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Public Hearing on Sexual Harassment in the Workplace
Before the New York City Commission on Human Rights

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Thank you for the opportunity to submit testimony on behalf of the National Women's Law Center on the issue of sexual harassment in the workplace. The National Women's Law Center has worked for 45 years to advance and protect women's equality and opportunity, and has long worked to remove barriers to equal treatment of women in the workplace.

Sexual harassment is a substantial barrier to women's equality, economic security, and safety. Despite laws at the federal, state, and local levels prohibiting sexual harassment as a form of sex discrimination, sexual harassment remains a widespread problem, affecting workers in every state, in every kind of workplace setting and industry, and at every level of employment. The incidence of harassment is higher in workplaces with stark power imbalances between workers and employers, and those that have traditionally excluded women, including both blue collar jobs like construction, and white collar ones like medicine and science. Women working in industries with a high proportion of low-wage jobs, such as food service, hospitality, and agriculture, also experience high incidences of sexual harassment.

Longstanding gaps in the law, and judicial decisions undermining existing protections and their enforcement, have stymied efforts to address and prevent persistent workplace sexual harassment. These gaps put certain workers at increased risk of harassment and vulnerability to retaliation with little or no legal recourse. Court-imposed standards have made it difficult for victims to hold employers and individual harassers accountable, and federal law has failed to prevent the proliferation of employer-driven agreements that help hide the true extent of sexual harassment and shield serial harassers from accountability. Antidiscrimination laws also focus largely on remedying harassment after the fact, with little emphasis on preventing harassment in the first instance.

We urge the New York City Commission on Human Rights ("the Commission") and the New York City Council to implement a number of key policy initiatives that would strengthen laws to better protect victims, promote accountability, strengthen enforcement, and prevent harassment. These initiatives would expand protections to greater numbers and types of workers, allow victims to hold individual harassers accountable, promote greater transparency regarding harassment, and elevate prevention practices.[1]

I. SEXUAL HARASSMENT REMAINS A SERIOUS AND PERVASIVE BARRIER TO EQUALITY, ECONOMIC SECURITY AND WORKPLACE SAFETY.

While more than 72 million women are in the labor force in the United States, representing nearly half the country's workforce,[2] sexual harassment undermines their best efforts to provide for themselves and their families. One in four women reports that she has experienced sexual harassment at work.[3] In Federal Fiscal Year 2016, nearly 30,000 harassment charges were filed with the EEOC;[4] nearly one-quarter of those charges alleged sexual harassment.[5] But these charge statistics do not even begin to represent the extent of sexual harassment in the workplace, given that a survey found that 70 percent of workers who experience sexual harassment say they have never reported it.[6] Whether suffering harassment from supervisors, coworkers, or third parties, such as customers, most victims of harassment are suffering in silence.

Sexual harassment is particularly common for women in low-wage jobs and in nontraditional fields. For example, women working in the restaurant industry, particularly women who rely on tips to supplement a sub-minimum wage, are among the lowest-paid workers, and -- relatedly-- experience sexual harassment at high rates.[7] Sixty percent of female and transgender restaurant workers report that sexual harassment is an uncomfortable aspect of work life,[8] over half of whom describe sexual harassment as occurring on at least a weekly basis.[9] This harassment is perpetrated by management (according to 66 percent of restaurant workers), coworkers (according to 80 percent of restaurant workers), and customers (according to 78 percent of restaurant workers).[10] Sexual harassment is also a serious problem for women working in the agricultural industry, with conduct ranging from unwanted touching and remarks to sexual assault and rape in the fields, where harassers -- frequently their supervisors -- are often able to perpetrate their crimes in private.[11] Women who work as hotel employees report facing sexual harassment from coworkers, supervisors, and hotel guests.[12] Yet out of fear of losing their jobs and the income that is critical to their families, few women in low-wage jobs report the sexual harassment they face at work, but rather tolerate it as part of the culture of the workplace, or the cost of maintaining employment.[13]

Women in better-paying jobs that are male-dominated or nontraditional for women also face high rates of sexual harassment. For instance, while construction and extraction jobs typically offer women the opportunity to earn higher wages than in traditionally female occupations,[14] data indicate that most of the women in these industries face extreme sexual harassment and denigration.[15] A study by Chicago Women in Trades found that 88 percent of female construction workers experience sexual harassment at work,[16] more than three times the rate of women in the general workforce.[17] Women in other traditionally male-dominated fields, such as medicine and science, also are subjected to high levels of sexual harassment.[18]

These are only a few examples of the many ways in which sexual harassment continues to compromise women's economic security and safety, demonstrating the critical need for legislative and policy change and robust enforcement efforts.

II. THE CITY'S HUMAN RIGHTS LAW SHOULD BE AMENDED TO EXTEND PROTECTION FROM SEXUAL HARASSMENT TO MORE WORKERS, AND EXISTING PROTECTIONS SHOULD BE VIGOROUSLY ENFORCED.

Title VII, the New York State Human Rights Law, and the New York City Human Rights Law provide important protections against workplace sexual harassment -- but only for some workers. Individuals deserve to be protected from sexual harassment on the job regardless of the size of the establishment where they work or their employment classification.

A. Protect Employees of Small Businesses

Federal antidiscrimination laws only apply to employers with fifteen or more employees, meaning that those employees working for a business with less than fifteen employees have no federal remedy for workplace sexual harassment.[19] However, New York extends workplace protection to greater numbers of employees than federal law. The New York State and New York City Human Rights Laws protect people working for employers with four or more employees from discrimination in the workplace, a critical expansion of coverage. New York State further expanded protections by amending the State Human Rights Law to apply to all employers, regardless of the number of employees they employ, for the purposes of sexual harassment protection.[20] A similar expansion of the City Human Rights Law would align the state and city's laws and ensure that all employees, including those working for the smallest employers, like domestic workers, will no longer be left without recourse when they are sexually harassed.

B. Ensure Strong Enforcement of Protections for Independent Contractors

Federal antidiscrimination laws by their terms only protect "employees" from sexual harassment on the job. This leaves the growing segment of individuals classified as "independent contractors" without protection from workplace harassment.[21] Freelancers and individuals who work in the gig economy, for example, have no legal protection against workplace sexual harassment in most of the country. Employers' misclassification of people as independent contractors in an attempt to limit their liability under labor and employment laws also threatens many individuals' ability to avail themselves of sexual harassment protections.[22]

New York City has been on the forefront of extending protections from workplace harassment to independent contractors.[23] The City Human Rights Law's coverage of independent contractors aids some of the most vulnerable workers -- particularly the women, women and color, and immigrants who are majority of low-wage workers. But ensuring that these protections become reality for independent contractors working in the City depends heavily on enforcement and public education; individuals, particularly low-wage workers from marginalized communities, must be made aware of these protections and options for enforcement. The Commission should strengthen its outreach and education efforts in the communities and industries employing significant numbers of independent contractors to ensure workers are aware of their legal rights and remedies under the City Human Rights Law.

III. NEW YORK CITY SHOULD INCREASE TRANSPARENCY REGARDING DISCRIMINATION COMPLAINTS AGAINST EMPLOYERS AND THEIR RESOLUTION.

Individuals may accept employment with a company without knowing if discrimination and harassment are particular problems at that workplace. Once employed, harassers and employers use a variety of legal tools in order to limit how, when, why, and to whom an employee can disclose details about harassment. Through employment agreements — entered into upon hiring at a new job, and settlement terms — agreed to when resolving a sexual harassment complaint — employees can be forbidden by contractual terms from speaking out about sexual harassment and assault. Such circumstances operate to isolate victims, shield serial predators from accountability, and allow harassment to persist at a company. Policy efforts to increase transparency regarding the incidence of harassment at a company would redress the power imbalance exacerbated by employer-imposed secrecy provisions, and restore victims' voices.

A. Limit Employer-Imposed Secrecy in Employment Contracts

Employers sometimes use employment agreements to forbid employees from speaking out about sexual harassment and assault. Other provisions in such agreements also often prohibit employees from going to court to enforce their rights, instead forcing employees to litigate sexual harassment and assault claims in a private arbitration, which is frequently designed, chosen, and paid for by the employer or corporation, and conducted and resolved in secret.

Federal laws, like the National Labor Relations Act and Title VII, limit an employer's ability to enforce contracts that restrict employees' ability to discuss employment conditions or situations. An employer cannot, for example, forbid employees from discussing with each other employment conditions, including sexual harassment.[24] Employers also cannot require employees to waive their right to discuss or report violations of federal law to civil rights enforcement agencies, or require employees to waive in advance the ability to report a crime to authorities.[25]

Despite these protections, employers continue to use contractual provisions to prevent employees, including victims, from publicly disclosing the details of sexual harassment or assault, allowing serial harassers to act without accountability, and preventing employees from joining together to counter a predator. Other provisions in employment agreements, such as clauses prohibiting employees from publicly disparaging the employer, and forced arbitration clauses requiring all employment-related disputes to be settled in private arbitration proceedings, are standard provisions in some industries, imposed on new hires as a condition of their employment. These contractual provisions can mislead employees as to their legal rights and prohibit employees from publicly telling their story, which in turn makes it less likely that other victims of harassment will speak out and hold their employers accountable.

Prohibiting contractual provisions that restrict employees' ability to speak out about harassment as a condition of employment – especially contractual language that makes a victim question

whether they can report harassment to federal and state antidiscrimination agencies, and force employees to give up their day in court – would help lift the veil of secrecy that enables predatory behavior, and protect employees' right to speak with enforcement agencies and act collectively to challenge harassment.[26]

B. Require Disclosure or Reporting of Discrimination Claims, Charges, and Lawsuits and Their Resolution.

Greater transparency around discrimination complaints or formal charges filed against an employer, and the resolution those charges (including settlements), would help alleviate the secrecy around harassment, thereby empowering victims and encouraging employers to implement prevention efforts proactively. The Commission should consider making publicly available the type and number of discrimination charges filed against a company, whether the charges were dismissed or resolved, and general information about the nature of the resolution (for instance, whether the charge was resolved through a monetary settlement). Such information could be made available on the Commission's website, so that members of the public could conduct searches by company name. However, it is critical that any such effort balance transparency with steps to safeguard the identity of individuals filing charges.

Additionally, the City could implement transparency initiatives requiring contractors, as a condition of submitting a bid or keeping an awarded contract, to fulfill certain conditions. First, the City could forbid contractors from requiring employment-related claims to be subject to mandatory arbitration. Second, contractors could be required to report regularly to the relevant agency the type and number of discrimination complaints or lawsuits filed against the company within a particular time period, and the nature of the resolution of claims or lawsuits. A similar model previously existed at the federal level in the form of Executive Order 13673 of 2014, commonly known as "Fair Pay and Safe Workplaces." The executive order and implementing regulations required federal contractors and subcontractors to disclose violations, within the three preceding years, of 14 enumerated federal labor and employment laws and executive orders, as well as their state equivalents.[27] Although the Trump Administration revoked the rule by executive order in March 2017,[28] Fair Pay and Safe Workplaces provides a valuable model for further consideration. Making even some portion of the reported information publicly available would provide job applicants and employees with valuable information about discrimination and harassment at a particular workplace. Such reporting also would encourage employers to implement practices to effectively address complaints and prevent sexual harassment.

Although there are important questions still to explore, and further work to be done to develop policies to ensure the proper balance between transparency and competing concerns, such as victims' privacy and ability to negotiate an advantageous resolution, we believe greater transparency will help remove some of the barriers victims of harassment face in seeking justice. Moreover, transparency will encourage employers to take proactive steps to prevent harassment in the first instance and provide safer workplaces.

IV. NEW YORK CITY SHOULD REQUIRE EMPLOYERS TO IMPLEMENT CRITICAL PREVENTION STRATEGIES.

Preventing sexual harassment should be a priority for any employer in the public or private sector. Existing sexual harassment law has focused on responding to reports of workplace harassment, and encouraging, but not requiring, employers to implement preventative practices. Harassment prevention ultimately requires changes in attitude and behavior, for which there is no short-term solution. Yet for businesses, investing in sexual harassment prevention is not only the right thing to do, it is the financially advantageous thing to do. Preventing sexual harassment in the first instance helps employers avoid costly litigation, settlements, and higher insurance premiums, as well as attendant negative publicity.

A. Require Comprehensive Prevention Practices

While many employers have a written sexual harassment policy, such a policy is only the first step in prevention. An employer must also have policies and procedures regarding how to report harassment (with multiple avenues for making a report), how harassment complaints will be promptly and thoroughly investigated and addressed, and ensuring that harassment perpetrators will be held accountable. Employers also should have strong and appropriately enforced policies against retaliation.

An effective prevention program should also include an anonymous climate survey of employees, which will help management understand the true nature and scope of harassment and discrimination in the workplace. The survey can help inform important issues to be included in training, and help identify problematic behavior that may be addressed before it leads to formal complaints or lawsuits. The City could require employers to conduct anonymous climate surveys and report the findings to employees.

B. Require Sexual Harassment Training for Employees and Supervisors

A policy's effectiveness depends on its implementation through education and training. Requiring and assisting employers to develop and conduct effective trainings consistent with promising practices is a critical step in prevention.

Federal law does not require employers to train their employees on sexual harassment, but to varying degrees states have imposed certain training requirements. In New York State, employees working for all executive branch agencies must participate in training on sexual harassment.[29] Some states have gone further. In California, Connecticut, and Maine, employers in the *private* sector must train their employees on sexual harassment prevention, and in South Dakota and Washington, *government contractors* must provide trainings to employees.[30]

The Commission and the Council could institute similar mandatory training requirements for businesses operating in New York City. All businesses employing a certain number of

employees could be required to provide an enumerated number of hours of sexual harassment training to all employees, including managers and supervisors. In the alternative, and at a minimum, the City should require that all City employees, and employees of City contractors, receive a certain number of hours of sexual harassment training upon hire and at regular intervals -- such as annually -- thereafter. The requirements should include information on the minimum required content of the training and how the training should be conducted.

C. Recommend Guidelines and Promising Practices for Prevention and Trainings

Although many companies provide sexual harassment training, it often falls short of the mark. Effective training must go beyond mere compliance; that is, simply describing legal standards for employees. Unfortunately, many sexual harassment trainings are not taken seriously by employees and supervisors by virtue of their failure to engage employees in rigorous and interactive training that helps them acquire tools to respond to relevant workplace issues, and to avoid engaging in not just unlawful behavior, but behavior considered unacceptable by the employer.

To ensure that employers are implementing effective sexual harassment trainings and other prevention practices, the Commission should develop guidelines and promising practices for employers to follow when creating and implementing prevention practices, including trainings. The EEOC's 2016 Report of the Select Task Force on the Study of Harassment in the Workplace is an excellent resource, and we urge you to review its recommendations regarding harassment policies and training.[31] According to the EEOC, trainings should, among other things: be mandatory for all employees; frequent (upon hire and at least annually thereafter); interactive; tailored to the particular workplace context; help employees and supervisors recognize sexual harassment and understand their rights and responsibilities; require employees to problem solve common scenarios, including by utilizing bystander intervention techniques; identify the internal and external resources that are available to an employee who feels they have been harassed; explain how to report harassment as a victim or a witness, as well as the reporting and investigation process, and the consequences for engaging in harassment. Providing employers with guidelines and other valuable tools would promote effective preventative practices.

V. CONCLUSION

As the movement ignited by #MeToo shows, for too long, employees have suffered workplace sexual harassment in silence, with little or no accountability for harassers. Now more than ever, corporate leaders and policymakers must step forward to go beyond simply responding to harassment, to focus on protection and prevention. As the home of progressive policymakers, as well as leaders in business, education, and the arts, New York City is a natural candidate to lead change. We urge you to lead initiatives that will refashion systems, laws, and culture to ensure that victims can obtain justice, predators are held accountable, and sexual harassment is prevented.

[1] For more information regarding policy proposals and state initiatives, *see* MAYA RAGHU AND JOANNA SURIANI, #METOOWHATNEXT: STRENGTHENING WORKPLACE SEXUAL HARASSMENT PROTECTIONS AND ACCOUNTABILITY, NAT'L WOMEN'S LAW CTR. (Dec. 2017), https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/#_edn54 https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/#_edn54.

[2] U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY, Table 3, https://www.bls.gov/cps/cpsaat03.pdf.

[3] LANGER RESEARCH, ABC NEWS & WASHINGTON POST, *One in Four U.S. Women Reports Workplace Harassment* (Nov. 16, 2011), http://www.langerresearch.com/uploads/1130a2WorkplaceHarassment.pdf.

[4] U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, ENFORCEMENT AND LITIGATION STATISTICS, ALL CHARGES ALLEGING HARASSMENT FY2010-FY 2016, https://www.eeoc.gov/eeoc/statistics/enforcement/all_harassment.cfm

[5] EEOC, ENFORCEMENT AND LITIGATION STATISTICS, CHARGES ALLEGING SEXUAL HARASSMENT FY2010-FY 2016, https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm.

[6] HUFFINGTON POST & YOUGOV, *Poll of 1,000 Adults in United States on Workplace Sexual Harassment* (Aug. 2013), http://big.assets.huffingtonpost.com/toplines_harassment_0819202013.pdf.

[7] Women constitute 66 percent of the occupations that receive a sub-minimum wage of $2.13 per hour that must be supplemented with tips—wages that leave many women working and living in poverty. REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, THE GLASS FLOOR: SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY 5 (2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf [THE GLASS FLOOR].

[8] *Id.* at 2.

[9] *Id.* at 6.

[10] *Id.*at 2.

[11] HUMAN RIGHTS WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE US TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT (May 2012), https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual (documenting pervasive sexual harassment and violence among immigrant farmworker women); Waugh, I.M., *Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women*, 16 VIOLENCE AGAINST WOMEN 237, 241 (Jan. 2010), http://vaw.sagepub.com/content/16/3/237.abstract (eighty percent of female farmworkers in California's Central Valley reported experiencing some form of sexual harassment).

[12] *See, e.g.*, Gasper v. Ruffin Hotel Corp. of Maryland, 183 Md. App. 211, 216, (2008) *aff'd*, 418 Md. 594, 17 A.3d 676 (2011) (in which an employee of Ruffin Hotel Corporation sued the company because she alleged that the company retaliated against her by terminating her employment due to her reports of sexual harassment from other employees); Arthur v. Pierre Ltd., 2004 MT 303, 323 (in which a hotel dining room waitress was sexually harassed by coworker (a night auditor) and alleged that management ignored her multiple reports of sexual harassment); *See, e.g.*, Ramada Inn Surfside v. Swanson, 560 So. 2d 300, 301 (Fla. Dist. Ct. App. 1990) (lounge supervisor of hotel sued for workers' compensation benefits for emotional injuries after she was sexually harassed by her supervisor, including unwanted sexual contacts); UNITE HERE LOCAL 1, HANDS OFF, PANTS ON: SEXUAL HARASSMENT IN CHICAGO'S HOSPITALITY INDUSTRY (July 2016), https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf (58 percent of hotel workers and 77 percent of casino workers surveyed reported being sexually harassed by a guest); Chafoulias v. Peterson, 668 N.W.2d 642, 645 (Minn. 2003) (five female Radisson hotel employees - who eventually quit - alleged management ignored their reports of sexual harassment by male guests, in that they set up a meeting to discuss the problem, which the company then canceled).

[13] *See* THE GLASS FLOOR, *supra* note 7, at 27 (70 percent of restaurant workers surveyed felt there would be negative repercussions, such as lower tips, if they complained about customer harassment); HANDS OFF, PANTS ON, *supra* note 12, at 8 (hospitality workers surveyed said they chose not to report customer harassment "because inappropriate guest behavior is so frequent and widespread, it 'feels normal' or they had become 'immune' to it"). In a nationwide survey of workers in the fast food industry, nearly 40 percent of the women reported experiencing unwanted sexual behaviors on the job. Of those workers, 21 percent reported that they suffered negative workplaces consequences after raising the harassment with their employer. Hart Research Assoc., *Key Findings From a Survey of Women Fast Food Workers* (Oct. 5, 2016), http://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf.

[14] NAT'L WOMEN'S LAW CTR., WOMEN IN CONSTRUCTION: STILL BREAKING GROUND (2014), http://nwlc.org/wp-content/uploads/2015/08/final_nwlc_womeninconstruction_report.pdf.

[15] MATHEMATICA POLICY RESEARCH, AN EFFECTIVENESS ASSESSMENT AND COST-BENEFIT ANALYSIS OF REGISTERED APPRENTICESHIP IN 10 STATES 50-52 (2012), http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf; Elizabeth J. Bader, *Skilled Women Break Through Barriers to Entry and Promotion in Trades Work*, TRUTH-OUT.ORG (October 6, 2012), http://www.truth-out.org/news/item/11927-skilled-women-break-through-barriers-to-entry-and-promotion-in-trades-work.

[16] CHICAGO WOMEN IN TRADES, BREAKING NEW GROUND: WORKSITE 2000 (1992), http://chicagowomenintrades2.org/wp-content/uploads/2015/02/Breaking-New-Ground2.pdf; ADVISORY COMM. ON OCCUPATIONAL SAFETY & HEALTH, OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEP'T OF LABOR, WOMEN IN THE CONSTRUCTION WORKPLACE: PROVIDING EQUITABLE SAFETY AND HEALTH PROTECTION (1999), https://www.osha.gov/doc/accsh/haswicformal.html.

[17] *See* ABC NEWS & WASHINGTON POST, *supra* note 3.

[18] *See* Jagsi, R. et al., *Sexual Harassment and Discrimination Experiences of Academic Medical Faculty*, 315 J. AM. MEDICAL ASS'N, 2120 (May 17, 2016), http://jama.jamanetwork.com/article.aspx?articleid=2521958 (almost one-third of medical academic faculty responding to survey had experienced workplace sexual harassment); Clancy, K.B.H., et al., Survey of Academic Field Experiences (SAFE): Trainees Report Harassment and Assault, 9 PLoS ONE 7 (2014), http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0102172 (sixty-four percent of survey respondents reported they had personally experienced sexual harassment in the scientific fieldwork setting).

[19] 42 U.S.C. § 2000e ("the term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person").

[20] NEW YORK STATE DIVISION OF HUMAN RIGHTS, GUIDANCE ON SEXUAL HARASSMENT FOR ALL EMPLOYERS IN NEW YORK STATE, https://dhr.ny.gov/sites/default/files/pdf/guidance-sexual-harassment-employers.pdf.

[21] *See* NAT'L EMPLOYMENT LAW PROJECT, POLICY BRIEF: INDEPENDENT CONTRACTOR VS. EMPLOYEE (May 2016), http://www.nelp.org/content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf.

[22] *Id*. Workers misclassified as independent contractors may gain coverage under state and federal sexual harassment laws if they challenge their misclassification and do, in fact, meet the definition of "employee" under the state statute.

[23] N.Y.C Admin. Code § 8-102(5).

[24] *See* Phoenix Transit Sys., 337 NLRB 510 (2002); *see also* Hyundai Am. Shipping Agency, Inc. & Sandra L. Mccullough, 357 NLRB 860, 874 (2011), *rev'd on other grounds*, Hyundai Am. Shipping Agency, Inc. v. N.L.R.B., 805 F.3d 309, 314 (D.C. Cir. 2015) (upholding NLRB's determination that the "confidentiality rule was so broad and undifferentiated" that it violated the NLRA).

[25] *See, e.g.*, E.E.O.C. v. Astra U.S.A., Inc., 94 F.3d 738, 741-45 (1st Cir. 1996) (invalidating settlement agreements requiring employees not to file charges with the EEOC or assist the agency with future investigations of charges of discrimination).

[26] For more information on how mandatory arbitration clauses impact sexual harassment claims, *see* Emily Martin, "Forced Arbitration Protects Sexual Predators and Corporate Wrongdoing," https://nwlc.org/blog/forced-arbitration-protects-sexual-predators-and-corporate-wrongdoing/.

[27] Executive Order 13673, Fair Pay and Safe Workplaces, 79 Fed. Reg. 45309 (Aug. 5, 2014); Federal Acquisition Regulation; Fair Pay and Safe Workplaces, 81 Fed. Reg. 58562 (Aug. 25, 2016); Guidance for Executive Order 13673, Fair Pay and Safe Workplaces, 81 Fed. Reg. 58654 (Aug. 25, 2016).

[28] Executive Order 13782, 82 Fed. Reg. 15607 (Mar. 30, 2017).

[29] N.Y. Exec. Order No. 19 (1983; continued 2011), https://www.governor.ny.gov/news/no-2-review-continuation-and-expiration-prior-executive-orders; N.Y. Comp. Codes R. & Regs. tit. 9, § 4.19.

[30] Cal. Gov't Code § 12950.1; Conn. Gen. Stat. § 46a-54(15); Me. Rev. Stat. tit. 26, § 807; S.D. Admin. R. 46:11:09:02; Wash. Exec. Order No. 1 (1989), http://www.governor.wa.gov/sites/default/files/exe_order/eo_89-01.pdf.

[31] *See* U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE, REPORT OF CO-CHAIRS CHAI R. FELDBLUM AND VICTORIA LIPNIC, Part Three & Appendix B (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.