Sexual Harassment
"IT'S ~~JUST A JOKE.~~"

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

NYC Commission on Human Rights

Bill de Blasio
Mayor

Carmelyn P. Malalis
Chair/Commissioner

Cover photo credit: Adrienne Nicole Productions

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

NYC 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.

Acknowledgements

The New York City Commission on Human Rights thanks the workers, experts, advocates, and organizations that delivered testimony at the Commission's historic December 6, 2017 public hearing on sexual harassment in the workplace – the first in over 40 years – which forms the basis of this Report. Deep thanks are owed to the women, men, and non-binary people who continue to bravely come forward at much personal and professional risk to share their stories of sexual harassment and assault across different industries.

Specifically, we thank the following people and organizations for providing oral and written testimony:

Nantasha Williams, Cozen O'Connor; Public Advocate Letitia James; Commissioner Julie Menin, Mayor's Office of Media and Entertainment; Amy M. Hong, The Legal Aid Society Employment Law Unit; Simone Pero, New York Women in Film and Television (NYWIFT); Martha Kamber, The YWCA of Brooklyn, Inc.; Leah Rambo; Carey Castro; Susan Scafidi and Jeff Trexler, Fashion Law Institute at Fordham; Sara Ziff and Lauren Switzer, The Model Alliance; Maya Raghu, National Women's Law Center; Dina Bakst, A Better Balance; Alanna Kaufman, Emery Celli Brinckerhoff & Abady LLP; Marrisa Senteno and Daniela Contreras, National Domestic Workers Alliance; Michael Rojas, U.S. Equal Employment Opportunity Commission (EEOC); Liz Sprotzer, Make the Road NY; Nathalia Varela, LatinoJustice PRLDEF; Laura Berger, City Bar Justice Center; Rita Pasarell, Hollaback!; Beverly Neufeld, PowHer New York; KC Wagner, The Worker Institute at Cornell ILR; LaDonna Lusher, Virginia & Ambinder LLP; Daniela Nanau, Law Office of Daniela Nanau PC; Leslie Escobosa, ROC-NY; New York State Assembly Member Carmen De La Rosa; Dr. Claudia López Lomelí; Carrie Smith; Mazeda A. Uddin, South Asian Fund for Education, Scholarship and Training (SAFEST); Hugo Tillman; Amy Schwartz, Women's City Club of New York; Elizabth Adams, Planned Parenthood of NYC; Margaret McIntyre, NELA/NY; Seher Khawaja, Legal Momentum; Emily Kibble; Jenny Waters, National Association of Women Lawyers; Linda A. Chiaverini, Women's Bar Association of the State of New York (WBASNY); Audra Callo; Erin Williams; Tina Davis; Deidre Olivera; Rebecca Hayes, Screen Actors Guild – American Federation of Television and Radio Artists; Kathleen Peratis, Outten & Golden LLP; Vasuki Pasumarty; and Christopher Carroll, Local 802AFM.

Members of the Columbia Law School's Sexuality and Gender Law Clinic who participated in the creation of this Report are:

Rachel Guest, Meredith Strike, Erika VanHorne, and Nicole Walsh.

Of-Counsel team:

Nate Balk, William Kuzma, Kevin Minofu, and Samuel Rosh.

Supervisors:

Professor Suzanne Goldberg and Lecturer-in-Law Jenny Ma.

We acknowledge that many Commission staff contributed to the creation of this Report with specific appreciation to:

Carmen Boon, Zoey Chenitz, Lauren Elfant, Rosa Lee, Hollis Pfitsch, Bianca Victoria Scott, Dana Sussman, and Edwin Tablada.

Our very special thanks to:

U.S. Congresswoman Eleanor Holmes Norton; CUNY School of Law's Dean Mary Lu Bilek; Professor Merrick Rossein, the CUNY School of Law; the New York Women's Foundation and its President and CEO Ana Oliveira; and the people who sat with Chair and Commissioner Malalis on the panel, who heard testimony and asked follow-up questions: Lorelei Salas (Commissioner of NYC Department of Consumer Affairs); Catherine Albisa (Co-founder and Director of the National Economic and Social Rights Initiative, and Commissioner of the NYC Commission on Human Rights); Carrie Davis (Healthcare and Management Consultant and Commissioner of the NYC Commission on Human Rights); and Beverly Tillery (Executive Director of the New York City Anti-Violence Project and Commissioner of the NYC Commission on Gender Equity).

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.

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 agreement[41] 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 workforce[61] 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 years[117] 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 settlements[127] and other secrecy clauses[128] 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 dis-incentivize 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 webite 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 harassment[152] 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 disproportionaly 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 literate[159] 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**. 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

1 Holly Kearl, *The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault*, Stop Street Harassment (Feb. 2018), http://www.stopstreetharassment.org/wp-content/uploads/2018/01/2018-National-Sexual-Harassment-and-Assault-Report.pdf.

2 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; *Testimony of Carmelyn P. Malalis, Chair/Commissioner of the NYC Commission on Human Rights Before the Committee on Women and the Committee on Civil and Human Rights*, N.Y.C. Comm'n on Hum. Rts, Feb. 28, 2018, http://www1.nyc.gov/assets/cchr/downloads/pdf/SexualHarassmentHearing_Testimony.pdf.

3 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.

4 U.S. Equal Emp. Opportunity Comm'n, All Charges Alleging Harassment FY 2010 - FY 2017, https://www.eeoc.gov/eeoc/statistics/enforcement/all_harassment.cfm; U.S. Equal Emp. Opportunity Comm'n, Charges Alleging Sex-Based Harassment FY 2010 - FY 2017, https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm.

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*, N'tl 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 Kearl, *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 Kearl, *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.cpwr.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.

82 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.

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").

105 *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.

106 "About Us," One Fair Wage, http://onefairwage.com/about/.

107 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; "Hearing Transcript at 61 (Amy Hong, Legal Aid Society); Hearing Transcript at 90-96 (Jeff Trexler, Fashion Law Institute)."

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=ij7r2e4l9iI.

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 Marrisa 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/sag-aftra_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.

NYC Commission on Human Rights

Bill de Blasio
Mayor

Carmelyn P. Malalis
Chair/Commissioner

NYC.gov/HumanRights | @NYCCHR | (718) 722-3131