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Ten Legislative Changes Needed to Prevent and Redress Sexual Harassment in All American Workplaces

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In the fall of 2017, news broke of allegations that influential movie producer Harvey Weinstein had repeatedly harassed his female coworkers. Following the news, Hollywood celebrity Alyssa Milano called on other victims of sexual assault to step forward by tweeting #MeToo. In response, women across the country and globe shared their personal stories of sexual harassment and assault — and over the course of the following year these revelations led to the fall of hundreds of men from positions of leadership in business, the media, and politics. The movement is now calling for stronger protections for women in the workplace.

Title VII of the federal Civil Rights Act of 1964 makes sexual harassment illegal, but it is riddled with gaps, restrictions, and limitations — denying the law's full promise and protection for many women. To strengthen and expand Title VII, activists are calling on Congress to implement a comprehensive agenda. Activists are also calling on state legislatures to expand and strengthen state-level anti-discrimination laws.

Ten Legislative Changes

The #MeToo movement demands that full, legal protection against workplace sexual harassment be ensured for all workers. The following changes are needed to meet that need:

1. **Cover all workers.** Title VII only applies to employers with fifteen or more employees and does not cover independent contractors, freelancers, and people who work in the ever-growing "gig economy" featuring ridesharing services and other app-based exchange platforms. Sexual harassment laws must cover smaller employers and more workers.
2. **Change the legal standard for proving sexual harassment.** The Supreme Court ruled in 1986 that sexually harassing behavior must be "severe or pervasive" in order to violate Title VII. This vague standard has been interpreted inconsistently in various lower court jurisdictions. For example, groping is considered severe in some places but not others. Congress and states should enact inclusive definitions, like the recent standard adopted in New York City that defines sexual harassment as any unwanted sexual behavior that rises above what a reasonable person would consider "petty slights and trivial inconveniences."
3. **Remove caps on punitive and compensatory damages.** Under Title VII, money damages to victims are capped at $50,000 to $300,000, depending on the size of the employer. The cap must be lifted so that damage awards can be based on the harm done, not on the size of the employer held responsible.
4. **Extend the time to file a complaint.** Federal law requires that Title VII complainants file their case within 180 or 300 days of when they had been harassed or assaulted. That may not be enough time for survivors to process their experience, decide to file, and find a lawyer.
5. **Make employers responsible for harassment by any supervisor.** The Supreme Court has narrowly defined who is a supervisor, making it harder to prove a case against a boss who controls the daily work environment but lacks the authority to hire and fire employees.
6. **Hold harassers personally liable.** Title VII also holds only the employer liable, not the harassers themselves. Women's rights organizations are pushing to expand the law to create direct, personal accountability for the individuals responsible for sexual harassment.
7. **End mandatory arbitration and collective-action waiver clauses.** Employers try to preemptively silence workers through forced arbitration clauses in employment contracts, which today prevent more than 60 million workers from filing complaints in open court. Mandatory arbitration favors employers who choose and pay for the arbitrators deciding the cases. This system also enables employers to hide sexual harassment complaints, because there is often no record nor public transparency in arbitration. Employers may also require employees to sign clauses that forfeit rights to join together in class-action lawsuits, effectively preventing them from proving the "pervasive" nature of workplace harassment. On May 21, 2018 the Supreme Court ruled that mandatory arbitration and collective action-waiver clauses

are enforceable. They can only be prohibited by new legislation.

8. **End nondisclosure requirements.** Employers silence women through confidentiality agreements — otherwise known as nondisclosure agreements in employment contracts and sexual harassment settlements. Even though such agreements in employment contracts are not enforceable with regard to sexual harassment, nondisclosure clauses in employment contracts run the risk of confusing or intimidating potential complainants. The law should require that these agreements explicitly exempt sexual harassment and other criminal behavior so as not to discourage reporting of sexual harassment and assault. In settlement agreements, employers should not be allowed to require nondisclosure of complainants' experiences of sexual harassment.
9. **Increase accountability and transparency.** Businesses and governments should be required to disclose harassment settlements to the public. Democratic Senator Elizabeth Warren of Massachusetts and Democratic Representative Jacky Rosen of Nevada recently introduced the Sunlight in Workplace Harassment Act, which would require public companies to disclose settlement data to the Securities and Exchange Commission.
10. **Pursue sector-specific initiatives.** For example, hotel workers have pressed for laws requiring hotels to provide those who clean rooms with panic buttons to call security if they are harassed by customers. Workers in the union UNITE HERE! won such ordinances in Chicago and Seattle, and are pursuing them in California, Miami Beach and Las Vegas.

A number of states and localities have made a start toward comprehensive protections. New York has already adopted harassment legislation that includes employers with as few as four workers, while California has expanded protections to independent contractors, unpaid interns, and volunteers, all of whom are not currently covered by Title VII. Massachusetts passed a domestic workers bill of rights that includes protections against sexual harassment. Now that the #MeToo movement has exposed real weaknesses in federal and state laws used to prevent and redress workplace sexual harassment, it is time for congressional representatives, state legislators, and city officials across the country to take the full range of necessary legal steps to ensure safe, equitable, and fair workplaces for all American workers.

Read more in Carrie N. Baker and Maria Bevacqua, "Challenging Narratives of the Anti-Rape Movement's Decline," *Violence Against Women* 24, no.3, Online First (2017): 350-376.