

SEXUAL HARASSMENT IN THE AFTERMATH OF #ME TOO

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Definitions of Sexual Harassment

Meeting New Legal Requirements

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WHAT TO DO NOW

Prepare for mandatory training starting on 10/9/18.

Revise your sexual harassment policy statements and complaint reporting policies and procedures and distribute before 10/9/18.

Prepare to distribute a poster and information sheet from the NYC Commission on Human Rights by 9/6/18.

Remove mandatory arbitration provisions in your employment agreements or create an exception for sexual harassment claims

After 7/11/18, consider removing confidentiality/non-disclosure provisions in agreements settling sexual harassment claims unless they state that the inclusion was the employee's preference and they provide for a 21 day period to revoke that consent.

Contact insurance brokers to expand employment practices coverage to include sexual harassment claims by interns and non-employees, including contractors, subcontractors, vendors, consultants, any anyone else providing services under a contract in the workplace.

DEFINITIONS OF SEXUAL HARASSMENT

Federal law

Title VII of Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. It is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

State Law

N.Y.S. Human Rights Law, Executive Law, Art. 15

Sexual harassment consists of "unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature if such conduct is made either explicitly or implicitly a term or condition of employment, or submission or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment."

City Law

N.Y.C. Human Rights Law, Admin. Code, Title 8

Sexual harassment exists when an employee is treated less well than other employees based on gender and the conduct is more than petty slights or trivial inconveniences.

REQUIRED ELEMENTS OF A SEXUAL HARASSMENT POLICY

1. Definition of sexual harassment, including that it is a form of unlawful discrimination under federal, state and city law, with examples
2. Statement that the policy protects employees and independent contractors from harassment by employees, partners, independent contractors, and non-employees including clients, vendors, and other non-employees they encounter in connection with their employment
3. Statement that sexual harassment is against Firm policy and will not be tolerated.
4. Statement encouraging reporting.
5. Reference to a standard complaint form.
6. Description of responsibilities of managers and supervisors in prevention of sexual harassment and their obligations, including mandatory reporting, when complaints are received or harassment observed, and a statement that knowingly allowing harassment to continue will be sanctioned.
7. Identification of persons, by name and title, who are available to receive complaints and provide advice regarding harassment personally experienced or observed.
8. Statement that all complaints will be investigated and dealt with appropriately, and that persons found to have committed sexual harassment will be subject to appropriate disciplinary action.
9. Description of internal complaint/investigation process that is timely and confidential and ensures due process for all parties.
10. Requirement that all employees cooperate in investigations.
11. Prohibition against retaliation against persons who complain or cooperate in an investigation or testify or assist someone in making a complaint.
12. Information on available federal, state and city remedies, including list of available judicial and administrative forums, contact information for relevant agencies, and available remedies. Must also state that additional laws may be applicable.

MODEL SEXUAL HARASSMENT STATEMENT

[Firm Name] does not tolerate sexual harassment and reaffirms its commitment to that policy in this Statement. We believe that all employees and independent contractors working with us are entitled to work in an environment that is businesslike and free of bias, prejudice and harassment, including sexual harassment.

What is sexual harassment? Sexual harassment is a form of unlawful sex discrimination under federal law (Title VII of the Civil Rights Act of 1974, 42 U.S.C. section 2000e et seq.), New York State law (New York Human Rights Law, Executive Law section 296), and New York City law (New York City Human Rights Law, N.Y.C. Administrative Code Section 8-101 et seq.).

The New York City law also treats sexual harassment as a form of unlawful discrimination, and defines sexual harassment as encompassing any situation where an employee is treated less well than other employees based on gender and the conduct is more than "petty slights or trivial inconveniences."

New York State law and federal law are more restrictive. The New York State Division on Human Rights uses the following definition, based on both State and federal law:

Sexual harassment in the form of a "hostile environment" consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks made by someone in the workplace which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

A type of sexual harassment known as "quid pro quo" harassment occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms conditions or privileges of employment. Only supervisors and managers are deemed to engage in this kind of harassment, because co-workers do not have the authority to grant or withhold benefits.

Sexual harassment can occur between males and females, or between persons of the same sex. Sexual harassment that occurs because the victim is transgender is also unlawful.

A single incident of inappropriate sexual behavior may be enough to rise to the level of sexual harassment, depending on the severity of such incident. Federal and State law require that the behavior be severe or pervasive, so that one joke or comment may not be enough to be sexual harassment. *Leaving aside legal definitions, at FIRM, a single instance of coerced sexual activity or*

unwelcome touching or pinching will constitute sexual harassment.

Another common definition of sexual harassment is that it covers unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

- Such conduct is made either explicitly or implicitly a term or condition of employment,
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

The New York State Division on Human Rights also has described some of the types of acts that may be unlawful sexual harassment:

- Physical assaults of a sexual nature , such as:
 - o Rape, sexual battery, molestation, or attempts to commit these assaults.
 - o Intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employees' body.
- Unwanted sexual advances, propositions or other sexual comments, such as:
 - o Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments;
 - o Subtle or obvious pressure for unwelcome sexual activities;
 - o Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which are sufficiently severe or pervasive to create a hostile work environment.
 - o Sexual or discriminatory displays or publications anywhere in the workplace, such as displays of pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic.

Other examples of behavior that could be unlawful sexual harassment are sexual innuendos, verbal abuse of a sexual nature; graphic commentary about an individual's body, sexual prowess or sexual deficiencies; leering; whistling; and suggestive, insulting or obscene comments or gestures.

Who is covered by this policy? Applicants for employment, employees, and independent contractors are all covered by this policy, and have the right to be free from harassment by anyone associated with the Firm, including co-workers, supervisors, independent contractors, clients and persons doing business with us, and the conduct need not be sexual; profanity or rudeness based on your gender, for example, could constitute sexual harassment.

What is the responsibility of department chairs, supervisors and managers? Everyone with supervisory or managerial authority is responsible for assuring that no employees are subjected to conduct that constitutes sexual harassment, and they are required to report all complaints they receive, or all situations they observe, that involve possible sexual harassment. If they receive complaints about, or observe, behavior that could constitute harassment, they are required to report it. Supervisors and managers who knowingly allow sexual harassment to continue will be sanctioned.

What is the responsibility of all employees? All employees who observe harassment are encouraged to report it. They also are required to cooperate in any investigation of a sexual harassment claim and are requested, although not required, to maintain confidentiality concerning the investigation.

What should I do if I believe that I am being subjected to sexual harassment?

Any person who believes that he or she is being sexually harassed is encouraged to try to resolve the problem directly with the person concerned. If this does not resolve the matter, or if there is a reluctance to deal directly with the person involved, the situation should be brought to the attention of your manager, supervisor or department head, or [name at least two persons, by name and title, who are familiar with personnel and discrimination issues but are in different "chains of command"; possibly identify different people for lawyers/support staff?] for counseling and help in handling the problem, including initiation of a complaint using the Discrimination Complaint Form attached to this Statement.

What happens after I submit a Discrimination Complaint Form?

All complaints will be investigated promptly, thoroughly and impartially.

The completed Discrimination Complaint Form should be brought to [an identified person/title in HR? An identified senior partner/title for attorneys?], who will share the complaint with [head of firm for lawyers; COO or CAO for administrators]. [Head of Firm/CAO/COO] will then designate a person to serve as Investigator, who may or may not be a Firm employee or partner. Whenever possible, the Investigator will not be from the department in which either the complainant or the person(s) charged work or in the chain of supervisory command of either the complainant or the person(s) charged.

The Investigator will meet with the complainant and then with the person(s) charged within ten working days after being designated, or as soon thereafter as feasible. Persons charged will be

told the nature of the claims asserted, but the decision whether to share the Discrimination Complaint Form is at the discretion of the Investigator. Both the complainant and the person charged will be given the opportunity to present evidence and to identify possible witnesses. The Investigator will then conduct such further investigation as deemed appropriate, including possible interviews of additional persons and review of documents.

All persons involved in the investigation, including the complainant, the person(s) accused, and witnesses, will be asked to maintain confidentiality and information on the charges and on the investigation will be kept confidential to the extent possible.

Investigators will endeavor to conclude their investigations within thirty days of their designations. They will then inform the [head of the Firm/CAO?COO] of their findings, including whether sexual harassment had occurred. If the Investigator finds that sexual harassment had occurred, disciplinary action will be recommended and relief may also be recommended for the complainant.

All persons found to have engaged in sexual harassment will be subject to appropriate disciplinary action, up to and including dismissal, as determined in the sole discretion of the [head of the Firm/COO/CAO] following receipt of the report from the Investigator.

Both the complainant and the person(s) charged will be told whether the charge of sexual harassment was sustained, but no information will be given concerning either the relief awarded the complainant or the sanction on the person(s) charged.

Freedom from retaliation.

Employees will not be subjected to retaliation or be penalized in any way for making a good faith complaint of harassment or discrimination or for their assistance to a complainant, or for their cooperation or participation in the investigation of a complaint. Violations of this provision should be reported to [identify the persons listed above]. All claims will be investigated and anyone found to have engaged in such retaliation will be subject to appropriate discipline, up to and including termination.

Pursuing a sexual harassment claim under federal, state or city law

Claims under Title VII of the Civil Rights Act of 1974 as amended, 42 U.S.C. 2000e et seq.
The firm must have 15 or more employees.

Remedies include back and future pay; compensatory damages (e.g. for emotional distress and medical fees) and punitive damages with monetary caps; and reasonable attorneys' fees

Claims must first be filed within 300 days with the Equal Employment Opportunity Commission (EEOC):

Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th floor
New York, NY 10004
Tel: (800) 669-4000
www.eeoc.gov

Claims under the New York State Human Rights Law, Executive Law section 290 et seq.

Claims can be filed directly in New York State court, or can first be filed with the New York State Division on Human Rights (NYSDHR).

Remedies include back and future pay; compensatory damages; and reasonable attorneys' fees.

Claims must be filed within one year with the NYSDHR or three years in State court.

New York State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, NY 10458.
Tel: (888) 392-3644.
www.DHR.NY.GOV

Claims under the New York City Human Rights Law, N.Y.C. Administrative Code Section 8-101 et seq.

Claims can be filed directly in New York State court or can first file with the New York City Human Rights Commission (NYCHRC).

Remedies include back and future pay; compensatory damages; and reasonable attorneys' fees. If you go directly to court, you may also get punitive damages.

Claims must be filed with the NYCHRC or the court within 3 years.

NYC Commission on Human Rights
22 Reade Street
New York, NY 10007
Tel: 311 or (718) 722-3131
www.nyc.gov/humanrights

DISCRIMINATION COMPLAINT FORM

Description of claim (use additional pages if necessary):

NAME

DATE

REQUIRED ELEMENTS OF SEXUAL HARASSMENT TRAINING¹

1. An explanation of sexual harassment that covers federal, State and City law and explains that it is a form of gender discrimination.
2. Examples of conduct that would constitute sexual harassment.
3. Information on by-stander intervention, including resources explaining how to engage in bystander intervention.
4. Information on the employer's internal complaint process.
5. A prohibition on retaliation with examples.
6. Statement of expected conduct by supervisors and managers in the prevention of sexual harassment and retaliation and measures they may take to appropriately address complaints.
7. Information on the federal, state and New York City statutes concerning sexual harassment, on the complaint processes available under those statutes, and on available remedies under those statutes, including contact information.
8. The training must be interactive.

¹ This list reflects requirements set forth in the 2018 State Budget Bill, Section KK Subpart E and in the Stop Sexual Harassment in New York City Act, Int. 632-A. It does not reflect the model training program being developed by the NYS Department of Labor (DOL) and NYS Division on Human Rights (DHR) or the on-line interactive training being developed by the N.Y.C. Commission on Human Rights, neither of which was available as of July 6, 2018.

ADDITIONAL SUGGESTED SUBJECTS FOR TRAINING OF
SUPERVISORS, MANAGERS, AND OTHERS IDENTIFIED
AS AVAILABLE FOR ADVICE

(see SUGGESTED AGENDA FOR INITIAL MEETING WITH
COMPLAINANT and SUGGESTED AGENDA FOR INITIAL MEETING
WITH PERSON ACCUSED WHEN BEHAVIOR COULD RESULT FROM
A GOOD FAITH MISUNDERSTANDING)

9. Discussion of their role and its limits. They are expected to listen to the complaint and offer advice and help in filing a formal complaint if appropriate. They also may help to informally resolve the problem, if it appears to be the result of a good faith misunderstanding and does not constitute illegal harassment.
10. Confidentiality and its limits. If the information conveyed suggests illegal harassment has occurred or is occurring, it must be reported.
11. Convincing a complainant where confidentiality is permissible to allow efforts to be made to address the issue.
12. Identifying the relief the person wants in addition to an end to the unwelcome behavior, if anything. (No personal interactions? Physical separation? Change in assignments or office? Opportunity to discuss the issue or to be left alone?)
13. Options available to complainants. Counsel on options (assuming the behavior does not require filing of a formal complaint)

Keep a diary.

Confront the alleged harasser (in person or in writing).

See other suggestions in "Dealing Informally with Sexual Harassment."

Informal resolution. See "Suggested Agenda for Initial Meeting with Alleged Harasser, When Behavior Could Result from a Good Faith Misunderstanding."

Filing a formal complaint. All cases beyond possible misunderstandings or "petty slights or inconveniences" should be handled through the procedure, so there is a record. Offer to help write the complaint, if appropriate.

ADDITIONAL SUGGESTED SUBJECTS FOR TRAINING OF INVESTIGATORS

14. Interviewing the complainant; TAKE GOOD NOTES

- a. Have Kleenex handy.
- b. Explain confidentiality limits and request that the claim and investigation be kept confidential.
- c. Create a detailed chronology
- d. Ask for witnesses: people who were present at the events in question or who you reported them to at the time.
- e. Ask for possible additional victims
- f. Offer to review supporting documents
- g. Discuss interim and final relief
- h. Explain next steps: time frame; interviews with person accused and witnesses, document review, possible 2d interview to clarify open questions; conclusions shared and sanctions recommended to X, who will convey final conclusion to complainant, including whatever relief may be offered, and will also state whether a sanction was imposed on the person accused (without details).
- i. Explain right to freedom from retaliation and ask about fear of any specific forms of retaliation

15. Interviewing the person accused; TAKE GOOD NOTES

- a. Explain confidentiality limits and request that the claim and investigation be kept confidential.
- b. Start with simple questions, to put person at ease and get a demeanor baseline.
- c. Describe the behavior alleged
- d. Ask for a response
- e. Ask for witnesses
- f. Offer to review supporting documents
- g. Explain next steps: time frame; interviews with witnesses, document review, possible 2d interview to clarify open questions; conclusions shared and sanctions recommended to X, who will convey final conclusion to person accused, including sanction if complaint sustained.
- h. Warn about retaliation, including any specific acts mentioned by the complainant.
- i. Explain the right to challenge allegations as made in bad faith

16. Interviewing witnesses; TAKE GOOD NOTES

- a. Explain that the person is required to cooperate.
- b. Request that the content of the discussion be kept confidential.

- c. Describe the incidents that the person is alleged to have witnessed. Ask if the person remembers the incident, or remembers the complainant discussing the incident. Wait for a response.
 - d. Ask if they are aware of any other incidents involving the person accused or anyone else.
 - e. Ask if they have anything to add, after you've finished your questions
 - f. Describe the right to be free from retaliation and ask if they have any specific fears.
17. How to make factual findings: weighing evidence and assessing credibility (through demeanor changes, inherent plausibility, corroboration, motive, past record).
18. Identifying appropriate sanctions and relief for complainants. Need to take into account the practical effects of retaining the employee including on employee morale, workplace harmony, and the Firm's reputation.
19. Dealing with a bad faith complaint. Needs to be more than unsupported. You need to find that the claim was made with knowledge that the facts alleged were not true and with an intent to harm the person accused.

Dealing Informally With Sexual Harassment (from lawyers.com)

- ⊙ **The 'Miss Manners' Approach:** "I beg your pardon!" This can be coupled with strong facial expressions of shock, dismay and disgust.
- ⊙ **Naming or Describing the Behavior:** "What you just said is offensive, unprofessional and probably violates the Firm's sexual harassment policy. This behavior has to stop."
- ⊙ **Pretending Not to Understand:** This is particularly useful with sexist or sexual remarks and jokes. You keep a deadpan expression and state that you "don't get the point of this" or "I don't understand what this means." You follow up by asking the person to repeat whatever it is they just said, and again claim that you don't understand what they mean.
- ⊙ **Using Humor:** Here are some standard responses, said lightly and jokingly that might be useful:
 - ⊙ "Uh oh! That's sexual harassment - you had better watch out before you get in big trouble."
 - ⊙ "Is this a test to see how I handle sexual harassment?" (This could also be said without humor.)
 - ⊙ "Are you sexually harassing me again?"
- ⊙ **The Sexual Harassment Notebook:** Buy yourself a notebook and write in bold letters on the cover, "Sexual Harassment." When the behavior happens, you take out the notebook and casually state, "Could you say that again? I want to write it down." You make a big show of asking for the date, time, checking the place you are at, etc. If asked why you are writing things down, you can blandly say, "I'm just writing things down" or "I'm thinking of writing a book about sexual harassment."
- ⊙ **The Sexual Harassment Research Project:** This is particularly helpful in dealing with recurrent sexual harassment including harassment by a group. Upon hearing the remark, you whip out a form (written in advance) and say, "I'm so glad you said that. I'm doing research on sexual harassment. Would you mind if I ask you some questions?" The questions are about sexual harassment, such as "How often do you do this?" "How do you choose people to harass?" "Do you discuss this with your girlfriend or your mother?" etc. You can make up your own form or a women's center might be willing to come up with a form that could actually be compiled.
- ⊙ **Writing a Letter to the Perpetrator:** The letter consists of three parts:
 - Describe what happened in a very factual manner.
 - Describe how you feel about the incidents in non-evaluative words such as "I am very upset with this behavior. I find it offensive."
 - Say what you want to have happen next: "I want this behavior to stop at once." "I want to be treated in a professional manner, the way every employee has a

right to be treated." "I don't want to be alone with you." "I don't want any more personal conversations." "I don't want to discuss this."

- State that, as of now, this is just between the two of you, but that if the behavior continues, you will report it.

Send the letter by registered mail, return receipt requested. Should the harassment continue, the receipt and the letter can be used as evidence that sexual harassment existed and that you took steps to inform the perpetrator that the behavior was unwelcome.

Keep a copy for yourself, but don't send a copy to anyone else. The letter works best if it is a private communication.

☉ **Talk to others.** You are probably not the only one who is being harassed by this person. Virtually all harassers are serial harassers; their behavior with you is not likely to have been an isolated incident.

☉ **Read the Firm's policy.**

☉ **Send a copy of the Firm's policy or other materials** regarding sexual harassment to the person who is making you uncomfortable, underlining the appropriate sections. If you do not want to send it under your name, send it anonymously.

Laughing at the harasser's behavior, joking back at the harasser, or initiating sexual joking or a sexual discussion is rarely successful in stopping sexual harassment, because the harasser does not recognize that the behavior he is engaging in is not welcomed by the woman, so continues his behavior.

Don't just ignore it in the hope that it will go away. It won't. When people ignore sexual harassment it often is interpreted as a sign of approval - "She didn't say anything so she must really like it."

SUGGESTED AGENDA FOR INITIAL MEETING WITH COMPLAINANT

Explain your role. Your functions are to listen to the complaint and offer advice and help in filing a formal complaint, if that is appropriate. In some situations, you might also offer to help resolve the problem informally.

Explain confidentiality and its limits. If the information that is conveyed suggests that illegal sexual harassment has occurred or is occurring, the conversation cannot be completely confidential.

Try to get a detailed, chronological account of what happened including, if possible, dates, witnesses, and written documentation.

Help the person identify the specific relief requested, in addition to an end to the unwelcome behavior. no personal interactions? physical separation? change in assignments or office? opportunity to discuss the issue, or to be left alone?

Counsel on options (assuming the behavior does not require immediate consideration under a formal complaint).

Consider some of the options in "Dealing Informally with Sexual Harassment"

Keep a diary.

Confront the alleged harasser (in person or in writing).

Informal resolution. You meet with the alleged harasser. If the charges are denied, the issue is dropped unless a formal grievance is filed. If the charges are conceded, the harasser will be warned or disciplined as appropriate.

Filing a formal complaint. All cases beyond possible misunderstandings or "petty slights" should be handled through the procedure, so there is a record. Offer to help write the complaint, if appropriate.

Explain the right to be free from retaliation and ask if there is any particular form of retaliation that is feared.

Encourage the person to refer other possible victims.

SUGGESTED AGENDA FOR INITIAL MEETING WITH PERSON ACCUSED, WHEN BEHAVIOR COULD RESULT FROM A GOOD FAITH MISUNDERSTANDING.

Explain your role. You are meeting with him/her at the request of [name or "an associate/staff member"] who has described behavior that was believed to violate the Firm's sexual harassment policy. Your role is neither fact-finder nor advocate; rather, you are there to get the situation dealt with before it's escalated to the level of a formal complaint. Stress that you are assuming that, if the allegations of the complainant are true, they are the result of a sincere, good faith misunderstanding. If this were not the case, you would not be meeting informally, but would instead have told the complainant that s/he needed to file a formal complaint.

If the meeting is based on your own observations, say similar things: you assume that the person was not aware of the impact of his/her behavior on others and possibility that s/he was violating the Firm's policy.

Describe the claim. Stress that you've heard one side of a story or that you understand that your observations may need context. Place the behavior in the context of Firm policy and the law as you understand it.

Hostile work environment allegations. Explore the impact of the alleged statements or actions on the complainant's work experience. Stress that you're not attempting to censor speech but assuming that, now that the person has been made aware of the impact of his actions, this will not happen again.

Advances or propositions alleged. Ask whether in retrospect it's possible that the challenged behavior was unwelcome. Ask them to try to see their actions from the complainant's perspective.

Adverse consequences alleged. Explain why the complainant believes that the "punishment" was not based on legitimate work performance considerations and listen to the response.

Review the options available.

Denial that they did anything wrong. If the allegations are totally and completely unfounded and could not possibly have arisen from a good faith misunderstanding, they should say so, and you will make no more efforts to discuss the matter with them. You also will convey this denial to the complainant and explain that, if the complainant wishes to pursue the issue further, s/he will have to file a formal complaint. If the person accused expresses concern at this possibility, point out that this is the only way for his/her name to be officially cleared.

Acceptance of responsibility. If the person accused concedes there is some grain of truth in what was alleged or observed by you, describe what relief you think is appropriate (e.g. an apology, a return to a purely professional relationship, without any adverse professional consequences, possible reassignments) and discuss possible causes of the problem and ways to avoid future misunderstandings,

Discuss expectations regarding the future relationship of the parties and his/her future behavior. What you say about future contact with the complainant depends on what the complainant wants. If it is an anonymous complaint, say that this conversation should not be shared with anyone suspected of having brought the complaint. If the complainant has allowed his/her name to be used, the following should be covered:

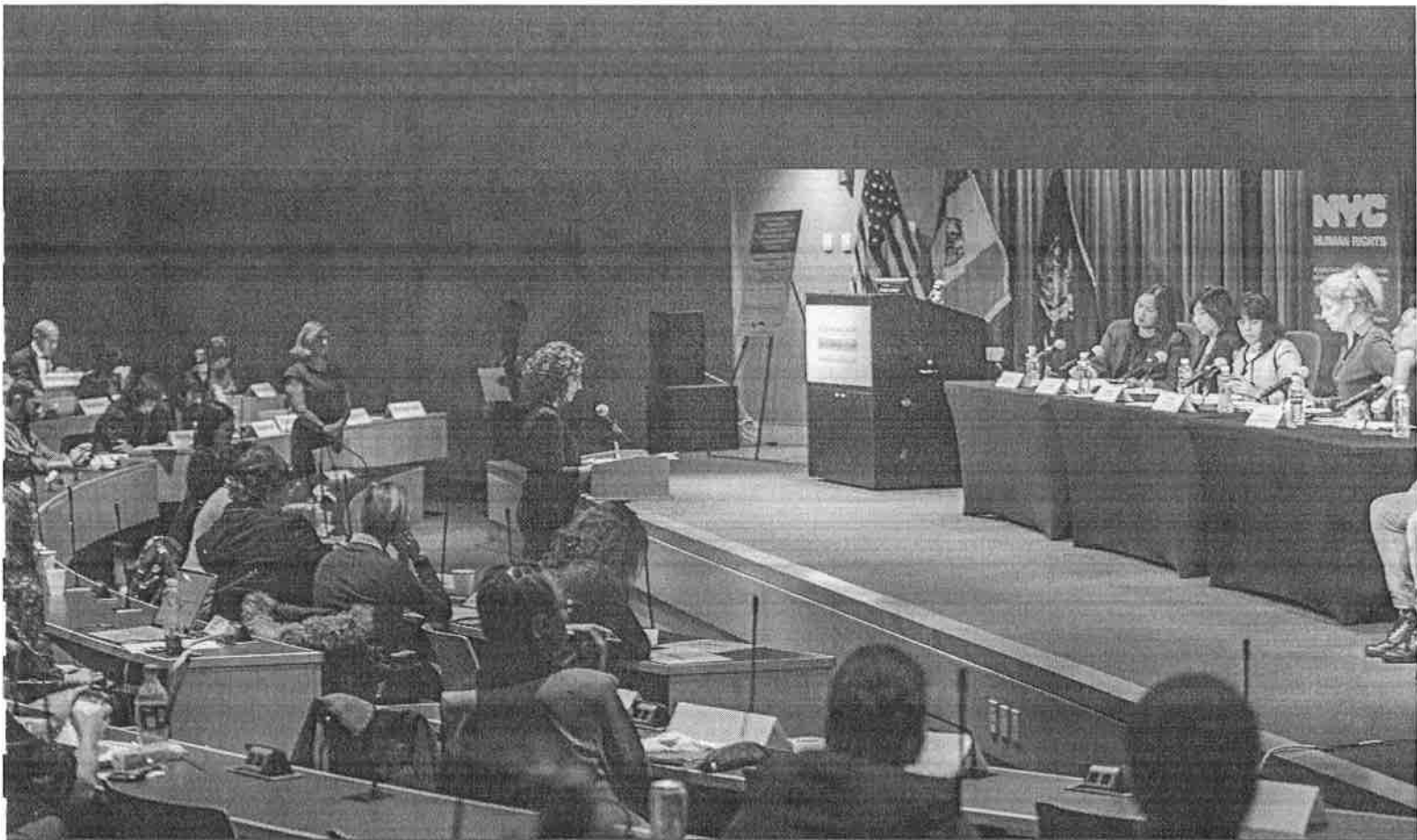
The need to return to a purely professional relationship. This is the best way to avoid future misunderstandings.

The need to avoid discussing the charges face-to-face (unless the complainant wants to do so, either alone or in your presence). Offer to convey any statements that the person accused may wish to make (apology, explanation) to the grievant.

The need to clean up his/her act. As his/her manager/supervisor, you are held responsible for the behavior of people who report to you. If there are any more incidents, you will take formal, adverse action.

Discuss confidentiality. Explain that you will be keeping the matter confidential, would like him/her to keep it confidential, and have asked the same of the complainant.

Discuss retaliation. Describe the Firm policy. State that any actions which could be viewed as retaliatory would constitute independent violations of federal, state and local law as well as Firm policy and could have serious consequences, and describe any particular concerns about retaliation that have been raised. Explain that very careful thought must be given to any future adverse actions taken by the person accused against the complainant, making sure that there is documentation to justify that they are based on valid performance considerations. If there are any questions (e.g. about how to phrase something in a performance review), you should be consulted.



Sexual Harassment
"IT'S JUST A JOKE."

Combating Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public Hearing Testimony

SEXUAL HARASSMENT
~~"IT'S JUST A JOKE."~~

Combating Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public Hearing Testimony



**Commission on
Human Rights**

Bill de Blasio,
Mayor

Carmelyn P. Malalis,
Chair/Commissioner

Authors

The New York City Commission on Human Rights and the Sexuality and Gender Law Clinic at Columbia Law School.

About the New York City Commission on Human Rights

The New York City Commission on Human Rights (the "Commission") is the City agency responsible for enforcing the New York City Human Rights Law (the "City Human Rights Law"), one of the most comprehensive anti-discrimination laws in the country, which prohibits sexual harassment in the workplace. The Commission has three primary divisions: the Law Enforcement Bureau ("LEB"), the Community Relations Bureau ("CRB"), and the Office of the Chairperson. LEB is responsible for the intake, investigation, and prosecution of City Human Rights Law violations, including those that raise systemic violations. CRB, through borough-based Community Service Centers, helps cultivate understanding and respect among the City's many diverse communities through events, workshops, training sessions, and pre-complaint interventions, among other programs and initiatives. The Office of the Chairperson houses the legislative, regulatory, policy, and adjudicatory functions of the Commission and convenes meetings with the agency's commissioners.

The current Commissioner and Chair of the Commission is Carmelyn P. Malalis, who was appointed by Mayor de Blasio in November of 2014. Commissioner Malalis brings with her over a decade of experience as a human rights and employee advocate in the private sector, prioritizing the fight against all forms of gender-based discrimination, including sexual harassment. Over the last two years, claims of sexual harassment at the Commission have

increased over 40 percent. In 2017, discrimination claims based on gender were the most common employment-related complaints brought to the Commission. Currently, claims of sexual and gender-based harassment constitute roughly a quarter of all gender discrimination complaints being investigated at the Commission.

About the Sexuality and Gender Law Clinic at Columbia Law School

Columbia Law School's Sexuality and Gender Law Clinic, founded in the fall of 2006, is the first law school clinic anywhere in the U.S. directed by a full-time law school faculty member and dedicated to legal and public policy issues related to gender and sexuality. In the clinic, students hone lawyering and advocacy skills while working directly on cutting-edge sexuality and gender law issues. They provide vital assistance to lawyers and organizations throughout the country and the world that advocate for the equality and safety of women and lesbians, gay men, bisexuals, and transgender individuals. The clinic emphasizes multidimensional lawyering, which is the practice of being strategic, smart, and creative in identifying and deploying resources to advocate for social change.

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Message from the Chair and Commissioner, Carmelyn P. Malalis



In the early 1970s, one of my predecessors, now-Congresswoman Eleanor Holmes Norton, held the country's first-ever hearings on gender discrimination while she was Chair and Commissioner of the New York City Commission on

Human Rights. It was at one of these hearings in 1975 that the term "sexual harassment" was used publicly for the first time. Nearly 50 years after those historic hearings, we have sought to continue that legacy of breaking new ground in advancing women's rights and gender equity. On December 6, 2017, the New York City Commission on Human Rights convened a citywide public hearing to address sexual harassment in the workplace. We heard from activists and workers from a broad range of industries, including construction, fashion, media, domestic work, tech, finance, hospitality, and others, about their experiences with sexual harassment and the challenges they face in reporting it and obtaining justice.

Those who testified represented some of New York City's most vulnerable workers, including women in male-dominated industries, people of color, immigrant workers, and LGBTQ workers. People who testified described how power disparities in workplaces enable and exacerbate sexual harassment within a wide range of industries across white collar and

trade professions. Testimony addressed the heightened vulnerabilities of workers with intersecting identities, in particular low-wage and immigrant workers.

As the #MeToo movement has been widely resurrected in recent months, we have experienced increased awareness around gender-based violence and discrimination. During this moment, we honor #MeToo founder Tarana Burke and her vision of centering the survivors of sexual harassment by making sure they have the resources they need to address harassment and effect change in their communities. As a government agency here in New York City, we do this work by helping people understand that they have a venue to seek justice for harassment and discrimination they face in the workplace, and by providing them with resources to impact change in their workplaces and communities. This movement is, after all, inspiring action, with survivors of harassment and their allies asking: "What can I do?" and "How can I create change?" Our hope is that this Report will serve to reflect their ideas and provide a starting point for continued conversations on sexual harassment so that more people can partner with the Commission on Human Rights to make sure that all New Yorkers are treated with the dignity and respect they deserve.

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Part I. Introduction

In the landmark case of *Meritor Savings Bank v. Vinson*, the United States Supreme Court first recognized sexual harassment as a form of illegal discrimination under federal anti-discrimination law. In the approximately thirty years that have since elapsed, jurisprudence around sexual harassment claims has developed to the point where every state recognizes sexual harassment as a form of sex- or gender-based discrimination cognizable under state or local law. Courts and adjudicating agencies have addressed the different ways that sexual harassment manifests in workplaces, including demands for sexual favors in return for different terms or conditions of employment, oversexualizing the workplace with language or imagery, and creating a hostile work environment for employees. They have also recognized that sexual harassment is primarily about an abuse of power in the workplace, which exists as a form of discrimination, subjugation, and humiliation by and against people of all genders and sexualities.

People vulnerable to sexual harassment in the workplace have always been aware of the different forms this type of harassment manifests. The resurgence of the #MeToo movement in the fall of 2017 has served as a wake-up call to the greater public that, despite the aforementioned legal advances in this area, many individuals experiencing sexual harassment remain unable or unwilling to come forward. Significant obstacles remain to people accessing available remedies under the law.

Recognizing the need for increased outreach and education on the issue of workplace sexual harassment and for creative enforcement strategies tailored to distinct industries, the Commission held a citywide public hearing (the "Hearing") on sexual harassment in the workplace on December 6, 2017. The Hearing, which took place at the CUNY School of Law, was the first of its kind in over three decades and one of the

first government-sponsored hearings in the country soliciting testimony from workers and their advocates on sexual harassment in the wake of #MeToo going viral. Opening remarks were provided by Congresswoman Eleanor Holmes Norton, and the Hearing was moderated by a panel of people serving as commissioners in different City agencies or bodies, including Chair and Commissioner Malalis, Department of Consumer Affairs Commissioner Lorelei Salas, Catherine Albisa, Carrie Davis, and Beverly Tillery. The panel received oral testimony from 27 members of the public, including representatives from advocacy groups, activists, and workers representing a wide range of industries. The Commission continued to receive written testimony after the Hearing through the end of December and received a total of 21 submissions.

This Report identifies distinctive characteristics of the City Human Rights Law as enforced by the Commission, examines the common themes that emerged from the oral and written testimony (some of which were addressed in proposed legislation following the Hearing), highlights policy recommendations to combat sexual harassment, and provides some best practices for employers to address sexual harassment. The objectives of this Report include focusing on the narratives of workers from diverse industries who testified about their experiences with sexual harassment, listening to advocates who have spent decades working to combat sexual harassment, and responding to requests by employers wishing to improve their workplace. Through these aims, the Commission hopes to provide support and resources for victims of sexual harassment and their allies, as well as information to help individuals and entities effect change in their workplaces and communities to address sexual harassment and discrimination.

Part II. What Is Sexual Harassment

Sexual harassment is unwelcome verbal or physical behavior based on a person's gender. While sexual harassment occurs both in and out of the workplace—including in public and private spaces, such as on the street, public transit, and in housing, schools, prisons, and detention centers—this Report focuses on sexual harassment in the workplace. Sexual harassment can, but need not, include conduct of a sexual nature, such as requests for sexual favors or unwanted verbal or physical sexual advances and can occur regardless of whether the harasser claims to be sexually attracted to the victim. In the employment context, harassers can be supervisors, co-workers, or non-employees, such as clients, customers, or third-party vendors. Victims of sexual harassment and harassers can be of any gender or sexual orientation, however, women are disproportionately affected. According to one national study, 38% of women and 13% of men report that they have experienced sexual harassment in the workplace.¹

Discriminatory behavior based on gender can range from a single instance of an inappropriate or sexualized comment or sexual assault to multiple acts of harassment in the workplace. It may include unwanted touching, offensive and suggestive gestures or comments, asking about a person's sex life or making sexualized remarks about a person's appearance, sexualizing the work environment with imagery or other items, or telling sexual jokes. Such behavior legally constitutes sexual harassment when it is unwelcome and contributes to a culture or atmosphere hostile to individuals because of their gender. Federal, state, and local anti-discrimination laws include different requirements for harassing conduct to be unlawful, including that harassment rise to a certain level of severity; that victims meet the definition of "employee;" and that employers employ a certain number of individuals. While some behavior might be easily identifiable as

sexual harassment, there are no bright line rules about what is or is not sexual harassment.

Sexual harassment in the workplace is prevalent in the United States and in New York City (the "City").² Even taking account of gross under-reporting, approximately 60% of female employees report that they have experienced at least one specific instance of sexually harassing behavior, such as unwanted sexual attention or sexual coercion.³ With over 27,000 harassment complaints in 2017, sexual harassment is the most common complaint made to the Equal Opportunity Employment Commission (the "EEOC"), the agency responsible for enforcing federal laws against workplace discrimination across the country.⁴ This statistic is only the tip of the iceberg.⁵ Approximately 90% of individuals who say they have experienced sexual harassment never take formal action, such as filing a charge or complaint, to report it.⁶ These numbers are especially troubling given sexual harassment's harmful effects on individuals who experience it. Sexual harassment in the workplace is often accompanied by long-lasting emotional, physical, and financial consequences. Victims may suffer mental and physical consequences including post-traumatic stress disorder, depression, anxiety, flashbacks, panic attacks, stomach issues, and headaches.⁷ Additionally, sexual harassment is harmful to the long-term earning capacity of female employees and contributes to the gender wage gap.⁸

Part III. Sexual Harassment Claims Under the New York City Human Rights Law

The New York City Human Rights Law ("City Human Rights Law"), codified as N.Y.C. Administrative Code § 8, protects against gender discrimination in the workplace, which includes sexual harassment and discrimination on the basis of actual or perceived gender. Title VII of the Civil Rights Act of 1964 ("Title VII"), codified as 42 U.S.C. § 2000e et seq., and the New York State Human Rights Law ("State Human Rights Law"), codified as N.Y. Executive Law, Article 15, prohibit employment discrimination on the basis of sex in hiring, firing, compensation, and the terms, conditions, or privileges of employment. Under all three statutes, sexual harassment is a form of discrimination based on sex or gender; however, the City Human Rights Law differs from its federal and state counterparts in several ways, including by providing broader protections from sexual harassment.

When Is Sexual Harassment Illegal?

The City Human Rights Law prohibits discrimination on the basis of gender in virtually all areas of City life, including "in compensation or in terms, conditions or privileges of employment."⁹ Sexual harassment is considered a form of gender discrimination under the City Human Rights Law. For many years, courts interpreted the City Human Rights Law to be identical to its federal and state counterparts, in that the conduct, i.e., the sexual harassment, had to be "severe or pervasive" to be unlawful.¹⁰ However, recent case law and amendments to the City Human Rights Law makes clear that the standard for sexual harassment in City law is significantly broader,¹¹ ensuring that the City's standard for sexual harassment keeps pace with community expectations of appropriate or inappropriate workplace behavior.

Under the City Human Rights Law, any unwanted sexual or gender-based harassment—including

seemingly isolated sexual comments or jokes, gestures, touching, texts, or emails—may be unlawful.¹² As a New York State court stated in the seminal case, *Williams v. New York City Housing Authority*, "there is a wide spectrum of harassment cases falling between severe or pervasive on the one hand and a merely offensive utterance on the other."¹³ The City Human Rights Law takes the overall context of workplace behavior into account; even "a single comment that objectifies women . . . made in circumstances where that comment would, for example, signal views about the role of women in the workplace [may] be actionable."¹⁴ The relevant determination, then, is whether the conduct has the effect of treating an individual less well because of their gender, and amounts to more than "petty slight or trivial inconveniences."¹⁵ The City Human Rights Law standard allows victims to report a wide range of degrading and humiliating actions as sexual harassment without the actions being minimized or their complaints being easily dismissed.

In contrast to New York City's broad and protective standard, alleged sexual harassment must rise to the level of "severe and pervasive" to be unlawful under federal and state law. Title VII and the State Human Rights Law categorize sexual harassment as either "quid pro quo" or "hostile work environment."¹⁶ Quid pro quo harassment occurs when an employment decision, such as promoting or firing someone, is conditioned upon whether the employee agrees to sexual favors or advances.¹⁷ Hostile work environment harassment occurs when, judged by both an "objective and subjective standard,"¹⁸ the harassment is "sufficiently severe or pervasive"¹⁹ to alter the terms or conditions of employment and to create an abusive working environment.²⁰ The "severe or pervasive" standard can be an extremely high threshold for victims to meet and, in general, isolated instances of less severe harassment will not support a hostile work environment claim under State or Federal law.²¹

The City Human Rights Law, like its state and federal counterparts, also prohibits employers from retaliating or discriminating "in any manner against any person" because that person opposed an unlawful discriminatory practice.²² Retaliation can manifest through direct actions, such as demotions or terminations, or more subtle behavior, such as publicly humiliating or shunning

a worker who complains of harassment through criticism in front of other employees.²³ So long as the negative actions are reasonably likely to deter a person from engaging in protected activity, they constitute retaliation and are unlawful. In accordance with the Local Civil Rights Restoration Act, New York courts have "broadly interpreted the City Human Rights Law's retaliation provisions."²⁴ Plaintiffs can demonstrate that they opposed an unlawful practice where they merely made their disapproval clear by communicating it to the defendant.²⁵ The determination of whether retaliation was reasonably likely to deter a person from engaging in protected activity should be made "with a keen sense of workplace realities, of the fact that the 'chilling effect' of particular conduct is context-dependent, and of the fact that a jury is generally best-suited to evaluate the impact of retaliatory conduct."²⁶

Key Protections Against Sexual Harassment Under the City Human Rights Law

In addition to its inclusive and broadly applied legal standard for sexual harassment, the City Human Rights Law is an excellent tool to address sexual harassment in the workplace in four other unique ways, in that it:

- allows for individuals and employers to be held liable;
- covers small and large employers, so long as they employ at least four employees;²⁷
- permits the Commission to bring actions against employers even when employees are precluded from litigation by arbitration or severance agreements; and
- includes protections for independent contractors and interns.

Both Individuals and Employers Can Be Held Liable

a) Individual Liability

It is unlawful under the City Human Rights Law for "an employer or an employee or agent thereof" to discriminate, meaning that supervisors, managers, and employees may

all be held individually liable.²⁸ This standard of individual liability is broader than the State Human Rights Law, which only holds individuals with ownership or decision-making powers liable, and Title VII, which does not allow for the possibility of holding individuals liable.²⁹ As a result, the City Human Rights Law incentivizes individuals to comply with the law and to engage in trainings provided by their employer because they are legally accountable for their actions.

b) Employer Liability

Employers are liable under the City Human Rights Law for the actions of their employees and independent contractors. When a supervisor or manager has engaged in sexual harassment, an employer will be liable regardless of whether they had actual knowledge of the conduct.³⁰ When an employee or agent who is not a supervisor or manager engages in sexual harassment, an employer will be held liable if they:

- knew of the conduct and acquiesced in such conduct or failed to take immediate and appropriate corrective action;³¹ or
- the employer should have known of the employee or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such conduct.³²

Lastly, when an independent contractor engages in sexual harassment, an employer will be held liable if the harassment was committed in the course of employment that furthered the employer's business and the employer had actual knowledge of and acquiesced in the conduct.³³

c) Remedies Available to Victims of Sexual Harassment

If the Commission finds an employer or individual responsible for sexual harassment under the City Human Rights Law, it has broad discretion to determine the appropriate remedy, including:

- requiring an employer to take affirmative actions, such as hiring, reinstating, or upgrading employees;

- awarding back and front pay to victims of sexual harassment;
- imposing damages or civil penalties; or
- monitoring compliance, such as requiring an employer to submit compliance reports.³⁴

Restorative justice remedies, such as community service, are also available. In appropriate circumstances, this approach may be more fulfilling than economic penalties for some victims and can, at times, more broadly effect change in workplace culture. For example, restorative justice remedies—which may include a mediated apology,³⁵ community service,³⁶ reflections on what the harasser learned through trainings, or other resolutions—can be negotiated and tailored based on input from the complainant.

■ Most Businesses Are Considered “Employers” Under the City Human Rights Law

In cases of gender discrimination in the workplace, the City Human Rights Law applies to employers with four or more employees.³⁷ As required by the construction provision of the City Human Rights Law, the Commission interprets this four-employee minimum liberally. Rather than viewing the size of an employer’s workforce as fixed, the Commission considers whether the employer met this minimum at any point during the period that the alleged sexual harassment occurred.³⁸ In order to investigate, the Commission considers the threshold number of employees to include employees performing business operations even if unpaid (such as interns and volunteers) and many independent contractors.³⁹ This interpretation extends the City Human Rights Law’s protection to more employees within New York City. A recent bill, Int. No. 657, which was passed by Council on April 11, 2018 and awaits signature by the Mayor, would extend liability to all gender-based harassment claims regardless of employee size.⁴⁰

■ Arbitration and Severance Agreements Do Not Bind the Commission from Investigating Claims of Discrimination

The Commission is empowered to investigate and prosecute claims of discrimination even where a complainant has signed an arbitration agreement⁴¹ or has agreed to waive all claims through a severance agreement.⁴² If the Commission believes that discrimination has occurred, the Commission can file a complaint directly against employers.⁴³ The Commission has an independent mandate to root out discrimination, and its broad enforcement authority is not restricted by private contracts between employers and employees.⁴⁴ Upon a finding of discrimination, the Commission may order various remedies, including injunctive or affirmative relief, compensatory damages for victims, and civil penalties.⁴⁵

■ Independent Contractors and Interns Are Protected from Sexual Harassment

The City Human Rights Law defines employees to include both independent contractors (so long as they “carry out work in furtherance of an employer’s business enterprise,” and are “not themselves employers”)⁴⁶ and all interns.⁴⁷ This means that, in contrast to federal anti-discrimination law,⁴⁸ sexual harassment and any other form of unlawful discrimination against independent contractors and interns in the workplace is unlawful.

Part IV. Recurring Themes at the Commission's Public Hearing on Sexual Harassment in the Workplace

To better understand how sexual harassment affects workers in New York City and to provide a public venue for advocates and individuals who have experienced harassment to tell their stories, the Commission invited testimony from workers, advocacy organizations, and various other stakeholders at its Hearing, held on December 6, 2017. The resulting testimony emphasized that individuals experience sexual harassment differently depending on their personal or perceived identity and across industries.⁴⁹ Those who testified emphasized that gender, income level, race, national origin, gender identity, sexual orientation, and other characteristics are factors that influence how they, or the communities they represent, experience sexual harassment. Testimony also raised power disparities and structural inequalities as workplace and industry characteristics that can impact workers of various identities. Additionally, underscoring each theme was the recognition that fear of retaliation prevented individuals, regardless of identity and across all industries, from coming forward to report experiences of sexual harassment in the workplace. This section summarizes the recurring themes from the testimony.

Identity Impacts How Individuals Experience Sexual Harassment

A common theme that emerged from the testimony across industries was that an individual's identity impacts how they experience sexual harassment. Those who testified highlighted gender, race, ethnicity, disability, national origin, sexual orientation, and gender identity as particularly relevant to one's experience of, and vulnerability to, sexual harassment. For example, one individual at the Hearing recalled an incident where a colleague, who identified as a Black man, endured inappropriate questions about his sexuality at work, and compromised his

career when he rejected a co-worker's unwanted verbal and physical sexual advances.⁵⁰ Another person told the story of a transgender woman of color who was groped after she informed her supervisor that she was transitioning.⁵¹ Another person recounted an incident where a restaurant worker suffered such severe harassment from her coworkers based on her sexual orientation that she blacked out during work.⁵²

This reality is reinforced by numerous studies and reports finding that workplace sexual harassment disproportionately affects people of color, particularly women of color.⁵³ Indeed, women of color are more likely to experience harassment than white women or men of color.⁵⁴ Further, a national study of sexual harassment found that Hispanic, gay, and bisexual men reported experiencing significantly higher rates of sexual harassment than other men, especially physically aggressive sexual harassment.⁵⁵ Individuals with disabilities are also at a higher risk of sexual harassment, regardless of the individual's gender, race, ethnicity, income, or other characteristics.⁵⁶ Additional studies show that workplaces that lack diversity or that poorly integrate diversity within the workforce exacerbate the risk of sexual harassment for members of underrepresented groups within that workforce.⁵⁷ Thus, workers' intersecting vulnerabilities, combined with homogenous workplaces, can increase the risk and burden of sexual harassment.

Power Disparities Contribute to Sexual Harassment in the Workplace

Workplaces with significant power disparities are especially prone to high rates of sexual harassment.⁵⁸ To illustrate this point, those who testified at the Hearing emphasized the experiences of low-wage workers, immigrant workers, individuals harassed by employees perceived to be indispensable, workers in highly regulated industries, skilled trade workers, and women working in non-traditional employment for women. Fear of retaliation was cited across these industries as particularly likely to lead to underreporting of sexual harassment.

■ Low-Wage Workers

Testimony at the Hearing revealed that low-wage workers are vulnerable to sexual harassment due to their dependence on wages and income from multiple jobs as well as the fluid nature of employment in low-wage industries where workers are considered easily replaceable. Because of their economic insecurity, low-wage workers are more likely to be targeted and are less likely to report harassment due to fear that doing so will result in lost wages,⁵⁹ which can cause a worker or their family to lose housing, healthcare benefits, and higher education opportunities, or compromise their ability to support their family.⁶⁰ Even when low-wage workers are able to report incidents of sexual harassment, they typically have less authority and bargaining power and are less likely to be believed, further preventing future reporting.

■ Immigrant Workers

Immigrants comprise nearly half of the City's workforce⁶¹ and are especially vulnerable to sexual harassment due to fear of deportation, threats from employers that they will be reported to immigration authorities if they speak out about harassment, and lack of access to resources and information about their rights under the law.⁶² As a result, immigrant workers are less likely to report sexual harassment or to seek out assistance from government enforcement agencies.

Employers with an immigrant workforce have significant power to leverage workers' sensitive information—such as their home address, emergency contacts, their immigration status, or the status of a family member—in order to exploit, sexually harass, and silence them. Testimony from the Hearing confirmed instances where employers threatened to report their employees' immigration status to ensure that they kept the sexual harassment a secret.⁶³ In addition, employees working on non-immigrant visas have temporary authorization to work in the United States and worry that their employment will not be renewed if they speak out, and thus their ability to remain in this country will be compromised.⁶⁴

For some immigrants, limited English proficiency and unfamiliarity with the legal system prevent them from accessing information about workplace rights and reporting procedures.⁶⁵ Studies have also confirmed that cultural and language differences in shared workspaces increase the likelihood of sexual harassment for employees who are members of the under-represented group.⁶⁶ However, Hearing testimony indicated that even when immigrant workers overcome these barriers, law enforcement officials sometimes devalue or minimize allegations brought by low-wage immigrant women, and thus hesitate to advance their cases.⁶⁷ Unfortunately, these issues have worsened after the 2016 election as a result of changes in federal immigration policy, despite the City having sanctuary status.⁶⁸

■ Workers Harassed by Employees Perceived to be Indispensable

In fields such as law, tech, finance, medicine, or academia, where harassers may be "high value" employees, or perceived to be indispensable to an employer (such as a "rainmaking" partner or a grant-winning researcher),⁶⁹ senior management might fail to take corrective action to protect individuals who come forward to report sexual harassment.⁷⁰ If management is reluctant to challenge the behavior of their prominent employees, the lack of action can enable those employees to believe that workplace rules do not apply to them.⁷¹ This phenomenon is exacerbated when those coming forward are young,⁷² new, or temporary employees, who may have less bargaining power or self-confidence.⁷³ When individuals do attempt to come forward, the use of certain contractual terms, including arbitration agreements, class action waivers, non-disclosure agreements, and strict non-compete clauses, further silences victims of sexual harassment and enables harassers to continue this behavior with impunity.⁷⁴ Even when employers believe that the harassment has occurred, they may utilize the above-mentioned tools to keep the high value employee on staff while merely separating them from the individual who has reported the harassment—thus reinforcing a workplace culture that both tolerates and does little to prevent sexual harassment.

■ Workers in Highly Regulated Industries

The fear of retaliation in highly regulated workplaces, such as finance, banking, medicine, and law, deters victims of sexual harassment from reporting their experiences. For example, in financial services, employers have included false or misleading statements about employees in Form U-5 filings, which are filed with banking regulators when a registered employee leaves a firm, in order to damage the professional reputation of individuals who speak up about harassment.⁷⁵ These forms become a part of the employee's permanent employment record and are disclosed to subsequent potential financial services employers. After an employer submits a Form U-5, changing information on the form can be a complicated and expensive process. Wary of endangering their future employment prospects with a negative Form U-5, many victims of sexual harassment in these industries forgo complaints.

■ Skilled Trade Workers and Non-Traditional Employment for Women

Hearing testimony revealed that sexual harassment for women in trade jobs, such as in carpentry and construction, can be especially extreme in part because these professions are traditionally male-dominated.⁷⁶ At the Hearing, workers in these trade industries testified to being regularly subjected to public humiliation and sexually vulgar language from co-workers, as well as being targeted for physical and sexual abuse.⁷⁷ Studies also indicate that an overwhelming majority of female construction workers experience sexual harassment and alienation in the workplace.⁷⁸ In general, lack of female leadership or gender and cultural diversity in a workforce increases the likelihood of sexual harassment for the underrepresented group.⁷⁹ As a result, women in predominately male industries are likely to experience more sexual harassment.

The hazardous nature of many trade jobs increases the dangerous side effects of sexual harassment, as it may impair victims' concentration and can lead to work-site accidents. For example, a training director in the city's construction industry noted that, "when you're working with power tools, heavy

equipment, and when you work on a ladder [or a scaffold]," sexual harassment may become "a matter of life or death."⁸⁰ Additionally, male workers often "test" female workers by assigning them to dangerous tasks or making them carry heavy objects that men typically would not carry alone.⁸¹ Despite high stress levels and fear of assault or physical harm, tradeswomen are reluctant to report problems or ask for help for fear of being labeled as whiners.⁸² The lack of diverse leadership and the potential for danger in male-dominated trade jobs leaves women workers in a precarious position.⁸³

Underrepresentation also contributes to sexual harassment in other, traditionally higher paying, male-dominated industries, such as science, technology, engineering, and mathematics ("STEM"). In these non-traditional workspaces for women, harassment deters women from ascending in the ranks, further exacerbating unequal female representation at all levels. An advocate at the Hearing testified that 50% of women in STEM fields who experience sexual harassment or unwanted sexual advances in the workplace leave the industry.⁸⁴ The lack of female leadership and representation contributes to gendered power imbalances, which simultaneously increases the risk of sexual harassment.⁸⁵

Structural Inequalities Contribute to Sexual Harassment in the Workplace

In addition to identity-based vulnerabilities and power disparities in the workplace, Hearing testimony revealed that environmental risk factors like the structure and type of workplace also influence the prevalence of sexual harassment. Structural inequities, such as lack of female leadership, lack of diversity, and unequal pay, create power imbalances that contribute to sexual harassment at the workplace.⁸⁶ For example, lack of female leadership at all levels of the workforce was cited as a factor which reduces accountability for sexual harassment and allows it to thrive unchecked.⁸⁷ These types of structural inequities exacerbate sexual harassment across all industries, but the particular impact on workers in short-term positions, in tipping industries, and

in small or isolated workplaces was highlighted at the Hearing.

■ Short-Term Contracts and Temporary Positions

Short-term contracts or freelance work, also known as "gig economies," contribute to power imbalances between workers and employers and increase the risk of sexual harassment in industries that rely on this type of workforce. Although many associate the term "gig economies" with new technologies like ride-sharing platforms, this kind of labor market has long existed. For example, hiring structures within the music industry empower certain musicians, bandleaders, and conductors to act as gatekeepers to the success of others.⁸⁸ This "climate of power-wielder or industry influencer," combined with the subjective nature of determining skill and talent in the industry, limits the accountability of those acting as gatekeepers and may increase individuals' fear of retaliation or of a negative impact on their careers if they report harassment.⁸⁹

A similar power imbalance exists in fashion, film, theater, dance, music, television, and other gig economies in large part because temporary, contract-based employees rely on employers' networks in order to continue obtaining employment and advance in the industry. In the fashion industry, men and women are frequently victims of sexual harassment because of the unique power imbalances arising from short-term contracts in this industry. Fashion industry professionals sometimes bend rules or look the other way to accommodate harassers and pressure models to "do what it takes" to succeed or to satisfy the client.⁹⁰ Models face pressure to succumb to requests for nudity, sexually explicit poses, and other acts not negotiated in their contracts.⁹¹

The short-term nature of these jobs, in conjunction with the dependence of careers on word-of-mouth reputation, encourage victims of sexual harassment to stay hidden for fear of retaliation and of not excelling in the industry.⁹² For their primary form of protection from sexual harassment, many workers rely on word-of-mouth solutions like "whisper networks," or informal chains of conversation

among employees within an industry to provide warnings about their own or rumored experiences of sexual harassment by specific individuals.⁹³

■ Tipping Industries

Industries in which employees must rely on tips or commissions to supplement sub-minimum wages increase dependence on customer satisfaction, thus creating a power imbalance that enables harassment and deters reporting.⁹⁴ Among women who work for tips in restaurants, 90% report experiencing unwanted sexual comments or behaviors in the workplace.⁹⁵ Male and transgender employees also experience sexual harassment at high rates in tipped industries.⁹⁶ Federal law permitting employers to pay tipped employees a sub-minimum wage of \$2.13 an hour contributes to this power imbalance by increasing workers' reliance on tips.⁹⁷ As a result, workers in states with low minimum wages for tipped employees are expected to collect the remainder of their wages from customers' tips. The result is an environment where the workforce—the majority of which is female—must curry favor with customers to earn a living.⁹⁸ These workers often suffer through crude comments, propositions, groping, and even stalking from customers in order to receive tips so that they may buy groceries or pay rent.⁹⁹ One study found that women with tipped subminimum wages were more than twice as likely to experience harassment as women in states without this pay structure.¹⁰⁰ These pay structures create financial incentives for individuals who experience harassment to tolerate and endure sexual harassment instead of reporting it because they rely on tips or sales commissions for the bulk of their income.¹⁰¹

Employers also often fail to protect employees from customer or client harassment due to a desire to keep customers happy and will even harass workers themselves in order to make more money. For example, employers may require or pressure workers to dress in "a sexy uniform"¹⁰² or to act in a sexualized manner to increase tips and business.¹⁰³ As in other industries rampant with sexual harassment, the restaurant industry has several environmental and structural risk factors that facilitate this

abuse, such as male-dominated leadership by head chefs and management as well as gender- and race-based pay inequity.¹⁰⁴ For example, one study reflects that women who previously worked in the restaurant industry also acclimate to a culture of harassment, causing them to be more likely to tolerate sexual harassment in other work environments in the future.¹⁰⁵ Thus, the restaurant industry, in which workers feel as though they have to tolerate sexual harassment from customers and management in order to make a living wage, normalizes this conduct and causes employees to expect harassment in future workplaces.¹⁰⁶

■ Small or Isolated Workplaces

Individuals who work in small or isolated workplaces have very few ways to hold employers accountable for sexual harassment and, for this reason, are more likely to experience harassment.¹⁰⁷ In isolated workplaces, where there usually are no coworkers or witnesses, harassers can easily take advantage of workers.¹⁰⁸ Examples of vulnerable employees include domestic workers taking care of children or cleaning, janitors working the nightshift, housekeepers cleaning individual hotel rooms, and agricultural workers in outdoor environments. For example, a Chicago survey found that nearly half of housekeepers reported that guests had exposed themselves to these workers in some capacity, and that 58% of hotel workers experienced a form of sexual harassment.¹⁰⁹ The survey also highlighted how hotel employees, many of whom are women of color, can be especially vulnerable to harassment because of the power imbalance between them and frequent customers, many of whom are wealthy men.¹¹⁰

Employees in isolated workplaces are prone to sexual harassment in other ways as well. For example, those who employ domestic workers may not be aware of their legal obligations. Many domestic workers may also be more vulnerable to harassment because of their or a family member's immigration status and/or economic insecurity, which limits their ability to take leave from work to figure out legal options because they fear being fired from their job. Domestic workers, like workers in gig economies, also rely on the recommendations

of their primary employer in order to obtain further work. This dependence deters victims from reporting sexual harassment due to the lack of anonymity in small workplaces and, as a result, increases victims' fear of employers retaliating by not providing favorable referrals.

Fear of Retaliation

Fear of retaliation causes many individuals who experience sexual harassment to remain silent. Instead of reporting, victims of harassment simply try to avoid the harasser, deny or downplay the seriousness of the situation, or ignore the behavior.¹¹¹ As a result, nearly three-quarters of individuals who experience sexual harassment refrain from telling a supervisor, manager, or union representative about what happened to them.¹¹² Fears of social and professional retaliation, among other factors that deter reporting, seem to be well-founded, given that approximately 75% of employees who reported harassment say they faced trivialization of their claims and retaliation.¹¹³

Retaliation may come in many forms and various levels of severity. Social retaliation includes humiliation and ostracism, while professional retaliation damages a worker's career. Common examples of retaliation described at the Hearing included firing and forced resignation; limited job opportunities and career advancement; ridicule and isolation by superiors; decreased hours and wages; altered work schedules; and threats to call immigration officials.¹¹⁴ Though retaliation for reporting sexual harassment is illegal under city, state, and federal laws, employees may not want to risk their own or a family member's safety or immigration status, job security, physical security, or career advancement for the sake of reporting the harassment.

Part V. Recommendations Raised in Testimony at the Hearing

The stakeholders who submitted testimony at the Hearing and afterwards advocated for creative and wide-ranging proposals to combat sexual harassment. This Report identifies some key recommendations that were raised throughout the testimony, though a full record of all recommendations raised is available by reviewing the transcript or video recording of the Hearing.¹¹⁵ Many of the recommendations raised in the testimony included suggested actions that have been or are currently underway at the Commission or through legislative action at both the State and City level in recent months.¹¹⁶ These proposals, which were suggested in Hearing testimony and not by the Commission, span the following categories:

- Recommended Legislative Changes;
- Recommended Best Practices and Policy Changes for Employers; and
- Recommended Initiatives for the Commission.

Recommended Legislative Changes

■ Allow victims of sexual harassment three years to file a complaint at the Commission

Stakeholders who testified at the Hearing—representing workers from various industries, including domestic work, tech and finance, and film and television—recommended extending the statute of limitations (“SOL”) for filing claims of sexual harassment at the Commission from one to three years¹¹⁷ to match the SOL for filing similar claims in New York State Court.¹¹⁸ SOLs are provisions in the law that impose timelines on an individual’s ability to file legal complaints. According to people who testified at the Hearing, fear of retaliation and other barriers to reporting deter individuals from coming forward to file complaints at the Commission within the one-

year timeframe required under the City Human Rights Law. This has likely excluded some of the most vulnerable victims from filing a complaint. While the SOL for filing a claim in State Court is three years, the Commission is an important venue for those without the resources to hire an attorney or investigate their own claims, as well as for individuals whose current employers need a reminder that retaliation is unlawful. Unlike State Court, the Commission does its own investigation of all claims brought before it and can immediately intervene with employers to reinforce protections for complainants against retaliation.

In addition, extending the one-year SOL for filing City Human Rights Law claims will allow workers additional time to emotionally prepare themselves to share what can be humiliating, painful, and extremely personal stories, as well as time to better understand their rights under the law.¹¹⁹ Some workers require time to process their experience of discrimination, to overcome their fear of retaliation before reporting, or to investigate their reporting options. A one-year reporting deadline may also be particularly challenging for immigrant workers because of language barriers and well-founded fears of retaliation, such as the fear of losing work authorization.¹²⁰

On April 11, 2018, City Council passed the “Stop Sexual Harassment in NYC Act” which includes a bill that extends the SOL for filing a claim of “gender-based harassment” from one to three years under the City Human Rights Law.¹²¹ Sexual harassment is a form of gender-based harassment under the City Human Rights Law. Extending the SOL will advance workers’ access to justice, regardless of their means, their immigrant status, or other barriers they may face to early reporting.

■ Extend protection to all workers regardless of employer size

Representatives of domestic workers and immigrant workers advocated for the City Human Rights Law to better protect employees in small or isolated workplaces by abolishing the requirement in place at the time of the Hearing that employers have at least four employees to be liable.¹²² Although the Commission

interpreted this requirement of the City Human Rights Law liberally, as described in Part III, the employee minimum limits the coverage of the City law. Also included in the Stop Sexual Harassment in NYC Act is a law that extends liability to all employers regardless of size for claims of gender-based harassment.¹²³ This is a positive step forward, as testimony noted that the four-employee minimum in place at the time of the Hearing especially burdened the rights of domestic workers and many independent contractors, whose workplaces may not have satisfied the requirement, and prevented these workers from filing complaints of sexual harassment against their employers.¹²⁴

■ Ban non-disclosure agreements and provisions regarding allegations of sexual harassment

Nondisclosure clauses in settlement agreements or employment contracts ("NDAs") often condition the terms of employment on the restriction of an employee's ability to speak out publicly about their experiences with harassment, the existence or terms of a settlement, or the identity of the parties involved.¹²⁵ NDAs can silence victims, hide the pervasiveness of harassment in a given workplace, and prevent other victims from speaking out against a serial harasser.¹²⁶ Many stakeholders at the Hearing suggested that the use of NDAs in sexual harassment settlements¹²⁷ and other secrecy clauses¹²⁸ should be limited and should have greater transparency and oversight.¹²⁹ However, victims may prefer NDAs in some contexts to ensure confidentiality and to protect themselves from retaliation, including reputational damage or worsened future job prospects.¹³⁰ Victims may also use NDAs as leverage in settlement negotiations; it follows that banning NDAs outright may disincentivize employers from settling claims and force victims to pursue unwanted litigation.¹³¹ The Commission acknowledges the complexity of this issue and will continue engaging with stakeholders to determine best practices and recommend policy solutions around NDAs.

■ Reduce dependence on tips by ensuring a minimum wage for all employees

Advocates for low-wage and restaurant workers testified that sub-minimum wage pay structures increase the likelihood of workplace harassment.¹³² Over 80% of restaurant workers have reported experiencing sexual harassment, which the organization Restaurant Opportunity Centers United Forward Together attributes in part to workers' reliance on tipping to earn minimum wage.¹³³ New York should consider legislation that requires tipping-dependent workplaces like restaurants to pay their employees a minimum wage to prevent dependence on customer satisfaction. The current sub-minimum wage pay structure can cultivate sexual harassment because it pressures employees to tolerate sexual harassment from customers and management in order to receive tips and to make a living wage.¹³⁴ Moreover, management can be unresponsive to customer misbehavior because they want to keep customers happy and may pressure employees to dress or act in a sexualized manner in order to receive tips.¹³⁵ Consequently, raising the pay of workers in this industry to the minimum wage will remove the pressure of tips that would otherwise encourage individuals to tolerate sexual harassment.

Recommended Best Practices and Policy Changes for Employers

■ Require that employers provide multiple avenues for reporting sexual harassment

Hearing testimony highlighted the need for victims of harassment to have multiple ways to report harassment, especially when the harasser is the default person to whom employees may report harassment.¹³⁶ It is essential that workers have the ability to choose how and to whom they will bring their complaint of sexual harassment;¹³⁷ having more than one option could encourage reporting because employees would choose a manner of reporting with which they are most comfortable.¹³⁸ One of these avenues should include a mechanism by which employees can report discriminatory behavior conducted by supervisors.¹³⁹ An effective

system may include options to file complaints with managers, human resource departments, multi-lingual hotlines, and online.¹⁴⁰ Finally, providing anonymous channels through which workers can report sexual harassment will allow for employer intervention before harassment escalates, and may prevent retaliation.

■ **Require employers to train employees on sexual harassment in the workplace**

Advocates from across industries spoke at the Hearing regarding the importance of training as a tool to end workplace harassment.¹⁴¹ Stakeholder testimony illustrated the need to bolster employers' and employees' understanding of the law regarding sexual harassment and of best practices for prevention and response. Middle managers and first-line supervisors play a crucial role in preventing and responding to sexual harassment in the workplace, meaning that workers in these roles should receive specific training that reinforces their role in preventing sexual harassment and their obligation to report incidents.¹⁴² Training should be implemented for all employers, employees, human resources departments, and city agencies; should cover legal rights and responsibilities with regard to sexual harassment, as well as strategies for prevention, such as affirmative consent and the role of bystander intervention; and should be tailored to the individual workforce and workplace.¹⁴³

■ **Recommendations specific to the City as an employer**

Recognizing the important role of the City as an employer and its potential to model best practices, people who testified at the Hearing suggested that City entities should train City employees to better handle workers' claims in ways that minimize case-specific risks like retaliation, should staff diversity training officers, and should prioritize harassment prevention as a key aspect of diversity and inclusion training.¹⁴⁴ Suggested ways to improve sexual harassment policies and procedures included having more regular anti-sexual harassment training sessions;¹⁴⁵ assessing City employees', employers', and appointees' knowledge of their rights and obligations under the City Human Rights Law; and developing strategies

to ensure that City entities are mindful about protecting the City from liability by preventing harassment.¹⁴⁶

Testimony also suggested that the City could require employers that contract with the City to disclose the number and resolution of discrimination complaints brought against them, and to submit such information to the City on an ongoing basis throughout the contract period.¹⁴⁷ Finally, the City could serve as a model employer by affirmatively publicizing the number and resolution of sexual harassment complaints against City agencies.¹⁴⁸

Recommended Initiatives for the Commission

■ **Expand resources for Commission-initiated investigations into workplace harassment and retaliation**

Representatives from multiple legal services groups who testified at the Hearing encouraged the Commission to apply greater time and resources to investigate, identify, and respond to workplace sexual harassment.¹⁴⁹ An effective way to meet this recommendation is through Commission-initiated investigations. The Commission's Law Enforcement Bureau ("LEB") can initiate affirmative investigations into violations of the City's Human Rights Law. For example, LEB uses this authority to intervene quickly when discrimination and harassment is ongoing, to address pattern or practice violations, and to take action when vulnerable workers are unable to file their own complaints or are at risk of retaliation. Commission-initiated investigations can proactively address persistent sexual harassment when an employer has not only failed to address the harassment but has also intimidated workers into silence with retaliation. Recently, LEB has received reports about serial harassers in which the victims are too afraid to come forward to file their own case. These investigations are challenging and can be resource-intensive.

Commission-initiated enforcement can be pursued alongside cases filed by affected workers, or in their stead, and seeks more

comprehensive relief and deeper remedies than in individual cases. In Commission-initiated cases, LEB requires policy changes, training of managers and other personnel, monitoring and—where appropriate—significant civil penalties. These enforcement actions are necessary in order to put an end to harassment and to prevent it in the future.

Because sexual harassment is amplified when workers belong to multiple protected categories, it is critical that the Commission be able to leverage these resources across all forms of workplace harassment and to also use the same tactics to address retaliation, which so often is the barrier for workers to come forward.

■ **Increase transparency of enforcement-related dispositions**

Hearing testimony recommended that the Commission create pilot initiatives to increase transparency of discrimination complaints,¹⁵⁰ as public accountability could provide employers with incentive to proactively address harassment as it happens and before it leads to formal complaints or litigation.¹⁵¹ Currently, the Commission's website highlights noteworthy resolutions by posting final Decisions and Orders and summaries of the key terms of conciliation agreements—including the names of those respondents involved. The Commission also publishes data through formal reports and via the website and social media about the number of discrimination charges filed and their resolutions in the aggregate. Additionally, the Commission regularly and proactively reaches out to media and communities across the City on noteworthy settlements that can serve as an example for employers of process and outcomes.

■ **Work with various industries to develop tailored sexual harassment training**

At the Hearing, representatives from industries ranging from construction to finance testified to the unique challenges their industries face in combatting workplace sexual harassment. For example, representatives from the film and entertainment industry suggested that government, workers, employers, and advocacy organizations representing certain industries should work together to develop industry-

specific standard operating procedures ("SOPs") to address sexual harassment¹⁵² with a focus on industries that rely on freelancers or employees working in small or isolated workplaces.¹⁵³ By working closely with stakeholders in different industries, model policies on how to combat sexual harassment can be created and tailored to each industry.

■ **Increase outreach efforts to educate workers on their legal rights and responsibilities with respect to sexual harassment in the workplace**

1) **Diversify outreach strategies**

In her Hearing testimony, Public Advocate Letitia James recommended increasing outreach to inform the public of their legal rights and how the Commission can be a resource for victims of sexual harassment, legal services providers, and employers.¹⁵⁴ In light of New York's diverse workforce, outreach must be strategic and include consideration of the various barriers and vulnerabilities faced by different workers across different industries while focusing on utilizing media and other outreach sources that are most commonly used by diverse communities to access information on government services. Broad outreach efforts should consider language access, access to technology, and the size and structure of various workplaces.¹⁵⁵ To reach less accessible and underserved communities of workers, these efforts should also include trainings, know your rights materials, such as one-pagers and notice of rights posters, and targeted media outreach events.¹⁵⁶ The Commission's Community Relations Bureau ("CRB") engages in outreach efforts to educate workers on their legal rights and remedies with regard to all areas of protection under the City Human Rights Law, including sexual harassment.¹⁵⁷ The Commission's Communications and Marketing Office communicates the City Human Rights Law's protected areas and categories and the Commission's policies, positions, goals, law enforcement actions, and community outreach efforts to New Yorkers in all five boroughs through platforms that include press, publications, digital and social media,

and citywide media campaigns. Even prior to the resurgence of the #MeToo movement in the fall of 2017, the Commission was proactively disseminating know-your-rights information about gender-based harassment in the workplace, including the creation and distribution of its first-ever multilingual materials on protections against various types of discrimination that disproportionately affect women. The Commission launched a citywide public awareness campaign on workplace sexual harassment in April 2018, and continues to engage in diverse and ongoing outreach strategies in this area.

2) Prioritize particularly vulnerable employees

Throughout the Hearing, stakeholders stressed the need to prioritize outreach to vulnerable workers, such as low-wage and immigrant workers, using multiple platforms. Such outreach should engage community groups and centers and cultivate partnerships with diverse media outlets.¹⁵⁸ Further, outreach efforts must ensure that workers who have limited access to the Internet or who are not literate¹⁵⁹ are reached by making information easily accessible by mobile phone.¹⁶⁰ Educational outreach materials should also be tailored to the specific risks that immigrant workers face. This aim can be accomplished by holding information sessions in immigrant communities,¹⁶¹ training outreach staff to understand the challenges of immigrant workers in the context of sexual harassment,¹⁶² increasing the number of languages in which information is offered,¹⁶³ and raising awareness of the U-Visa process.¹⁶⁴

3) Communicate the Commission's role

Clarifying the role and mandate of the Commission and the City Human Rights Law ensures that workers understand their broad protections from sexual harassment as well as available legal solutions.¹⁶⁵ For example, it is important for the public to understand that the Commission can pursue remedies on behalf of individuals who have experienced harassment even when they have signed contracts that require arbitration.¹⁶⁶ Additionally, the Commission should continue

efforts to inform employees in all industries that they can report harassment through the Commission's hotline or website, and some advocates suggested that the Commission should consider introducing a hotline dedicated to sexual harassment if needed.¹⁶⁷ In addition, the Commission should continue to communicate to employees that if they report harassment to the Commission, it will intervene to discourage employer retaliation by contacting and informing the employer of its legal obligations.

It is also important for employees to understand not only the ways in which they may report harassment to the Commission, but also that they may report without having to file a claim. In addition, employees should be advised of the various steps of the Commission process. Though fear of prolonged litigation may deter potential complainants from coming forward, the Commission has robust processes in place for resolving complaints through mediation or conciliation. Any party may request mediation, which is fully voluntary, and either party or the mediator can terminate the mediation at any time. Further, at various stages of the complaint process, LEB can seek to negotiate a pre-hearing resolution of a case, resulting in a conciliation agreement that is signed by all parties and becomes an enforceable order of the Commission.

■ Increase education and outreach efforts to youth

To effectively combat sexual harassment, various stakeholders recommended that the Commission initiate targeted outreach to youth who will soon enter the workforce.¹⁶⁸ According to a 2011 survey of 7–12 graders, 48% of students experienced some form of sexual harassment during the school year.¹⁶⁹ Yet, many teenagers and young adults do not know what behaviors constitute harassment or do not appreciate the magnitude of harassment. State law seeks to protect public school students from bullying by employees or other students by requiring New York public schools to train school employees to handle harassment, to annually report instances of harassment to the State Department of Education, and to

incorporate bullying and harassment awareness into students' classwork.¹⁷⁰ Efforts must be made to increase outreach to youth and to strengthen youth education at the City level.

Targeted training and outreach for young people and teachers should include strategies for sexual harassment prevention, bystander intervention, and mutual respect among students.¹⁷¹ These trainings should provide a platform for youth to talk about their experiences with harassment and for educators to reinforce that harassment is never normal.¹⁷² Anti-bullying and anti-sexual harassment trainings in schools should also include discussions of workplace harassment. Bystander intervention education should include strategies for intervening in digital harassment, as many students experience harassment by other students on digital platforms outside of school.¹⁷³ Finally, students—like workers—must have multiple options for reporting harassment. Through regular outreach to students, schools should identify numerous “safe people” to whom students can report harassment, whether it occurs in school, on digital platforms, or in workplaces.¹⁷⁴ Taken together, these strategies aim to provide youth with a vocabulary to discuss sexual harassment and bullying, skills to combat harassment as it occurs, and a stronger support system within schools.

Part VI. Best Practices for Employers

Testimony from the Hearing provides much food for thought on how individuals, employers, the City, and the Commission can effectively address sexual harassment, support survivors and victims of sexual harassment, and effect meaningful change in their workplaces and communities. In the months following the Hearing, the momentum to address sexual harassment in the workplace has continued: the Commission is proactively working with other City entities and elected officials; women's rights, workers' rights, and gender equity advocates; and representatives for employers and business communities.

Where testimony suggested that the public was unaware of current Commission initiatives or interpretations, the Commission has endeavored to provide clarity in this Report by highlighting unique provisions of our law and by drawing attention to policies and practices already implemented at the Commission. The Commission has also worked with the Administration and City Council to advance and pass legislation that will further protect workers from sexual harassment, increase public awareness of rights and responsibilities under the City Human Rights Law, and promote further targeted outreach and training. We are especially grateful for the input from advocates and other stakeholders who testified at the Hearing on these important issues. While many important steps are being taken, the Commission will continue to work towards increased accountability and education on the issue of sexual harassment.

In the meantime, businesses should implement the following practices in order to prevent, combat, and remedy sexual harassment. By employing these strategies, employers may protect employees, mitigate direct financial costs, and diminish indirect costs arising from the demoralizing impact that sexual harassment has within the workplace.¹⁷⁵

Anti-Harassment Policies and Procedures

Employers should institute and communicate clear policies regarding sexual harassment that include effective mechanisms for reporting, investigating, and resolving complaints. For example, these mechanisms should include independent monitoring and investigation procedures.¹⁷⁶ The policies should also be consistently and periodically communicated to employees so that all employees are aware of their rights and responsibilities with regard to sexual harassment in the workplace, and of how to report, investigate, and resolve complaints of sexual harassment. The structure and efficacy of an employer's policies and procedures will necessarily depend on a robust analysis of each employer's workplace and workforce.

Reporting

Employers should eliminate obstacles to reporting by taking actions such as clarifying reporting procedures, providing multiple avenues for reporting, fostering a workplace culture that is supportive of reporting, and ensuring that all employees are aware of their duty to report conduct they believe may constitute workplace sexual harassment. It is crucial that employees know to whom they should report harassment, and that employers provide multiple points of contact to whom employees may report. By providing multiple possible complaint handlers, employers break down barriers to reporting. An anonymous reporting avenue may also provide an effective option for those individuals who do not feel comfortable relying on an employer's designated points of contact. Employers in some industries may also consider implementing a foreperson model whereby certain staff members are the consistent point-persons for employees to contact regarding harassment. Worker-led, worksite-based advocates can set standards around sexual harassment and facilitate an anti-harassment workplace culture.¹⁷⁷

In some workplaces, unique barriers to reporting may require employers to take more proactive measures to encourage employees to speak out.

Employers should consider, when appropriate, asking workers in a sensitive and supportive way if harassment has occurred, or instructing managers to periodically check in about employees' experiences with harassment in the workplace.¹⁷⁸ In addition, employers should consider inquiring about compliance with sexual harassment policies during employees' exit interviews. To reduce the possibility of retaliation by supervisors, employers should be supportive of both employees who report harassment and supervisors who investigate claims.¹⁷⁹ Because fear of negative consequences may prevent workers from reporting, employers must have strong and consistently enforced policies against retaliation to encourage workers to speak out.¹⁸⁰ Employers can better reduce sexual harassment and create positive change in the workplace by acknowledging complaints and their resolution, rather than by hiding or diminishing complaints and subsequent disciplinary actions.¹⁸¹

Investigation

In order to maximize the efficacy of anti-harassment policies and procedures, employers must investigate all alleged instances of sexual harassment. Upon notice of a complaint of sexual harassment, employers should begin investigating immediately and should conduct the investigation thoroughly. Employers should immediately consider and implement any measures necessary to prevent further misconduct from occurring during the pendency of the investigation. These measures might include separating the individuals involved; however, an employer's approach should be dictated by an assessment of the specific facts at issue.

The results of the investigation should be documented and, after the investigation has concluded, the employer should contact the person who reported the conduct. In some circumstances, this communication may mean giving that person a transparent disclosure of the remedial measures; though in others, a different approach may be more appropriate. Regardless of the results, the employer should implement a follow-up plan designed to assess the effectiveness of its initial response.

Employers should also design investigation processes that are independent and sufficiently flexible to avoid any conflicts that might arise from the specific facts reported. For example, investigators should not be assigned to investigate their supervisors. Likewise, an employer that mandates reporting the results of an investigation to the CEO should have an alternative policy in place in the event that the CEO is the alleged wrongdoer.

Training

■ All employees should participate in regular training

Employers should regularly provide training to employees on the laws prohibiting sexual harassment and retaliation, internal policies and procedures, bystander intervention strategies, and workplace civility. Training should ensure that all employees understand the procedure for reporting and are aware of their duty to report any behavior that they believe may constitute sexual harassment. Bystander intervention training may be used to foster a culture of collective responsibility for harassment and to strengthen understanding of inappropriate and illegal conduct.¹⁸² Workplace civility training may be used to set a workplace-wide standard for respectful behavior and language.¹⁸³

Additionally, employers should consider industry-specific training. For example, industries with workplace hazards, such as construction, should include sexual harassment training in safety training. In hazardous workplaces, sexual harassment is particularly dangerous because it can be distracting for workers in compromising circumstances (e.g., operating heavy machinery) and can raise the stakes for retaliation.¹⁸⁴ Employees in customer service industries, such as restaurants and hotels, are at heightened risk of sexual harassment by patrons, and so employers in these industries (or those that present similar risks) should ensure their training addresses those risks.

Employers should also equip all employees, including supervisors, with a strong understanding of the laws around workplace sexual harassment and the workplace procedures for investigating and resolving claims. Through training of all employees, including managers, employers should ensure that all workers understand their legal responsibilities with regard to sexual harassment, including their duty to immediately report suspected or alleged sexual harassment and supervisors' heightened duties and responsibilities. Training should emphasize that retaliation by any employee is illegal, and includes any negative action a supervisor takes against an employee in response to that employee's lawful action opposing harassment.

■ **Training should incorporate a broader understanding of gender justice**

In implementing sexual harassment training, employers should connect this form of discrimination to broader gender justice issues that employees encounter beyond the workplace, as well as other intersecting forms of discrimination. Hearing testimony revealed that employees with overlapping identities, such as LGBTQ employees, experience severe sexual harassment. For example, one restaurant worker experienced such substantial harassment from her coworkers based on her sexuality that she blacked out during work.¹⁸⁵ Effective sexual harassment training acknowledges the broader context within which workplace sexual harassment occurs. Perpetrators of sexual harassment are sometimes acting on personal biases based on gender or other identity metrics, such as race.¹⁸⁶ By providing workplace civility training, which focuses on respect in the workplace generally, employers can better target the motivation behind harassing conduct rather than only the conduct itself.¹⁸⁷

Utilize the New York City Commission on Human Rights as a Resource

Employers can find guides for employers, further legal guidance, and answers to frequently asked questions at [NYC.gov/HumanRights](https://nyc.gov/humanrights). Employers may also contact the Commission directly by calling the Commission's Infoline at (718) 722-3131.

Part VII. Next Steps

As evidenced by this Report, the Hearing was incredibly fruitful and underscored the pervasiveness of sexual harassment in the workplace across all industries. The recommendations highlighted in this Report from the Hearing testimony illustrate the need for collaboration among diverse stakeholders in order to address the rampant issue of sexual harassment. In the next few months, the Commission will use this Report as a platform to implement policy and legislative change, including by reaching out to particular industries to develop creative, tailored policies and trainings. The Commission also welcomes and invites those stakeholders who testified at the Hearing as well as the many representatives who were unable to attend or share their thoughts to reach out to the Commission to share their experiences, expertise, and recommendations, either broadly or as it relates to specific industries. For those New Yorkers who are experiencing sexual harassment or who wish to anonymously report their own experiences or the experiences of friends, family, or colleagues, you can reach the Commission directly by calling the Commission's Infoline at (718) 722-3131. Thank you to all of the individuals, organizations, and stakeholders who have come forward to share their stories and to effect change in New York City.

Endnotes

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- 5 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on the Study of Workplace Sexual Harassment (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 6 *Moving Women Forward On the 50th Anniversary of Title VII of the Civil Rights Act*, EQUAL RIGHTS ADVOCATES, <https://www.equalrights.org/wp-content/uploads/2014/11/ERA-Moving-Women-Forward-Report-Part-One-Sexual-Harassment-Oct-2014.pdf>.
- 7 *Sexual Harassment Toxic to Mental, Physical Health*, WEBMD, <https://www.webmd.com/women/news/20171204/sexual-harassment-toxic-to-mental-physical-health#1>.
- 8 *Moving Women Forward On the 50th Anniversary of Title VII of the Civil Rights Act*, EQUAL RIGHTS ADVOCATES, <https://www.equalrights.org/wp-content/uploads/2014/11/ERA-Moving-Women-Forward-Report-Part-One-Sexual-Harassment-Oct-2014.pdf>.
- 9 N.Y.C. Admin. Code § 8-107(1)(a)(3).
- 10 *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 108 (2d Cir. 2013) (citing cases).
- 11 In 2005, the New York City Council passed the Local Civil Rights Restoration Act (the "Restoration Act"), to clarify the City Human Rights Law's "uniquely broad and remedial purposes" and to overrule cases that conflated the City and federal standards. N.Y.C. Local L. No. 85. In 2009, a New York State appellate court determined that sexual harassment exists under the City Human Rights Law when an individual is "treated less well than other employees because of [] gender" and the conduct complained of consists of more than "petty slights or trivial inconveniences." *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 66, 78, 80 (N.Y. App. Div. 2009). Under this standard, whether harassment was "severe and pervasive" is relevant in determining the scope of damages, but not in the question of underlying liability. *Id.* at 76. The broader Williams standard was explicitly written into the City Human Rights Law as part of a second Restoration Act in 2016. N.Y.C. Local L. No. 35, §2(c)
- 12 *Williams*, 61 A.D.3d at 84 n.30; Carmelyn P. Malalis, *Sexual Harassment in New York*, N.Y. TIMES, Dec. 13, 2017, <https://www.nytimes.com/2017/12/13/opinion/sex-harassment-new-york.html>.
- 13 *Williams*, 61 A.D.3d at 76.
- 14 *Williams*, 61 A.D.3d at 84 n.30; *Hernandez v. Kaisman*, 103 A.D.3d 106, 114-15 (N.Y. App. Div. 2012) (stating that seemingly isolated comments and emails that objectified women's bodies and exposed them to sexual ridicule failed to meet the "severe or pervasive" standard, but were actionable under the City Human Rights Law as the overall context "clearly signaled that defendant considered it appropriate to foster an office environment that degraded women.").
- 15 *Williams*, 61 A.D.3d at 80 (recognizing that an affirmative defense exists when defendants can show that the "conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences.'")
- 16 29 C.F.R. § 1604.11; *Pucino v. Verizon Wireless Comm., Inc.*, 618 F.3d 112, 117 n.2 (Courts "review discrimination claims brought under the State Human Rights Law according to the same standards that [they] apply to Title VII discrimination claims.").
- 17 For example, a supervisor offering a promotion, raise, or favorable review if an employee meets his or her sexual demands is quid pro quo sexual harassment.
- 18 An objective standard examines how a reasonable person would have considered the alleged harassment, while a subjective standard examines the personal feelings and unique perspective of the employee making the complaint.
- 19 *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986).
- 20 *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993).
- 21 Courts have typically found one or two incidents of kissing, groping, or rubbing an erection on another person, to be insufficient to meet this standard unless they are especially serious. See, e.g., *Chenette v. Kenneth Cole Prods. Inc.* 2009 WL 2837626, at *4 (2d Cir. 2009) (employee kissed on mouth once by co-worker); *Carter v. New York*, 2005 WL 2460116, at *1 (2d Cir. 2005) (collecting cases); *Moore v. Verizon*, No. 13-CV-6467, 2016 WL 825001, at *11-12 (S.D.N.Y. Feb. 5, 2016) (citing *Alfano v. Costello*, 294 F.3d 365, 374 (2d Cir. 2002) and *Pucino*, 618 F.3d at 117 n.2). That said, some federal courts found persistent sexually charged comments, *Frey v. Coleman*, 141 F. Supp. 3d 873, 878-81 (N.D. Ill. 2015), or a single incident of unwelcome touching, *Winkler v. Progressive Bus. Publ'ns*, 200 F. Supp. 3d 514, 519-20 (E.D. Pa. 2016), to be severe and pervasive. Like quid pro quo claims, employers are automatically responsible for the conduct of their supervisors or managers even if they are not aware of the harassing behavior; however, if a victim's co-worker is committing the harassment, the employer is only liable if the employer knew or should have known about the harassment and failed to immediately address the situation. *Burlington Indus., Inc.*

- v. Ellerth, 524 U.S. 742, 765 (1998).
- 22 N.Y.C. Admin. Code § 8-107(7). Examples of opposing discriminatory practices include filing a complaint, testifying, or assisting in any proceeding relating to such a practice; commencing a civil action alleging the perpetration of such a practice; assisting the Commission or corporate counsel in an investigation pursuant to the City Human Rights Law; or providing information to the Commission pursuant to a conciliation agreement.
 - 23 Mihalik, 715 F.3d at 116.
 - 24 Mihalik, 715 F.3d at 112. The reach of the City Human Rights Law's anti-retaliation provision is broader than the burden-shifting framework applied to retaliation claims under both Title VII and the State Human Rights Law. *Fincher v. Depository Trust & Clearing Corp.*, 604 F.3d 712, 723 (2d Cir. 2010).
 - 25 Mihalik, 715 F.3d at 112 (citing cases).
 - 26 Mihalik, 715 F.3d at 112 (citing cases).
 - 27 On April 11, 2018, City Council passed the "Stop Sexual Harassment in NYC Act" which included a bill extending liability to all employers regardless of size. Int. No. 657 (2018) "A Local Law to amend the administrative code of the city of New York, in relation to expanding sexual harassment protections to all employees" (employer shall include any employer, including those with fewer than four persons in their employ, for claims based on gender-based harassment). The bill awaits final signature from the Mayor.
 - 28 N.Y.C. Admin. Code § 8-107(1)(a) (emphasis added). Additionally, third parties who are not employees, such as customers, clients, and donors, can be held individually liable under the City Human Rights Law's discriminatory harassment provisions, which prohibit harassment that interferes with a person's civil or constitutional rights and is motivated in part by that person's gender. N.Y.C. Admin. Code §§ 8-602, 8-603.
 - 29 In contrast to the City Human Rights Law, individual liability is more limited under the State Human Rights Law and federal law. Under the State Human Rights Law, only individuals with an ownership interest or supervisors with "power to do more than carry out personnel decisions made by others" are individually liable. *N.Y. St. Div. of Human Rights v. ABS Elecs., Inc.*, 102 A.D.3d 967, 969, 958 (N.Y. App. Div. 2013). Co-workers are therefore not liable unless they are shown to have an ownership interest or power to do more than carry out others' personnel decisions. *Id.* Further, Title VII does not provide for individual liability. *Cayemittes v. City of N.Y. Dep't of Hous. Pres. & Dev.*, 641 F. Appx. 60, 62 (2d Cir. 2016). Individual defendants such as supervisors and co-workers therefore may not be held personally liable under federal law. *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313 (2d Cir. 1995). For additional explanation of how the City Human Rights Law is broader than state and federal standards, see *Malena v. Victoria's Secret Direct, LLC*, 886 F.Supp.2d 349, 366 (S.D.N.Y. 2012).
 - 30 N.Y.C. Admin. Code § 8-107(13)(b).
 - 31 N.Y.C. Admin. Code § 8-107(13)(b) (Employers are deemed to have knowledge of an employee or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility.)
 - 32 N.Y.C. Admin. Code § 8-107(13)(b). Courts have concluded that "actual notice, rather than constructive notice, appears to be required under the [City Human Rights Law]" to establish employer liability. *Ponticelli v. Zurich Am. Ins. Grp.*, 16 F.Supp.2d 414, 433 (S.D.N.Y. 1998) (citing cases). The sufficiency of notice tends to turn on whether the employee who experienced sexual harassment reported the conduct to a supervisor or through formal channels. *Id.* See also *Manswell v. Heavenly Miracle Acad. Servs.*, No. 14-CV-7114 (MKB) (SMG), 2017 U.S. Dist. LEXIS 136366, at *28-29 (E.D.N.Y. 2017); *Heskin v. InSite Advert., Inc.*, 2005 U.S. Dist. LEXIS 2546, at *77, 82-83 (S.D.N.Y. 2005); *Duviella v. Counseling Serv.*, 00-CV-2424 (ILG), 2001 U.S. Dist. LEXIS 22538, at *53 (E.D.N.Y. 2001).
 - 33 N.Y.C. Admin. Code § 8-107(13)(c). The City Human Rights Law imposes liability on employers for the conduct of their employees, agents, and independent contractors. Other persons, such as customers or clients, may still be held individually liable under the law's discriminatory harassment provisions. *Id.* at §§ 8-602, 8-603.
 - 34 N.Y.C. Admin. Code § 8-120. For example, recent settlements of sexual harassment claims at the Commission include: requiring employers to pay damages for emotional distress ranging from \$12,500 to \$95,000, mandating the appointment of a Sexual Harassment Coordinator to oversee the creation of new policies and trainings, and requiring an employer to update their employment policies to be in compliance with the City Human Rights Law. *2016 Settlement Highlights*, N.Y.C. COMM'N ON HUM. RTS., <https://www1.nyc.gov/site/cchr/enforcement/2016-settlements.page>.
 - 35 With the written consent of complainants, the Commission can consider the possibility of an alternative resolution instead of compensatory damages, such as a mediated apology or other resolution. See, e.g., COMM'N ON HUM. RTS. ex. rel. *Spitzer v. Dahbi*. OATH Index No. 883/15 (Mar. 27, 2015) modified on penalty, Comm'n Dec. & Order (July 7, 2016), appended.
 - 36 Respondents can be ordered to complete community service instead of paying a civil penalty. See, e.g., COMM'N ON HUM. RTS. ex. rel. *Spitzer v. Dahbi*. OATH Index No. 883/15 (Mar. 27, 2015) modified on penalty, Comm'n Dec. & Order (July 7, 2016), appended.
 - 37 N.Y.C. Admin. Code § 8-102(5). However, this employee minimum does not apply to public accommodations or housing. N.Y.C. Admin. Code §§ 8-107(4), 8-107(5). Notably, the State Human Rights Law generally applies to employers with four or more employees. N.Y. Exec. Law § 292(5); *Guidance on Sexual Harassment for All Employers in New York State*, N.Y. St. Div. of Hum. Rts., <https://dhr.ny.gov/sites/default/files/pdf/guidance-sexual-harassment-employers.pdf> (last visited Feb 22, 2018). However, the State Human Rights Law was amended in 2015—specifically, with respect to sexual harassment claims—to apply to all employers, regardless of the number of employees. *Guidance on Sexual Harassment for All Employers in New York State*, N.Y. St. Div. of Hum. Rts., <https://dhr.ny.gov/sites/default/files/pdf/guidance-sexual-harassment-employers.pdf> (last visited Feb 22, 2018). Additionally, the State Human Rights Law four-employee minimum does not apply to the law's standalone provision prohibiting discrimination against domestic workers. *Id.* In contrast, Title VII covers

employers with fifteen or more employees. Civil Rights Act of 1964, 42 U.S.C. § 2000e, 701(b) (1964).

- 38 Hwang v. DQ Mktg. & Pub. Relations Grp., 2009 NY slip op. 32387(U) at *10 (N.Y. Sup. Ct. 2009); Lenhoff v. Getty, No. 97 Civ. 9458, 2000 WL 977900, at *3 (S.D.N.Y. 2000); Echevarria v. Insight Med., P.C., 72 F. Supp. 3d 442, 460-61 (S.D.N.Y. 2014) (noting that courts read N.Y.C. Admin Code. § 8-102(5) expansively, due in part to the absence of any temporal restrictions in its language).
- 39 Moraetis v. Evans, 150 A.D.3d 403, 405 (N.Y. App. Div. 2017); Pugliese v. Actin Biomed LLC, 2011 NY slip op. 30912(U), at *6 (N.Y. Sup. Ct. 2011). Employees who do not live within New York City proper may also count toward the total. Grewal v. Cuneo, No. 13-CV-6836 (RA), 2015 U.S. Dist. LEXIS 87755, at *41 (S.D.N.Y. 2015). However, while the Commission and courts may count employers within the total number of employees under the City Human Rights Law, this area of law is unsettled. Germakian v. Kenny Int'l Corp., 151 AD2d 342 (N.Y. App. Div. 1989); Rosa v. Levinson, No. 16441/06, 2009 WL 3152798 at *3 (N.Y. Sup. Ct., Sept. 30, 2009).
- 40 Int. No. 657 (2018) "A Local Law to amend the administrative code of the city of New York, in relation to expanding sexual harassment protections to all employees" (employer shall include any employer, including those with fewer than four persons in their employ, for claims based on gender-based harassment). The bill awaits final signature from the Mayor.
- 41 Mandatory arbitration clauses in employment contracts, which apply to nearly a quarter of all U.S. workers, preclude employees who have disputes from filing a lawsuit in court and force them to arbitrate their claims. Federal Arbitration Act, 9 U.S.C. § 3; see also Katherine V.W. Stone & Alexander J.S. Colvin, *The Arbitration Epidemic: Mandatory Arbitration Deprives Workers and Consumers of Their Rights*, ECON. POL'Y INST. (Dec. 7, 2015), <http://www.epi.org/publication/the-arbitration-epidemic/#epi-toc-10>. In arbitration, employees are usually less successful on their claims and receive lower damages. Alexander J.S. Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*, 8 J. EMPIRICAL LEG. STUD. 1 (2011). Arbitration is controversial because it entails non-public, out-of-court process and bars class actions; courts have limited powers to review outcomes; and employers present these terms of employment on a "take it or leave it" basis. Citing these concerns, the Attorneys General of all fifty states, the District of Columbia, and the U.S. Territories called on Congress to prohibit mandatory arbitration clauses in the context of workplace sexual harassment. *Letter on Mandatory Arbitration of Sexual Harassment Disputes*, NTL ASSOCIATION OF ATTORNEYS GENERAL (Feb. 12, 2018), <https://www.mass.gov/files/documents/2018/02/12/NAAG%20letter%20to%20Congress%20Sexual%20Harassment%20Mandatory%20Arbitration.pdf>.
- 42 See *Ladenburg Thalmann & Co. Inc. v. Matty*, 36 Misc. 3d 1243(A), 960 N.Y.S.2d 50 (Sup. Ct. N.Y. Cnty. 2012)
- 43 R.C.N.Y., tit. 47 § 1-1, 1-12.
- 44 See *Ladenburg Thalmann & Co. Inc. v. Matty*, 36 Misc. 3d 1243(A), 960 N.Y.S.2d 50 (Sup. Ct. N.Y. Cnty. 2012); *Anker Mgmt. Corp. v. N.Y.S. Div. of Hum. Rts.*, 215 A.D.2d 706 (N.Y. App. Div. 1995). This stance aligns with that of the EEOC, which files lawsuits against parties that have signed arbitration or severance agreements under Title VII, Title VII, § 707. See, e.g., *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279 (2002). EEOC guidance states that obtaining a promise from an employee not to file a charge or assist in investigations constitutes unlawful retaliation in violation of federal employment rights statutes, rendering these agreements invalid. U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC Enforcement Guidance on Non-Waivable Employee Rights Under EEOC Enforced Statutes (1997), <https://www.eeoc.gov/policy/docs/waiver.html>; 29 C.F.R. § 1625.22(c)(2). The EEOC has taken action against employers who prevent employees from filing charges. *E.E.O.C. v. Doherty Enters., Inc.*, 126 F. Supp. 3d 1305, 1313 (S.D. Fla. 2015) (upholding EEOC standing to bring discrimination lawsuit against employer without attempt at arbitration).
- 45 See N.Y.C. Admin. Code § 8-120 (allowing for hiring, reinstating or upgrading of employees; awarding back and front pay and compensatory damages for the aggrieved person, and issuing other affirmative relief that effectuates the purpose of Chapter 8 of the Admin. Code); See also *People ex rel. Cuomo v. Coventry First LLC*, 13 N.Y.3d 108, 114 (2009) (where the court held that an "arbitration agreement between defendants and their alleged victims does not bar the Attorney General from pursuing victim-specific judicial relief in his enforcement action."). Some courts do suggest, however, that an individual who already recovered through arbitration may not be awarded additional damages through a public enforcement action by the Commission, as it would function as a double recovery. See *Anker Mgmt. Corp.* 215 A.D.2d at 706; *N.Y.S. Dep't of Labor v. N.Y.S. Div. of Hum. Rts.*, 71 A.D. 3d 1234, 1236 (3d Dep't 2010).
- 46 N.Y.C. Admin. Code § 8-102(5) ("For purposes of this subdivision, natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer."). Courts broadly protect independent contractors under this provision, including consultants, *Sellers v. Royal Bank of Canada*, No. 12 CIV. 1577 KBF, 2014 WL 104682, at *10 (S.D.N.Y. Jan. 8, 2014), *aff'd*, 592 F. App. 39, 45 (2d Cir. 2015); exotic dancers, *Fowler v. Scores Holding Co.*, 677 F. Supp. 2d 673, 680 (S.D.N.Y. 2009); and independent computer technicians, *Yu v. N.Y.C. Hous. Dev. Corp.*, No. 07 CIV. 5541 GBD MHD, 2011 WL 2326892, at *26 (S.D.N.Y. Mar. 16, 2011), among others. Occasionally, independent contractors do not receive this protection if, for example, they were contracted to the defendant through a corporation with which they have an employment relationship, *Hopper v. Banana Republic, LLC*, No. 07 CIV. 8526 (WHP), 2008 WL 490613, at *3 (S.D.N.Y. Feb. 25, 2008), or if their work does not further the employer's business, *Lavergne v. Burden*, 244 A.D.2d 203, 665 N.Y.S.2d 272 (1997). Also, a recently passed state law, dated January 18, 2018, provides protection to contractors, vendors, and any other agent so long as they were working in furtherance of the business of the employer and the employer knew or should have known of the alleged discrimination and failed to take corrective action. N.Y. Exec. Law § 296(d).
- 47 N.Y.C. Admin. Code § 8-107(23); N.Y. Exec. Law § 296-c; *Unpaid, But Not Unprotected: New York City Extends Human Rights Law to Protect Interns*, LEG. MONITOR WORLDWIDE (May 14, 2014), <http://bi.galegroup.com/essentials/article/GALE%7CA368023593?u=columbiau>.

- 48 According to the EEOC, the relationship between an individual and their direct employer must be one of employment in order to qualify for Title VII protections— independent contractors do not satisfy this definition. U.S. EQUAL EMP. OPPORTUNITY COMM'N, Policy Guidance on Control by Third Parties over Employment Relationship between Individual and Direct Employer (1987), https://www.eeoc.gov/policy/docs/control_by_third_parties.html. Additionally, the EEOC interprets Title VII's definition of "employees" to require that individuals receive "significant remuneration" from volunteer activities, and not merely inconsequential benefits, and courts have treated financial benefits as a prerequisite to an employment relationship under Title VII. U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC COMPLIANCE MANUAL SECTION 2: THRESHOLD ISSUES § 2(III)(A)(1)(c) (2000), <http://www.eeoc.gov/policy/docs/threshold.html> (discussing coverage for volunteers); O'Connor v. Davis, 126 F.3d 112, 116 (2d Cir. 1997).
- 49 Some industries were not represented at the Hearing and we acknowledge that workers in many other industries are vulnerable to sexual harassment. The Commission hopes to reach out to members and representatives of additional industries to learn more details about how they are impacted by harassment. In the meantime, the Sexuality and Gender Law Clinic conducted several follow-up calls with other industries, including dance, acting, and sex work/adult entertainment. For dancers, choreography often involves nudity or intimate poses, meaning that it is impossible to simply apply usual workplace rules such as "refraining from intimate touch with co-workers" to prevent dancers from feeling pressured by choreographers and others in positions of power. Call with Kara Gilmour of Gibney Dance (Apr. 5, 2018). Actors are often less familiar with their rights as employees and reporting procedures because of the temporary, project-based nature of their work. Call with Lillian Gallina of the Actors Fund (Mar. 7, 2018). Workers in various professions within the sex work and adult entertainment industries are at risk of sexual harassment based on the power of managers, promoters, and studio and website owners, who may expect sexual favors in exchange for jobs. Further, these workers have little recourse to report harassment and may be unsure of their legal rights. These risk factors are potentially exacerbated by the stigma of working in professions that they or others may not perceive as legitimate. Call with RJ Thompson, Director of the Sex Workers Project and Human Rights Project at the Urban Justice Center.
- 50 Hearing Transcript at 43 (Testimony of Nantasha Williams).
- 51 Hearing Transcript at 138 (Testimony of Elizabeth Sprotzer, Make the Road New York).
- 52 Hearing Transcript at 45 (Testimony of Letitia James, New York City Public Advocate).
- 53 Kathleen M. Rospenda, Judith A. Richman & Candice A. Shannon, *Prevalence and Mental Health Correlates of Harassment and Discrimination in the Workplace: Results from a National Study*, J. INTERPERSONAL VIOLENCE, 2009 May 24(5): 819-43; Tanya Kateri Hernandez, *Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race*, 4 J. GENDER, RACE & JUST. (2000-2001); Jennifer L. Berdahl & Celia Moore, *Workplace Harassment: Double Jeopardy for Minority Women*, J. OF APPLIED PSYCHOL., 91(2), 426-36.
- 54 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 26 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 55 Holly Kearn, *The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault*, STOP STREET HARASSMENT 18, (Feb. 2018), <http://www.stopstreetharassment.org/wp-content/uploads/2018/01/2018-National-Sexual-Harassment-and-Assault-Report.pdf> (finding that "36% of Hispanic men versus 25% of White men and 18% of Black men" reported physically aggressive harassment, while "42% of gay and bisexual men reported facing physically aggressive sexual harassment compared with 25% of straight men").
- 56 Holly Kearn, *The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault*, STOP STREET HARASSMENT 18, (Feb. 2018), <http://www.stopstreetharassment.org/wp-content/uploads/2018/01/2018-National-Sexual-Harassment-and-Assault-Report.pdf> (finding that "[p]ersons with disabilities were significantly more likely to experience all forms of sexual harassment and assault than people without disabilities").
- 57 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 25-27 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 58 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 28 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 59 Written Testimony of Seher Khawaja, Legal Momentum. An EEOC study identifying special risk factors for sexual harassment concluded that significant power disparities feed victims' fear of termination, retaliation, or further abuse, leading these events to go unreported and unpunished. Hearing Transcript at 132 (Testimony of Michael Rojas, EEOC New York). See also, Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 28 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 60 Hearing Transcript at 179 (Testimony of Richard Allman, Assemblywoman Carmen de la Rosa).
- 61 *A City of Immigrant Workers: Building a Workforce Strategy to Support All New Yorkers*, THE CTR. FOR POPULAR DEMOCRACY & THE CTR. FOR AN URB. FUTURE 1, (Apr. 2016), <https://nycfuture.org/pdf/A-City-of-Immigrants.pdf>.
- 62 Hearing Transcript at 136 (Testimony of Elizabeth Sprotzer, Make the Road New York); 125-26 (Testimony of Daniela Contreras, National Domestic Workers Alliance).
- 63 These experiences often include harassers threatening to call immigration officials if harassed persons spoke up. Hearing Transcript at 135-37 (Testimony of Elizabeth Sprotzer, Make the Road New York); Hearing Transcript at 141-42 (Testimony of Nathalia Varela, Latino Justice PRLDEF); Hearing Transcript at 178-79 (Testimony of Richard Allman, Assemblywoman Carmen de la Rosa). Harassers can also retaliate by subjecting workers to

unsanitary workplaces, docking their pay, or withholding wages while shielding their actions as responses to complaints. Hearing Transcript at 141–42 (Testimony of Nathalia Varela, Latino Justice PRLDEF).

- 64 Hearing Transcript at 165 (Testimony of LaDonna Lusher, Virginia & Ambinder).
- 65 Written Testimony of Seher Khawaja, Legal Momentum; Hearing Transcript at 135–37 (Testimony of Elizabeth Sprotzer, Make the Road New York). For example, despite a surge of harassment complaints in many organizations and agencies, these numbers have declined in jurisdictions with large immigrant populations. Written Testimony of Seher Khawaja, Legal Momentum.
- 66 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 26 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 67 Hearing Transcript at 138 (Testimony of Elizabeth Sprotzer, Make the Road New York).
- 68 Written Testimony of Seher Khawaja, Legal Momentum; Hearing Transcript at 145 (Testimony of Laura Berger, Immigrant Justice Project).
- 69 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 27 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf (finding that "young workers who are in unskilled or precarious jobs may be more susceptible to being taken advantage of by coworkers or superiors, particularly those who may be older and more established in their positions.")
- 70 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 27 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 71 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 27 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf
- 72 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 27 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf (finding that "young workers who are in unskilled or precarious jobs may be more susceptible to being taken advantage of by coworkers or superiors, particularly those who may be older and more established in their positions.")
- 73 Hearing Transcript at 163–65 (Testimony of La Donna Lusher, Virginia & Ambinder) (testifying that harassers target temporary employees in tech and finance because companies take these complaints less seriously and terminate these employees' contracts if they do not receive favorable reviews).
- 74 Written Testimony of Kathleen Peratis and Nina Frank, Outten & Golden.
- 75 Written Testimony of Kathleen Peratis and Nina Frank, Outten & Golden.
- 76 *The Construction Chart Book the U.S. Construction Industry and Its Workers Fifth Edition*, THE CTR. FOR

CONSTRUCTION RES. & TRAINING, 20 (Apr. 2013), <https://www.cpw.com/sites/default/files/publications/5th%20Edition%20Chart%20Book%20Final.pdf#page=57> (finding that in 2010, women made up 9% of the construction workforce in the U.S. despite comprising 47% of the total workforce).

- 77 Written Testimony of Anonymous Carpenter Apprentice and Diedre Olivera.
- 78 Hearing Transcript at 110–11 (Testimony of Dina Bakst, A Better Balance); U.S. DEP'T OF LABOR, Women in the Construction Workplace: Providing Equitable Safety and Health Protection (1999), <https://www.osha.gov/doc/accsh/haswicformal.html> (finding that 88% of women construction workers surveyed reported having been sexually harassed in the workplace).
- 79 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 26–28 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 80 Hearing Transcript at 85 (Testimony of Leah Rambo).
- 81 U.S. DEP'T OF LABOR, Women in the Construction Workplace: Providing Equitable Safety and Health Protection (1999), <https://www.osha.gov/doc/accsh/haswicformal.html>.
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- 83 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 26 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 84 Hearing Transcript at 155 (Testimony of Bev Neufeld, PowHer New York).
- 85 Although there was limited testimony at the Hearing as to the experiences of individuals with sexual harassment within STEM industries, the Commission looks forward to engaging stakeholders in future conversations. Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 28 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
- 86 Hearing Transcript at 32–33 (Testimony of Carmelyn Malalis, Commissioner of NYCCHR); Written Testimony of Margaret McIntyre, National Employment Lawyers Association, New York Affiliate.
- 87 Hearing Transcript at 50–53 (Testimony of Julie Menin, Mayor's Office of Media and Entertainment); Hearing Transcript at 168–69 (Testimony of Daniela Nanau).
- 88 Written Testimony of American Federation of Musicians, Local 802.
- 89 Written Testimony of American Federation of Musicians, Local 802.
- 90 Written Testimony of Audra Callo.
- 91 Written Testimony of Erin Williams and Tina Davis.
- 92 Hearing Transcript at 67, 71 (Testimony of Simone Pero, President of NYWIFT).
- 93 Hearing Transcript at 71 (Testimony of Simone Pero,

- President of NYWIFT).
- 94 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 28 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf; Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. TIMES, Mar. 12, 2018, <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html>; See Hearing Transcript at 173 (Testimony of Leslie Escobosa, Restaurant Opportunity Center of New York).
 - 95 *Our Work*, RESTAURANT OPPORTUNITIES CTR. UNITED, <http://rocunited.org/our-work/#gender-inequality-is-widespread>.
 - 96 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 3 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
 - 97 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 1 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
 - 98 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 1 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
 - 99 Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. TIMES, Mar. 12, 2018, <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html>.
 - 100 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 2 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
 - 101 *Our Tips Belong to Us: Overcoming the National Restaurant Association's Attempt to Steal Workers' Tips, Perpetuate Sexual Harassment, and Maintain Racial Exploitation*, RESTAURANT OPPORTUNITIES CTR. UNITED 4 (Oct. 2017), http://rocunited.org/wp-content/uploads/2017/10/OurTips_2017_W.pdf.
 - 102 Hearing Transcript at 173 (Testimony of Leslie Escobosa, Restaurant Opportunity Center of New York); *Our Tips Belong to Us: Overcoming the National Restaurant Association's Attempt to Steal Workers' Tips, Perpetuate Sexual Harassment, and Maintain Racial Exploitation*, RESTAURANT OPPORTUNITIES CTR. UNITED 4 (Oct. 2017), http://rocunited.org/wp-content/uploads/2017/10/OurTips_2017_W.pdf.
 - 103 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 8 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
 - 104 SARU JAYARAMAN, BEHIND THE KITCHEN DOOR (2013) (Chapter 6, "Women Waiting on Equality").
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 - 108 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace, at 29 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.
 - 109 *Hands Off, Pants On: Sexual Harassment in Chicago's Hospitality Industry*, UNITED HERE LOCAL 1, at 4 (July 2016), <https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf>.
 - 110 *Hands Off, Pants On: Sexual Harassment in Chicago's Hospitality Industry*, UNITED HERE LOCAL 1, at 4 (July 2016), <https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf>.
 - 111 *Key Findings of the Select Task Force on the Study of Harassment in the Workplace*, N'TL SEXUAL VIOLENCE RESOURCE CTR. 5 (2017), https://www.nsvrc.org/sites/default/files/publications/2018-03/publications_nsvrc_research-translation_key-findings-select-task-force-study-harassment-in-the-workplace.pdf; Hearing Transcript at 67 (Testimony of Simone Pero, President of the Board of Directors of New York Women in Film and Television); Hearing Transcript at 110 (Testimony of Dina Bakst, A Better Balance).
 - 112 *Key Findings of the Select Task Force on the Study of Harassment in the Workplace*, N'TL SEXUAL VIOLENCE RESOURCE CTR. 5 (2017), https://www.nsvrc.org/sites/default/files/publications/2018-03/publications_nsvrc_research-translation_key-findings-select-task-force-study-harassment-in-the-workplace.pdf.
 - 113 *Key Findings of the Select Task Force on the Study of Harassment in the Workplace*, N'TL SEXUAL VIOLENCE RESOURCE CTR. 5 (2017), https://www.nsvrc.org/sites/default/files/publications/2018-03/publications_nsvrc_research-translation_key-findings-select-task-force-study-harassment-in-the-workplace.pdf.
 - 114 See Hearing Transcript at 67 (Testimony of Simone Pero, President of the Board of Directors of New York Women in Film and Television); Hearing Transcript at 110 (Testimony of Dina Bakst, A Better Balance); Hearing Transcript at 115-16 (Testimony of Alanna Kaufman, Emery, Celli, Brinckerhoff & Abady); Hearing Transcript at 136-37 (Testimony of Elizabeth Sprotzer, Make the Road New York); Hearing Transcript 141-42 (Testimony of Nathalia Varela, Latino Justice PRLDEF).
 - 115 *Public Hearing on Sexual Harassment in the Workplace*, N.Y.C. COMM'N ON HUM. RTS., Dec. 6, 2017, https://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR_SexualHarassment_Hearing_Transcript_12.6.17.pdf; CUNY School of Law, *Public Hearing on Sexual Harassment by the NYC Commission on Human Rights*, 12/6/17, YOUTUBE (Dec. 6, 2017), <https://www.youtube.com/watch?v=ij7r2e4l9il>.
 - 116 The Stop Sexual Harassment in NYC Act includes several of these suggestions. This legislative package consists of eleven bills that the City Council's Committee on Women

and Committee on Civil and Human Rights introduced in February 2018 and that have passed City Council and are awaiting the Mayor's signature.

- 117 Hearing Transcript at 130 (Marrisa Senteno, National Domestic Workers Alliance) (noting that domestic workers who come forward to report harassment are frequently stymied by the one year SOL); Hearing Transcript at 165 (La Donna Lusher, Virginia & Abinder Law Firm) (testifying that the one year SOL impedes reporting by workers in the tech and finance industries, especially for immigrant workers who work authorization may be revoked if they complain); Written testimony of Rebecca Hayes, representing the Screen Actors Guild (recommending that the SOL be extended).
- 118 N.Y. C.P.L.R. § 214(2) (McKinney 2018); see also, *Giannone v. Deutsche Banke Sec., Inc.*, 392 F. Supp. 2d 576, 585 (S.D.N.Y. 2005) (finding plaintiff's employment discrimination claims under NYSHRL were time-barred because the alleged workplace sexual harassment occurred more than three years before the complaint was filed)
- 119 Hearing Transcript at 118–25 (Marrisa Senteno, National Domestic Workers Alliance).
- 120 Written Testimony of Seher Khawaja, Legal Momentum.
- 121 Int. No. 663-A (2018), "A Local Law to amend the administrative code of the city of New York, in relation to the statute of limitations for filing certain harassment claims arising under the city human rights law," which extends the SOL from one to three years for gender-based harassment claims. The bill awaits final signature from the Mayor.
- 122 Hearing Transcript at 130 (Marrisa Senteno, National Domestic Workers Alliance).
- 123 Int. No. 657 (2018), "A Local Law to amend the administrative code of the city of New York, in relation to expanding sexual harassment protections to all employees" (employer shall include any employer, including those with fewer than four persons in their employ, for claims based on gender-based harassment). The bill awaits final signature from the Mayor.
- 124 Hearing Transcript at 138 (Elizabeth Sprotzer, Make the Road New York).
- 125 Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 126 Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 127 Written Testimony of Kathleen Peratis & Nina Frank, Outten & Golden.
- 128 Hearing Transcript at 108 (Maya Raghu, National Women's Law Center).
- 129 Hearing Transcript at 46-47 (Letitia James, New York City Public Advocate). Other states limit when employers can impose nondisclosure agreements. California prohibits the use of nondisclosure agreements in the settlement of

felony sex offenses and non-felony sex crimes. Several states, including Florida, Delaware, Indiana, New York, North Carolina, Oregon, and Washington have "Sunshine in Litigation" statute that prohibit settlements that would "conceal a public hazard," and has primarily been applied in cases of sexual abuse of minors. See Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.

- 130 Hearing Transcript at 90-96 (Jeff Trexler, Fashion Law Institute); Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 131 Hearing Transcript at 90-96 (Jeff Trexler, Fashion Law Institute); Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 132 Hearing Transcript at 175 (Leslie Escobosa, Restaurant Opportunity Center of New York).
- 133 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED FORWARD TOGETHER 13 (Oct. 17, 2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf; Hearing Transcript at 155–56 (Bev Neufeld, PowHer New York) (testifying that though the restaurant industry comprises only 7% of working women, claims arising from women in those positions account for 37% of sexual harassment cases on the whole).
- 134 *About, ONE FAIR WAGE*, <http://onefairwage.com/about/>; Catrin Einhorn & Rachel Abrams, *The Tipping Equation*, N.Y. TIMES, <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html?smid=tw-share>.
- 135 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED FORWARD TOGETHER 8 (Oct. 17, 2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf.
- 136 Hearing Transcript at 58 (Amy Hong, Legal Aid Society) (describing a case in the harasser was the victim's "supervisor, HR rep, owner of the company all wrapped into one" and the victim had "nowhere to complain to her employer outside of her perpetrator").
- 137 Hearing Transcript at 58–59 (Amy Hong, Legal Aid Society).
- 138 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, *Select Task Force on The Study of Harassment in the Workplace* (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 139 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, *Select Task Force on The Study of*

- Harassment in the Workplace (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 140 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Promising Practices for Preventing Harassment, <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm>.
- 141 Hearing Transcript at 133 (Michael Rojas, NY EEOC); Hearing Transcript at 150 (Rita Pasarell, Hollaback); Hearing Transcript at 165 (La Donna Lusher, Virginia & Ambinder law firm); Written Testimony of Rebecca Hayes, Screen Actors Guild—American Federation of Television and Radio Artists; Written Testimony of Seher Khawaha, Legal Momentum.
- 142 On April 11, 2018, City Council passed the "Stop Sexual Harassment in NYC Act" which included Int. No. 632-A (2018), "A Local Law to amend the administrative code of the city of New York, in retaliation to mandating anti-sexual harassment training for private employers[.]" The bill awaits final signature from the Mayor, and once signed takes effect April 1, 2019.
- 143 Hearing Transcript at 133 (Speaking on behalf of NY EEOC, Michael Rojas advocated for greater sexual harassment training in workplaces, especially for management and with regard to bystander intervention); Hearing Transcript at 150 (Speaking on behalf of Hollaback, Rita Pasarell advocates for an emphasis on bystander training in workplaces); Hearing Transcript at 165 (La Donna Lusher, speaking on behalf of Virginia & Ambinder law firm, recommends that the city mandate sexual harassment training for employers and supervisors); Written Testimony of Rebecca Hayes of the Screen Actors Guild—American Federation of Television and Radio Artists; Written Testimony of Seher Khawaha, Legal Momentum; Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 144 See generally Hearing Transcript at 118–25 Recommendations of Marris Senteno, (Enforcement program manager for National Domestic Workers Alliance); Hearing Transcript at 47 (Recommendations of NYC Public Advocate Letitia James).
- 145 On April 11, 2018, City Council passed the "Stop Sexual Harassment in NYC Act" which included Int. No. 612-A (2018), "A Local Law to amend the New York city charter, in relation to anti-sexual harassment trainings at city agencies[.]" The law will go into effect 120 days after it is signed by the Mayor.
- 146 Written Testimony of Margaret McIntyre, National Employment Lawyers Association; City Council has just passed, as part of the Stop Sexual Harassment in NYC Act, a bill in changing law to this effect, including: Int. No. 664-A (2018), "A Local Law in relation to climate surveys and action plans to combat sexual harassment and equal employment opportunity violations at city agencies;" and Int. No. 613-A (2018), "A Local Law in relation to assessing workplace risk factors associated with sexual harassment within city agencies." The bill awaits final signature from the Mayor.
- 147 Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 5 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 148 On April 11, 2018, City Council passed the "Stop Sexual Harassment in NYC Act" which included Int. No. 653-A (2018), "A Local Law to amend the administrative code of the city of New York, in relation to mandating annual reporting on workplace sexual harassment within city agencies." The bill awaits final signature from the Mayor. The law will go into effect 180 days after it is signed by the Mayor.
- 149 Written Testimony of Margaret McIntyre, National Employment Lawyers Association; Hearing Transcript at 59 (Amy Hong, Legal Aid Society).
- 150 Hearing Transcript at 106–07 (Maya Raghu, National Women's Law Center).
- 151 See, e.g., Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/12/MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf>.
- 152 Hearing Transcript at 65–73 (Simone Pero, New York Women in Film and Television).
- 153 SOPs should include (a) reporting structures, (b) an investigative body, and (c) enforcement mechanisms that are workable for the type of employer. For example, Screen Actors Guild created a code of conduct that outlines the obligations of employers and union members under the law and union rules. *Code of Conduct*, SAG-AFTRA, 2018, https://www.sagaftra.org/files/sagaftra_code_of_conduct_f2_2.pdf; Hearing Transcript at 65–73 (Simone Pero, New York Women in Film and Television); Hearing Transcript at 105–10 (Maya Raghu of the National Women's Law Center in D.C. advocated that sexual harassment training be mandated for all parties doing business in New York City, or at the least all City contractors and employees).
- 154 Hearing Transcript at 47–48 (Letitia James, New York City Public Advocate).
- 155 Written Testimony of Amy Baldwin, Women's Bar Association of the State of New York; Written testimony of Seher Khawaha, Legal Momentum; Hearing Transcript at 56–58 (Amy Hong, Legal Aid Society).
- 156 Written Testimony of Amy Baldwin, Women's Bar Association of the State of New York; Written testimony of Seher Khawaha, Legal Momentum; Hearing Transcript at 56–58 (Amy Hong, Legal Aid Society).
- 157 Written Testimony of Amy Baldwin, Women's Bar Association of the State of New York; Written testimony of Seher Khawaha, Legal Momentum; Hearing Transcript at 56–58 (Amy Hong, Legal Aid Society).
- 158 Hearing Transcript at 138 (Speaking on behalf of Make the Road New York, Elizabeth Sprotzer emphasized the need to increase educational outreach to low-wage workers).
- 159 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 160 Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of

Harassment in the Workplace (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

- 161 Hearing Transcript at 142–43 (Speaking on behalf of Latino Justice PRLDEF, Nathalia Varela advocated for directly educating immigrant workers on their legal rights and recourse).
- 162 Hearing Transcript at 142–43 (Speaking on behalf of Latino Justice PRLDEF, Nathalia Varela advocated for complaint intake procedures that better protect immigrant workers by providing workers with practical, extralegal advice such as not disclosing their personal address to employers who may leverage such information to threaten undocumented immigrant workers).
- 163 Hearing Testimony at 147 (Laura Berger, Immigrant Justice Project).
- 164 Hearing Testimony at 146–47 (Laura Berger, Immigrant Justice Project).
- 165 Hearing Transcript at 47–48 (Letitia James, New York City Public Advocate).
- 166 Hearing Transcript at 110–14 (Dina Bakst, A Better Balance); Hearing Transcript at 114–18 (Allana Kaufman, Emery, Celli, Brinckerhoff & Abady).
- 167 Hearing Transcript at 58–59 (Amy Hong, Legal Aid Society); Hearing Transcript at 93 (Jeff Trexler, Fashion Law Institute).
- 168 See, e.g., Hearing Transcript at 73–84 (Martha Kamber, YWCA Brooklyn).
- 169 Catherine Hill, *Crossing the Line: Sexual Harassment at School*, AAUW 11 (2011), <https://www.aauw.org/research/crossing-the-line/>.
- 170 N.Y. EDUC. §§ 10–18 (McKinney 2018); *The Dignity for All Students Act*, NYSED.GOV, <http://www.p12.nysed.gov/dignityact/>; Letitia James, Public Advocate for the City of New York, *On First Day of School, PA James Launches a Campaign for Student Protection and Parent's Rights Re: Bullying, Sexual Harassment*, Press Release, Sept. 8, 2016, <https://pubadvocate.nyc.gov/news/articles/first-day-school-pa-james-launches-campaign-student-protection-and-parents%E2%80%99-rights-re/>; Letitia James, Public Advocate for the City of New York, *On First Day of School, PA James Launches a Campaign for Student Protection and Parent's Rights Re: Bullying, Sexual Harassment*, Press Release, Sept. 8, 2016, <https://pubadvocate.nyc.gov/news/articles/first-day-school-pa-james-launches-campaign-student-protection-and-parents%E2%80%99-rights-re>
- 171 See, e.g., Hearing Transcript at 73–84 (Martha Kamber, YWCA Brooklyn).
- 172 Hearing Transcript at 73–84 (Martha Kamber, YWCA Brooklyn); Chai R. Feldblum & Victoria A. Lipnic, U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on The Study of Harassment in the Workplace (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 173 *Stop Sexual Violence A Violence Bystander Intervention Toolkit*, N. Y. STATE DEP'T. OF HEALTH, 9–10, <https://www.health.ny.gov/publications/2040> (last visited Apr. 6, 2018); Written testimony of Elizabeth Adams on behalf of Planned Parenthood of New York City.
- 174 Hearing Transcript at 73–84 (Martha Kamber, YWCA Brooklyn).
- 175 *Key Findings of the Select Task Force on the Study of Harassment in the Workplace*, N'TL SEXUAL VIOLENCE RESOURCE CTR. 6 (2017), https://www.nsvrc.org/sites/default/files/publications/2018-03/publications_nsvrc_research-translation_key-findings-select-task-force-study-harassment-in-the-workplace.pdf.
- 176 Hearing Transcript at 179–80 (Richard Allman, on behalf of Assemblywoman Carmen de la Rosa); Hearing Transcript at 133 (Michael Rojas, N.Y. EEOC); Hearing Transcript at 97–99 (Sarah Ziff, Model Alliance).
- 177 *The Glass Floor: Sexual Harassment in the Restaurant Industry*, RESTAURANT OPPORTUNITIES CTR. UNITED 31 (Oct. 7, 2014), <http://rocunited.org/publications/the-glass-floor-sexual-harassment-in-the-restaurant-industry/>.
- 178 Hearing Transcript at 118–25 (Marrisa Senteno, National Domestic Workers Alliance).
- 179 Written Testimony of Kathleen Peratis and Nina Frank, Outten & Golden.
- 180 Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 6 (2017) <https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/>.
- 181 Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, N'TL WOMEN'S LAW CTR. 6 (2017), <https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/>.
- 182 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on the Study of Workplace Sexual Harassment (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 183 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on the Study of Workplace Sexual Harassment (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 184 Hearing Transcript at 86 (Speaking as a representative from the construction industry, Leah Rambo explained how sexual harassment can be distracting, creating dangerous workplace conditions, and argued that "sexual harassment should be considered as a safety hazard.").
- 185 Hearing Transcript at 45 (Letitia James, New York City Public Advocate).
- 186 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on the Study of Workplace Sexual Harassment (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.
- 187 U.S. EQUAL EMP. OPPORTUNITY COMM'N, Select Task Force on the Study of Workplace Sexual Harassment (2016), https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.



U.S. Equal Employment Opportunity Commission

Select Task Force on the Study of Harassment in the Workplace

Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic

Executive Summary & Recommendations

June 2016

Full text of report available at:

https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

EXECUTIVE SUMMARY

As co-chairs of the Equal Employment Opportunity Commission's Select Task Force on the Study of Harassment in the Workplace ("Select Task Force"), we have spent the last 18 months examining the myriad and complex issues associated with harassment in the workplace. Thirty years after the U.S. Supreme Court held in the landmark case of *Meritor Savings Bank v. Vinson* that workplace harassment was an actionable form of discrimination prohibited by Title VII of the Civil Rights Act of 1964, we conclude that we have come a far way since that day, but sadly and too often still have far to go.

Created in January 2015, the Select Task Force was comprised of 16 members from around the country, including representatives of academia from various social science disciplines; legal practitioners on both the plaintiff and defense side; employers and employee advocacy groups; and

organized labor. The Select Task Force reflected a broad diversity of experience, expertise, and opinion. From April 2015 through June 2016, the Select Task Force held a series of meetings - some were open to the public, some were closed working sessions, and others were a combination of both. In the course of a year, the Select Task Force received testimony from more than 30 witnesses, and received numerous public comments.

Throughout this past year, we sought to deploy the expertise of our Select Task Force members and our witnesses to move beyond the legal arena and gain insights from the worlds of social science, and practitioners on the ground, on how to prevent harassment in the workplace. We focused on learning everything we could about workplace harassment - from sociologists, industrial-organizational psychologists, investigators, trainers, lawyers, employers, advocates, and anyone else who had something useful to convey to us.

Because our focus was on prevention, we did not confine ourselves to the legal definition of workplace harassment, but rather included examination of conduct and behaviors which might not be "legally actionable," but left unchecked, may set the stage for unlawful harassment.

This report is written by the two of us, in our capacity as Co-Chairs of the Select Task Force. It does not reflect the consensus view of the Select Task Force members, but is informed by the experience and observations of the Select Task Force members' wide range of viewpoints, as well as the testimony and information received and reviewed by the Select Task Force. Our report includes analysis and recommendations for a range of stakeholders: EEOC, the employer community, the civil rights community, other government agencies, academic researchers, and other interested parties. We summarize our key findings below.

Workplace Harassment Remains a Persistent Problem. Almost fully one third of the approximately 90,000 charges received by EEOC in fiscal year 2015 included an allegation of workplace harassment. This includes, among other things, charges of unlawful harassment on the basis of sex (including sexual orientation, gender identity, and pregnancy), race, disability, age, ethnicity/national origin, color, and religion. While there is robust data and academic literature on sex-based harassment, there is very limited data regarding harassment on other protected bases. More research is needed.

Workplace Harassment Too Often Goes Unreported. Common workplace-based responses by those who experience sex-based harassment are to avoid the harasser, deny or downplay the gravity of the situation, or attempt to ignore, forget, or endure the behavior. The least common response to

harassment is to take some formal action - either to report the harassment internally or file a formal legal complaint. Roughly *three out of four* individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct. Employees who experience harassment fail to report the harassing behavior or to file a complaint because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.

There Is a Compelling Business Case for Stopping and Preventing Harassment. When employers consider the costs of workplace harassment, they often focus on legal costs, and with good reason. Last year, EEOC alone recovered \$164.5 million for workers alleging harassment - and these direct costs are just the tip of the iceberg. Workplace harassment first and foremost comes at a steep cost to those who suffer it, as they experience mental, physical, and economic harm. Beyond that, workplace harassment affects *all* workers, and its true cost includes decreased productivity, increased turnover, and reputational harm. All of this is a drag on performance - and the bottom-line.

It Starts at the Top - Leadership and Accountability Are Critical. Workplace culture has the greatest impact on allowing harassment to flourish, or conversely, in preventing harassment. The importance of leadership cannot be overstated - effective harassment prevention efforts, and workplace culture in which harassment is not tolerated, must start with and involve the highest level of management of the company. But a commitment (even from the top) to a diverse, inclusive, and respectful workplace is not enough. Rather, at all levels, across all positions, an organization must have systems in place that hold employees accountable for this expectation. Accountability systems must ensure that those who engage in harassment are held responsible in a meaningful, appropriate, and proportional manner, and that those whose job it is to prevent or respond to harassment should be rewarded for doing that job well (or penalized for failing to do so). Finally, leadership means ensuring that anti-harassment efforts are given the necessary time and resources to be effective.

Training Must Change. Much of the training done over the last 30 years has not worked as a prevention tool - it's been too focused on simply avoiding legal liability. We believe effective training can reduce workplace harassment, and recognize that ineffective training can be unhelpful or even counterproductive. However, even effective training cannot occur in a vacuum - it must be part of a holistic culture of non-harassment that starts at the top. Similarly, one size does *not* fit all: Training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees. Finally, when trained correctly, middle-managers and first-line supervisors in particular can be an employer's most valuable resource in preventing and stopping harassment.

New and Different Approaches to Training Should Be Explored. We heard of several new models of training that may show promise for harassment training. "Bystander intervention training" - increasingly used to combat sexual violence on school campuses - empowers co-workers and gives them the tools to intervene when they witness harassing behavior, and may show promise for harassment prevention. Workplace "civility training" that does not focus on eliminating unwelcome or offensive behavior based on characteristics protected under employment non-discrimination laws, but rather on promoting respect and civility in the workplace generally, likewise may offer solutions.

It's On Us. Harassment in the workplace will not stop on its own - it's on all of us to be part of the fight to stop workplace harassment. We cannot be complacent bystanders and expect our workplace cultures to change themselves. For this reason, we suggest exploring the launch of an *It's on Us* campaign for the workplace. Originally developed to reduce sexual violence in educational settings, the *It's on Us* campaign is premised on the idea that students, faculty, and campus staff should be empowered to be part of the solution to sexual assault, and should be provided the tools and resources to prevent sexual assault as engaged bystanders. Launching a similar *It's on Us* campaign in workplaces across the nation - large and small, urban and rural - is an audacious goal. But doing so could transform the problem of workplace harassment from being about targets, harassers, and legal compliance, into one in which co-workers, supervisors, clients, and customers all have roles to play in stopping such harassment.

Our final report also includes detailed recommendations and a number of helpful tools to aid in designing effective anti-harassment policies; developing training curricula; implementing complaint, reporting, and investigation procedures; creating an organizational culture in which harassment is not tolerated; ensuring employees are held accountable; and assessing and responding to workplace "risk factors" for harassment.

Recommendations

Recommendations Regarding the Prevalence of Harassment in the Workplace

- EEOC should work with the Bureau of Labor Statistics or the Census Bureau, and/or private partners, to develop and conduct a national poll to measure the prevalence of workplace harassment based on sex (including pregnancy, sexual orientation and gender identity), race, ethnicity/national origin, religion, age, disability, and genetic information over time.

- Academic researchers should compile baseline research on the prevalence of workplace harassment based on race, ethnicity/national origin, color, religion, age, disability, genetic information, sexual orientation, and gender identity.
- EEOC should confer with the Merit Systems Protection Board to determine whether it can repeat its study of harassment of federal employees, and expand its survey to ask questions regarding harassment based on race, ethnicity/national origin, color, religion, age, disability, genetic information, sexual orientation, and gender identity in the federal government, and to disaggregate sexually-based harassment and gender-based harassment.
- EEOC should work within the structure established by the Office of Personnel Management to offer specific questions on workplace harassment in the Federal Employee Viewpoint Survey.

Recommendations Regarding Workplace Leadership and Accountability

- Employers should foster an organizational culture in which harassment is not tolerated, and in which respect and civility are promoted. Employers should communicate and model a consistent commitment to that goal.
- Employers should assess their workplaces for the risk factors associated with harassment and explore ideas for minimizing those risks.
- Employers should conduct climate surveys to assess the extent to which harassment is a problem in their organization.
- Employers should devote sufficient resources to harassment prevention efforts, both to ensure that such efforts are effective, and to reinforce the credibility of leadership's commitment to creating a workplace free of harassment.
- Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.
- Employers should hold mid-level managers and front-line supervisors accountable for preventing and/or responding to workplace harassment, including through the use of metrics and performance reviews.
- If employers have a diversity and inclusion strategy and budget, harassment prevention should be an integral part of that strategy.

Recommendations Regarding Harassment Prevention Policies and Procedures

- Employers should adopt and maintain a comprehensive anti-harassment policy (which prohibits harassment based on any protected characteristic, and which includes social media considerations)

and should establish procedures consistent with the principles discussed in this report.

- Employers should ensure that the anti-harassment policy, and in particular details about how to complain of harassment and how to report observed harassment, are communicated frequently to employees, in a variety of forms and methods.
- Employers should offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.
- Employers should be alert for any possibility of retaliation against an employee who reports harassment and should take steps to ensure that such retaliation does not occur.
- Employers should periodically "test" their reporting system to determine how well the system is working.
- Employers should devote sufficient resources so that workplace investigations are prompt, objective, and thorough. Investigations should be kept as confidential as possible, recognizing that complete confidentiality or anonymity will not always be attainable.
- EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible confidentiality of workplace investigations, and the permissible scope of policies regulating workplace social media usage.
- Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the behavior(s) at issue and the severity of the infraction. Employers should ensure that discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.
- In unionized workplaces, the labor union should ensure that its own policy and reporting system meet the principles outlined in this section.
- EEOC should, as a best practice in cases alleging harassment, seek as a term of its settlement agreements, conciliation agreements, and consent decrees, that any policy and any complaint or investigative procedures implemented to resolve an EEOC charge or lawsuit satisfy the elements of the policy, reporting system, investigative procedures, and corrective actions outlined above.
- EEOC should, as a best practice in cases alleging harassment, seek as part of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer in assessing the impact and efficacy of the policies, reporting systems, investigative procedures, and corrective actions put into place by that employer. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency

must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.

- Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of their policies, reporting systems, investigative procedures, and corrective actions put into place by those employers, in a manner that would allow research data to be aggregated in a manner that would not identify individual employers.

Recommendations Regarding Anti-Harassment Compliance Training

- Employers should offer, on a regular basis and in a universal manner, compliance trainings that include the content and follow the structural principles described in this report, and which are offered on a dynamic and repeated basis to all employees.
- Employers should dedicate sufficient resources to train middle-management and first-line supervisors on how to respond effectively to harassment that they observe, that is reported to them, or of which they have knowledge or information - even before such harassment reaches a legally-actionable level.
- EEOC should, as a best practice in cases alleging harassment, seek as a term of its settlement agreements, conciliation agreements, and consent decrees, that employers adopt and maintain compliance training that comports with the content and follows the structural principles described in this report.
- EEOC should, as a best practice in cases alleging harassment, seek as a condition of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer to assess the climate and level of harassment in respondent workplaces pre- and post-implementation of compliance trainings, and to study the impact and efficacy of specific training components. Where possible, this research should focus not only on the efficacy of training in large organizations, but also smaller employers and newer or "start up" firms. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.
- Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of trainings, particularly in the context of holistic harassment prevention efforts, in a manner that would allow research data to be aggregated and not identify individual employers.
- EEOC should compile a resource guide for employers that contains checklists and training modules for compliance trainings.

- EEOC should review and update, consistent with the recommendations contained in this report, its anti-harassment compliance training modules used for Technical Assistance Seminars, Customer Specific Trainings, trainings for Federal agencies, and other outreach and education programs.

Recommendations Regarding Workplace Civility and Bystander Intervention Training

- Employers should consider including workplace civility training and bystander intervention training as part of a holistic harassment prevention program.
- EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible content of workplace "civility codes."
- Researchers should assess the impact of workplace civility training on reducing the level of harassment in the workplace.
- EEOC should convene a panel of experts on sexual assault bystander intervention training to develop and evaluate a bystander intervention training module for reducing harassment in the workplace.
- EEOC should, as a best practice in cases alleging harassment, seek as part of its settlement agreements, conciliation agreements, and consent decrees, an agreement that researchers will be allowed to work with the employer in assessing the efficacy of workplace civility training and/or bystander intervention training on reducing the level of harassment in the workplace. While we encourage EEOC to seek such an agreement when appropriate, we do not suggest that the agency must do so in all instances, or that failure to obtain such an agreement should derail otherwise acceptable settlement proposals.
- Groups of employers should consider coming together to offer researchers access to their workplaces to research the effectiveness of workplace civility and bystander intervention trainings in a manner that would allow research data to be aggregated and not identify individual employers.

Recommendations Regarding General Outreach

- EEOC should develop additional resources for its website, including user-friendly guides on workplace harassment for employers and employees, that can be used with mobile devices.
- Non-profit organizations should conduct targeted outreach to employers to explain the business case for strong harassment prevention cultures, policies, and procedures.
- Non-profit organizations (including employee advocacy organizations, business membership associations, and labor unions) should develop easy-to-understand written resources and other creative materials (such as videos, posters, etc.) that will help workers and employers understand their rights and responsibilities.

- EEOC should partner with internet search engines to ensure that a range of EEOC resources appear high on the list of results returned by search engines.

Recommendations Regarding Targeted Outreach to Youth

- EEOC should continue to update its Youth@Work initiative (including its website) to include more information about harassment.
- Colleges and high schools should incorporate a component on workplace harassment in their school-based anti-bullying and anti-sexual assault efforts.
- EEOC should partner with web-based educational websites, such as Khan Academy, or YouTube channels that have a large youth following, to develop content around workplace harassment.
- EEOC should establish a contest in which youth are invited to design their own videos or apps to educate their peers about workplace harassment.

Recommendation Regarding an It's on Us campaign:

- EEOC assists in launching an "It's on Us" campaign to end harassment in the workplace.

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Promising Practices for Preventing Harassment

As many employers recognize, adopting proactive measures may prevent harassment from occurring. Employers implement a wide variety of creative and innovative approaches to prevent and correct harassment.[1]

The Report of the Co-Chairs of EEOC's Select Task Force on the Study of Harassment in the Workplace ("Report") identified five core principles that have generally proven effective in preventing and addressing harassment:

- Committed and engaged leadership;
- Consistent and demonstrated accountability;
- Strong and comprehensive harassment policies;
- Trusted and accessible complaint procedures; and
- Regular, interactive training tailored to the audience and the organization.[2]

The Report includes checklists based on these principles to assist employers in preventing and responding to workplace harassment.[3] The promising practices identified in this document are based primarily on these checklists.[4] Although these practices are not legal requirements under federal employment discrimination laws, they may enhance employers' compliance efforts.[5]

A. Leadership and Accountability

The cornerstone of a successful harassment prevention strategy is the consistent and demonstrated commitment of senior leaders to create and maintain a culture in which harassment is not tolerated. This commitment may be demonstrated by, among other things:

- Clearly, frequently, and unequivocally stating that harassment is prohibited;[6]
- Incorporating enforcement of, and compliance with, the organization's harassment and other discrimination policies and procedures into the organization's operational framework;[7]
- Allocating sufficient resources for effective harassment prevention strategies;
- Providing appropriate authority to individuals responsible for creating, implementing, and managing harassment prevention strategies;
- Allocating sufficient staff time for harassment prevention efforts;
- Assessing harassment risk factors and taking steps to minimize or eliminate those risks;[8] and
- Engaging organizational leadership in harassment prevention and correction efforts.[9]

In particular, we recommend that senior leaders ensure that their organizations:

- Have a harassment policy that is comprehensive, easy to understand, and regularly communicated to all employees;[10]
- Have a harassment complaint system that is fully resourced, is accessible to all employees, has multiple avenues for making a complaint, if possible, and is regularly communicated to all employees;[11]
- Regularly and effectively train all employees about the harassment policy and complaint system;[12]
- Regularly and effectively train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of prohibited harassment;[13]
- Acknowledge employees, supervisors, and managers, as appropriate, for creating and maintaining a culture in which harassment is not tolerated and promptly reporting, investigating, and resolving harassment complaints;[14] and
- Impose discipline that is prompt, consistent, and proportionate to the severity of the harassment and/or related conduct, such as retaliation, when it determines that such conduct has occurred.

In addition, we recommend that senior leaders exercise appropriate oversight of the harassment policy, complaint system, training, and any related preventive and corrective efforts, which may include:

- Periodically evaluating the effectiveness of the organization's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel;^[15]
- Ensuring that concerns or complaints regarding the policy, complaint system, and/or training are addressed appropriately;
- Directing staff to periodically, and in different ways, test the complaint system to determine if complaints are received and addressed promptly and appropriately; and
- Ensuring that any necessary changes to the harassment policy, complaint system, training, or related policies, practices, and procedures are implemented and communicated to employees.

To maximize effectiveness, senior leaders could seek feedback about their anti-harassment efforts. For example, senior leaders could consider:

- Conducting anonymous employee surveys on a regular basis to assess whether harassment is occurring, or is perceived to be tolerated;^[16] and
- Partnering with researchers to evaluate the organization's harassment prevention strategies.

B. Comprehensive and Effective Harassment Policy

A comprehensive, clear harassment policy that is regularly communicated to all employees is an essential element of an effective harassment prevention strategy. A comprehensive harassment policy includes, for example:

- A statement that the policy applies to employees at every level of the organization, as well as to applicants, clients, customers, and other relevant individuals;^[17]
- An unequivocal statement that harassment based on, at a minimum, any legally protected characteristic is prohibited;^[18]
- An easy to understand description of prohibited conduct, including examples;
- A description of any processes for employees to informally share or obtain information about harassment without filing a complaint;^[19]
- A description of the organization's harassment complaint system, including multiple (if possible), easily accessible reporting avenues;^[20]
- A statement that employees are encouraged to report conduct that they believe may be prohibited harassment (or that, if left unchecked, may rise to the level of prohibited harassment), even if they are not sure that the conduct violates the policy;
- A statement that the employer will provide a prompt, impartial, and thorough investigation;
- A statement that the identity of individuals who report harassment, alleged victims, witnesses, and alleged harassers will be kept confidential to the extent possible and permitted by law, consistent with a thorough and impartial investigation;
- A statement that employees are encouraged to respond to questions or to otherwise participate in investigations regarding alleged harassment;
- A statement that information obtained during an investigation will be kept confidential to the extent consistent with a thorough and impartial investigation and permitted by law;^[21]
- An assurance that the organization will take immediate and proportionate corrective action if it determines that harassment has occurred; and
- An unequivocal statement that retaliation is prohibited, and that individuals who report harassing conduct, participate in investigations, or take any other actions protected under federal employment discrimination laws will not be subjected to retaliation.^[22]

In addition, effective written harassment policies^[23] are, for example:

- Written and communicated in a clear, easy to understand style and format;
- Translated into all languages commonly used by employees;^[24]
- Provided to employees upon hire and during harassment trainings, and posted centrally, such as on the company's internal website, in the company handbook, near employee time clocks, in employee break rooms, and in other commonly used areas or locations;^[25] and
- Periodically reviewed and updated as needed, and re-translated, disseminated to staff, and posted in central locations.

C. Effective and Accessible Harassment Complaint System

An effective harassment complaint system welcomes questions, concerns, and complaints; encourages employees to report potentially problematic conduct early; treats alleged victims, complainants, witnesses, alleged harassers, and others with respect; operates promptly, thoroughly, and impartially; and imposes appropriate consequences for harassment or related misconduct, such as retaliation.

For example, an effective harassment complaint system:

- Is fully resourced, enabling the organization to respond promptly, thoroughly, and effectively to complaints;
- Is translated into all languages commonly used by employees;^[26]
- Provides multiple avenues of complaint, if possible,^[27] including an avenue to report complaints regarding senior leaders;
- Is responsive to complaints by employees and by other individuals on their behalf;^[28]
- May describe the information the organization requests from complainants, even if complainants cannot provide it all, including: the alleged harasser(s), alleged victim(s), and any witnesses; the date(s) of the alleged harassment; the location(s) of the alleged harassment; and a description of the alleged harassment;^[29]
- May include voluntary alternative dispute resolution processes to facilitate communication and assist in preventing and addressing prohibited conduct, or conduct that could eventually rise to the level of prohibited conduct, early;
- Provides prompt, thorough, and neutral investigations;
- Protects the privacy of alleged victims, individuals who report harassment, witnesses, alleged harassers, and other relevant individuals to the greatest extent possible, consistent with a thorough and impartial investigation and with relevant legal requirements;
- Includes processes to determine whether alleged victims, individuals who report harassment, witnesses, and other relevant individuals are subjected to retaliation, and imposes sanctions on individuals responsible for retaliation;
- Includes processes to ensure that alleged harassers are not prematurely presumed guilty or prematurely disciplined for harassment; and
- Includes processes to convey the resolution of the complaint to the complainant and the alleged harasser and, where appropriate and consistent with relevant legal requirements, the preventative and corrective action taken.^[30]

We recommend that organizations ensure that the employees responsible for receiving, investigating, and resolving complaints or otherwise implementing the harassment complaint system, among other things:

- Are well-trained,^[31] objective, and neutral;
- Have the authority, independence, and resources required to receive, investigate, and resolve complaints appropriately;
- Take all questions, concerns, and complaints seriously, and respond promptly and appropriately;
- Create and maintain an environment in which employees feel comfortable reporting harassment to management;
- Understand and maintain the confidentiality associated with the complaint process; and
- Appropriately document every complaint, from initial intake to investigation to resolution, use guidelines to weigh the credibility of all relevant parties, and prepare a written report documenting the investigation, findings, recommendations, and disciplinary action imposed (if any), and corrective and preventative action taken (if any).

D. Effective Harassment Training

Leadership, accountability, and strong harassment policies and complaint systems are essential components of a successful harassment prevention strategy, but only if employees are aware of them. Regular, interactive, comprehensive training of all employees may help ensure that the workforce understands organizational rules, policies, procedures, and expectations, as well as the consequences of misconduct.

Harassment training may be most effective if it is, among other things:

- Championed by senior leaders;
- Repeated and reinforced regularly;
- Provided to employees at every level and location of the organization;^[32]
- Provided in a clear, easy to understand style and format;
- Provided in all languages commonly used by employees;
- Tailored to the specific workplace and workforce;
- Conducted by qualified, live, interactive trainers, or, if live training is not feasible, designed to include active engagement by participants; and
- Routinely evaluated by participants and revised as necessary.

In addition, harassment training may be most effective when it is tailored to the organization and audience. Accordingly, when developing training, the daily experiences and unique characteristics of the work, workforce, and workplace are important considerations.

Effective harassment training for all employees includes, for example:

- Descriptions of prohibited harassment, as well as conduct that if left unchecked, might rise to the level of prohibited harassment;
- Examples that are tailored to the specific workplace and workforce;
- Information about employees' rights and responsibilities if they experience, observe, or become aware of conduct that they believe may be prohibited;
- Encouragement for employees to report harassing conduct;
- Explanations of the complaint process, as well as any voluntary alternative dispute resolution processes;^[33]
- Explanations of the information that may be requested during an investigation, including: the name or a description of the alleged harasser(s), alleged victim(s), and any witnesses; the date(s) of the alleged harassment; the location(s) of the alleged harassment; and a description of the alleged harassment;
- Assurance that employees who report harassing conduct, participate in investigations, or take any other actions protected under federal employment discrimination laws will not be subjected to retaliation;
- Explanations of the range of possible consequences for engaging in prohibited conduct;
- Opportunities to ask questions about the training, harassment policy, complaint system, and related rules and expectations; and
- Identification and provision of contact information for the individual(s) and/or office(s) responsible for addressing harassment questions, concerns, and complaints.

Because supervisors and managers have additional responsibilities, they may benefit from additional training. Employers may also find it helpful to include non-managerial and non-supervisory employees who exercise authority, such as team leaders.^[34]

Effective harassment training for supervisors and managers includes, for example:

- Information about how to prevent, identify, stop, report, and correct harassment, such as:
 - Identification of potential risk factors for harassment and specific actions that may minimize or eliminate the risk of harassment;^[35]
 - Easy to understand, realistic methods for addressing harassment that they observe, that is reported to them, or that they otherwise learn of;
 - Clear instructions about how to report harassment up the chain of command; and
 - Explanations of the confidentiality rules associated with harassment complaints;
- An unequivocal statement that retaliation is prohibited, along with an explanation of the types of conduct that are protected from retaliation under federal employment discrimination laws, such as:
 - Complaining or expressing an intent to complain about harassing conduct;
 - Resisting sexual advances or intervening to protect others from such conduct; and
 - Participating in an investigation about harassing conduct or other alleged discrimination;^[36] and
- Explanations of the consequences of failing to fulfill their responsibilities related to harassment, retaliation, and other prohibited conduct.

To help prevent conduct from rising to the level of unlawful workplace harassment, employers also may find it helpful to consider and implement new forms of training, such as workplace civility or respectful workplace training and/or bystander intervention training.^[37] In addition, employers may find it helpful to meet with employees as needed to discuss issues related to current or upcoming events and to share relevant resources.

[1] See, e.g., EEOC, *Select Task Force Meeting of October 22, 2015 - Workplace Harassment: Promising Practices to Prevent Workplace Harassment*, https://www.eeoc.gov/eeoc/task_force/harassment/10-22-15/index.cfm. Promising practices may vary based on the characteristics of the workplace and/or workforce.

[2] See Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf [hereinafter *Select Task Force Co-Chairs' Report*].

[3] See *Select Task Force Co-Chairs' Report*, *supra* note 2, at 79-82 (noting that the checklists are intended as a resource for employers, rather than as a measurement of legal compliance).

[4] This document focuses primarily on several practices identified in Select Task Force testimony and the subsequent Select Task Force Co-Chair Report. While EEOC believes that these practices may help employers prevent and address harassment, these practices do not represent an exhaustive list of promising preventative and corrective actions. We encourage employers to continue to develop, implement, and share additional promising practices.

[5] We note, however, that refraining from taking certain actions recommended here as promising practices may increase an employer's liability risk in certain circumstances. For example, failing to develop and implement an adequate anti-harassment policy and complaint procedure may preclude an employer from establishing an

affirmative defense to a supervisory harassment complaint, or a defense to a coworker harassment complaint.

Moreover, state and/or local laws may impose certain harassment prevention-related responsibilities on covered employers that are similar to specific promising practices described in this Appendix; failing to comply with those laws may result in liability. See, e.g., Cal. Gov. Code §§ 12950 - 12950.1 (West 2017) (requiring California employers to provide information to employees regarding sexual harassment, internal complaint procedures, and remedies; and requiring California private sector employers with at least 50 employees and all California public sector employers to provide sexual harassment training to supervisors); Conn. Gen. Stat. Ann. § 46a-54(15) - (16) (West 2017) (requiring Connecticut employers with at least three employees to prominently post information about sexual harassment prohibitions and remedies, requiring Connecticut employers with at least 50 employees to provide sexual harassment training to supervisors, and requiring Connecticut public sector employers to provide discrimination training to supervisory and nonsupervisory employees); Me. Rev. Stat. tit. 26, § 807 (2017) (requiring Maine employers to prominently post information about sexual harassment and the external complaint process, and to annually provide employees with a written notice regarding sexual harassment and internal and external complaint processes; and requiring Maine employers with at least 15 employees to provide sexual harassment training to employees and supervisors); Mass. Gen. Laws Ann. ch. 151B, § 3A (West 2017) (requiring Massachusetts employers with at least six employees to develop a written sexual harassment policy and to provide the policy to new employees upon hire, and to all employees annually).

[6] For example, in addition to regularly disseminating the organization's harassment policy and complaint procedure, senior leaders could notify employees about relevant policies and resources in response to high profile events.

[7] See, e.g., Patti Perez, *Written Testimony for the October 22, 2015 Meeting of the EEOC Select Task Force on the Study of Harassment in the Workplace*, https://www.eeoc.gov/eeoc/task_force/harassment/10-22-15/perez.cfm [hereinafter *Perez Task Force Testimony*] (observing that companies that are committed to preventing inappropriate conduct develop, implement, and incorporate "robust" and "creative" programs into "the fabric of their being").

For example, leaders could direct human resources staff to request information from supervisory and managerial applicants and/or their references about applicants' demonstrated commitment to and experience with enforcing harassment policies and other EEO policies, practices, and procedures. Leaders could also instruct HR to ensure that employee orientation and training material includes information about the organization's harassment policy, complaint procedure, and any related rules, policies, and expectations. In addition, leaders could ensure that enforcement of, and compliance with, the organization's harassment policy and related policies and procedures is included in executive competencies and performance plans for employees with supervisory or managerial responsibilities.

[8] See *Select Task Force Co-Chairs' Report*, *supra* note 2, at 25-30, 83-88 (identifying select risk factors for harassment and proposing strategies to reduce the risk of harassment); see also, e.g., *Preventing Unlawful Workplace Harassment in California*, Soc'y for Human Res. Mgmt. (Apr. 16, 2016) (noting that human resources and information technology staff can monitor workplace communications for prohibited or unacceptable conduct, such as transmission of pornography, obscenities, and threats); Alexander et al., United States Army Research Institute for the Behavioral and Social Sciences, *Best Practices in Sexual Harassment Policy and Assessment* 29 (2005) [hereinafter *Army Research Institute Best Practices Report*] (explaining a practice at one company in which Human Resources staff and managers make unannounced visits during night shifts, which tend to have less managerial supervision and therefore greater opportunity for harassment).

[9] See, e.g., Heidi-Jane Olguin, *Written Testimony for the October 22, 2015 Meeting of the EEOC Select Task Force on the Study of Harassment in the Workplace*, https://www.eeoc.gov/eeoc/task_force/harassment/10-22-15/olguin.cfm [hereinafter *Olguin Task Force Testimony*] (noting that senior leadership involvement is "crucial" in "set[ting] the tone for the entire organization" and describing an organization in which corporate executives were promptly notified of harassment complaints (assuming no conflict of interest), updated about investigation determinations, and involved in prevention analysis).

For example, organizations could include harassment prevention and corrective activity, as well as other equal employment opportunity-related information, in reports submitted to Boards of Directors or similar advisory or oversight entities. Employers should consult with legal counsel as necessary regarding any relevant legal considerations, such as confidentiality restrictions associated with complaints or disciplinary action.

[10] See *infra* section B for additional information about promising practices related to harassment policies.

[11] See *infra* section C for additional information about promising practices related to complaint procedures.

[12] See *infra* section D for additional information about promising practices related to training.

[13] See *infra* section D for additional information about promising practices related to training.

[14] See *Olguin Task Force Testimony*, *supra* note 9 (explaining that appropriate acknowledgement of well-handled complaints - such as by privately praising complainants and managers who promptly reported complaints - may help create a compliance-oriented culture, and noting that senior leaders' willingness to critically examine and "aggressively deal with" managers who participate in harassment or who refrain from properly reporting harassment may enhance workplace morale and productivity).

[15] See, e.g., *Perez Task Force Testimony*, *supra* note 7 (describing a company that tracked complaint trends, discovered multiple complaints of racial harassment and discrimination, and implemented a training program to address the perception of race-based conduct); *Army Research Institute Best Practices Report*, *supra* note 8, at 30 (describing a company's efforts to measure the success of its sexual harassment policy, including tracking sexual harassment questions and allegations and conducting periodic employee surveys that included questions regarding sexual harassment).

When evaluating the effectiveness of harassment prevention and correction strategies, it may be helpful for organizations to carefully analyze complaint trends. A relatively high number of internal complaints may signify that harassment has occurred or was perceived to have occurred, but may also indicate employees' awareness of and confidence in the internal complaint process. See, e.g., *Perez Task Force Testimony*, *supra* note 7 (discussing a company that perceives increases in internal complaints positively as a "testament to the comfort and trust employees put in the [complaint] system"). A relatively low number of internal complaints may result from employees' lack of awareness or trust in the complaint process, or, alternatively, from the absence of harassing conduct in the organization. Organizations may find it helpful to solicit information from employees in anonymous surveys, harassment training sessions, or other settings in which employees may feel comfortable, regarding their awareness of and confidence in the organization's harassment policies and complaint procedures. Organizations could also solicit suggestions from employees about how to enhance employees' knowledge of and faith in the organization's harassment prevention and correction efforts.

[16] See, e.g., *Select Task Force Co-Chairs' Report*, *supra* note 2, at 33 (addressing the development and use of climate surveys to assess perceptions of harassment among employees and members of the military).

[17] It may be helpful to explain and/or provide examples of the non-employees covered by the policy, who may include individuals who interact with the organization's employees during the course of business, such as delivery or repair workers, security guards, and food service workers, as well as individuals otherwise affiliated with the organization, such as members of Boards of Directors or similar advisory or oversight entities.

[18] Federal law prohibits workplace harassment based on race, color, national origin, religion, sex, age, disability, and genetic information. State and/or local laws may prohibit workplace harassment on additional bases. See, e.g., Cal. Gov. Code § 12940(a) (West 2017) (prohibiting workplace harassment based on, among other things, marital status and military and veteran status); D.C. Code Ann. § 2-1402.11 (West 2017) (prohibiting workplace harassment based on, among other things, marital status, personal appearance, family responsibilities, political affiliation, and matriculation); Mich. Comp. Laws Ann. § 37.2202 (West 2017) (prohibiting workplace harassment based on, among other things, height, weight, and marital status); N.J. Stat. Ann. § 10:5-12 (West 2017) (prohibiting workplace harassment based on, among other things, marital status, civil union status, domestic partnership status, and military service); Wis. Stat. Ann. § 111.321 (West 2017) (prohibiting workplace harassment based on, among other things, arrest or conviction records, marital status, and military service). Employers may wish to consult with legal counsel as necessary to ensure that their harassment policies cover, at a minimum, all applicable legally protected bases.

[19] To encourage employees to share and obtain information about harassment, employers may find it helpful to provide a process, such as a phone line or website, that enables employees (anonymously or identified, at their discretion) to ask questions or share concerns about harassment.

[20] See *infra* note 27.

[21] For example, the National Labor Relations Act restricts the circumstances under which employers may require employees to keep information shared or obtained during ongoing disciplinary investigations confidential. See, e.g., *Banner Health System d/b/a Banner Estrella Medical Center*, 362 NLRB 137, 2015 WL 4179691, at *3 (2015) (holding that employers may restrict employee discussions regarding discipline or ongoing disciplinary investigations involving themselves or their coworkers only if employers can establish a "legitimate and substantial business justification that outweighs employees' Section 7 rights"), *enforced in part*, 851 F.3d 35, 40 (D.C. Cir. 2017) (describing employees' right to discuss investigations with coworkers as "settled Board precedent" (quoting *Inova Health Sys. v. NLRB*, 795 F.3d 68, 85 (D.C. Cir. 2015))).

[22] See, e.g., EEOC, *Facts About Retaliation*, <https://www.eeoc.gov/laws/types/retaliation.cfm> (last visited Nov. 20, 2017).

[23] Small businesses may be able to prevent and correct harassment without the use of formal, written harassment policies, though they may develop and use such policies at their discretion. For example, small business owners may verbally inform employees that harassment is prohibited; encourage employees to report harassment promptly; advise employees that harassment may be reported directly to the owner; conduct a prompt, thorough, impartial investigation; and take swift and appropriate corrective action. For additional information about how small businesses can prevent and address harassment, see EEOC, *Frequently Asked Questions #5: How can I prevent harassment?*, https://www.eeoc.gov/employers/smallbusiness/faq/how_can_i_prevent_harassment.cfm (last visited Nov. 20, 2017); EEOC, *Tips for Small Businesses: Harassment Policy Tips*, https://www.eeoc.gov/employers/smallbusiness/checklists/harassment_policy_tips.cfm (last visited Nov. 20, 2017).

[24] It may also be helpful for employers to periodically determine whether to translate the policy and complaint system into additional languages as a result of any changes in workforce composition and employees' linguistic abilities.

[25] See, e.g., *Army Research Institute Best Practices Report*, *supra* note 8, at 35 (noting the importance of a coordinated communications campaign to disseminate information about the harassment policy to employees, including policy distribution and strategic, sequenced use of a variety of communication methods and strategies, including bulletin board postings, newsletter and magazine articles, training sessions, and internal website postings); *Olguin Task Force Testimony*, *supra* note 9 (suggesting that distributing pens or magnets with the complaint hotline phone number or website address may help remind employees about their complaint filing options); cf. *Perez Task Force Testimony*, *supra* note 7 (describing a company that posted the diversity program mission statement in every elevator in the corporate office).

Employers may need to take additional steps to ensure that employees who work off-site or outside of regular business hours, or who otherwise may have limited access to the organization's employee handbook, internal website, or relevant officials, receive information about harassment policies and complaint systems, participate in harassment training, and are able to communicate with relevant officials. For example, employers could include information about the policy and complaint procedure with employees' schedules or paychecks; schedule training at a time and location convenient for these employees, if possible, or offer online training; provide contact information for appropriate individuals and/or offices; and ensure that employees receive prompt responses to questions, concerns, and complaints.

[26] See *supra* note 24.

[27] See, e.g., *Olguin Task Force Testimony*, *supra* note 9 (describing a "multifaceted" complaint system as "critical," and recommending that organizations provide multilingual complaint hotlines and online complaint systems, in addition to traditional management and Human Resources Department complaint options). Smaller organizations may have fewer avenues of complaint available, due to their size, but may still consider designating multiple individuals to receive harassment complaints, if possible.

[28] See, e.g., HR Specialist, *Preventing and Handling Workplace Harassment of Teen Workers*, III. Emp't Law 7, 7 (2012) (observing that teenagers may not be comfortable discussing harassment and recommending that employers train supervisors to be receptive to harassment complaints from teenage workers' parents).

[29] Organizations that allow employees to submit anonymous complaints telephonically, online, or through some other process, may find it helpful to include a summary of this information in an introductory message for employees, while recognizing that anonymous complainants may not provide all of the requested information.

[30] To address potential Privacy Act concerns related to sharing corrective or disciplinary action with complainants, federal agencies may either: (1) maintain harassment complaint records that include information about corrective or disciplinary action by complainants' names; or (2) ensure that the agency's complaint records system includes a routine use permitting disclosure of corrective or disciplinary action to complainants.

[31] See, e.g., *Perez Task Force Testimony*, *supra* note 7 (describing a company that provides "comprehensive investigation and conflict resolution training" to internal investigators annually that includes, among other things, information about how to recognize and eliminate implicit or unconscious bias in investigations).

[32] To facilitate participation and communication and to ensure that relevant information is shared with the appropriate audience, organizations may find it helpful to train employees, managers, and Human Resources staff separately. See, e.g., *Olguin Task Force Testimony*, *supra* note 9 (noting that this approach may enhance participation and enable organizations to obtain information about potential compliance issues).

[33] See EEOC, *Best Practices of Private Sector Employers* sections 2.B, 2.G, 3.F (1997), https://www.eeoc.gov/eeoc/task_reports/best_practices.cfm (identifying several creative dispute prevention and resolution strategies used by employers).

[34] See, e.g., *Army Research Institute Best Practices Report*, *supra* note 8, at 29 (noting a company that designated several workers with long-standing positive reputations who were perceived as trustworthy and good listeners as points of contact for their fellow employees, and trained those workers about how to refer sexual harassment complaints to Human Resources).

[35] See *supra* note 8.

[36] See, e.g., EEOC, *Facts About Retaliation*, <https://www.eeoc.gov/laws/types/retaliation.cfm> (last visited Nov. 20, 2017).

[37] Broad workplace civility rules that may be interpreted to restrict employees' conduct and/or speech may raise issues under the National Labor Relations Act. Employers may wish to consult with legal counsel prior to implementing training and/or policies to ensure that they do so in a legally compliant manner.

See also *Select Task Force Co-Chairs' Report*, *supra* note 2, at 54-58 (describing workplace civility and bystander intervention training, and noting that such trainings "show[] significant promise for preventing harassment in the workplace"); Lilia Cortina, *Written Testimony for the June 20, 2016 Commission Meeting*, <https://www.eeoc.gov/eeoc/meetings/6-20-16/cortina.cfm> (describing and providing examples of workplace civility training); Dorothy J. Edwards, *Written Testimony for the October 22, 2015 Meeting of the EEOC Select Task Force on the Study of Harassment in the Workplace*, https://www.eeoc.gov/eeoc/task_force/harassment/10-22-15/edwards.cfm (describing bystander intervention training Green Dot); Melissa Emmal, *Written Testimony for the October 22, 2015 Meeting of the EEOC Select Task Force on the Study of Harassment in the Workplace*, https://www.eeoc.gov/eeoc/task_force/harassment/10-22-15/emmal.cfm (describing the successful implementation of Green Dot training in Anchorage).



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Checklists for Employers

Checklist One: Leadership and Accountability

The first step for creating a holistic harassment prevention program is for the leadership of an organization to establish a culture of respect in which harassment is not tolerated. Check the box if the leadership of your organization has taken the following steps:

- Leadership has allocated sufficient *resources* for a harassment prevention effort
- Leadership has allocated sufficient *staff time* for a harassment prevention effort
- Leadership has assessed harassment *risk factors* and has taken steps to *minimize* those risks

Based on the commitment of leadership, check the box if your organization has the following components in place:

- A harassment prevention *policy* that is *easy-to-understand* and that is *regularly communicated* to all employees
- A harassment reporting *system* that employees *know about* and is *fully resourced* and which accepts reports of harassment experienced and harassment observed
- Imposition of discipline* that is prompt, consistent, and proportionate to the severity of the harassment, if harassment is determined to have occurred
- Accountability* for mid-level managers and front-line supervisors to prevent and/or respond to workplace harassment
- Regular *compliance trainings* for all employees so they can recognize prohibited forms of conduct and know how to use the reporting system
- Regular *compliance trainings* for mid-level managers and front-line supervisors so they know how to prevent and/or respond to workplace harassment

Bonus points if you can check these boxes:

- The organization conducts *climate surveys* on a regular basis to assess the extent to which harassment is experienced as a problem in the workplace
- The organization has implemented *metrics* for harassment response and prevention in supervisory employees' performance reviews
- The organization conducts *workplace civility training* and *bystander intervention training*
- The organization has *partnered with researchers* to evaluate the organization's holistic workplace harassment prevention effort

A reminder that this checklist is meant to be a useful tool in thinking about and taking steps to prevent harassment in the workplace, and responding to harassment when it occurs. It is not meant to convey legal advice or to set forth legal requirements relating to harassment. Checking all of the boxes does not necessarily mean an employer is in legal compliance; conversely, the failure to check any particular box does not mean an employer is not in compliance.



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Checklists for Employers

Checklist Two: An Anti-Harassment Policy

An anti-harassment policy is a key component of a holistic harassment prevention effort. Check the box below if your anti-harassment policy contains the following elements:

- ? An unequivocal statement that harassment based on *any* protected characteristic will not be tolerated
- ? An easy-to-understand description of prohibited conduct, including examples
- ? A description of a reporting system - available to employees who experience harassment as well as those who observe harassment - that provides multiple avenues to report, in a manner easily accessible to employees
- ? A statement that the reporting system will provide a prompt, thorough, and impartial investigation
- ? A statement that the identity of an individual who submits a report, a witness who provides information regarding a report, and the target of the complaint, will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- ? A statement that any information gathered as part of an investigation will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- ? An assurance that the employer will take immediate and proportionate corrective action if it determines that harassment has occurred
- ? An assurance that an individual who submits a report (either of harassment experienced or observed) or a witness who provides information regarding a report will be protected from retaliation from co-workers and supervisors
- ? A statement that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately
- ? Is written in clear, simple words, in all languages commonly used by members of the workforce

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Checklists for Employers

Checklist Three: A Harassment Reporting System and Investigations

A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a holistic harassment prevention effort.

Check the box below if your anti-harassment effort contains the following elements:

- A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed
- Employer representatives who take reports seriously
- A supportive environment where individuals feel safe to report harassing behavior to management
- Well-trained, objective, and neutral investigators
- Timely responses and investigations
- Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility
- An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible
- Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation
- During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not "presumed guilty" and are not "punished" unless and until a complete investigation determines that harassment has occurred
- A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred

A reminder that this checklist is meant to be a useful tool in thinking about and taking steps to prevent harassment in the workplace, and responding to harassment when it occurs. It is not meant to convey legal advice or to set forth legal requirements relating to harassment. Checking all of the boxes does not necessarily mean an employer is in legal compliance; conversely, the failure to check any particular box does not mean an employer is not in compliance.



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Checklists for Employers

Checklist Four: Compliance Training

A holistic harassment prevention effort provides training to employees regarding an employer's policy, reporting systems and investigations. Check the box if your organization's compliance training is based on the following structural principles and includes the following content:

- Structural Principles

- ? Supported at the highest levels
- ? Repeated and reinforced on a regular basis
- ? Provided to all employees at every level of the organization
- ? Conducted by qualified, live, and interactive trainers
- ? If live training is not feasible, designed to include active engagement by participants
- ? Routinely evaluated and modified as necessary

- Content of Compliance Training for All Employees

- ? Describes illegal harassment, and conduct that, if left unchecked, might rise to the level of illegal harassment
- ? Includes examples that are tailored to the specific workplace and the specific workforce
- ? Educates employees about their rights and responsibilities if they experience conduct that is not acceptable in the workplace
- ? Describes, in simple terms, the process for reporting harassment that is experienced or observed
- ? Explains the consequences of engaging in conduct unacceptable in the workplace

- Content of Compliance Training for Managers and First-line Supervisors

- ? Provides easy-to-understand and realistic methods for dealing with harassment that they observe, that is reported to them, or of which they have knowledge or information, including description of sanctions for failing to use such methods
- ? Provides clear instructions on how to report harassing behavior up the chain of command, including description of sanctions for failing to report

? Encourages managers and supervisors to practice "situational awareness" and assess the workforces within their responsibility for risk factors of harassment

A reminder that this checklist is meant to be a useful tool in thinking about and taking steps to prevent harassment in the workplace, and responding to harassment when it occurs. It is not meant to convey legal advice or to set forth legal requirements relating to harassment. Checking all of the boxes does not necessarily mean an employer is in legal compliance; conversely, the failure to check any particular box does not mean an employer is not in compliance.

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Chart of Risk Factors for Harassment and Responsive Strategies

Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
Homogenous workforce	Historic lack of diversity in the workplace Currently only one minority in a work group (e.g., team, department, location)	Employees in the minority can feel isolated and may actually be, or at least appear to be, vulnerable to pressure from others. Employees in the majority might feel threatened by those they perceive as "different" or "other," or might simply be uncomfortable around others who are not like them.	Increase diversity at all levels of the workforce, with particular attention to work groups with low diversity. Pay attention to relations among and within work groups.
Workplaces where some employees do not conform to workplace norms	"Rough and tumble" or single-sex-dominated workplace cultures Remarks, jokes, or banter that are crude, "raunchy," or demeaning	Employees may be viewed as weak or susceptible to abuse. Abusive remarks or humor may promote workplace norms that devalue certain types of individuals.	Proactively and intentionally create a culture of civility and respect with the involvement of the highest levels of leadership. Pay attention to relations among and within work groups.

Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
Cultural and language differences in the workplace	<p>Arrival of new employees with different cultures or nationalities</p> <p>Segregation of employees with different cultures or nationalities</p>	<p>Different cultural backgrounds may make employees less aware of laws and workplace norms.</p> <p>Employees who do not speak English may not know their rights and may be more subject to exploitation.</p> <p>Language and linguistic characteristics can play a role in harassment.</p>	<p>Ensure that culturally diverse employees understand laws, workplace norms, and policies.</p> <p>Increase diversity in culturally segregated workforces.</p> <p>Pay attention to relations among and within work groups.</p>
Coarsened Social Discourse Outside the Workplace	<p>Increasingly heated discussion of current events occurring outside the workplace</p>	<p>Coarsened social discourse that is happening outside a workplace may make harassment inside the workplace more likely or perceived as more acceptable.</p>	<p>Proactively identify current events-national and local-that are likely to be discussed in the workplace.</p> <p>Remind the workforce of the types of conduct that are unacceptable in the workplace.</p>
Young workforces	<p>Significant number of teenage and young adult employees</p>	<p>Employees in their first or second jobs may be less aware of laws and workplace norms.</p> <p>Young employees may lack the self-confidence to resist unwelcome overtures or challenge conduct that makes them uncomfortable.</p> <p>Young employees may be more susceptible to being taken advantage of by coworkers or superiors, particularly those who may be older and more established in</p>	<p>Provide targeted outreach about harassment in high schools and colleges.</p> <p>Provide orientation to all new employees with emphasis on the employer's desire to hear about all complaints of unwelcome conduct.</p> <p>Provide training on how to be a good supervisor when youth are promoted to supervisory positions.</p>

Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
		<p>their positions.</p> <p>Young employees may be more likely to engage in harassment because they lack the maturity to understand or care about consequences.</p>	
<p>Workplaces with "high value" employees</p>	<p>Executives or senior managers</p> <p>Employees with high value (actual or perceived) to the employer, e.g., the "rainmaking" partner or the prized, grant-winning researcher</p>	<p>Management is often reluctant to jeopardize high value employee's economic value to the employer.</p> <p>High value employees may perceive themselves as exempt from workplace rules or immune from consequences of their misconduct.</p>	<p>Apply workplace rules uniformly, regardless of rank or value to the employer.</p> <p>If a high-value employee is discharged for misconduct, consider publicizing that fact (unless there is a good reason not to).</p>
<p>Workplaces with significant power disparities</p>	<p>Low-ranking employees in organizational hierarchy</p> <p>Employees holding positions usually subject to the direction of others, e.g., administrative support staff, nurses, janitors, etc.</p> <p>Gendered power disparities (e.g., most of the low-ranking employees are female)</p>	<p>Supervisors feel emboldened to exploit low-ranking employees.</p> <p>Low-ranking employees are less likely to understand complaint channels (language or education/training insufficiencies).</p> <p>Undocumented workers may be especially vulnerable to exploitation or the fear of retaliation.</p>	<p>Apply workplace rules uniformly, regardless of rank or value to the employer.</p> <p>Pay attention to relations among and within work groups with significant power disparities.</p>
<p>Workplaces that rely on customer service or client satisfaction</p>	<p>Compensation directly tied to customer satisfaction or client service</p>	<p>Fear of losing a sale or tip may compel employees to tolerate inappropriate or harassing behavior.</p>	<p>Be wary of a "customer is always right" mentality in terms of application to unwelcome conduct.</p>

Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
Workplaces where work is monotonous or tasks are low-intensity	<p>Employees are not actively engaged or "have time on their hands"</p> <p>Repetitive work</p>	<p>Harassing behavior may become a way to vent frustration or avoid boredom.</p>	<p>Consider varying or restructuring job duties or workload to reduce monotony or boredom.</p> <p>Pay attention to relations among and within work groups with monotonous or low-intensity tasks.</p>
Isolated workplaces	<p>Physically isolated workplaces</p> <p>Employees work alone or have few opportunities to interact with others</p>	<p>Harassers have easy access to their targets.</p> <p>There are no witnesses.</p>	<p>Consider restructuring work environments and schedules to eliminate isolated conditions.</p> <p>Ensure that workers in isolated work environments understand complaint procedures.</p> <p>Create opportunities for isolated workers to connect with each other (e.g., in person, on line) to share concerns.</p>
Workplaces that tolerate or encourage alcohol consumption	<p>Alcohol consumption during and around work hours.</p>	<p>Alcohol reduces social inhibitions and impairs judgment.</p>	<p>Train co-workers to intervene appropriately if they observe alcohol-induced misconduct.</p> <p>Remind managers about their responsibility if they see harassment, including at events where alcohol is consumed.</p> <p>Intervene promptly when customers or clients who have consumed too much alcohol act inappropriately.</p>

Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
<p>Decentralized workplaces</p>	<p>Corporate offices far removed physically and/or organizationally from front-line employees or first-line supervisors</p>	<p>Managers may feel (or may actually be) unaccountable for their behavior and may act outside the bounds of workplace rules.</p> <p>Managers may be unaware of how to address harassment issues and may be reluctant to call headquarters for direction.</p>	<p>Ensure that compliance training reaches all levels of the organization, regardless of how geographically dispersed workplaces may be.</p> <p>Ensure that compliance training for area managers includes their responsibility for sites under their jurisdiction</p> <p>Develop systems for employees in geographically diverse locations to connect and communicate.</p>

The strategies outlined in Part Three of this report (e.g., exercising leadership, holding people accountable for their actions, developing and enforcing effective policies and procedures, and conducting training) will help address all the risk factors listed in this chart. The strategies outlined in the last column of this chart are designed to address specific risk factors.

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