



Addressing Sexual Harassment in the Workplace

BY SUZANNE HULTIN

The recent wave of sexual harassment allegations against media, sports moguls, politicians and people of power over the past year has prompted many state legislatures to address how they are protecting their state's workers. According to the [U.S. Equal Employment Opportunity Commission \(EEOC\)](#), "unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature constitute sexual harassment." [Title VII of the Civil Rights Act of 1964](#) recognizes sexual harassment as a form of sex discrimination and applies to private employers with 15 or more employees, as well as government and labor organizations.

Sexual harassment can occur in a variety of ways, according to the EEOC:

- The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex from the harasser.

- The harasser may be the victim's supervisor; an agent of the employer, a supervisor in another area, a co-worker or a nonemployee, such as a vendor or customer.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

The [#MeToo](#) and [#TimesUp](#) movements have demonstrated the prevalence of sexual harassment in all types of industries, including high-profile ones such as entertainment and government. While the extent of sexual harassment across trades is still being revealed, research has found certain occupations where sexual harassment is even more commonplace: among those in low-paying jobs.

Did You Know?

- Nearly 7,000 charges alleging sexual harassment were filed with the Equal Employment Opportunity Commission in FY 2017.
- Low-wage workers, particularly those in the accommodations and restaurant industries, are more likely to report sexual harassment claims.
- Connecticut, Maine, Massachusetts, Rhode Island and Vermont are the only states that require or strongly encourage employers to provide sexual harassment training.

Additional Resources

- [NCSL LegisBrief, Sexual Harassment Policies and Training in State Legislatures](#)
- [NCSL webpage, Sexual Harassment Resources](#)
- [U.S. Equal Employment Opportunity Commission](#)

Many states are considering prohibiting nondisclosure agreements as they pertain to sexual harassment claims. Nondisclosure agreements are designed to keep proprietary information secret; however, they have also been used to keep settlements of harassment undisclosed.

A survey conducted by [Hart Research Associates](#) found that 40 percent of women in the fast food industry have experienced unwanted sexual behaviors on the job.

Further [research](#) on the topic suggests that workers in tipped professions, where earnings can depend on happy customers, create environments that tolerate sexual harassment and discourage workers from reporting unwelcomed behavior from customers and colleagues. [EEOC data](#) on sexual harassment claims show that almost 37 percent of all sexual harassment charges filed with the agency come from the accommodations and restaurant industry—the largest of any industry sector. Retail, manufacturing, health care and social assistance, and the administrative and support sector round out the other five top industries with the most sexual harassment charges filed with the EEOC.

State Action

Although federal law says it is unlawful to harass a person because of that person's sex, many state legislatures are looking to go beyond federal regulations to prevent workplace sexual harassment. In 2017, California, Illinois, Maine and Oregon passed legislation aimed at combatting sexual harassment in the workplace and addressing certain worker populations.

Maine passed [HB 1016](#), which coordinates and enforces workforce sexual harassment training requirements and imposes violations for all employers in the state. Illinois enacted [SB 402](#), which requires the General Assembly to adopt policies related to sexual harassment, but also created a Sexual Harassment Hotline for people in the public or private sector to report sexual harassment and find necessary resources. The [hotline website](#) provides additional information on reporting, legal assistance and counseling. California's [SB 295](#) directs sexual harassment training specific to farm labor contractors and their employees. Similarly, Oregon's [HB 3279](#) requires sexual harassment training for certain employees in the janitorial sector.

In 2016, California enacted [AB 1682](#), which prohib-

its a confidentiality provision in a civil settlement agreement as it relates to sexual assault, but does not specify sexual harassment.

During the 2018 legislative sessions, at least 20 states have introduced legislation on this issue. Many states are considering prohibiting Nondisclosure agreements as they pertain to sexual harassment claims. Nondisclosure agreements are designed to keep proprietary information secret; however, they have also been used to keep settlements of harassment undisclosed. Sixteen states have introduced legislation aimed at limiting or prohibiting the use of nondisclosure provisions as they relate to sexual harassment. They are Alaska, Arizona, California, Florida, Indiana, Kansas, Maryland, New York, New Jersey, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and Washington. California, Connecticut, Illinois, Louisiana, New Mexico and New York introduced legislation aimed at providing training for employers and employees on sexual harassment legality, policies and remedies.

In March, Washington enacted four bills ([SB 5996](#), [SB 6068](#), [SB 6313](#) and [HB 2759](#)) to address sexual harassment. Three of the bills pertain to nondisclosure agreements and employee contracts and one creates a women's commission charged with identifying and developing policies to keep state employees safe from sexual harassment.

In April, Arizona enacted [HB 2020](#), banning nondisclosure agreements as they relate to sexual harassment criminal proceedings. New York banned nondisclosure agreements when it passed [AB 9507](#) in April.

Federal Action

Congress has also taken interest in the topic. Among the legislation related to sexual harassment in the workplace that has been introduced is a bill by U.S. Representative Cheri Bustos (D-Ill.) and Senator Kirsten Gillibrand (D-N.Y.). The [Ending Forced Arbitration of Sexual Harassment Act](#) would make any arbitration agreement void in a sex discrimination dispute.

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