

# Safe and Thriving Workplace Act

## It's Time to Fight for Harassment-Free Workplaces in Virginia

The need for strong workplace anti-harassment laws in Virginia is more urgent than ever. Workplace harassment is a widespread problem, affecting workers in every state, in every kind of workplace and industry, and at every level of employment. However, low-paid workers—two-thirds of whom are women in Virginia—are especially at risk of harassment given the stark power imbalances they experience at work.

The COVID-19 pandemic has exposed and exacerbated these conditions. The pandemic has unleashed an economic recession that is hitting women hardest, with especially high levels of job loss for Black women and Latinas. **Women—disproportionately Black women—are also 66% of front-line workers in Virginia risking their lives in low-paid jobs.** Without a safety net or optimism about their chances of finding another job, workers are more desperate to keep a paycheck at any cost and less willing to report workplace abuses, increasing their vulnerability to harassment, discrimination, exploitation, abuse, and retaliation at work.

## The public is demanding solutions for ending harassment, and states are leading the charge

- [Eighty-three percent](#) of voters surveyed want policymakers to focus on ending sexual harassment at work, and [68 percent](#) of voters think addressing sexual harassment and assault should be a major or top priority for elected officials.
- In just the last three years, [19 states from Tennessee to Maryland](#) have clarified or strengthened their protections against workplace harassment and many more are working this session to join them. The General Assembly has recognized the need to address workplace harassment and taken some initial steps, but much more is needed.

## Virginia's Human Rights Act currently prohibits, but doesn't define, harassment, which puts workers at a greater risk of workplace abuses

- While the Human Rights Act ensures that working people are protected from discrimination, which includes harassment, what constitutes workplace harassment is *not* currently spelled out in Virginia's employment discrimination code, nor is it spelled out in federal statute.
- Instead, the parameters of what constitutes workplace harassment have been left to courts and the result has been varying interpretations—too many of which don't reflect the realities of our workplaces, existing power dynamics, or modern understandings of unacceptable harassment at work.
- As a result, many cases challenging workplace behavior most people would consider harassment are being thrown out by courts, which normalizes harassing behavior in workplaces. [See last page for examples.](#)

## The Safe and Thriving Workplace Act provides a clear definition of harassment that reflects the realities of workplace harassment

This bill will provide a clear, statutory definition of workplace harassment in Virginia employment discrimination law and guiding factors for courts to consider in evaluating whether conduct constitutes harassment to ensure that Virginia courts look to the strongest elements of existing federal and state law and reject bad court interpretations that have arisen over the years.

Importantly, the bill clarifies that:

- Incidents that may be workplace harassment shall be considered in the aggregate, with conduct of varying types viewed in totality and conduct based on multiple protected characteristics viewed in totality, rather than in isolation.
- Workplace harassment is impermissible regardless of whether the victim submitted to or participated in the conduct—recognizing the power imbalances in many workplaces, especially low-paid workplaces, that keep employees from pushing back.
- Harassment can harm workers, regardless of whether the conduct caused tangible physical or psychological injury, and regardless of whether the worker was able to continue to do their job.

## **This Act will also provide needed clarity to procedural elements of the Virginia Human Rights Act**

- **Provides a 2-year statute of limitations for filing a discrimination charge with the Division on Human Rights, and 1-year statute of limitations for filing in court after receiving a right to sue letter from the Division.** No statute of limitations is currently specified in the HRA statute.
  - A 2-year statute of limitations aligns the main HRA provisions with the statute of limitations provided for in much of Virginia tort law and the HRA's pregnancy accommodations protections, avoiding confusion for workers.
  - A 2-year statute of limitations is also crucial to ensuring that workers can access justice and hold their employers accountable. The 300-day deadline for bringing a charge under federal law is woefully inadequate when employees are dealing with trauma as a result of discrimination or harassment (such as sexual assault) and fear reporting. A 2-year statute of limitations is especially important for workers in the low-paid workforce, who often need to prioritize finding new employment to keep food on their tables, before they can tackle bringing a claim.
  - For these reasons, states have been pushing for longer statutes of limitations for harassment claims: Maryland, New York, Oregon, and California recently extended their statute of limitations to 2 or more years.
- **Provides for a consistent “5 or more employees” employer-size threshold across all HRA discrimination claims.**
  - This eliminates confusion caused by the current differing size thresholds for discriminatory discharge and pregnancy accommodations protections versus discrimination not resulting in discharge.
  - Workers should be protected from discrimination no matter the size of their employer, and sometimes those most vulnerable to harassment work for smaller employers. Over a dozen states have extended their anti-discrimination laws to all employers, including Maryland, Illinois, South Dakota, and North Dakota.
- **Clarifies awards of “attorney fees and costs” include reasonable litigation expenses.**
  - This is important for helping workers, especially those in low-paid jobs, obtain legal representation in all types of discrimination cases, including harassment.

## **The Safe and Thriving Workplace Act will benefit Virginia businesses**

This bill provides clarity to employers about what constitutes unlawful harassment, which will help employers prevent and stop harassment. In turn, it will help employers avoid liability and the lasting human impacts of harassment that translate into business costs, such as decreased productivity, increased absenteeism, and diminished recruitment and retention.

### **Organizations Supporting this Bill**

ACLU of Virginia – Birth in Color RVA – Equality Virginia – NARAL Pro-Choice Virginia – National Women’s Law Center – Planned Parenthood Advocates of Virginia – SEIU Virginia 512 – Virginia AFL-CIO – Virginia Domestic and Sexual Violence Action Alliance – Virginia Employment Lawyers Association – Virginia Interfaith Center for Public Policy –Virginia Poverty Law Center

## Examples of Problematic Court Interpretations:

### Courts too often interpret what constitutes workplace harassment very narrowly so that conduct most people would find egregious is not found to be unlawful.

- In **Singleton v. Dep't of Correctional Education**, the 4th Circuit found that conduct didn't amount to unlawful harassment because it wasn't "severe or pervasive." There, the plaintiff-employee alleged that, over a year, another employee stared at her breasts, constantly told her that he found her attractive, and made inappropriate comments such as, "the [plaintiff-employee] should be spanked every day." The other employee also referred to his physical fitness for his age; on one occasion, measured the length of the plaintiff-employee's skirt to judge its compliance with the prison's dress code and told her that it looked 'real good; asked her if he made her nervous (she answered 'yes'); and repeatedly remarked to her that if he had a wife as attractive as her, he would not permit her to work in a prison facility around so many inmates.
- In **Roberts v. Fairfax County Public Schools**, an Eastern District of Virginia court held that a teacher calling a Black female teaching assistant the N-word twice and threatening to kill her on at least one of those occasions did not constitute unlawful workplace harassment because they were "isolated" uses of racial slurs and not sufficiently frequent to be considered "severe or pervasive."
- In **Hopkins v. Baltimore Gas & Electric Co.**, the 4th Circuit found that the allegations of same-sex harassment extending over a seven-year period, were not "severe or pervasive" enough to constitute unlawful harassment. The plaintiff alleged that a supervisor frequently entered the men's restroom when plaintiff was in the restroom alone, and on one of those occasions, pretended to lock the door and said, "Ah, alone at last," while approaching the plaintiff. The supervisor also inquired about the plaintiff's dating life and whether the plaintiff had sex with anyone over the weekend, and regularly commented on the plaintiff's physical appearance. During one incident, the supervisor positioned an illuminated magnifying glass over the plaintiff's crotch, looking through it while pushing the lens down and asking, "Where is it?". In another instance, the supervisor bumped into the plaintiff and said, "You only do that so you can touch me." Additionally, while in a confined darkroom space together, the supervisor asked the plaintiff, "Was it as good for you as it was for me?, and upon leaving the darkroom, attempted to force himself in a one-person revolving door with the plaintiff.
- In **Montano v. INOVA Health Care Services**, an Eastern District of Virginia court found the sex- and race-based harassing conduct alleged by a Hispanic woman working at a health care center was not "severe or pervasive," but isolated incidents and off-hand remarks. According to the allegations, over the course of one year, the plaintiff's co-workers referred to Hispanic patients as "Mexicans" and members of MS-13, complained that "these [Latino] people keep crossing the river," sought to deny Hispanic patients workers' compensation benefits, unreasonably questioned Hispanic patients about their immigration status, and insinuated that Hispanics come to America to receive government benefits. In addition, the plaintiff's supervisor came into work on his day off so he could stare at her breasts after she underwent cosmetic surgery, her co-workers told her that her breasts looked nice, a co-worker told her he heard she received a gift that her husband likes (referring to her breasts), and co-workers informed her others were spreading rumors about her breasts.