

SUNU P. CHANDY – TESTIMONY PROVIDED ON MAY 9, 2019  
LEGAL DIRECTOR, NATIONAL WOMEN’S LAW CENTER  
U.S. COMMISSION ON CIVIL RIGHTS BRIEFING: FEDERAL #ME TOO -  
EXAMINING SEXUAL HARASSMENT IN GOVERNMENT WORKPLACES

My name is Sunu P. Chandy and I am the Legal Director of the National Women’s Law Center. Before I begin my official remarks, I want to say thank you for mentioning that you have provided mental health counselors and supports here today --- and for in that way recognizing that we are talking about issues that can have a deep impact on us. And thank you for making explicit that whether someone comes forward about sexual harassment, or not, either way, this is a burden that many carry and one that can have a corrosive and harmful impact on our lives.

I appreciate the opportunity to provide testimony regarding measures we should implement to help make the federal government a more inclusive workplace. I want to thank all who contributed ideas for these remarks, including former EEOC Commissioner, Chai Feldblum, my co-panelist Dexter Brooks, and a number of attorneys who have deep expertise representing federal workers, including Debra D’Agostino of the Federal Practice Group, Jennifer Klar with Relman, Dane & Colfax PLLC and a final thank you is owed to NWLC intern, Lauren Hoffman, for her diligence in helping me to prepare this testimony.

The federal government should be a model employer when it comes to eradicating sex harassment and indeed all forms of discrimination. At the outset, it must be noted that federal employees’ civil rights protections are far less favorable than in the private sector. This is particularly appalling given that there are tremendous gaps in the protections facing employees in the private sector too and these gaps are corrected in the BE HEARD in the Workplace Act<sup>1</sup>. The BE HEARD Act also includes requirements for additional studies and reports concerning harassment specifically in the federal government – and extends the time for filing complaints in the federal sector to match the timeframes proposed for the private sector as I will discuss.

For most of my 20-year legal career, I have worked in the federal government as a civil rights attorney and leader. First, I was with the EEOC’s New York District Office for 15 years, primarily as a senior trial attorney. At EEOC, I experienced firsthand the need for additional resources so that EEOC can ensure adequately fulfill its mission of providing timely investigations or resolutions, which are critical for all stakeholders, including workers and the employer community. When I served a detail as a supervisory investigator, each person on my team carried over 100 charges of discrimination, and I too had over 100 charges that had yet to be assigned that were brought to my office when the former supervisory investigator retired. I provide that example to make crystal clear that it is only through increased staffing that EEOC can properly fulfill its critical mission.

More recently, I served as the Deputy Director for Civil Rights at the Department of Health and Human Services (HHS) until August 2017. While leading the HHS Civil Rights Division, I had a team of close to 20 individuals, including three Section Chiefs. This team both provided input on systemic investigations in collaboration with our field offices and developed policy around addressing discrimination in healthcare and human services. In this role, I had to address

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<sup>1</sup> H.R. 2148, 116th Cong. (2019).

complaints as a senior manager and also ensure that my own managers were well-equipped to address issues that arose in a competent and timely matter.

In August of 2017, I joined the National Women’s Law Center. The Center was founded over 45 years ago and takes on precedent setting cases, advances new policies at the federal, state and local level, and uses research to build public support for transformative changes in women's lives. We focus on Workplace Justice, Education, Health and Reproductive Rights, and Income Security and Childcare. At the Center, I oversee our litigation efforts, and helped to build the TIME’S UP Legal Defense Fund. I also provide guidance for our workplace equality policy positions and recently provided Congressional testimony in support of the Equality Act, a bill that would strengthen and clarify civil rights protections, including for LGBTQ individuals.

In thinking back about the importance of EEOC’s work in the federal sector, one of the major highlights while I was there was the opinion in *Macy v. Holder*, in 2012, as this decision made explicit that claims of discrimination based on gender identity are included as part of Title VII, the federal law’s protections against sex discrimination.<sup>2</sup> And in 2015, in *Baldwin v. Foxx*, the EEOC ruled, in another federal sector case, that a claim of sexual orientation discrimination is “necessarily” a claim of sex discrimination under Title VII.<sup>3</sup> Through these cases, EEOC has provided important guidance as to the scope of federal protections against sex discrimination.

And now, as the #MeToo movement has illuminated, many sexual harassment claims include intersecting forms of discrimination. As such, these changes we recommend are not limited to sex harassment but must be implemented across all areas of workplace discrimination so that all of us, women of color, immigrant women, LGBTQ individuals and others who face sex discrimination do not, for example, have one set of procedures and rights as women and another, lesser set, as women of color. Our recommendations are as follows:

*First, here are two critical changes that may require larger statutory or regulatory changes:*

**Protection for All Workers** – We must change the law to include civil rights protections for all independent contractors and unpaid interns/volunteers working in federal agencies.

**Extend the Current Statutes of Limitations** - Private sector employees have 300 days or in some states, 180 days, to bring a charge of discrimination. However, federal worker only have 45 days to bring an EEO complaint and if they engage in informal resolution efforts with the EEO Office then they have only 15 days to file a formal complaint following those efforts. That is far from enough time, and we urge that this be changed to four years for all workers, consistent with the BE HEARD legislation pending in Congress. The current timeframes are completely contrary to allowing access to justice for our federal employees.

*Also, the following five changes are ones that can and should be implemented immediately:*

**Increased Leadership from the Top** - Given the immense importance that senior leadership have in setting workplace cultures, we are in a difficult moment for federal agencies. The

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<sup>2</sup> *Macy v. Holder*, EEOC Appeal No. 0120120821 (Apr. 20, 2012).

<sup>3</sup> *Baldwin v. Foxx*, EEOC Appeal No. 0120133080 (Jul. 15, 2015).

President of the United States has not engaged in building a culture free from sexual harassment. Indeed, to the contrary. Given this backdrop, other federal leaders must foster an organizational culture in which harassment is not tolerated. Employers must hold managers and supervisors accountable for preventing and responding to harassment, including data collection, performance reviews, and considering equal employment related factors when making promotion decisions.

**End Misclassification** - We must ensure that agencies put an end to miscategorizing actual federal employees as independent contractors, thereby limiting their civil rights protections.

**Resolve Claims More Quickly** - We must provide additional resources to EEOC designated for public sector matters, including for increased staffing and training. In the interim, agencies should triage complaints and prioritize systemic or egregious matters for more prompt review.

**End the Confusion Stemming from Parallel Processes** - Federal agencies have created separate offices for EEO complaints versus other offices that are meant to informally address issues of harassment. While the goal of providing additional venues might be laudable, this can also result in employees losing their civil rights protections. This is a particularly acute problem given that federal employees only have 45 days to bring claims. Thus, we call on all agencies to explicitly inform employees as to which offices take formal complaints and to *automatically toll* the formal complaint process if an employee engages in other informal resolution processes. Indeed, this change might encourage more employees to try out informal resolutions in a way that could benefit federal employers too. Similarly, unions can be a key partner in addressing sexual harassment in federal workplaces. However, again, employees must be informed that going to one's union or filing a grievance is not the same as bringing an EEO complaint. In sum, employers must explicitly inform employees about these parallel paths and relevant timeframes so that workers do not lose their federal civil rights protections.

**Required and Effective Training** - EEOC should be funded to offer free, interactive training that is tailored to various types of federal sector workplaces. Such training must be provided in multiple languages and in ways that are accessible to individuals with disabilities. Training should focus on creating a culture of workplace dignity including, for example, "bystander intervention training" – which can empower co-workers to intervene.<sup>4</sup>

As we know, it is extraordinary to be living in the middle of this vibrant cultural moment that will continue to redefine the way that sexual harassment and workplace discrimination more broadly is addressed. We are collectively pushing all institutions to reject the historic shaming of victims. Bit by bit, we are highlighting another possibility together; one that makes it possible for women and people of all genders to go to work feeling safe, supported, and thriving rather than being targeted based on our race, national origin, religion, disability, or sex, including our sexual orientation or gender identity. As part of that collective work, we urge this Commission to call upon the federal government to demonstrate leadership in addressing sexual harassment, and workplace discrimination broadly, and to ensure that these matters are handled effectively and efficiently. Thank you.

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<sup>4</sup> *Select Task Force on the Study of Harassment in the Workplace Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic.*