



FOR GENDER JUSTICE

POLICY BRIEF

ENSURING SAFE AND THRIVING WORKPLACES: STRENGTHEN PROTECTIONS AGAINST WORKPLACE HARASSMENT



THE PROBLEM

As the Me Too movement has made clear, workplace harassment, including sex harassment, is widespread, affecting working people in every state, in nearly every kind of workplace setting and industry, and at every level of employment. Although people of all genders experience sex harassment and assault, women, including trans and cisgender women, as well as gender-nonconforming and nonbinary people are disproportionately affected, and Black women seem to be especially likely to experience harassment. Sex harassment holds women back, threatens their safety and economic opportunities, and excludes many from public life. COVID-19 has left many workers more economically insecure and thus more vulnerable to harassment, especially for those historically most marginalized by workplace harassment—workers in low-paid jobs; Black women and other women of color; LGBTQI+ people; immigrant workers; and people with disabilities.

Gaps in state and federal laws have left many of those most vulnerable to workplace harassment without meaningful legal protections. Court imposed standards have made it difficult for victims to hold employers and individual harassers accountable, and federal law and many state laws have failed to prevent the proliferation of employer-driven agreements that help hide the true extent of harassment and shield serial harassers from accountability. Federal law and most state laws also focus largely on remedying harassment after the fact, with little emphasis on preventing harassment in the first instance.

THE SOLUTION

The need for strong workplace anti-discrimination and anti-harassment protections is clearer and more urgent than ever. States should expand anti-harassment and anti-discrimination protections to cover more workers, improve victims’ ability to hold employers and individual harassers accountable, redress victims’ harm by improving recovery of monetary damages, restrict employers’ efforts to impose secrecy regarding harassment, and emphasize prevention strategies. Importantly, these policy initiatives should not only address harassment based on sex (which includes sexual orientation and gender identity), but also harassment and discrimination based on other characteristics, like race or disability, because they often intersect and together reinforce gender, racial, and other forms of inequality.

BASIC ELEMENTS OF THE SOLUTION

- Amend anti-harassment and anti-discrimination laws to protect independent contractors, interns, graduate students, and guestworkers. Reduce the employer size thresholds for such laws so that workers in all workplaces with at least one employee are protected.
- Extend the statute of limitations for workplace harassment and discrimination claims to at least three years, so that victims dealing with the trauma of harassment and/or the fear of reporting do

FOR HELP CRAFTING LEGISLATION, TALKING POINTS, FACT SHEETS, AND FOR STATE-SPECIFIC POLICY RESEARCH AND DATA, PLEASE CONTACT US AT PLAYBOOK@NWLC.ORG.

not lose the opportunity to seek justice because of a short time limit.

- Protect all workers from retaliation. Make clear that workers are protected from retaliation for reporting workplace harassment even before it becomes actionable, that retaliation includes threats to report an individual to immigration authorities, and that an employer may be held liable for retaliation when a worker demonstrates that protected activity was a motivating factor for the employer's adverse action.
- Allow complete redress of the harm caused by harassment and discrimination by removing caps on the amount of compensatory and punitive damages a plaintiff can recover in a lawsuit.
- Address the judicially created "severe or pervasive" liability standard for establishing a hostile work environment claim so as to correct and prevent unduly restrictive interpretations by the courts and ensure that legal protections align with today's expectations of workplace behavior.
- Ensure employers adopt a comprehensive harassment and discrimination prevention program.
- Require employers to administer biennial anonymous climate surveys of employees to help management understand the nature and scope of workplace harassment.
- Eliminate the tipped minimum wage to ensure tipped workers are entitled to the same minimum wage as other workers, so women do not have to tolerate harassment as the price of tips.
- Prohibit employers from requiring employees to sign [nondisclosure or nondisparagement agreements](#) that prevent employees from speaking about harassment and discrimination in the workplace as a condition of employment.
- [Limit the use of nondisclosure clauses in settlements](#) that impose secrecy regarding harassment and discrimination and can insulate harassers from accountability.
- Require employers bidding on state contracts to [disclose information regarding forced arbitration agreements](#) that require employees to address discrimination or harassment claims through arbitration.
- Require employers to regularly report to a state or local enforcement agency the number of claims, lawsuits, and settlements involving harassment and discrimination and the amounts paid, to alleviate secrecy around harassment and discrimination and encourage employers to implement prevention efforts proactively.
- Clarify that employers are to be held vicariously liable for harassment committed by supervisors, including not only those supervisors empowered to hire and fire employees, but also

those with the authority to undertake or recommend tangible employment actions or with the authority to direct the harassed employee's daily work activities.

TALKING POINTS ON THE SOLUTION

- Sex harassment affects working people in every state and at every level of employment. [Sex harassment holds women back](#), threatens their safety, health, and economic opportunities, and excludes them from public life.
- Justice, healing, and preventing sex harassment or sexual assault will come from confronting the power imbalances in our workplaces. This is a systemic issue. It's about power and control. We need to keep challenging old systems of power. We need to keep fighting for gender and racial equity across spaces. When we refuse to stay silent, when we show up and name the real problems, we can build a better future for everyone.
- Sex harassment not only harms women, [it harms businesses and the broader economy](#). Sex harassment leads to reduced employee job satisfaction, increased absenteeism, and deterioration of co-worker relationships. Harassment and retaliation can push women out of their jobs or lead them to avoid or leave a profession or industry altogether—often times higher-paying or male-dominated professions, like construction or STEM. This, in turn, exacerbates the gender wage gap and limits women's ability to build wealth and plan for the future.
- [Sixty-five percent of people](#) say the government is doing too little to address the problem of sexual misconduct.
- Since 2018, [21 states](#) have enacted legislation that closes loopholes in existing harassment laws or creates new protections for victims of harassment and discrimination, including Tennessee, Virginia, Maryland, New York, Illinois, Vermont, California, and Washington.