NATIONAL WOMEN'S LAW CENTER

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A Better Path: Reflecting on State Workplace Harassment Reforms and Defining the Vision We Fight For

INTRODUCTION

Workplace harassment on the basis of sex, race, and other protected characteristics is widespread. It affects workers in every industry and at every level of employment. Harassment holds workers back, threatens their safety and economic opportunities, and excludes many from public life. Women are more likely to experience workplace harassment, and the least economically secure workers have the most to lose from harassment, especially workers in low-paid jobs; Black women and other women of color; LGBTQI+ people; immigrant workers; and people with disabilities.

In the eight years since #MeToo went viral,[1] 27 states and the District of Columbia have passed laws aimed at strengthening protections against workplace harassment.[2] The most widely adopted reforms have focused on protecting workers who speak out from retaliation, ensuring that all workers can have their day in court, requiring employer transparency and accountability, and making it more costly for employers to violate the law.

In May 2024, the National Women's Law Center (NWLC) brought together dozens of policy experts, worker-advocates, attorneys, and academics for a two-day convening to assess the impact of state anti-harassment laws passed since #MeToo went viral. The goal of the convening was to identify what legal reforms have or have not worked well for those who experience workplace harassment—especially low-paid women, women of color, and LGBTQI+ workers—and develop a collaborative vision of the policy solutions needed to fill existing gaps. This report aims to distill the themes that emerged from these discussions and map out the policy areas that advocates and lawmakers should explore moving forward.

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Pursuing and defending this vision in the states has become more urgent than ever given the second Trump administration's relentless efforts to attack the long-shared value of gender equity at work and dismantle workplace anti-discrimination protections, in particular for women, people of color, immigrants, and LGBTQI+ workers.

In just the first half of 2025:

- The administration has declared war on diversity, equity, and inclusion programs, issuing multiple executive orders aimed at bullying businesses and other institutions into ending what it has deemed "illegal DEI." The scope of the so-called "illegality" is purposefully vague, but so far, the administration has used the bogeyman of "illegal DEI" to threaten programs that encourage women to enter male-dominated fields, that help address sex harassment at work, and that provide community-based services and support to survivors of gender-based violence.

- The administration revoked longstanding civil rights protections for federal contract workers that required their employers to undertake proactive efforts to promote equal opportunity and prevent discrimination, including harassment.

- The Equal Employment Opportunity Commission dismissed seven lawsuits it had previously brought on behalf of transgender and nonbinary workers whom the agency believed to have experienced severe or pervasive harassment or retaliation, abandoning these cases, and these workers, mid-litigation. The EEOC has also blocked transgender and nonbinary workers from accessing the agency's process for investigating allegations of discrimination, essentially predetermining that charges of gender-identity based harassment are meritless—despite the Supreme Court's acknowledgment that discrimination based on gender identity constitutes unlawful sex-based discrimination under federal law.

It is imperative that lawmakers and advocates mount a full-throated defense against these attacks and draw on the lessons of post-#MeToo reforms to proactively present an alternative vision of a world that truly works for survivors of harassment. State legislators in particular have an opportunity to fill in the gaps left by the federal government's abdication of its responsibility to protect all workers from harassment and other forms of discrimination.

Lessons Learned From Workplace Harassment Reforms in the Wake of #MeToo

The May 2024 convening was structured as a series of panels and breakout sessions centered around the main themes and goals of post-#MeToo state policy efforts: protecting workers who speak out against harassment; reforming legal standards to work better for harassment survivors; and shining a light on harassment and making sure employers are held accountable.

The wide-ranging conversations that resulted reflected the progress these laws have made, while at the same time identified crucial gaps that continue to leave too many workers without meaningful protection or avenues for redress. Participants described how much more was needed to protect workers from the severe consequences they often face when reporting harassment—and how the threat of these consequences continues to prevent survivors of harassment from coming forward. We discussed the ways in which the legal system remains difficult for harassment survivors to navigate and the unreasonable and outdated legal standards that courts continue to impose even in the face of state laws designed to improve those standards. Participants reported how employers continue to face little to no repercussions for harassment and continue to use contractual methods to suppress information about complaints brought against them.

Three major themes emerged from the convening that should guide efforts to prevent and address harassment and support workers:

- The power imbalance between workers and employers must be corrected so that employers no longer hold harassment survivors' entire futures in their hands.
- Alongside new formal legal standards, the legal system itself must be transformed to become more accessible and navigable for survivors of harassment.
- Employers must be held accountable and face real consequences for harassment.
- Most importantly, any efforts to reform policy must be centered around and driven by the voices and experiences of harassment survivors.

The Problem: Employers Wield Power Over Harassment Survivors Inside and Outside the Workplace

Participants identified that fear of retaliation is a major barrier that prevents workers from coming forward to report harassment that they have experienced or witnessed. Retaliation takes many forms and can take place both inside and outside the workplace environment. Examples include firing, demotion or denied promotion opportunities, transfer to less desirable assignments, hostile comments, increased disciplinary scrutiny, and reporting or threatening to report to immigration authorities.

Retaliation laws are backward-looking, meaning that a worker can only bring a claim for retaliation after the employer has already engaged in the retaliatory action. But for many workers, especially the most economically precarious, the harms of employer retaliation can be catastrophic and irreversible. In the face of potentially devastating consequences—offered only the promise of legal relief that will come much later (if it comes at all) and that may be nowhere near enough to make up for the harm they have faced—many workers understandably conclude that coming forward is not worth the risk.

Participants also described how retaliation can be too difficult to prove, allowing abusive employers to get away with punishing survivors of harassment, with chilling effects for those who speak up and for others who experience harassment. Federal law requires harassment survivors to prove that the negative action was a direct result of the worker coming forward (known as "but-for" causation), and many state courts follow this same standard. For example, tipped restaurant workers may be moved to a less favorable assignment, putting them in a position to get fewer tips. Other examples of retaliation that participants shared included interfering with child custody disputes, changing work schedules, and making intrusive discovery demands during legal proceedings. Under a "but-for" causation standard, a worker who experiences these negative actions would have to prove that their complaint about harassment was the decisive factor behind their employer's actions. If an employer can show any other legitimate reason for the negative action, then the employer cannot be held liable under a "but-for" standard—even if the employer also had a retaliatory motive.

A related theme was how retaliation is enabled and worsened by the exceptionally large amount of power employers often hold over their workers. Employers may control not only the worker's paycheck, but also access to employer-provided housing, health insurance, child care, immigration sponsorship, and more.

The Path Forward

Making workers feel safe coming forward will require a comprehensive approach that leverages the power of both the law and collective worker action. We need better laws and legal standards to reform not just retaliation, but also the underlying power imbalances that enable retaliation in the first place.

Policies to strengthen anti-retaliation laws include:

- **Expanding coverage for anti-discrimination protections, including protection from retaliation.** Currently, federal protections against harassment and retaliation under Title VII of the Civil Rights Act only apply to workers at businesses with 15 or more employees. Since #MeToo went viral, four states have enacted laws to protect more workers: Arizona, California, New York, and Utah all have retaliation laws that apply to employers with one or more employees. Arizona, California, and Utah's expanded laws, however, are limited to retaliation related to sex harassment. State lawmakers and advocates should continue to fill the gaps in protection by pursuing legislation to remove small employer exemptions from harassment and retaliation laws. Laws should also be expanded to cover retaliation against employees related to *any* type of unlawful discrimination, not just sex harassment, and include specific categories of employees, such as interns, for whom the power imbalance with the employer may be especially severe.

- **Explicitly naming actions that are considered retaliatory.** Even though negative actions by employers both in and out of the workplace are already unlawful forms of retaliation, laws and regulations should more explicitly call out specific forms of retaliation so that workers and employers are aware of the scope of these laws. Examples from state law include expressly stating that retaliation can take the form of reporting or threatening to report employees or their family members to immigration authorities,[3] disclosing an employee's personnel files,[4] and altering an employee's work location or schedule.[5]

- **Instituting preventive measures to deter employers from retaliating.** Proposed solutions included requiring enforcement agencies that receive charges to send notice to the employer that retaliation is prohibited and allowing courts to issue immediate protective orders or preliminary injunctions preventing employers from taking adverse actions against an individual asserting rights protected by anti-discrimination laws. Congress should also require the federal government to offer deferred immigration action to workers without employment authorization who experience or witness workplace harassment or other violations of labor and employment laws.[6]

- **Making it easier to hold employers accountable for retaliation.** Legislators in jurisdictions that require "but-for" causation to prove retaliation should direct courts to instead apply a "mixed motive" standard, in which the worker need only show that speaking out was a motivation for the retaliatory action, even if the employer asserts other possible motivations. Another solution would be to create a rebuttable presumption of retaliation in cases where a worker is fired or otherwise experiences a negative employment action shortly after making a harassment complaint, meaning that courts would assume the action was in retaliation for the complaint unless the employer can prove otherwise.

- **Increasing worker power and economic stability.** Raising wages—including eliminating the subminimum wage for tipped workers—improves workers' economic stability, which can help empower workers to assert their rights. Workers who are living paycheck to paycheck may be more afraid to report harassment and more likely to endure workplace abuse in order to keep food on the table and pay for other basic needs, like housing, transportation, health care costs, and more. Protecting the right to organize for all workers, including those not covered under the National Labor Relations Act, enables workers to band together against harassment and retaliation and push for collective bargaining agreements that enshrine procedural rights for survivors of harassment.

- **Creating services to meet the needs of harassment survivors.** This includes funding wraparound services and other supportive measures to help harassment survivors navigate the collateral consequences of harassment on mental health, housing, household finances, and other aspects of life. These measures also leave harassment survivors less vulnerable to the negative impact of retaliation by providing the support necessary to mitigate harm.

The Problem: The Legal System and Court-Imposed Legal Standards Are Inadequate to Meet Harassment Survivors' Needs

A recurring theme throughout the convening was that the legal standards for proving harassment, and the legal system itself, are not designed to work for survivors of harassment. Although many policy solutions around harassment center around legal rights that harassment survivors can vindicate in court, participants repeatedly emphasized that the legal system is so inaccessible that the vast majority of cases never make it to court in the first place. Legal action is long, expensive, and hard to understand. Government enforcement agencies and legal aid organizations are typically under-resourced, and many legal aid organizations do not take on workplace harassment matters. Many workers cannot afford to hire a private attorney to help them assert their rights, and many attorneys are unwilling or unable to bring cases where the odds are stacked against their clients—and even if they were to succeed, Title VII and many state laws impose predetermined limits on how much money workers can recover as damages in employment discrimination cases, including cases of workplace harassment. These limits, known as damage caps, prevent workers from being fully compensated for the harms they have endured, even when a jury has found in their favor. In addition, they allow employers to shrug off discrimination suits as just a minor cost of doing business rather than taking active measures to prevent harassment from occurring in the first place.

Even survivors of harassment who make it to court face an uphill climb due to unrealistic and outdated legal standards. For decades, courts have required plaintiffs to show that the harassment they experienced was "severe or pervasive" to prevail in court. In practice, this has meant that even the most blatant and outrageous conduct has been excused by courts as not "severe or pervasive" enough to hold employers accountable. Lawmakers in a handful of states have passed laws rejecting "severe or pervasive" in favor of more inclusive standards that give courts explicit direction on what factors to account for when determining whether a harasser has created a hostile work environment—factors that reflect the full circumstances of workers' experiences, including power imbalances between employers and employees. This has helped show that change is possible—but participants report that application of these new standards in the courts has been mixed.

On top of these procedural and legal hurdles, the culture of the legal system can be hostile and disempowering for harassment survivors, especially those who are people of color, immigrants, LGBTQI+, or low-paid. Workers interacting with the system are often faced with attorneys, court staff, or agency personnel who are not trained in trauma-informed practices or who are not sensitive to language barriers, differing cultural practices, or fears of identity-related persecution.

The Path Forward

A great deal of work is needed to ensure that survivors of harassment can meaningfully interact with the legal system. There must be more education and training for judges and legal personnel, increased funding for survivor supportive services, and systemic and doctrinal reforms.

Policies to increase meaningful access to the legal system for harassment survivors include:

- **Eliminating the outdated "severe or pervasive" legal standard.** Five states and the District of Columbia have enacted reforms that can provide a rough framework for advocates and lawmakers by requiring courts to consider factors they have historically overlooked, like power imbalances or the use of slurs;[7] to disregard factors they have placed too much weight on, like effects on a harassment survivor's performance or whether the harassment is limited to one incident;[8] and to step into harassment survivors' shoes by asking whether a person in the same protected class would find the conduct offensive.[9] These reforms are an important first step, but there must be more outreach and training to educate judges and attorneys on the new standards; states should invest in partnerships between advocacy organizations, legal experts, and the judiciary to develop and implement continuing education programming.

- **Increasing funding for community-based education and survivor support.** Participants noted that fellow survivors of harassment in an individual's own community were seen as trusted messengers who are best positioned to inform harassment survivors of their rights and help navigate legal systems. Lawmakers and advocates should push for funding for community-based organizations to carry out Know Your Rights education and help survivors of harassment through the legal process. State agencies should also partner with these organizations to identify strategies and high-impact cases.[10]

- **Increase the financial penalties for violating the law.** Statutory limits on damages ensure that employers can limit their liability as a "cost of doing business," regardless of the harm caused to the survivor. Advocates and lawmakers should seek to remove statutory limits on how much employers can be required to pay in damages and, where applicable, eliminate judges' ability to reduce the amount of damages awarded by a jury. Since 2017, four states have enacted laws to increase the amount of financial relief available to survivors of harassment and discrimination.[11]

- **Adequately funding and training legal professionals.** Enforcement agencies and legal services organizations must be better equipped to serve harassment survivors through increased funding and requirements around language access and culturally competent community outreach. In addition, public and private legal professionals should be given training around trauma-informed practices.

The Problem: Employers Can Too Easily Conceal Harassment to Avoid Accountability

One of the reasons why workplace harassment remains so prevalent is the belief on the part of harassers that they will not be held accountable for their actions. Not only do most employers have a resource advantage over their workers, which makes it more difficult for harassment survivors to assert their rights and obtain redress, but employers also remain adept at sweeping allegations of harassment under the rug and silencing harassment survivors' voices.

Since #MeToo went viral, state and federal policymakers have attempted to address the silencing of harassment survivors by focusing on banning or restricting nondisclosure agreements (NDAs) that prevent survivors from discussing any information about the harassment they experienced. Congress enacted the Speak Out Act in 2022 to make "pre-dispute" NDAs—meaning agreements signed before the harassment occurred—unenforceable. Eighteen states have now adopted some version of a law addressing NDAs. Thirteen of these states restrict both pre-dispute and post-dispute NDAs, although most of these laws do allow some form of post-dispute NDA under limited circumstances in cases where such a clause is the employee's preference.

Participants noted that, although these laws were important to survivors of sex harassment who want to publicly share their stories, this was not the top priority for many of their clients who simply wanted to put painful matters behind them. Participants also noted the many ways in which employers attempt to silence the voices of harassment survivors outside of the context of an NDA, including not only retaliation (as described above), but also increasingly widespread use of defamation suits against workers who come forward and noncompete clauses that discourage reporting by restricting a former employee's ability to pursue future employment within the employer's industry or related industries.

The Path Forward:

Policymakers should continue to promote increased transparency and accountability for harassers, including by preventing employers from using the law to intimidate into silence harassment survivors who want to speak out.

In addition to laws to ban or limit NDAs, these policies include:

Prohibiting employers from abusive lawsuits designed to intimidate employees who speak out. Several states have enacted laws banning strategic lawsuits against public participation. (These lawsuits are known as SLAPPs and the laws protecting people from them are known as anti-SLAPP laws.) SLAPPs are meritless lawsuits filed to intimidate people, including survivors of harassment or assault, from speaking out about misconduct or to retaliate against them for having spoken out. The primary motivation for these suits is not to succeed in court, but to silence people from speaking out by threatening them with the tremendous amount of time, money, and emotional effort it takes to defend against a SLAPP suit.

Banning or limiting contract mechanisms used by employers to suppress workers' speech and constrain workers' choices. These should not be limited to NDAs, but should also include no-rehire clauses and noncompete clauses. These clauses are designed to silence employees with the threat of legal consequences and loss of future job opportunities and to limit their power in relation to their employer. Policymakers should also undertake education to ensure that workers covered under the National Labor Relations Act (NLRA) are aware that employers cannot ask them to waive their right under the NLRA to engage in protected concerted activity, which includes discussing workplace harassment.

Add reporting requirements to consent decrees. State enforcement agencies can leverage the power of enforcement agencies and consent decrees by requiring employers who are found to have engaged in harassment to monitor and report on incidents of harassment to the agency and take preventive measures.

Workers Speak Out on Harassment

In addition to the legal and policy practitioners who joined us for the convening, we were fortunate to have the participation of several community-based worker advocates, who shared insights from their own experiences of harassment in industries such as farmwork and restaurants, and from their perspectives as individuals who provide direct support to workers experiencing harassment.

They offered invaluable insights into the disconnect between legal and policy systems and their experience of what workers need. We spoke more closely with some of these individuals after the convening about what they want lawyers, advocates, and policymakers to know. Below are summaries of what the advocates told us and the themes that emerged.

Harassment is rampant and often goes unreported:

- Fear and shame keep people from coming forward, so a worker who is harassed feels like they are the only one experiencing it. Or it is seen as so commonplace that the worker should just expect it and put up with it. Society itself makes workers feel guilty, like it's their fault because of how they dress or behave. When workers go to the bosses, they say "I don't believe you," or "you just don't want to work."

- Too often, when a worker reports harassment to their employer, or to police or other enforcement agencies, nothing changes. Many times, the harassment gets even worse, or the worker loses their job in retaliation. This also makes it hard for workers to support one another when there is harassment in their workplace, because everyone is afraid of losing their job.

- There are laws to protect workers, but there is a lack of awareness and training about workers' rights, so even when laws are passed, the communities are not seeing them. People don't feel supported when they go to the police or government agencies, and since the 2024 election people are afraid that enforcement agencies will be even less likely to believe them, or that they will be retaliated against if they speak up—especially if they are immigrants.

The emotional and financial toll of harassment can be devastating:

- There is a feeling among workers that they must live with sexual harassment because we need the job to support our families.

- Workers who have experienced harassment often have lasting impacts on their mental health. They feel anxiety, shame, guilt, and depression.

- Because workers are afraid of retaliation like losing their job if they report harassment, they don't report it. But this also means that workers are reluctant to support co-workers who have experienced harassment.

Our stories are not being heard by people in power:

- For the most part, the people who make the laws are not going into communities and asking about what they need—or if they do, it feels like a last-minute afterthought. Lawmakers need to make it a point to listen to what survivors of harassment need to be able to work with dignity, and to give them ways to guide the policies that are passed.

- We do not see harassment survivors' stories represented in the media, or at least the media consumed in the community. Some of that is because people are afraid to have their names attached to something that could get them retaliated against, but even anonymous stories would spread awareness and help people feel like they're not alone.

Organizations serving communities need more support:

- When workers get to know an organization, like a worker center, where they can get training and hear from other people, the workers feel more listened to and more confident. That's what empowers workers to report these things and empowers other women to do it too. These organizations can also help people through the process of filing a complaint and help intervene if workers are threatened with retaliation.
- Workers need access to training about what to do when they experience harassment and what their rights are, and so do the community organizations that support them. Especially now, these organizations need more financial support as well as information and training about the best ways to report harassment under the new administration, particularly for immigrant workers.
- Harassment survivors need connections with lawyers who understand their communities and who can work in partnership with organizations that directly support the most vulnerable workers.

ENDNOTES

1. *See* "State Workplace Harassment Laws Enacted Since #MeToo Went Viral," National Women's Law Center (2025).
2. Many of these laws also address harassment and discrimination against all workers covered by state civil rights laws; such laws address sex harassment even more comprehensively, since harassment and discrimination are often intersectional.
3. N.Y. Lab. Law § 215.
4. N.Y. Exec. Law § 296(7).
5. Conn. Gen. Stat. § 46a-60(8).
6. *See*, e.g., U.S. Department of Homeland Security, "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations" [archived] (January 2023), https://www.dhs.gov/archive/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations
7. *See*, e.g., Colo. Rev. Stat. § 24-34-402(1.3).
8. *See*, e.g., Cal. Gov't Code § 12923.
9. *See*, e.g., 21 Vt. Stat. § 495(k)(2).
10. *See* Jenn Round, Janice Fine, & Michael Felsen, "The Labor Standards Enforcement Toolbox—Tool 12: Introduction to Co-Enforcement," (Workplace Justice Lab, Rutgers School of Management and Labor Relations, May 2023).
11. Andrea Johnson, Samone Ijoma, & Da Hae Kim, "#MeToo Five Years Later: Progress & Pitfalls in State Workplace Anti-Harassment Laws," October 2022, https://nwlc.org/wp-content/uploads/2022/10/final_2022_nwlcMeToo_Report-MM-edit-10.27.22.pdf; Da Hae Kim, Elizabeth Tang, & Christina Iruela Lane, "2023 #MeToo Workplace Anti-Harassment Reforms," September 2023, https://nwlc.org/wp-content/uploads/2023/09/2023_nwlcMeToo_Report-1.pdf