other women who worked for him as well. She says it took her years to get over the shame and embarrassment she felt. (Interview with the Senate HELP Committee Democratic Staff, 11/26/2018)

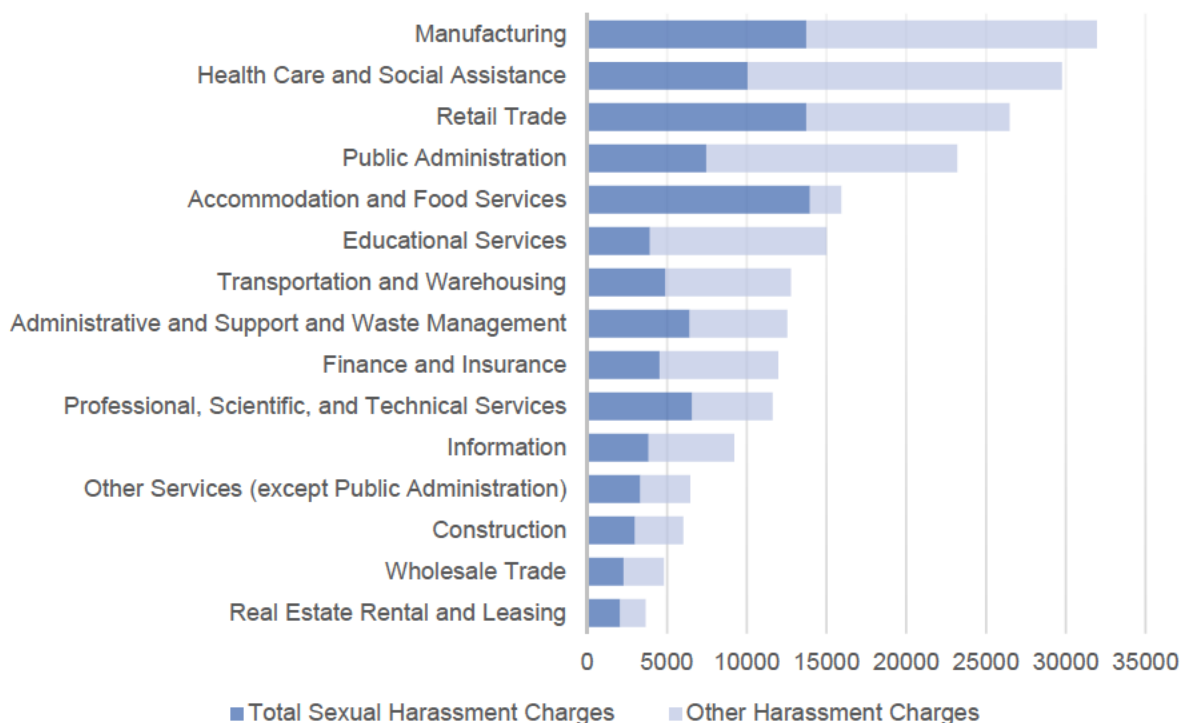
➤ ***Retaliation is the most frequently filed charge related to workplace harassment***

Retaliation has been the most frequently filed charge of harassment to the EEOC since FY 2016, amounting to over 49 percent of all charges filed in FY 2018.⁵⁷ The percentage of charges related to retaliation for all workplace harassment has risen since FY 2004, from 18.1 percent in FY 2004 to 49.4 percent in FY 2018.⁵⁸ Retaliation charges for both sexual and non-sexual harassment are highest in the manufacturing, retail trade, health care and social assistance, and public administration industries; these four industries account for 27.5 percent of all harassment charges since FY 1997.⁵⁹ For sexual harassment only, retaliation charges are highest in the manufacturing, retail trade, accommodation and food services, and health care and social assistance industries.⁶⁰ In addition to retaliation, gender, race, and disability charges are among the most commonly filed charges of workplace harassment to the EEOC.⁶¹

➤ ***Workers in certain industries account for a large number of harassment charges***

The EEOC reports on harassment charges filed across 20 different industries. Over the last 20 years, EEOC data have consistently shown the highest number of workplace harassment charges across the same five industries: manufacturing, health care and social assistance, retail trade, public administration, and accommodation and food services.⁶² Between FY 1997 and FY 2018, the accommodation and food services, manufacturing, and retail trade sectors reported the highest numbers of sexual harassment charges.⁶³

THE TOP 15 INDUSTRIES WITH THE HIGHEST NUMBER OF HARASSMENT CHARGES FROM FY 1997 - 2018



Source: Equal Employment Opportunity Commission

The EEOC also reports on the number of charges for which no industry was reported. In recent years, the charges for which no industry was reported outnumber the charges for which an industry was reported, for both sexual harassment and all workplace harassment charges.⁶⁴

➤ ***Responsive federal department data show around 50 percent of all EEO complaints involve complaints of sexual or non-sexual harassment***

In addition to EEOC data that capture charges of harassment across the private and public workforces, the Democratic staff reviewed claims and settlement data from ED, HHS, and DOL.⁶⁵ From FY 2013 to the third quarter of FY 2018, there were 150 EEO complaints filed with ED, including 67 complaints alleging non-sexual harassment and two claims alleging sexual harassment.⁶⁶ There were three findings of discrimination, one of which was a claim of non-sexual harassment.⁶⁷

From FY 2011 through June 30, 2016, there were 2,442 EEO complaints filed with HHS, including 1,233 complaints alleging non-sexual harassment and 94 claims alleging sexual harassment.⁶⁸ There were 41 findings of discrimination, including seven claims of non-sexual harassment and one claim of sexual harassment.⁶⁹

From FY 2013 to September 30, 2018, there were 777 EEO complaints filed with DOL, including 341 complaints alleging non-sexual harassment and 27 complaints alleging sexual harassment.⁷⁰ There were four findings of discrimination, including for one claim of sexual harassment.⁷¹

Harassment is significantly underreported, due in part to fears of retaliation.

While the number of charges filed with the EEOC provide some information about workplace harassment, these data fail to capture the full extent of the problem. Experts believe that most workers who experience harassment never report it to their employers or to the EEOC. Estimates suggest that only “six [percent] to 13 [percent] of individuals who experience harassment file a formal complaint,” and approximately 70 percent never report to their employer or union representatives.⁷² The 2018 MSPB survey found that only 11 percent of federal workers who experienced sexual harassment filed a formal complaint,⁷³ while a 2018 survey of chief human resource officers at more than 100 private companies found that 91 percent of respondents identified “ensuring that sexual harassment victims are not inhibited from bringing their complaints to the attention of appropriate company officials” as “one of the most significant factors that need to be addressed regarding sexual harassment in any workplace.”⁷⁴

Fear of retaliation was by far the most common explanation provided to Democratic staff to explain why workers hesitate to report harassment to either their employer or the EEOC. Workers are concerned that if they report, their employers may move them from their offices, demote them, delay promotion, change their job duties, or even fire them. They worry that their coworkers may ostracize them, or they will get a reputation of being “difficult” to work with. While retaliation for filing a claim is illegal, one study found that two-thirds of surveyed workers who spoke out against workplace harassment faced some form of retaliation.⁷⁵

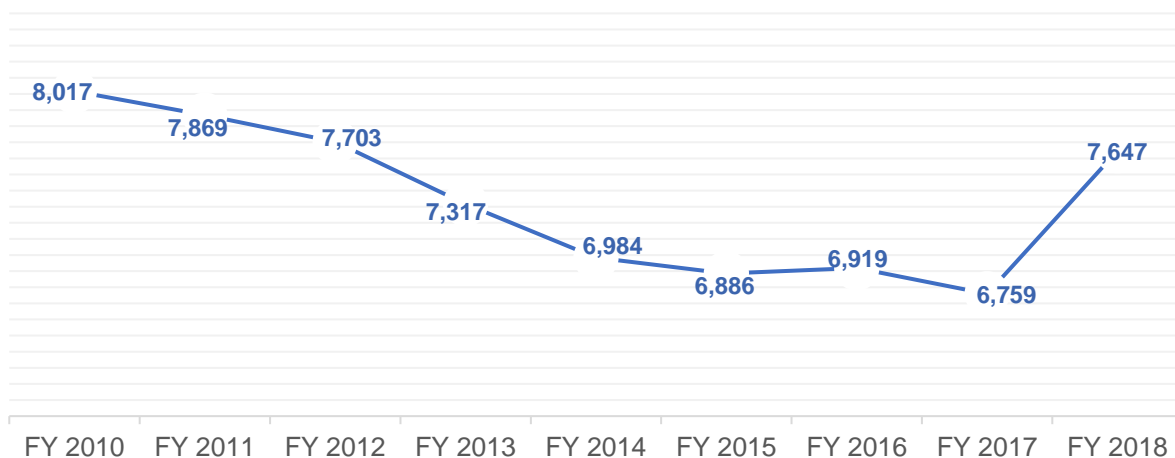
KELLY'S STORY

Kelly used to be a domestic worker in a private home. Her employer was a law enforcement officer who worked from home when not out on his shifts. He began asking Kelly to lunch, requesting massages, and calling her while she was not at work to ask her uncomfortable questions. One day, her employer cornered her and attempted to kiss her, and she screamed to get away. Kelly wanted to leave, but relied entirely on her employer for her income. Taking unpaid time off to look for another job was not an option, and Kelly knew she needed the experience and recommendation from her current job to find new employment. Kelly is terrified to come forward because she is worried about the retaliation she may face from bringing a claim against a law enforcement officer. (Story submitted to the Senate HELP Committee Democratic Staff, 11/23/2018)

There are many other reasons why a worker may not want to report harassment, including lack of awareness of their rights, lack of access to legal services, financial barriers, or mistrust of the reporting process. In many cases, workers may not know how to file a complaint or, due to statutes of limitations, it may be too late to file by the time they decide they want to go public with a charge of harassment.

However, there is reason to be hopeful. In the wake of the #MeToo movement, workers are becoming more aware of reporting options and more comfortable bringing charges. Since #MeToo began, the number of sexual harassment charges filed with the EEOC substantially increased. Between FY 2017 and FY 2018, sexual harassment charges filed with the EEOC increased by over 13 percent—the biggest single-year percentage change in over 20 years.⁷⁶ Similarly, the EEOC's rate of filing harassment lawsuits increased by more than 50 percent from FY 2017 to FY 2018, amounting to a total of 66 harassment lawsuits (41 of which included allegations of sexual harassment).⁷⁷

SEXUAL HARASSMENT CHARGES FILED WITH EEOC FROM FY 2010 - 2018



Source: Equal Employment Opportunity Commission

While these data reveal greater awareness and changed behavior on the part of workers, a Society for Human Resource Management (SHRM) 2018 survey revealed the majority of executives have not changed their behaviors or changed their behaviors only minimally despite increased attention to sexual harassment over the previous 12 months.⁷⁸ Of over 1,000 executives surveyed, 66 percent said they had changed their behaviors to a small extent or not at all. The same survey asked over 3,000 workers—a combination of non-managers, managers, and executives—whether their workplace “is one that fosters the occurrence of behaviors that might be considered sexual harassment;” 37 percent said yes.⁷⁹

Industry-specific factors contribute to high rates of harassment in certain types of jobs.

While harassment is pervasive across all types of workplaces, certain industries have particular risk factors that lead to higher-than-average rates of workplace harassment and demand specific interventions to reduce harassment. The EEOC Select Task Force on the Study of Harassment in the Workplace report identified several of these risk factors.⁸⁰ Some of the factors Democratic staff similarly identified are described below.

Service Sector and Tipped Workers

From FY 2005 to FY 2015, the accommodation and food services industry accounted for the greatest portion of sexual harassment charges filed with the EEOC, followed by the retail trade.⁸¹ In service-based industries, prioritizing customer service can contribute to high rates of harassment, by implicitly encouraging managers to ignore harassment or workers to tolerate harassment in order to appease the customer.⁸²

The pervasiveness of sexual harassment in service industries is only exacerbated when considered in the context of the subminimum wage paid to tipped workers. The current federal subminimum wage of \$2.13 per hour often forces tipped workers, who are overwhelmingly women, to rely on tips to try to achieve basic economic security.⁸³ All too often, women who are tipped workers say they feel powerless when harassed by a customer because they feel financially dependent on these customers and their tips.⁸⁴ One study found that women working in states that allow tipped workers to be paid a \$2.13 per hour tipped wage are twice as likely to be sexually harassed as women working in states requiring the full minimum wage.⁸⁵

JORDAN'S STORY

Jordan worked as a dishwasher at a fine dining restaurant when he was 19 years old. One night after a busy day, the head chef and owner, drunk from drinking at the restaurant bar, cornered Jordan. The chef touched Jordan and made comments about his body. The sexual harassment continued throughout Jordan's time at the restaurant. Jordan constantly felt ashamed and vulnerable, but he felt that he had to put up with it. There did not seem to be another option—the chef was influential in the restaurant community and Jordan knew he had the power to help or hurt Jordan's career. In his time since leaving the restaurant, Jordan has found that sexual harassment of the LGBTQ community is common in the restaurant industry – particularly against those just starting out in their careers. (Interview with the Senate HELP Committee Democratic Staff, 12/3/2018).

Workplaces that are Not Diverse

Workplaces that have groups of workers that resemble each other are more likely to foster workplace cultures that make it difficult for workers who are different in some way to report.⁸⁶ According to the EEOC Task Force on the Study of Harassment in the Workplace, “[w]orkers with different demographic backgrounds than the majority of the workforce can feel isolated and may actually be, or at least appear to be, vulnerable to pressure from others.”⁸⁷ For example, in workplaces with mostly men, women may be seen as outsiders who have not conventionally belonged and may feel isolated from coworkers or mentors with whom they can share common experiences.⁸⁸

As just one example, the low number of women in the workplace may exacerbate harassment in the tech and venture capital industries. National Venture Capital Association (NVCA) President and CEO Bobby Franklin explained, “[a] lack of diversity among investment decision makers at venture firms has, in some instances, led to cultural dynamics that have overshadowed an inclusive professional environment.”⁸⁹ Women represented 11 percent of investment partners in 2016,⁹⁰ and female entrepreneurs only received two percent of venture capital dollars in 2017.⁹¹ One survey found that more than 50 percent of 869 startup founders had experienced or knew someone who had experienced sexual harassment in the workplace, and three quarters of female founders surveyed reported having personal experience with sexual harassment.⁹² In the technology sector, where 80 percent of executives are men,⁹³ a survey of more than 200 senior-level women found that 60 percent reported receiving unwanted sexual advances.⁹⁴ Another survey found that workers in the tech industry specifically reported unwanted sexual attention at rates nearly two times higher than tech workers in other industries.⁹⁵

Workplaces with Substantial Power Differentials

Issues of power and control underlie workplace harassment across many industries. As noted by the EEOC Task Force on the Study of Harassment in the Workplace, often, but not always, harassment involves a worker who has less authority than a manager or their employer, and less ability to leave the situation because the worker needs the job to support their families or advance

their careers.⁹⁶ In some industries, power dynamics are particularly acute, including in many low-wage industries where workers rely on their weekly wages to feed their families or industries where undocumented immigrants fear they may be deported. In other industries, some workers or employers may have outsized power that makes it particularly difficult to report. The EEOC has found that significant power disparities between groups of workers is a risk factor for harassment.⁹⁷

In the biomedical field, power dynamics between senior and less-established researchers also play a role in fostering a culture that breeds harassment. Because research funding is often tied to a principal

ADDY'S STORY

Addy cleans houses in Vancouver, Washington. She was harassed by one of her employers, who asked her to do things like clean the house naked. When she refused, he threatened to call immigration and report her for being undocumented. Another employer sexually assaulted her in his home, but Addy was scared to call the police because of her undocumented status. (Interview with the Senate HELP Committee Democratic Staff, 11/26/2018).

researcher rather than an institution, students or workers may be reluctant to reveal the harassing behavior of those established researchers, for fear that doing so could affect the student or worker's own professional trajectory.⁹⁸ These senior researchers, many of whom are men serving in positions of authority as deans, department chairs, or dissertation advisors, can influence funding, research direction, and recruitment decisions for their students and workers.⁹⁹ These professional costs can drive fears of retaliation that make it incredibly difficult for workers to report harassment. While researchers may be reticent to report these incidents to their institution, half of women in academia report experiencing harassment.¹⁰⁰ An independent survey found this number increases to 71 percent when researchers are in isolated environments conducting field research.¹⁰¹

Worker organizing and collective bargaining can help reduce imbalances of power that often facilitate harassment. Union contracts can create contractual harassment protections that exceed existing state and federal protections. For example, UNITE HERE hotel workers organized and won contractual protections including GPS-enabled panic buttons and a ban on guests who have a track record of sexually harassing workers, while SEIU workers in California successfully lobbied the state legislature to enact a new law requiring registration of janitorial companies and mandatory sexual harassment training in the industry.¹⁰² However, employer opposition to organizing has intensified in recent decades, and the share of workers with the protection of a union contract has declined.¹⁰³

Isolated Workplaces

According to the EEOC's Task Force on the Study of Harassment in the Workplace, home health care aides, janitors, housekeeping workers, and farmworkers are examples of workers whose jobs often require them to be in isolated environments, which leaves them particularly vulnerable to harassment.¹⁰⁴ Often, this harassment may be from third parties with whom workers must interact due to their jobs. For example, home health care workers may experience harassment from patients

GILDA'S STORY

Gilda, a black immigrant from Guatemala, has worked in Seattle for 14 years. During this time, she was employed as a family's live-in domestic worker, serving as the family's nanny, cook, housekeeper, and more. The family she worked for would verbally abuse her, threaten to call Immigration and Customs Enforcement to deport her if she spoke out or left, and would often refuse to pay her. She was so afraid of being deported or arrested that she put up with the abuse for four years, finally fleeing the family after they withheld thousands of dollars in pay from her.

Years later, on her first visit to clean his house, a male client asked Gilda to wear a sexual nurse's outfit. When she refused, he pushed her against the wall, began touching her, and raped her. She found the sudden strength to escape, fleeing from the home and leaving everything—her wallet, purse, keys, and supplies—behind. She ran to the nearest store and called her brother-in-law for help. Gilda felt that she had nowhere else to turn. She strongly supports increased funding for community-based legal and social services to assist workers who are not employed in formal workplaces. It is important to her that changes are made to protect the life, security, and dignity of women in all workplaces. (Interview with the Senate HELP Committee Democratic Staff 11/27/2018).

due to the nature of their work, especially since they work in the patients' homes, away from other coworkers or a familiar environment.¹⁰⁵ These positions often require touching, moving, bathing, and undressing patients, which could create vulnerability or a false sense of intimacy.¹⁰⁶ A limited study conducted in Oregon found that 41 percent of home care workers surveyed reported incidents of sexual harassment and 14 percent reported incidents of sexual violence.¹⁰⁷

In the hotel industry, housekeeping workers may be alone with hotel guests in home-like environments and often work behind closed doors away from security or other colleagues.¹⁰⁸ According to research conducted by UNITE HERE, a survey of 500 hotel and casino housekeepers and servers found that 58 percent of hotel workers and 77 percent of casino workers had faced some form of sexual harassment by a guest.¹⁰⁹ UNITE HERE found 49 percent of housekeepers in Chicago reported having experienced guests answering the door naked or exposing themselves; guest nudity was the most common manifestation of sexual harassment for housekeepers.¹¹⁰

NURIS' STORY

Nuris, an immigrant from El Salvador, worked as a hotel housekeeper in Seattle. One day, she knocked on the door for permission and entered a room to find a guest standing naked waiting for her. Distressed, she fled despite his calls for her to stay. Though she reported the guest to her shift supervisor, they both felt pressure to finish the job, so Nuris and her supervisor returned to clean the room together. Nuris is happy that Seattle has since enacted a city ordinance to require housekeepers to carry panic buttons on the job, but she knows there is much more that must be done to ensure that all workers have access to safe working environments. (Interview with the Senate HELP Committee Democratic Staff, 11/28/2018).

PANIC BUTTONS FOR HOTEL WORKERS AND NOTICES FOR GUESTS

In response to the pervasive sexual abuse and harassment experienced by hotel workers, workers and their unions have organized across the country to demand greater protections—and in many cities their advocacy has brought meaningful change. In 2016, Seattle city voters overwhelmingly approved Ballot Initiative 124, which established a city ordinance requiring the use of panic buttons in Seattle city hotels as a way for workers to call for help if they experience assault or harassment on the job.

Many hotels in cities including Washington, D.C., New York, and Long Beach also provide panic buttons, and AHLA is now working to expand these efforts. Though panic buttons are an example of an industry-specific harassment prevention mechanism, it is not the complete solution. Such efforts must be met with comprehensive training, education, and outreach as well as robust efforts to establish an inclusive and responsive workplace culture.

While hotel workers work alone in hotel rooms and home health care aides work alone in patients' homes, janitors often work at a time of day when many others are not around.¹¹¹ Janitorial workers often clean buildings early in the morning and late at night. Janitors at physically smaller

workplaces, such as banks and retail stores, tend to work by themselves. While some janitors work in larger workplaces as part of a crew, they still are often working in isolated locations at odd hours.¹¹² In 2016, SEIU United Service Workers West (USWW) leaders surveyed their union and found about 50 percent of their workers said they had been sexually harassed or assaulted on the job, and another quarter said they had witnessed harassment.¹¹³ Another report estimates that as many as 75 percent of janitors experience sexual harassment.¹¹⁴

Sexual harassment among female farmworkers, who often work in isolated conditions in fields and without security, is similarly rampant. Eighty percent of respondents in a survey of California Central Valley female farmworkers reported experiencing harassment.¹¹⁵ In addition, farm work often leaves workers isolated from a larger community and makes it difficult for workers to find resources that could help them.¹¹⁶ Sexual harassment and assault is so pervasive in farm work that some California workers refer to certain fields as “field de calzon” which translates to “field of panties,” referring to the number of rapes that occur in the fields.¹¹⁷

Workplace harassment policies and trainings do not consistently follow best practices and are not consistently implemented.

Formal nondiscrimination and anti-harassment policies are a primary workplace harassment prevention tool used by employers across industries. In a series of cases in the late 1990s, the Supreme Court found that employers could protect themselves against liability for harassment in some cases if they had appropriately communicated harassment is not tolerated and responded to harassment claims when they occur.¹¹⁸ In response, companies began adopting policies and trainings, and by 2017, the Association for Talent Development found that 71 percent of nearly 1,000 organizations surveyed offered sexual harassment prevention training.¹¹⁹

The EEOC has identified a number of best practices that can lead to effective anti-harassment policies, which are broadly categorized into five themes outlined below:¹²⁰

- 1) **Policies should be comprehensive.** For example, they should clearly state and cover all forms of harassment, clearly apply to all workers, and must address situations of harassment when it involves a third party, including clients, customers, and applicants.
- 2) **Policies should explicitly denounce retaliation.** For example, the most common reason harassment is not reported is because survivors fear retaliation that could affect their earnings, their working environment, or their ability to continue working at all; policies should clearly explain that retaliation is prohibited and give examples of what constitutes retaliation.
- 3) **Policies should be clearly written and accessible.** For example, policies should be written in a way that the average worker can understand, should be translated into all languages that are spoken by workers, and should be widely posted and available.
- 4) **Policies should encourage reporting and outline specific reporting channels.** For example, policies should encourage reporting even when workers are unsure whether behavior they have observed or experienced rises to the level of prohibited harassment.

Policies should include multiple options for how to report complaints, including identifying more than one individual workers can report to.

- 5) **Policies should set clear expectations for employers' investigations.** For example, investigations should be prompt, impartial, and thorough. The policy should outline the investigation process so that workers understand the post-complaint procedures, should explain expectations about confidentiality, and should outline potential steps the employer may take to address any misconduct identified. Investigators should be well-trained, neutral, and independent.

Nondiscrimination policies and procedures are more effective when accompanied by high-quality training based on social science research on adult learning and behavior change. According to the EEOC Select Task Force on the Study of Harassment in the Workplace, when acts of harassment are defined and examples of harassment are outlined in training, more workers are able to identify unacceptable behavior in the workplace.¹²¹ Training can increase an individual's likelihood of reporting, especially when they are combined with holistic efforts to establish a positive workplace culture.¹²² However, while the EEOC Select Task Force on the Study of Harassment in the Workplace found that training increases awareness of harassment and reporting, it also recognized that some studies have found not all training positively impacts employee behaviors.¹²³ In order to help employers craft more effective trainings, the EEOC has outlined best practices, some of which include:

- Trainings should be regular and reinforced, and every worker should meaningfully participate;
- Trainings should be specific to the organization and workers, discuss the employer's policy and complaint process, and use examples specific to the workplace;
- Ideally, trainings should be conducted by live trainers or include interactive features; and

NO FEAR ACT AND FEDERAL AGENCIES

In 2002, Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act, which includes education requirements related to policies and trainings among other things. Senator Murray requested information about the Departments' of Education, Health and Human Services, and Labor efforts to address and respond to workplace harassment, and found that trainings vary from department to department. As just one example:

- ED requires all employees to complete an online course on sexual harassment awareness and requires managers, supervisors, and employees to complete training on prevention of harassment and sexual harassment.
- HHS training requirements vary across its operating divisions.
- DOL requires all employees to take "No FEAR Act Training" every two years.

The departments' responses are available in Appendix II.

- Supervisors and managers should receive specialized training, including “information on how to prevent, identify, stop, report, and correct harassment.”¹²⁴

Yet, while policies and trainings appear to be widely utilized, Democratic staff found that policies and trainings that follow best practices are not consistently provided to all workers, and some employers do not always follow-through on executing their policies appropriately. Some of the biggest areas of concern are identified below.

Policies and Trainings in Small and New Businesses

Democratic staff found that some employers are not adequately investing in, or do not have access to, the resources necessary to develop and implement anti-harassment policies and trainings consistent with best practices. This is a particular problem in small businesses, where prevention efforts may be lagging behind other employers. According to one study, “at businesses with zero to four employees, only 39 percent had such policies, compared to 85 percent of businesses with 50 or more employees . . .”¹²⁵ Only nine percent of surveyed small businesses “reviewed policies around diversity and gender equality in hiring and promotion,” and only 11 percent had issued reminders about sexual harassment policies.¹²⁶

Smaller businesses that do have policies face unique challenges to implementing some of the EEOC best practices that rely on staff capacity. Small businesses may not have sufficient numbers of workers to identify multiple people to intake reports of harassing behavior. Small businesses may also have an increased challenge of keeping investigations confidential. For example, in some cases of small, family-operated businesses, the person designated to handle human resource (H.R.) issues and receive complaints may be a relative of a supervisor or manager who is perpetrating the harassment, which could cause workers to be particularly reticent to raise issues. Finally, small businesses may lack resources to develop interactive trainings or obtain expert assistance with developing best practices.

In conversations with Democratic staff, NVCA discussed similar issues in smaller venture capital firms and early-stage companies.¹²⁷ While some venture capital firms have financial capital available to invest in H.R. resources, most firms are small and face similar logistical challenges of smaller employers, including fewer staff to receive complaints. NVCA President and CEO Bobby Franklin wrote, “Some venture firms and early-stage startups have H.R. policies and best practices in place, but many do not. Smaller firms or startups may not have dedicated H.R. staff. Because there is no industry standard to turn to, policies, best practices, and education proved to be critical needs.”¹²⁸ NVCA moved to address this common obstacle faced by the venture capital ecosystem by releasing several H.R. resources in February 2018.¹²⁹

Decentralized Workplaces and Third Party Harassment

A second area of concern Democratic staff identified across multiple industries is the uneven implementation of prevention programs and policies in workplaces that do not resemble a corporate office environment. As EEOC’s Task Force on the Study of Harassment in the Workplace found, some workplaces are decentralized and geographically dispersed.¹³⁰ In these situations, workers do not operate in one central office, but rather workers and supervisors are dispersed across large geographic areas.¹³¹ For example, in large chain retail stores or restaurants,

BEVERLY'S STORY

Beverly is a fast food worker who was sexually harassed at work by her coworkers starting at age 17. Her breasts were touched, and sexual gestures were made toward her repeatedly. The experience was particularly difficult for Beverly because it gave her flashbacks to a previous rape. She left working at the restaurant in order to escape the harassment. (Interview with the Senate HELP Committee Democratic Staff 12/3/2018).

most workers operate in smaller franchises with rotating managers, while some contractors and day laborers may move from worksite to worksite with different managers and different work environments altogether. According to the EEOC's Task Force on the Study of Harassment in the Workplace, in these situations, it is more challenging for workers to consistently receive in-person training directly from a central office location or to tailor training to specific worksites.¹³² Managers in decentralized locations may also feel less accountable for their behavior or workers in decentralized locations may be unsure of how to report in their location.¹³³ The challenges of communicating and educating workers in geographically dispersed locations may exacerbate these issues.¹³⁴

Unlike most workers in a corporate office environment, workers in decentralized workplaces frequently interact with third parties, which presents harassment risk factors that can sometimes be overlooked. In these cases, workers may be harassed by individuals who are not coworkers but rather members of the public or contractors who have a different employer.¹³⁵ Employers can address these risk factors by implementing policies that explicitly and proactively address harassment involving third parties, including customers, clients, patients, vendors, etc. While in some cases employers have leverage over third party vendors or subcontractors and can end contracts in order to protect their workers, economic power imbalances between contracting companies and the nature of customer service in some industries may make managing customer relationships and behaviors difficult.

Inconsistent Follow-Through on Policies and Trainings

A third concerning theme identified was that while policies may exist on paper, they are not always executed effectively. Ensuring complaints are appropriately received and addressed is critically important. Without meaningful follow-up and appropriate investigation of workplace complaints, workers may be reluctant to report behaviors that should be addressed. Unfortunately, in conversations with Democratic staff, workers reported they are consistently skeptical they will be believed if they come forward, that employers will handle the complaint fairly and according to written policies, or that the problem will be resolved. This is a trend not

WADE'S STORY

Wade is an LGBTQ worker at a fast food restaurant. He reports that his shift manager referred to him and another male coworker as lovers and would make inappropriate comments about Wade and the LGBTQ community that made him feel extremely uncomfortable about his body and his relationships with his coworkers. The shift manager made it clear that any form of homosexuality was not welcome in the store.

Wade made several complaints to management, but the comments never stopped. Wade reports the experience felt like "torture" and caused him extreme anxiety – he began to try to change his appearance to avoid the abuse. (Interview with the Senate HELP Committee Democratic Staff 12/3/2018).

only in the private sector—the 2018 MSPB survey of federal workers found that only eight percent of employees who experienced sexual harassment believed corrective action had been taken in response to their report of harassment.¹³⁶

Potentially contributing to a lack of follow-through on policies, Democratic staff found even some large corporations did not have trainings in place – even for supervisors in charge of intake and follow-through on complaints of harassment. The Democratic staff spoke with one large corporation that has a substantial HR staff – but did not provide consistent training to supervisors except in California, where it is mandated by state law.¹³⁷ Several industry associations were beginning new trainings for their own managers after the #MeToo movement raised new concerns but had not regularly provided them before 2017. An HR Policy Association internal survey showed that about half of the companies surveyed reported that they were planning to provide new training in the wake of the #MeToo movement.¹³⁸

Quality and Availability of Targeted Trainings

According to several industry associations, there are not many trainings developed that meet EEOC's best practices by incorporating industry-specific examples and focusing on workplace-specific processes and procedures. For example, William Dombi, the President of the National Association of Home Care and Hospice (NAHC), said that while there are many policies in place in most of the industry, there is no systemic or industry-specific guidance on trainings.¹³⁹ Representatives of ISSA - The Worldwide Cleaning Industry Association (ISSA) similarly noted the difficulties of finding trainings for their industry, and the Association is considering developing its own online training for its members.¹⁴⁰

Employers in a number of industries have access to presentations and other forms of training through their employment practice liability insurer.¹⁴¹ Trainings conducted by insurance companies, who may be liable for any payouts as a result of a finding of employer wrongdoing, may naturally focus

A SEXUAL VIOLENCE TRAINING PROGRAM FOR THE HOTEL INDUSTRY

In 2016, the American Hotel and Lodging Association (AHLA) partnered with the National Alliance to End Sexual Violence (NAESV) to produce an industry-specific training program for all hospitality workers on ways to identify, deter, and report sexual violence, assault, and harassment.

The 30-minute interactive webinar incorporates the experiences of hotel bartenders and housekeepers by using industry-specific scenarios and asks trainees questions about how to respond in certain situations. The training also incorporates bystander intervention techniques. Though the training was developed with the goal of being a standard for the industry, more work remains to ensure it is being implemented nationwide. In addition, the training focuses solely on sexual violence and harassment—more can be done to address all forms of harassment.

While industry-wide education and trainings are important, AHLA and NAESV both recognize such efforts must be partnered with strong leadership. Without a serious commitment from management to ensure implementation of these strategies, the training program would not be as effective.

more on avoiding liability than on best practices for reducing or preventing harassment from the perspective of a worker. And many H.R. professionals noted the lack of external training resources that did not take a legal/compliance approach.¹⁴² While compliance-focused trainings may be effective in educating workers about the law, EEOC’s Task Force on the Study of Harassment in the Workplace cited several studies showing that training may not change attitudes toward harassment or behaviors to prevent harassment from occurring in the first place, especially if these trainings are conducted without context or follow-up.¹⁴³

Several industry associations noted they would like to see their industry adopt new types of targeted trainings that are prevention-focused. The Pharmaceutical Research and Manufacturers of America (PhRMA), for example, explained that unconscious bias trainings may help promote a more inclusive workforce; the Associated General Contractors of America (AGC) stated more diversity and inclusion trainings are needed in industries where women are disproportionately underrepresented; and the American Hotel and Lodging Association (AHLA) referenced bystander training as potentially helpful in hotel environments where workers interact with third party guests.¹⁴⁴

Establishing an inclusive workplace culture is critical to harassment prevention efforts.

ERIN’S STORY

Erin is a documentary filmmaker who, along with other coworkers, was sexually harassed at an advertising company. She says multiple men, including the CEO and vice president of the company, would make inappropriate comments about their appearances, such as, “I wish I got in early enough to look up your skirt” and “I almost broke my neck looking at you.” Erin stopped wearing dresses and skirts to work and stopped speaking up in meetings; she says she could no longer be herself. While the advertising company did have a Human Resource Department, Erin says she did not consider reporting because the company was so permeated with a culture that accepted this type of behavior – she believed that reporting would not matter. (Interview with the Senate HELP Committee Democratic Staff, 11/26/2018).

One theme raised consistently in conversations with the Democratic staff—whether with an association, worker, advocate, or company—was that establishing a workplace culture that values equal opportunity and does not tolerate discrimination of any kind is a critical component of combatting the epidemic of workplace harassment. Strong trainings and policies are important prevention tools, but without a robust culture of inclusivity, workers may not trust the policies in place or take trainings seriously.¹⁴⁵

Harassment proliferates in environments that foster power imbalances. As a result, harassment is inextricably connected to workplace culture, diversity, and inclusion. Strong leadership can set the standard that harassing behavior is not tolerated. Many industry associations also emphasized the importance of intentional diversity and inclusion efforts to recruit women in jobs of all levels throughout a company.¹⁴⁶ While companies with women in top leadership roles undoubtedly also

face harassment, research indicates that companies led by diverse teams have stronger workplace culture with less discrimination and harassment.¹⁴⁷ Studies of harassment, including in the military, have found that harassment is particularly pervasive in hierarchical, male-dominated organizations.¹⁴⁸ Another study found that men tend to have a more difficult time recognizing sexism or unfair treatment based on sex.¹⁴⁹

According to some experts, soliciting anonymous or confidential feedback through “climate surveys” is a potential tool to assess whether the company has created an appropriate, inclusive workplace culture.¹⁵⁰ These surveys can provide employers with feedback so that management understands whether the policies and practices they have put in place are effective and taken seriously. Over time, these data collection efforts can provide invaluable insights including answers to questions such as:

- What are the most common types of harassment experienced by workers?
- Which workers are experiencing harassment more frequently?
- Do workers know how to identify harassment?
- Do workers know how to report harassment if they experienced it or saw it occurring?
- Would workers feel comfortable reporting if they experienced harassment?
- What barriers do they encounter to reporting?

Unfortunately, many employers are reluctant or unable to survey their workers to understand any ongoing issues with workplace harassment. In a number of conversations with Democratic staff, legal liability was raised as a key reason that some employers may be unwilling to survey their own employees about harassment in the workplace. Other barriers that employers have cited are the lack of staff, time, and financial resources needed to develop and implement an effective survey—especially for smaller companies without large human resources operations.

Expanding Protections and Enforcing Worker Rights

Policymakers should strive to prevent harassment in the workplace, but they should also do more to ensure workers and employers can effectively address harassment when it does occur. One of the most critical tools workers can use to address workplace harassment is the legal framework that Congress passed to prohibit workplace discrimination, including harassment. While enacting federal anti-discrimination laws was a giant step forward, millions of workers are not covered by their protections, leaving them with little legal recourse and little leverage to ensure employers address harassing behavior. Even the workers who are covered by federal law struggle to effectively assert their right to be free from harassment at work.

A review of federal case law and conversations with attorneys, advocates, and workers revealed a number of issues that should be addressed in order to strengthen the EEOC’s ability to enforce federal law and strengthen workers’ ability to hold their employers accountable. This section of the report will consider the barriers the justice system creates for workers bringing claims of harassment and the reforms that are needed to ensure workers are able to access justice and assert their rights.

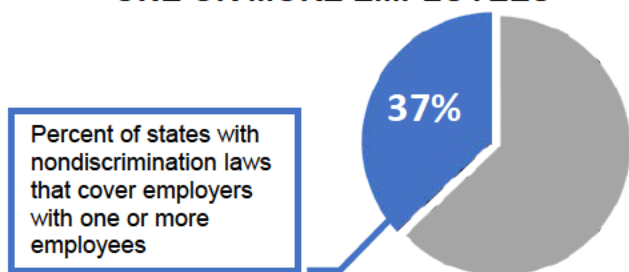
Federal anti-discrimination laws leave out millions of workers.

Businesses with Fewer than 15 Employees

No worker should experience harassment and discrimination at work—regardless of the size of their employer. Yet, federal anti-discrimination laws do not protect workers at small businesses from harassment and discrimination. Title VII, the ADA, and GINA apply only to employers with 15 or more employees, and the ADEA applies to employers with 20 or more employees.¹⁵¹ As a result, unlike other workers, workers at small businesses cannot bring claims against their employer for discrimination on the basis of race, religion, national origin, sex, age, disability, or genetic information, including harassment. Somewhere between 10 percent and 17 percent of U.S. workers (12 million to 20 million workers) are not covered by the federal prohibition on harassment and discrimination simply because they work at a small business.¹⁵²

Federal anti-discrimination laws apply only to employers with 15 or more employees – or in the case of the ADEA, 20 or more employees.

STATES WITH PROTECTIONS FOR EMPLOYEES AT BUSINESSES WITH ONE OR MORE EMPLOYEES



Source: HELP Committee Democratic Staff research

Recognizing the gap left by federal anti-discrimination laws, states have adopted protections that extend to workers at small businesses who cannot hold their employers accountable for harassment under federal law. At least fourteen states (Alaska, Colorado, Hawaii, Maine, Michigan, Minnesota, Montana, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, and Wisconsin) and Washington, D.C. have implemented nondiscrimination laws that cover employers with one or more employees.¹⁵³ Nondiscrimination laws in an additional four states (Arizona,

California, Illinois, and New York) cover employers with one or more employees for sexual harassment claims specifically.¹⁵⁴ In all, 37 percent of states offer some form of protections for workers at businesses with one or more employees.

Some states go even further than providing legal protection—they require all employers, including small businesses, to adopt mandatory prevention practices. For example, New York requires all employers to provide mandatory interactive training.¹⁵⁵ In California, employers with five or more employees must provide training by 2020.¹⁵⁶

Independent Contractors and Interns

Currently, there are millions of vulnerable interns and independent contractors in the workplace.¹⁵⁷ Federal anti-discrimination laws only protect workers who are legally recognized as “employees.” Workers who are classified as independent contractors, including many home health care workers and domestic workers, are often not considered employees and are not protected by the federal anti-discrimination laws.¹⁵⁸ Many interns similarly are not protected by these laws because they are not classified as employees.¹⁵⁹

ANGELA'S STORY

Angela is a freelance professional who provides beauty services like hair, makeup, and grooming to actors and models. As the only African-American professional at her former agency, Angela worked hard to develop a diverse portfolio that featured clients typically underrepresented in the entertainment and advertising industry.

A few years ago, Angela's former agent started to verbally harass her, for example yelling “f*ck, you're black” when he was unhappy with her work, telling her to “keep a smile on her face” so clients did not “think she's a black b*tch,” and telling her to take down a photo on the agency website so that clients would not know she was black. When she complained, her agent would punish her by cancelling bookings.

Angela wanted to quit, but relied on her agent for contacts and clients and was worried she would be unable to make a living if she left. After putting up with the verbal abuse for over a year, Angela's emotional health began to suffer, and she quit. Angela struggled to rebuild on her own, drawing on her savings while she recruited a client base from scratch.

If Angela was protected by federal anti-discrimination laws, she may have been able to bring a claim against her former agent for harassment and discrimination on the basis of race. But because she was not an employee, federal law did not protect Angela. (Interview with the Senate HELP Committee Democratic Staff, 11/24/2018)

In order to address this loophole that leaves millions of workers not covered by federal anti-discrimination laws, some states have extended protections to interns, independent contractors, and others who are left behind. At least seven states, including California, Connecticut, Delaware, Maryland, New York, Oregon, and Vermont, and Washington, D.C. have extended protections against both harassment and discrimination to unpaid interns.¹⁶⁰ Texas and Illinois extend protections against sexual harassment to unpaid interns.¹⁶¹ Kansas extends protections to interns who work for the state government, but not to interns who work for private employers.¹⁶² At least six states, including California, Minnesota, New York, Pennsylvania, Vermont, and Washington, have extended protections to independent contractors.¹⁶³

LGBTQ Workers

The EEOC has made clear that LGBTQ workers are already protected against discrimination on the basis of sexual orientation and gender identity under Title VII because sexual orientation and

PROTECTIONS FOR FEDERAL WORKERS

LGBTQ federal employees gained some protection against discrimination at work for the first time in 1995, when President Bill Clinton issued an executive order that prevented federal workers from being discriminated against because of their sexual orientation when going through the security clearance process. In 1998, President Clinton also prohibited sexual orientation discrimination in federal competitive hiring processes.

These protections were expanded further when President Barack Obama signed an executive order adding gender identity to the prohibition on discrimination and prohibited federal government contractors and sub-contractors from discriminating against LGBTQ workers.

gender identity are inherently aspects of a person's "sex."¹⁶⁴ However, differing interpretations of Title VII have led to confusion and uncertainty for LGBTQ workers, which has spurred Congress to introduce legislation to clarify these protections while expanding protections in other areas of civil rights law.¹⁶⁵ Approximately 3.8 percent of the population identifies as lesbian, gay, bisexual, or transgender, and these LGBTQ workers too often experience harassment at work.¹⁶⁶

Harassment of members of the LGBTQ community can take many forms. Harassment can include unwanted touching, contact, or unwelcome sexual behavior. Other examples of harassment experienced by members of the LGBTQ community can include harassment because of a gender transition, such as a coworker "intentionally and persistently failing to use the name and gender pronoun that correspond to" the worker's gender identity or an employer's denial of equal access to a common restroom.¹⁶⁷ It can also include harassing a worker because of their "sexual orientation, for example, by [using] derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex."¹⁶⁸

This type of harassment is not uncommon and, similar to other forms of harassment, harassment based on sexual orientation or gender identity often goes unreported. As noted by EEOC's Task Force on the Study of Harassment in the Workplace, 35 percent of lesbian, gay, and bisexual (LGB)-identified people report having been harassed.¹⁶⁹ Yet, only one out of every 25 complaints about workplace discrimination are made by LGBT employees.¹⁷⁰ Data from a nationally representative survey of LGBT people conducted by the Center for American Progress show that 25 percent of LGBT respondents had experienced discrimination because of their sexual orientation or gender identity in 2016.¹⁷¹ Another 2009 survey of a nationally representative sample found that "58 percent of LGB respondents reported hearing derogatory comments about sexual orientation and gender identity in their workplaces."¹⁷²

Like other forms of discrimination, harassment based on gender identity or sexual orientation can have devastating effects on workers. According to the Williams Institute, LGBT workers who have experienced employment discrimination, or experienced fear of such discrimination, have "higher levels of psychological distress and health-related problems," lower job satisfaction and higher rates of absenteeism, and are "more likely to contemplate quitting" than workers who have not experienced or do not fear discrimination.¹⁷³ In one survey conducted by CareerBuilder, 15 percent

of the respondents said they had missed work by calling in sick because of the bullying they experienced.¹⁷⁴

STATES THAT PROHIBIT DISCRIMINATION ON THE BASES OF SEXUAL ORIENTATION AND GENDER IDENTITY	
21 states and Washington, D.C.	Prohibit discrimination based on sexual orientation and gender identity
6 states	Prohibit discrimination against public employees based on sexual orientation and gender identity
5 states	Prohibit discrimination against public employees based on sexual orientation only
1 state	Prohibits discrimination based on sexual orientation only
17 states	Do not prohibit discrimination based on sexual orientation or gender identity

Source: Human Rights Campaign

Workers have insufficient time to decide whether to bring harassment claims.

Federal anti-discrimination laws enforced by the EEOC set up a specific process for workers to bring claims of civil rights violations, including harassment claims, against their employers.¹⁷⁵ Critically, if a worker does not file a charge with the EEOC, they cannot bring a claim against their employer in federal court.

The current reporting deadlines to file a charge are unnecessarily short, inhibiting workers from bringing claims to obtain relief and impeding efforts to create safer, more inclusive workplaces. The number of days a worker has to file a charge related to harassment with the EEOC depends on the existence of state or local employment discrimination laws, the type of discrimination alleged, and the type of employer.¹⁷⁶ In states or localities where there is a state or local agency that enforces a law that prohibits discrimination on the same basis as federal law, employees must file a charge within 300 days of the last incident of harassment, while otherwise employees have only 180 days to file.¹⁷⁷

There is a different process for federal workers, with even stricter timelines. Federal workers must contact a designated “EEO counselor” within 45 days of the last incident of harassment.¹⁷⁸ At that point, an employee has the option of going through either counseling or an alternative dispute resolution process, such as mediation.¹⁷⁹ If those fail, the worker has 15 days from receiving a notice from the EEO counselor to file a charge with the EEOC.¹⁸⁰

Not only are these timelines confusing, but they are also too short to give workers time to determine whether they want to proceed with a formal process. The short timeframes to file claims with the

EEOC are substantially shorter than the statutes of limitations for other workplace protections and discrimination claims.¹⁸¹ For example, the Supreme Court determined a four-year statute of limitations applies to Section 1981, which outlaws certain types of discrimination based on race.¹⁸²

According to Barbara Wahl, a partner at the law firm of Arent Fox, the short statute of limitations is one of the largest challenges workers can face when asserting sexual harassment claims against their employers. She explained that “many women from other workplaces have conferred with me about alleged inappropriate conduct in their working situations, but they have one thing in common—they are outside the window to file with EEOC.”¹⁸³ In addition to workers being confused about timelines or not knowing that they needed to file with the EEOC, experiencing harassment can lead survivors to feel angry, fearful, humiliated, guilty, shameful, powerless, and betrayed.¹⁸⁴ Furthermore, many survivors experience physical and emotional challenges after harassment, which can make the short timeline to decide to launch a formal process additionally burdensome.¹⁸⁵ As Alexis Ronickher, a partner at the law firm of Katz, Marshall, and Banks, explained, “[h]arassment is disempowering and emotionally devastating. Three hundred days is not enough time for many harassment victims to sufficiently recover emotionally to move forward with their claims.”¹⁸⁶

NINA’S STORY

Nina used to be a singer in a band – until her band manager started sexually harassing her. He continually made inappropriate remarks, including about how other managers found her attractive, and groped her. Ultimately, Nina had to leave the band in order to get away from his behavior. Her vocals were removed from a song used on a hit television show, and her career was derailed. Nina says the experience was extremely emotionally disturbing and she continues to deal with the impact on her life. She says she “changed career paths after losing confidence in my skills due to the abuse, and the loss of safety and career support.” (Interview with the Senate HELP Committee Democratic Staff, 11/25/2018).

Federal courts have narrowed the scope of legal protections for workers.

While federal anti-discrimination laws passed by Congress provide the basis for federal protections against harassment as a form of discrimination, federal courts have played a critical role in outlining the definitions of harassment and the type of conduct that is significant enough to be considered unlawful discrimination. Over the course of the past 30 years, federal courts have weakened some key aspects of federal anti-discrimination laws with rulings that have narrowed the scope of federal protections, contrary to Congressional intent. As a result, fewer workers have been able to successfully bring employment discrimination claims and prevail in those lawsuits. Three areas that have come under particular criticism from workers and civil rights attorneys include the scope of what constitutes hostile work environment harassment, the definition of a supervisor, and the standard of proof for proving retaliation claims.

Severe or Pervasive Harassment

Over time, some federal courts have created too high a bar to prove hostile work environment harassment. The Supreme Court found in *Meritor Savings Bank, FSB v. Vinson* that harassment

can be discrimination prohibited by federal law if it is sufficiently “severe or pervasive” to “alter the conditions of [] employment and create an abusive working environment.”¹⁸⁷ The “severe or pervasive” standard articulated by the Court was intended to be a middle path to define a hostile work environment as something more than offensive utterances, but that a worker was not required to show they suffered actual psychological or economic harm.¹⁸⁸

However, a number of lower courts have interpreted the Supreme Court’s “severe or pervasive” standard not as a middle path, as the Supreme Court intended, but rather as a very high bar for what constitutes abusive conduct. Suja Thomas, a Professor at the University of Illinois College of Law, and Sandra Sperino, a Professor at the University of Cincinnati College of Law, explained, “Courts have regularly used the severe or pervasive doctrine to dismiss cases where physical touching and/or repeated verbal harassment have harmed employees.”¹⁸⁹ This overly restrictive interpretation of “severe or pervasive” has become a barrier to workers’ ability to stop discrimination and harassment.

WHAT IS SEVERE OR PERVASIVE HARASSMENT?

In the following cases, workers alleged serious harassment that courts found were not “severe or pervasive”:

- **Donya Mitchell’s** supervisor made offensive comments about her, rubbed himself against her, picked her up, put his arm across her chest, and tried to kiss her. When Donya sued, the 11th Circuit Court of Appeals held for the employer, because Donya only alleged “16 specific instances of offensive conduct” over four years, which the Court found was “not that frequent” and accordingly not the kind of “severe” harassment prohibited by Title VII. *Mitchell v. Pope*, 189 F. App’x 911 (11th Cir. 2006).
- **Employees at Georgia Pacific Corporation** sued for race-based harassment, alleging offensive symbols, like “KKK” and nooses, were found on jobsites, and supervisors used racial slurs like the n-word and “black boy.” According to the 11th Circuit Court of Appeals in *Barrow v. Georgia Pacific Corp.*, even if these allegations were true, these were “isolated, sporadic instances of racial harassment” that were not sufficiently severe or pervasive to create an abusive working environment. *Barrow v. Ga. Pac. Corp.*, 144 F. App’x 54 (11th Cir. 2005).
- **Bonita Weiss** alleged her supervisor made jokes in front of other workers about Weiss being a “dumb blonde,” asked her on dates, repeatedly tried to kiss her, and placed signs saying “I love you” in her work area, even after she repeatedly asked him to stop. The court said that even assuming all this was true, the supervisor’s behavior was not serious and was “relatively isolated,” failing to meet the severe or pervasive standard for liability. *Weiss v. Coca-Cola Bottling Co. of Chicago*, 990 F.2d 333 (7th Cir. 1993).

Definition of Supervisor

Another area that has raised concerns is whether the definition of supervisor is adequate to capture the reality of power dynamics in the modern workplace. Whether a worker is harassed by a supervisor or by someone who is not a supervisor (for example, a coworker) matters in the determination of the level of liability an employer bears. When a supervisor is the one perpetrating the harassment and the harassment results in a tangible employment action such as termination or demotion, employers are automatically liable, or, where the supervisor's harassment created a hostile work environment, the employer must prove that it took effective steps to prevent and remedy harassing conduct.¹⁹⁰ But when the harasser is a coworker or other non-supervisory worker, or a third party like a customer, a worker must show the employer knew or should have known of the discrimination and failed to adequately address it.¹⁹¹ Proving such negligence is difficult, and imposes a higher evidentiary burden on the employee.

The primary Supreme Court case defining the role of supervisor is *Vance v. Ball State University*.¹⁹² In that case, the Supreme Court found a coworker is only a supervisor if that individual has the power to hire, fire, promote, or reassign the worker to a job with different responsibilities.¹⁹³ If the harasser merely directs the daily work of the complaining worker, or has a supervisory role that does not involve decision-making power over the particular worker, then the harasser cannot be considered a supervisor for the purpose of the employer's liability.¹⁹⁴ Due to the narrow definition of "supervisor" adopted in *Vance*, the lower standard of employer liability—and the higher burden of proof on plaintiffs—now governs harassment by a wide range of bosses and senior employees within a workplace who often have the ability to assign shifts and overtime, schedule break time, and provide direct supervision, but do not have the power to hire or fire.¹⁹⁵

Standard of Proof for Claims of Retaliation

Supreme Court decisions have also made it inappropriately difficult for workers with discrimination claims to prevail in court on charges of retaliation.¹⁹⁶ Federal anti-discrimination laws prohibit employers from retaliating against workers for opposing discriminatory practices such as harassment.¹⁹⁷ This means that an employer may not punish or take an "adverse action" against a worker for engaging in protected activity like filing a complaint, cooperating with an investigation about harassment, or opposing behavior that he or she believes is unlawful.¹⁹⁸

Unlike claims of discrimination—in which bias need only have been a "motivating factor" in the employer's adverse decision—workers must show "but-for" causation in order to prove claims of retaliation.¹⁹⁹ In other words, workers must show that their employers would not have taken adverse action against them *but for* their protected activity, and an employer can escape liability for retaliatory action if the employer can point to alternative reasons for taking adverse action against the worker. As a result, it is more difficult for workers to prove claims of retaliation than other claims under federal anti-discrimination laws. This is particularly problematic because retaliation is pervasive in cases of workplace harassment claims.

Nondisclosure agreements and forced arbitration can block justice for survivors and inhibit prevention efforts.

Employers have used contracts to silence workers and prevent transparency. There are two primary forms of agreements that are frequently cited as problematic: nondisclosure agreements (NDAs) and forced arbitration agreements (sometimes referred to as “mandatory arbitration”). While NDAs and arbitration can be used to resolve claims fairly if workers are free to choose when and how to agree to them, too often workers are given no choice but to agree to these provisions or forgo employment, usually against their own interests.

Nondisclosure Agreements

An NDA, also known as a confidentiality agreement, is a legal agreement between parties prohibiting disclosure of certain confidential information. While companies traditionally have used NDAs to protect trade secrets and other highly confidential company information, courts have allowed employers to forbid public disclosure of employer misconduct in NDAs only so long as it did not violate public policy interests, particularly in the context of reporting crime and ensuring public safety.²⁰⁰ There are two types of NDAs commonly at issue in harassment cases: 1) “pre-employment NDAs” that workers must sign before they begin employment, and 2) NDAs that are specific to a settlement and prevent a worker from speaking about harassment after it occurs.²⁰¹

The consequences of violating an NDA can be severe: employers can fire or discipline workers, survivors can be forced to pay back any money received in a settlement, and workers can be held personally liable for money damages to the employer, which is especially harmful to low-wage workers.²⁰² These consequences can have a chilling effect on workers discussing harassment or other forms of discrimination and prevent serial abusers from being exposed. It is important to note that workers have a right under the National Labor Relations Act to discuss their working conditions, including occurrences of sexual harassment.²⁰³

Seven states have limited or prohibited forms of nondisclosure provisions that silence sexual harassment survivors (Arizona, California, Maryland, New York, Tennessee, Vermont, and Washington).²⁰⁴ Washington State law prohibits employers from requiring employees to sign, as a condition of employment, an NDA preventing them from “disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and employee, off the employment premises.”²⁰⁵ The law permits confidentiality provisions in settlement agreements between employers and employees, allowing survivors to negotiate the information that should remain confidential as a condition of a settlement.²⁰⁶

Forced Arbitration

Forced arbitration refers to a requirement that workers individually arbitrate any legal disputes with the employer, rather than suing in court.²⁰⁷ These provisions are often in the fine-print of an employment contract that workers are required to sign in order to accept a job, resulting in many workers being unaware they are bound by arbitration clauses until they experience harassment or discrimination and attempt to file a lawsuit.²⁰⁸ The Economic Policy Institute estimates that more

than 60 million workers no longer have access to courts to protect their employment rights and instead must arbitrate their claims in forums and with arbitrators chosen by their employers.²⁰⁹

Growing evidence shows that mandatory arbitration produces different outcomes from litigation, most often to the disadvantage of workers, including a lower likelihood of a worker prevailing and lower damage recovery than in the courts.²¹⁰ Further, the confidentiality of the proceedings keeps fellow workers and the public from learning about the workers' accusations and any ultimate findings of wrongdoing, effectively hiding information that could result in additional workers coming forward.²¹¹ Several organizations and legislators have come out against forced arbitration because of its effect on harassment survivors. In February 2018, all 50 State Attorneys General penned a letter to Congressional leadership urging them to enact legislation prohibiting mandatory arbitration for sexual harassment claims.²¹² They stated ending mandatory arbitration of sexual harassment claims would help stop "the culture of silence that protects perpetrators at the cost of their victims."²¹³

Workers need support to bring legal claims.

Many workers, particularly low-income workers, do not have access to the resources they need to assert their rights. Navigating the EEOC process and court system can be difficult without the advice of a lawyer or other expert. To bring claims, workers must meet strict timelines to pursue a formal process that can vary based on where someone works and in what state the harassment occurred. Additionally, if workers decide to pursue a claim in court, they must navigate complicated court precedents.

Often, workers do not have the resources to obtain legal or other assistance for workplace harassment issues.²¹⁴ Hiring an attorney who can advise workers about whether they have experienced harassment or assist them as they attempt to navigate the complex legal landscape that governs civil rights claims is beyond the reach of many workers. According to one attorney who frequently litigates harassment cases, spending \$50,000, which in

TIME'S UP LEGAL DEFENSE FUND

In response to an outpouring of support from the Alianza Nacional de Campesinas and farmworker women, who wrote in support after women in entertainment shared stories of harassment and abuse, more 300 women connected to Hollywood came together to launch "TIME'S UP" to support survivors. As part of that effort, TIME'S UP launched the TIME'S UP Legal Defense Fund, which connects workers of all income-levels who have experienced workplace sexual harassment and related retaliation to attorneys and other professionals who may be able to provide advice and provides grants to attorneys who take cases on behalf of low-income workers who cannot afford upfront legal costs. The TIME'S UP Legal Defense Fund also provides outreach grants to groups that work with low-wage workers to raise awareness about workers' rights and available resources. Although the organization has been operational for only a year, they have received more than 3,700 requests for assistance. As Sharyn Tejani, Director of TIME'S UP Legal Defense Fund says, "*We have seen so many requests for assistance from workers from all over the country. This shows the need for legal assistance and improved protections for workers.*"

many cases will not even cover pretrial expenses, is beyond the capacity of most family budgets.²¹⁵ In addition to cost, the most common reasons cited by low-income families for not seeking help include believing they can handle the problem on their own or failing to identify the problem as a legal problem a lawyer could help solve.²¹⁶ As a result of these and other factors, low-income families seek help for only about one in every five legal issues they face, including for only about 19 percent of employment-related legal issues.²¹⁷

Federally Subsidized Legal Services

The primary source of federal funding to provide legal assistance to low-income families in need of an attorney for a civil need, like most workplace harassment claims, is LSC. Individuals whose annual income is at or below 125 percent of the Federal Poverty Guidelines qualify for legal services through LSC, which in 2017 was \$15,175 for an individual and \$31,375 for a family of four.²¹⁸ Such low thresholds serve to severely restrict the number of individuals and families in need who are provided these important services, and those who make more than the eligibility threshold may still struggle to afford legal help. Moreover, in 2017, only 28 to 38 percent of eligible legal needs brought to LSC grantees were addressed fully.²¹⁹ As a result, there is vast unmet need for legal assistance in civil complaints, including workplace harassment.

Democratic staff analyzed data provided by LSC, which are available in Appendix IV. The data provided by LSC show that grantees are only handling a small fraction of employment claims in most states due to limited resources and competing priorities.²²⁰ Nationwide, LSC's 133 grantees serving low-income Americans closed only about 2,000 employment discrimination cases last year.²²¹ In 34 states and Washington, D.C., grantees closed fewer than 30 employment discrimination cases.²²² In 10 states and Washington, D.C., the percentage of all employment discrimination cases was less than 10 percent of the total employment cases closed by LSC grantees; in contrast, in six states, employment discrimination cases made up at least half of the total employment cases closed.²²³

Private Firms and Damages

In addition to LSC, some workers receive legal assistance from private lawyers who may receive incentives to take on harassment cases even when a worker cannot pay upfront. Under these pay structures, often known as contingency-fee arrangements, the lawyer may waive most of their hourly fee in exchange for receiving a percentage of the worker's damages if the case settles or if the worker wins at trial. However, because some awards in harassment cases are calculated based

WENDY'S STORY

Wendy worked as a nanny for multiple families as part of a nanny-share agreement. Every morning, the dad of one of the families would exit the shower and try to start a conversation with Wendy. He would linger around the house, in various stages of undress. Wendy found his behavior "completely inappropriate." Wendy knew that if she left the job she would lose the income from all of the employers in the nanny share, so she decided to tolerate the behavior as long as possible. She says, "I felt like it would be very detrimental for my family's well-being to take a loss of the job, so I tolerated it [...]." Wendy says she felt "powerless" and did not know where to go for help. (Story submitted to the Senate HELP Committee Democratic Staff, 11/19/2018).

on the actual wages a worker lost, private attorneys often have more of an incentive to take the cases of higher-wage workers than low-wage workers.

Workers can also receive compensatory and punitive damages in some cases. Compensatory damages repay plaintiffs for nonmonetary losses, including emotional or mental pain and anguish in addition to loss of enjoyment of life, while punitive damages are intended to be a deterrent to punish employers for intentional discrimination so that it does not recur.²²⁴ Compensatory and punitive damages are subject to restrictive caps based on the size of the employer, which can dissuade private attorneys from taking on harassment claims. These caps are:

- \$50,000 for employers with 15-100 employees;
- \$100,000 for employers with 101-200 employees;
- \$200,000 for employers with 201-500 employees; and
- \$300,000 for employers with more than 500 employees.²²⁵

TERAVAINEN LAW FIRM

Natalie Teravainen runs a small, private law firm in Seattle dedicated to representing survivors of sexual harassment, assault, and abuse. Because these cases are rarely lucrative, especially on behalf of low-income workers, Natalie looked to a unique source to help fund her firm – a settlement from her own sexual harassment case.

While working as an employee at a company, one of the bosses Natalie worked for started sexually harassing her. He made comments in the company's break room about her needing to "take one for the team" and have sex with other employees "for the good of the [company]." He also touched her inappropriately and heckled her in front of other bosses. Whenever she spoke at meetings, he would turn her statements into sexual jokes and innuendos. After Natalie complained and the company investigated, she was told that, while her complaint was credible, the boss would receive a warning and they would have to continue working together. Natalie was told that if she wanted to be promoted, she would have to be friendlier with him.

Eventually Natalie decided to leave the company because she could no longer work with her harasser, who was relentless until her very last day. After leaving, on the 300th day after the final incident – the very last day she had to file a claim – Natalie finally decided to file an EEOC complaint for herself. Her claim was settled at an EEOC mediation.

Natalie decided she wanted to do something to help other women fight back against harassment in the workplace. With her settlement award and a grant from the King County Washington Women Lawyers, Natalie founded the Teravainen Law Firm to represent survivors and victims of sexual harassment. She also has applied for and been granted funding for one of her cases from the TIME'S UP Legal Defense Fund. The support from the TIME'S UP Legal Defense Fund means she no longer faces pressure to accept an unfair settlement offer because of increasing legal bills.

Multiple states have successfully lifted or allowed for higher damages caps in order to provide greater compensation for survivors of harassment and to help incentivize the private bar to take on claims of workers who cannot afford to hire an attorney. For example, states including California, Hawaii, Massachusetts, New Jersey, Ohio, Oregon, Vermont, and West Virginia do not follow Title VII's limitations on compensatory and punitive damages.²²⁶

"One client of mine was sexually assaulted at a work function. Because her employer had fewer than 101 employees, the most she can receive from bringing a harassment claim is \$50,000 – which was less than half of what her employer spent on the bar tab for the event the night of the assault. Few people will choose to bring invasive, stressful, years-long litigation for that amount and few employers would take corrective action to avoid the threat of such a minor penalty."
– Partner at Katz, Marshall, and Banks

Recommendations

After an extensive review of the issue of harassment in the workplace, the Democratic staff of the Senate HELP Committee make two sets of recommendations to further understand and address workplace harassment, as well as expand legal protections for survivors of harassment and discrimination in the workplace:

The Federal Government and Employers Must Do More to Understand and Prevent Harassment.

Recommendation 1: More research must be done to assess the prevalence of harassment in various workplaces and determine the most effective strategies for harassment prevention.

As the EEOC's Task Force on the Study of Harassment in the Workplace has noted, employers and policymakers alike need more information about the prevalence of harassment in the workplace, as well as what efforts are most effective in preventing workplace harassment from occurring. The federal government should conduct a nationally representative prevalence survey, as well as commission studies and provide grants to researchers focused on assessing effective prevention mechanisms.

Recommendation 2: The EEOC, non-profits, and advocacy groups should expand efforts to educate workers about their rights and other harassment prevention efforts. Despite the increased awareness surrounding issues of workplace harassment, workers across industries and workplaces are often too afraid to report out of fear of retaliation or are unaware of their rights to a safe and equal working environment altogether. The EEOC, non-profits, and advocacy groups should invest more resources in outreach and education in order to increase public awareness about what constitutes harassment, assist workers to report, and ensure employers are aware of existing prevention efforts and best practices.

Recommendation 3: Employers should adopt and implement workplace harassment and discrimination policies and practices based on best practices. Employers should maintain easily accessible and understandable harassment policies. These policies should be clearly

articulated to workers, consistently reviewed and revised when necessary, and be available in different locations and formats and to individuals who speak a language other than English, workers with disabilities, and teenage workers. The policies should follow best practices, including offering workers multiple pathways to report harassment, setting up a fair and prompt internal investigation process, and explaining potential methods of resolving complaints. The policies should explicitly include descriptions of how retaliation is prohibited to ensure that workers are aware of their rights and to encourage workers to report.

Recommendation 4: Employers should train workers, including supervisors, on how to prevent and address harassment and should assess their workplace climates. Employers should conduct training for their workers about what type of behavior is prohibited in the workplace and how workers can alert their employers about potential issues that arise. Employers should have a supervisor-specific training that instructs supervisors about how to identify risk factors for harassment and appropriately intake a harassment complaint. Employers should include bystander training, unconscious bias training, or other forms of training to enable workers to examine their own attitudes and proactively address inappropriate behavior when it occurs. Training should be designed using best practices in adult learning and organizational behavior change—not merely designed to reduce the liability of the employer. Along with strong training, establishing a workplace culture that values equal opportunity and does not tolerate discrimination of any kind is a critical component of combatting the epidemic of workplace harassment. Employers should assess their workplace climates, including by utilizing climate surveys, in order to better design and implement prevention efforts.

Recommendation 5: The EEOC should promulgate industry-specific recommendations for preventing and addressing harassment. The EEOC should identify industries with the highest rates of harassment and the factors that may contribute to the high rates of such behavior in those workplaces. The EEOC should provide guidance on methods to reduce the incidence of harassing behavior in their workplaces for employers in industries with high rates of harassment.

Recommendation 6: Congress should eliminate the tipped minimum wage. When workers rely on tips in order to support their families, they are at risk of harassment at work. The subminimum tipped wage and resulting reliance on tips pressure workers to choose between their economic security and speaking out about harassment they experience on the job. Congress should eliminate the tipped minimum wage to end workers' economic reliance on customers, which too often includes some customers who take advantage of the situation and harass workers.

Recommendation 7: Congress should strengthen workers rights' to join unions, bargain collectively, and act together against harassment. Through unions, collective bargaining, and collective action, workers can reduce the power imbalances that often facilitate harassment. Union workers can win contractual protections against sexual harassment that exceed legal requirements. Congress must strengthen workers' rights and remedies under the National Labor Relations Act (NLRA) to make these protections real and meaningful for more workers.

Protections in Current Law are Inadequate—Congress Must Expand or Restore Protections to Enable Workers to Enforce their Right to a Workplace Free of Harassment, And Workers Must Have Multiple Avenues to Access Support for Filing Claims to Enforce their Civil Rights.

Recommendation 8: Congress should expand protections against workplace harassment to cover workers at small businesses, independent contractors, interns, and similarly situated workers. Neither the size of an employer’s business nor the specific status of one’s employment relationship should determine whether an individual is protected from discrimination and harassment in the workplace. Congress should expand protections to cover independent contractors, interns, and others who perform work but are often not legally recognized as employees. All people, no matter their race, national origin, disability, religion, sex, sexual orientation, gender identity, or age should be protected by federal anti-discrimination laws. At the same time, Congress should consider how to ensure small employers have the resources necessary to prevent and address harassment and discrimination when incidents occur, consistent with research and best practices.

Recommendation 9: Congress should clarify that LGBTQ workers are protected from workplace harassment and discrimination because sexual orientation and gender identity are covered under the prohibition on sex discrimination. Too many LGBTQ workers face harassment and discrimination in the workforce. While the EEOC and several federal courts have clearly stated that Title VII’s protection against sex discrimination encompasses sexual orientation and gender identity harassment and discrimination, others—including the Trump Administration—have argued for a narrower interpretation of sex discrimination that fails to protect LGBTQ workers. Congress should make clear that no worker should be discriminated against or subjected to harassment because of their sexual orientation or gender identity.

Recommendation 10: Congress should ensure that protections are not unreasonably limited by narrow definitions of what constitutes harassment. In the more than 50 years since the Civil Rights Act was passed, federal courts have interpreted Title VII and other federal anti-discrimination laws in ways that have narrowed the scope of protection for workers and have made it more difficult to prove some harassment claims. Congress should clarify its intent in passing these statutes by making clear what types of behavior constitute hostile work environment harassment, define supervisor in a manner that reflects the power dynamics of the modern workplace, and make clear that any retaliatory motive for taking a harmful action against a worker who filed a claim of harassment undermines the purpose of the anti-discrimination statutes and is unlawful.

Recommendation 11: Congress should extend statutes of limitations to bring workplace harassment claims. Congress should extend the amount of time that a worker who has experienced harassment has between the incident and deadline for initiating a formal process with the EEOC. The current 180 or 300 day timeframe is too short given the complex psychological, social, and legal factors that workers must consider when determining whether to bring a formal complaint against their employer. Congress should also harmonize the time limits for workers in the federal government and in the private sector, both to make the process less confusing and to eliminate additional barriers placed on federal workers.

Recommendation 12: Congress should prohibit mandatory arbitration and pre-employment nondisclosure agreements. Congress should prohibit nondisclosure agreements that workers are forced to sign upon taking a job that prospectively prevent disclosure of workplace issues. The decision about when to stay silent about harassment should be in the hands of the survivor. Congress should also prohibit employers from using mandatory arbitration and should ensure workers have the right to pursue justice together in court. Employers should not be permitted to use their superior bargaining power to force workers out of court or stop them from joining together to seek justice collectively.

Recommendation 13: Congress should ensure workers have access to legal assistance to bring workplace harassment claims. Congress should explore new ways to ensure workers, including low-income workers, who need assistance to assert their rights under federal law have the support they need. When workers are unsure of their rights, lack the information to find help, cannot afford an attorney, struggle to understand the EEOC reporting system, or face other barriers to bringing claims under federal law, the effectiveness of federal anti-discrimination laws are undercut. Congress should address existing caps on damages that can prevent survivors from receiving appropriate redress for harassment claims and that can disincentivize private attorneys from taking on cases.

Recommendation 14: Congress should support a nationwide system of non-profit, mission-driven organizations to advocate for workers in the Courts, before administrative proceedings, and before state legislators. Congress should support advocacy and legal assistance to non-profit organizations that support and advance the rights of workers at the federal, state, and local levels. State law has played an important role in strengthening the rights of workers to be free from harassment in the workplace. However, few federal resources have supported this work. Congress should develop systems and support these systems to create multiple avenues for workers to enforce their rights. By taking this action, Congress will strengthen the effectiveness of federal anti-discrimination laws and state and local laws that extend beyond federal protections.

Conclusion

The #MeToo movement has empowered women and men to come forward and demand justice for the discrimination they have too long endured. The movement offered a critical opportunity to recognize the limits of past efforts to prevent and address harassment in the workplace, and it is a call to action to ensure workers across all industries are free from harassment and have avenues to fight it if it occurs.

The HELP Committee Democratic staff's conversations with workers, law professors, legal experts, advocacy groups, research organizations, labor unions, industry associations, and federal departments have produced valuable lessons. They have illustrated where current policies fall short, and they have offered ideas for areas where federal policymakers can take steps to better understand and prevent harassment, while also providing workers with the tools they need to hold employers accountable.

If implemented, the report's recommendations would meaningfully advance the current understanding of the prevalence of workplace harassment, provide employers with tools to implement effective anti-harassment policies and trainings, and provide workers in a variety of workplaces with the protections and tools they need to combat harassment. Yet, recognizing that workplaces vary dramatically—by industry, geography, size, and many other factors—means also recognizing there is not one solution to preventing and addressing all workplace harassment.

This report is meant to contribute to conversations about the current landscape and opportunities for change. It is not the start of those conversations, nor should it be the end.

Appendix

Appendix I: Letters to Associations. This appendix includes letters sent by Senator Murray to 17 industry associations, as well as the written responses and documents produced by the association that chose to respond in writing. The 17 industry associations include:

- American Hotel and Lodging Association (AHLA)
- American Farm Bureau Federation (AFBF)
- Associated Builders and Contractors (ABC)
- Associated General Contractors of America (AGC)
- Biotechnology Innovation Organization (BIO)
- Chamber of Commerce
- HR Policy Association
- Internet Association
- National Association for Home Care and Hospice (NAHC)
- National Association of Manufacturers (NAM)
- National Restaurant Association (NRA)
- National Retail Federation (NRF)
- National Venture Capital Association (NVCA)
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Society for Human Resource Management (SHRM)
- TechNet
- Worldwide Cleaning Industry Association (ISSA)

Appendix II: Letters to Federal Agencies and Responses. This appendix includes letters sent by Senator Murray and HELP Committee Democrats to the U.S. Department of Education, the U.S. Department of Labor, and the U.S. Department of Health and Human Services, as well as the written responses and documents produced from each of the federal agencies.

Appendix III: Equal Employment Opportunity Commission Data. This appendix includes data provided by the EEOC to Senator Murray. The EEOC data are divided into three types of harassment categories (sexual, non-sexual, and all harassment).

Appendix IV: Legal Services Corporation Data. This appendix includes data provided by LSC to Senator Murray.

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⁹ 29 U.S.C. § 621 et seq.

¹⁰ 42 U.S.C. § 12101 et seq.; 29 U.S.C. § 701 et seq.

¹¹ Pub. L. No. 110-233.

¹² 2 U.S.C. § 1301 et seq. Federal government employees also have additional protections under the Civil Service Reform Act of 1978 (Pub. L. No. 95-454), which is enforced by the Merit Systems Protection Board and Office of Special Counsel. Congress passed the Judicial Conduct and Disability Act in 1980 (28 U.S.C. § 352 et seq.), which provides a mechanism for reviewing and addressing complaints of misconduct against some federal court judges.

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²⁰ *Id.*

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⁵¹ EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III; “Charge Statistics (Charges filed with EEOC): FY 1997 Through FY 2017,” Equal Emp. Opportunity Comm’n, <https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (last visited Dec. 9, 2018).

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⁵³ EEOC Charge Receipts by Gender and Basis, Charges alleging sexual harassment, FY 1997 – FY 2018, *See* Appendix III; EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁵⁴ EEOC Charge Receipts by Gender and Basis, Charges alleging sexual harassment, FY 1997 – FY 2018, *See* Appendix III; EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁵⁵ EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

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⁵⁷ EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁵⁸ EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁵⁹ EEOC Charge Receipts by Top 15 Industries, by Industry and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁶⁰ EEOC Charge Receipts by Top 15 Industries, by Industry and Basis, Charges alleging sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁶¹ EEOC Charge Receipts by Gender and Basis, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁶² In FY 2017, administrative and support and waste management and remediation services outpaced public administration and tied for the number four spot with accommodation and food services. EEOC Charge Receipts for Top 15 Industries, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁶³ EEOC Charge Receipts for Top 15 Industries, Charges alleging sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

⁶⁴ In FY 2018, 2,453 of all sexual harassment charges reported an industry, while 5,194 charges did not report an industry. EEOC Charge Receipts with Industry Entered, Charges alleging sexual harassment, FY 1997 – FY 2018, *See* Appendix III. In FY 2018, 9,166 of all harassment charges reported an industry, while 17,601 charges did not report an industry. EEOC Charge Receipts with Industry Entered, Charges alleging either sexual or non-sexual harassment, FY 1997 – FY 2018, *See* Appendix III.

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¹²⁷ Phone Interview with Representatives, Nat’l Venture Capital Ass’n (Aug. 2, 2018).

¹²⁸ Letter from Bobby Franklin, President and Chief Executive Officer, Nat’l Venture Capital Ass’n, to Senator Patty Murray (June 20, 2018), *See* Appendix I (“The Survey demonstrates that most venture capital firms are small, with the average staff size of a U.S. venture firm being 17 employees. The Survey also found that because each firm has different strategies and needs regarding diversity and inclusion, the approaches that will provide each of them with the most effective outcomes ‘do not follow a one-size-fits-all strategy.’ For example, responses demonstrate that venture firms differ in their level of processes in place to address harassment. Certain firms require annual training on harassment and provide a clear point-of-contact for reporting harassment, while others have less concrete practices.”).

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¹³⁹ Interview with William Dombi, President, Nat’l Ass’n of Home Care and Hospice (Mar. 8, 2018).

¹⁴⁰ Phone Interview with Representatives, ISSA – The Worldwide Cleaning Industry Ass’n (Mar. 22, 2018).

¹⁴¹ Various interviews with industry associations conducted between March and July 2018. According to an informal survey from the National Retail Federation (NRF), some industry insurers offer materials and incentives for conducting sexual harassment training, although none of the 32 respondents use training from their employment practice liability insurer (EPLI). The respondents unanimously noted they provide training to prevent harassment and ensure legal compliance. NRF members generally either develop their own sexual harassment training programs in-house or purchase customized programs that are tailored to the industry and state law requirements.

¹⁴² Interview with Representatives, HR Policy Ass’n (Mar. 15, 2018).

¹⁴³ Chai R. Feldblum and Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, Equal Emp. Opportunity Comm’n 46-47 (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

¹⁴⁴ Interview with Representatives, Pharmaceutical Research and Manufacturers of Am. (July 20, 2018); Interview with Representatives, Associated Gen. Contractors of Am. (Mar. 9, 2018); Interview with Representatives, Am. Hotel and Lodging Ass’n (Mar. 6, 2018), *See* Appendix I for descriptions of steps that AGC, PhRMA, AHLA, and other associations are taking to address diversity and inclusion.

¹⁴⁵ *See* Chai R. Feldblum and Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, Equal Emp. Opportunity Comm’n 48 (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

¹⁴⁶ *See, e.g.*, Letter from Stephen E. Sandherr, Chief Executive Officer, Associated Gen. Contractors of Am., to Senator Patty Murray (Mar. 9, 2018) (“In 2018 AGC plans to launch toolkits to help members develop successful diversity & inclusion initiatives within their companies.”); Associated Gen. Contractors of Am. Diversity and Inclusion Council, *The Business Case for Diversity and Inclusion in the Construction Industry* (Nov. 8, 2018). *See* Appendix I.

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¹⁵⁴ Ariz. Rev. Stat. § 41-1461(6); Cal. Gov’t Code § 12940(j)(4)(A); 775 Ill. Comp. Stat. 5/2-101(B)(1)(b); NY CLS Exec § 292(5).

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¹⁶⁴ “What You Should Know About EEOC and the Enforcement Protections for LGBT Workers,” Equal Emp. Opportunity Comm’n, https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm (last visited Nov. 27, 2018).

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