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FOR GENDER EQUITY

# #MeTooWhatNext: STRENGTHEN PROTECTIONS AGAINST WORKPLACE SEXUAL HARASSMENT

## The Problem

As the Me Too movement has made clear, sexual harassment is widespread, affecting working women in every state, in nearly every kind of workplace setting and industry, and at every level of employment. Sexual harassment holds women back, threatens their safety and economic opportunities, and excludes them from public life. And for women of color, immigrants, and LGBTQ people who experience harassment based on multiple intersecting identities, harassment perpetuates inequality along multiple dimensions. Gaps in state and federal laws have left many of those most vulnerable to sexual 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 sexual 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

This is a critical moment to advance key policy initiatives to better protect workers, promote accountability, and prevent harassment. States should expand anti-harassment and anti-discrimination protections to greater numbers and types of 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 must 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.

For help  
crafting  
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## Basic Elements of the Solution

- Amend anti-harassment and anti-discrimination laws to apply to independent contractors, interns, graduate students, and guestworker recruits. Reduce the employer size thresholds for such laws so that workers in all workplaces with at least one employee are protected.
- Prohibit employers from requiring employees, as a condition of employment, to sign nondisclosure or nondisparagement agreements that prevent employees from speaking about harassment and discrimination in the workplace.
- Limit the use of nondisclosure clauses in settlements that impose secrecy regarding harassment and discrimination and can insulate harassers from accountability. Any legislative proposal regarding nondisclosure clauses should be carefully calibrated to ensure survivors have the power to decide what information about their claims should be confidential, while not discouraging employers from entering into settlements, as settlements will often be the best way for victims to obtain some level of justice.
- 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 empowered to hire and fire employees, but those with the authority to undertake or recommend tangible employment actions or with the authority to direct the harassed employee's daily work activities.
- Extend the statute of limitations on harassment and discrimination claims to three years, so that victims dealing with the trauma of harassment and/or the fear of reporting do not lose the opportunity to seek justice because of a short statute of limitations.
- 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 case.
- 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.

- Protect all workers from retaliation, including managers, human resources personnel, or other EEO advisors. 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.
- 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.

## Talking Points on the Solution

- Sexual harassment affects women in every state and at every level of employment, holding women back, threatening their safety, health, and economic opportunities, and excluding them from public life.<sup>1</sup>
- Sexual harassment not only harms women, it harms businesses and the broader economy. Sexual harassment leads to reduced employee job satisfaction, increased absenteeism, and deterioration of coworker relationships.<sup>2</sup> 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.<sup>3</sup>
- Eighty-one percent of voters, and millennial women in particular, see sexual harassment in the workplace as a serious problem, and 51 percent of voters would not vote for a leader who did not prioritize addressing sexual harassment.<sup>4</sup>
- States are at the forefront of addressing the issue of harassment in the workplace. In 2018 alone, at least 6 states have enacted legislation that closes loopholes in existing harassment laws or creates new protections for victims of harassment and discrimination, including Oregon, Maryland, New York, Tennessee, Vermont, and Washington.

1. Amy Blackstone, Heather McLaughlin, & Christopher Uggen, *State of the Union 2018, Workplace Sexual Harassment*, STANFORD CTR. ON POVERTY AND INEQ. 39–40 (2018), [https://inequality.stanford.edu/sites/default/files/Pathways\\_SOTU\\_2018\\_harassment.pdf](https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2018_harassment.pdf).

2. *Id.* at 40.

3. Amy Blackstone, Heather McLaughlin, & Christopher Uggen, The Economic and Career Effects of Sexual Harassment on Working Women, *Gender & Society* (3)3, pp 333-358 (June 2017), <http://journals.sagepub.com/doi/full/10.1177/0891243217704631>.

4. BARBARA LEE FAM. FOUND., *Voters, Candidates, and #MeToo* (2018), <http://www.barbaraleefoundation.org/research/voters-candidates-and-metoo/>.