

# SENATE TASK FORCE ON SEXUAL DISCRIMINATION AND HARASSMENT AWARENESS AND PREVENTION

TASK FORCE  
ASSESSMENT

2018

Findings and Proposals for Addressing  
Sexual Harassment in Illinois

Co-Chairs: Senator Melinda Bush and Senator Jil Tracy  
100<sup>th</sup> General Assembly

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# I. INTRODUCTION AND EXECUTIVE SUMMARY

In November 2017, the Illinois Senate unanimously adopted Senate Resolution 1076,<sup>1</sup> sponsored by Senator Melinda Bush and co-sponsored by two-thirds of the Senate, which created the Senate Task Force on Sexual Discrimination and Harassment Awareness and Prevention. The Task Force was created in response to the nationwide #MeToo movement and to an open letter signed by more than 300 Illinois legislators, lobbyists, staff, and policy-makers which acknowledged and condemned a pervasive culture of sexual harassment in Illinois politics and government.<sup>2</sup> The resolution outlined the harm caused by sexual harassment and discrimination in both the public and private sectors and recognized that Illinois has not historically provided victims of harassment with adequate recourse.

The Task Force was charged with studying the following seven areas:

1. Best practices for preventing and responding to sexual discrimination and harassment;
2. Proposed legislation or rule-making that would improve the State's existing enforcement efforts to ensure that institutions effectively prevent and respond to sexual discrimination and harassment;
3. Increasing the transparency of the State's enforcement activities concerning sexual discrimination and harassment;
4. Evaluating the existing ethical, civil, and criminal penalties for sexual discrimination and harassment and determining whether they are sufficient and what changes should be made;
5. Broadening public awareness of how to report sexual discrimination and harassment and the remedies available to victims;
6. Facilitating coordination among agencies engaged in addressing sexual discrimination and harassment;
7. Any other issue related to reducing the incidence of sexual discrimination and harassment or harassment in other forms and protecting the rights of victims.

The Task Force was directed to submit a report containing its findings and recommendations to the General Assembly by December 31, 2018. This report is the result of one year of intensive study and analysis by the Task Force.

In December 2017, the Task Force began holding nearly monthly hearings to learn from experts and stakeholders about the scope of the sexual harassment problem in Illinois and hear proposals for legislative change.<sup>3</sup> Hearings over the past year featured testimony from the Equal Employment Opportunity Commission, the Illinois Department of Human Rights, the Cook County State's Attorney, the National Conference of State Legislatures, the Congressional Office of Compliance, the Executive Ethics Commission, the Office of the Executive Inspector General for the Governor, the Secretary of State's Inspector General, labor unions including UNITE HERE Local 1 and the Chicago Federation of Labor, Seyfarth Shaw at Work, Reform for Illinois, the Illinois Chamber of Commerce, the Illinois Coalition Against Sexual Assault, Equality Illinois, the Illinois Coalition for Immigrant and Refugee Rights, and attorneys who represent both plaintiffs and defendants in harassment and discrimination cases. Perhaps most importantly, the Task Force heard often harrowing but crucial testimony from victims of sexual harassment and assault, who bravely and indelibly bore witness to their experiences and offered first-hand insight into how we might improve our current systems for reporting and remedying harassment.

Task Force members also met in subgroups to focus discussion on specific issues, such as the administrative process for investigating and adjudicating harassment complaints, the equivalent civil and criminal court processes, harassment in state government, intersectional issues, and particular risks of harassment for workers without an economic safety net. The Co-Chairs additionally held regular meetings to coordinate with the House of Representatives' Sexual Discrimination and Harassment Task Force, chaired by Leader Barbara Flynn Currie with Republican Spokesperson Representative Sara Wojcicki Jimenez. These hearings and meetings form the basis for the issues and proposals discussed in this report.

The Task Force's key findings are as follows:

- **Ethics and State Government:** While Illinois took significant and long overdue action in 2017 and 2018 to address the problem of sexual harassment in state government and politics, more work remains to be done. Task Force members supported, sponsored, and passed legislation in the 100<sup>th</sup> General Assembly to ensure that sexual harassment by elected officials, lobbyists, and state employees is punishable as an ethics violation; to require anti-harassment training and policies for state and local officials and employees; and to establish statutory rules for filling a vacancy in the Legislative Inspector General's office. These are important first steps, but the Task Force recognizes that they are not enough. The Task Force therefore strongly encourages the General Assembly to continue examining ways to create transparency and accountability in the legislative ethics process, to consider policies that recognize that sexual harassment in state government intersects with other forms of discrimination and harassment, and to take legislative action where appropriate to improve reporting and ensure a remedy for sexual harassment occurring in the context of political campaigns.
- **Civil Remedies for Harassment:** Illinois can do much more to ensure that victims of sexual harassment have accessible, user-friendly procedures for reporting harassment and can obtain meaningful relief in an administrative proceeding or in court. The Task Force considered a number of proposals that would remove procedural roadblocks frequently encountered by workers alleging sexual harassment, such as expanding the types of workers and employers covered by the Illinois Human Rights Act and limiting use of contractual tools like forced arbitration and nondisclosure clauses that can curtail victims' rights. Other ideas presented to the Task Force include gathering more data on sexual harassment complaints in Illinois so the state has better information to guide its policy decisions, giving harassment victims the right to take limited unpaid time off from work to seek legal assistance or obtain psychological care, creating a new order of protection available to victims of sexual harassment, and requiring certain employers in high-risk industries to provide employees working in isolated areas with panic buttons or other appropriate safety technology. While the Task Force does not take a formal position on these initiatives, it urges the General Assembly to consider them as well as concerns raised by opponents in the 101<sup>st</sup> General Assembly.
- **Criminal Consequences of Harassment:** The Task Force's survey of existing criminal penalties for conduct related to sexual harassment suggests that current statutes adequately penalize a wide range of actions, from sexual assault to stalking to harassment by telephone or social media. However, these laws too often go unenforced. Law enforcement officers, prosecutors, employers, employees, and educational institutions could all benefit from increased education regarding when harassing behavior crosses the line into criminal conduct. While the Task Force does not see a need for significant legislative action at this time, it encourages the Illinois Law Enforcement Training Standards Board and the State's Attorney's Appellate Prosecutor to include instruction on laws related to sexual harassment in their annual trainings. The Task Force additionally recommends that the Illinois State Police's safety educational officers create and offer training for public and private employers, universities, and schools on laws related to sexual harassment, particularly developing Illinois laws on technology such as cyberstalking, transfer of obscene messages, and harassment through electronic communications. Last, the Task Force encourages the Illinois Department of Human Rights to partner with these law enforcement agencies to coordinate public education on both the civil and potential criminal consequences of sexual harassment.

This Task Force report and its key findings are representative of the Task Force's work as a whole and should not be attributed to any member of the Task Force individually.

## A. TASK FORCE COMPOSITION

The members of the bipartisan Task Force were appointed in equal numbers by Senate President John J. Cullerton and Minority Leader William E. Brady, and include members of the Senate who reflect the gender, racial, and ethnic diversity of the caucus appointing them, members of the public who work for a statewide association representing women or working to advance civil rights, private attorneys representing both workers and employers in sexual harassment cases, and members who work in government and politics, including lobbyists, state's attorneys, and former state and local elected officials.

### MEMBERS OF THE TASK FORCE

- Co-Chair: Senator Melinda Bush (D-Grayslake)
- Co-Chair: Senator Jil Tracy (R-Quincy)
- Senator Pamela Althoff (R-McHenry)<sup>4</sup>
- Senator Omar Aquino (D-Chicago)
- Senator Scott M. Bennett (D-Champaign)
- Senator Tim Bivins (R-Dixon)
- Senator Bill Cunningham (D-Chicago)
- Senator John F. Curran (R-Woodridge)
- Julie Curry, Curry & Associates
- Felicia Davis, Olive-Harvey College
- Carrie Herschman, Choate Herschman Levison
- Senator Mattie Hunter (D-Chicago)
- Senator Toi W. Hutchinson (D-Olympia Fields)
- Ahlam Jbara, Illinois Coalition for Immigrant and Refugee Rights
- Leslie Quade Kennedy, Odelson & Sterk
- Maureen A. Maffei, Ice Miller LLP
- Senator Karen McConaughay (R-St. Charles)<sup>5</sup>
- Rikeesha Phelon, Phelon Strategies
- Polly Poskin, Illinois Coalition Against Sexual Assault
- Julie Proscia, Smith Amundsen
- Senator Dale A. Righter (R-Mattoon)
- Dr. Kathleen Robbins, Equality Illinois
- Senator Sue Rezin (R-Peru)
- Anita Rodriguez, Assistant State's Attorney, Adams County
- Maria Rodriguez, author and founder of *The Leader is YOU!*
- Senator Heather Steans (D-Chicago)

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- Joshua Horeled, Legal Counsel, Office of the Senate Minority Leader
- Giovanni Randazzo, Chief Legal Counsel and Senate Parliamentarian, Office of the Senate President

## B. ACKNOWLEDGMENTS

The Senate members of the Task Force would like to thank the members of the public who volunteered to serve on the Task Force. Thanks go to Julie Curry, Felicia Davis, Carrie Herschman, Ahlam Jbara, Leslie Quade Kennedy, Maureen Maffei, Rikeesha Phelon, Polly Poskin, Julie Proscia, Dr. Kathleen Robbins, Anita Rodriguez, and Maria Rodriguez.

The members of the Task Force would also like to thank the many advocates, stakeholders, and women with first-hand experience of sexual harassment and discrimination who made valuable recommendations and gave thoughtful feedback on legislative proposals over the past year. The Task Force is especially grateful for the testimony of Helen Allen, Terri Lewis Bledsoe, Michelle Dahn, Tonya Exum, LaWanda Jordan, Danielle Kudirka, Charmella Leviege, Miyoshi Morris, Shranda Campbell Salahuddin, Christie Van, Sarah Powers-Barnhard, Julie Romias, and Kay Rogness. Special thanks are also owed to those who traveled from out of state to testify at Task Force hearings, including Muslima Lewis (EEOC), Jon Griffin (NCSL), and Teresa James (Congressional Office of Compliance). In addition to the stakeholders who offered formal testimony at Task Force hearings, thanks go to those who offered other support, including Women Employed, the Sargent Shriver National Center on Poverty Law, the American Civil Liberties Union of Illinois, the Illinois Chamber of Commerce, the Office of the Illinois Attorney General, and the office of Congressman LaHood.

The Task Force would also like to thank the legislative caucus and district office staff who provided research, administrative, and drafting support. Special thanks go to Shawn Berry, Nick Meyer, Ed Gallagher, Sharon Wilson, and Ashley Harris.

## II. SEXUAL HARASSMENT: AN OVERVIEW

### A. LEGAL STANDARDS

**“Sexual harassment is an abuse of power channeled through sexuality and gender-based expectations. Sexual harassment occurs in a context of inequality.”<sup>6</sup>**

Sexual harassment is a form of discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.<sup>7</sup> The Illinois Human Rights Act,<sup>8</sup> like federal law and similar laws in other states,<sup>9</sup> prohibits sexual harassment in the contexts of employment and education. Courts have defined two types of behavior that qualify as unlawful sexual harassment: “quid pro quo” and “hostile work environment.”<sup>10</sup> Quid pro quo harassment occurs when an employment benefit or condition is contingent on compliance with a sexual favor or request. By its nature, this typically occurs where there is a power disparity between a supervisor and subordinate. A single incidence of quid pro quo sexual harassment is illegal and can be the grounds for a lawsuit. On the other hand, a hostile work environment exists where harassment is so severe or pervasive that it becomes a persistent condition of work. Although one in four women experience sexual harassment in the workplace, most workplace harassment still goes unreported due to fear of retaliation or organizational indifference.<sup>11</sup>

### B. SCOPE OF THE PROBLEM

Sexual harassment is not identical to sex discrimination, which involves treating someone unfavorably on the basis of his or her sex. However, the two commonly co-exist. According to the Illinois Department of Human Rights’ 2017 Annual Report, 15% of the total charges filed in FY 2017 included an allegation of sexual harassment, while 20% included an allegation of sex discrimination.<sup>12</sup> That adds up to a total of 35% of all charges that were brought either because someone was discriminated against on the basis of his or her sex, or was sexually harassed. To put that in perspective, the next most common charge was retaliation at 34% (which includes retaliation for reporting sexual harassment or discrimination), followed by race at 28%.<sup>13</sup>

**Table 1: All State-wide Discrimination Charges filed with IDHR over the past four years across all areas.**

CHARGES DOCKETED BY AREA	FY 2017	FY 2016	FY 2015	FY 2014
EMPLOYMENT	2748	2909	3163	3028
HOUSING	282	289	353	389
FINANCIAL CREDIT	3	6	6	3
PUBLIC ACCOMMODATIONS	165	214	197	165
EDUCATION (SEXUAL HARASSMENT ONLY)	3	3	1	4
TOTAL	3201	3421	3720	3589

Source: Process for Charges Alleging Sexual Harassment.ppt, Ill. Dept. of Human Rights, (Jan. 29, 2018).

**Table 2: All state-wide sexual harassment charges filed with IDHR in the employment area.**

CHARGES DOCKETED	FY 2017	FY 2016	FY 2015	FY 2014
SEXUAL HARASSMENT	403	397	469	334

Source: *Process for Charges Alleging Sexual Harassment.ppt*, Ill. Dept. of Human Rights, (Jan. 29, 2018).

sexual harassment, since the risk of retaliation for reporting unlawful harassment for at-will workers with little economic security is heightened. The hospitality industry, including restaurants, hotels, and casino, also sees increased incidents of sexual harassment.<sup>17</sup> While women make up just over half of all restaurant workers, they constitute nearly two-thirds of tipped workers, whose wages can be contingent on looking the other way if a customer harasses them.<sup>18</sup> Women in trade are also an especially vulnerable population. According to Chicago Women in Trades, women only make up 1-9% of trade workers in Illinois, even though the jobs are typically well paying with good benefits. For those women who do work in the industry, they are often further marginalized by race or sexual orientation. Under these working conditions, sexual harassment frequently occurs in unsafe environments where women do not have the requisite support of their coworkers, thereby making it a unique safety and health concern for women working in this field.

While anyone can experience sexual harassment, the majority of charges of sexual harassment in the workplace are brought by women.<sup>19</sup> Some populations are especially vulnerable to sexual harassment, such as women of color, immigrants, and the LGBTQIA community. According to an EEOC report, “[a]s people hold multiple identities, they can also experience harassment on the basis of more than one identity group.”<sup>20</sup> That same report highlighted findings of various studies that demonstrated members of racial minority groups report higher incidents of harassment than whites. However, despite studies documenting intersectional harassment, much of the research literature is still based on the experiences of white women and does not accurately reflect the actual experience of harassment victims.<sup>21</sup>

In late 2017, amid widespread public allegations of sexual harassment and assault in the entertainment industry, the #MeToo movement encouraged more women to come forth about their experiences. This resulted in allegations of sexual harassment in both the private and public sectors both nationwide and in Illinois.

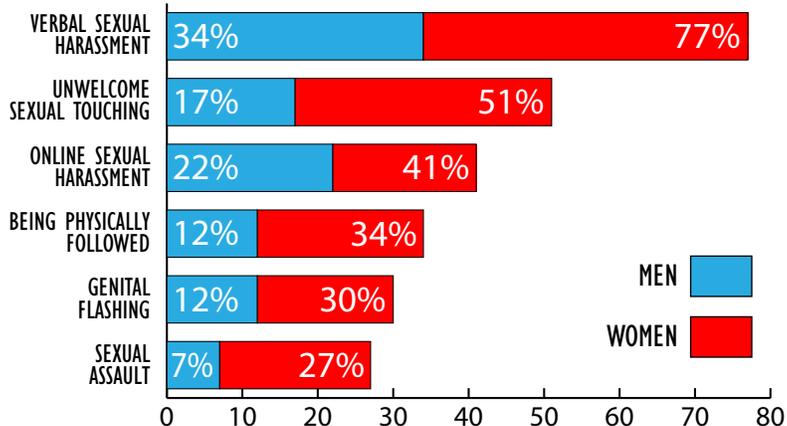
### C. PROBLEM IN ILLINOIS – PUBLIC SECTOR

In November 2017, as legislators, staff and lobbyists came forward with stories of sexual harassment in Illinois politics, the General Assembly took action to respond. The General Assembly introduced legislation to require training of state employees and to reform the process for reporting, investigating, and imposing penalties for sexual harassment by a state official or employee.<sup>22</sup> During the floor debate, Task Force member Senator Toi Hutchinson vividly described an experience she had suffered as a young lobbyist where she was told that, as an African-American woman, she was only there so that parts of her body could be put on sale. Senator Hutchinson’s story clearly illustrates why reform is needed:

**“Now, I was just starting out. I hadn’t gone to law school yet. I had absolutely no power to speak out. I had just one client in my pocket I was trying to work. That is an example of a conversation that crosses three things: it was generational, it was racist and it was sexist. I didn’t know there was**

Neither private nor public employers are immune from workplace sexual harassment. According to the 2017 Annual Report, of the 2,748 charges filed, 2,095 or 76% of charges were against private employers.<sup>14</sup> The remaining charges were against State and local governments, institutions of higher education, or individuals.<sup>15</sup> Among private employers, sexual harassment is particularly pervasive in labor sectors that exhibit substantial power disparities or have historically excluded women from the workforce, such as accommodation and food services, retail, or manufacturing.<sup>16</sup> Low-wage workers are particularly vulnerable to

**Figure 1: The forms of sexual harassment women and men described when surveyed.**



Source: Susan Chira, *Numbers Hint at Why #MeToo Took Off: The Sheer Number Who Can Say Me Too*, NY Times (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/upshot/pervasive-sexual-harassment-why-me-too-took-off-poll.html>.

**any place that I could have gone to say anything about it at the time.”<sup>23</sup>**

Throughout late 2017 and 2018, women continued to come forward with allegations of sexual harassment in Illinois government, both general stories of past experiences and public allegations against specific individuals. These stories form the background for the Task Force’s work.

## D. PROBLEM IN ILLINOIS – PRIVATE SECTOR

Private-sector workers in Illinois similarly came forward with allegations of sexual harassment over the past year. On March 5, 2018, the Task Force heard testimony from employees of Ford Motor Company who alleged sexual and racial harassment at two Chicago Ford plants. The women described alleged harassment that ranged from crude comments to groping to quid pro quo favorable treatment in exchange for sex. The harassment was compounded by the fact that union representatives represented both the victim and the perpetrator. Many of these women suffered serious psychological and physical trauma, economic loss, and retaliation including loss of their jobs. There is still ongoing litigation in federal court against Ford related to these claims. As a result of this testimony, many of the legislative proposals considered in this report were inspired by the experiences of these women.

The Task Force also heard testimony on May 15, 2018, from former members of a club volleyball team in Aurora involving allegations that a popular volleyball coach took advantage of and sexually assaulted multiple female athletes in the 1980s. Although the coach has been recently banned from coaching USA Volleyball, he is still able to privately coach women and minors despite allegations spanning decades. While this type of conduct is clearly criminal, it is crucial to note that much of the pre-assault conduct would be sexual harassment if it occurred in the context of employment or education.

Other instances of sexual harassment in both the public and private sector continue to permeate the news, both nationally and in Illinois. Even with current laws and procedures in place making workplace sexual harassment unlawful, it is still a pervasive aspect of many workplace cultures. There is no single remedy for the problem given all the intersectional issues involved. Sexual harassment, gender discrimination, and gender violence are all intrinsically connected. Therefore, the Task Force considered a variety of legislative proposals as well as non-legislative recommendations for best practices. This report summarizes those proposals, including some already passed by the General Assembly that are now law, and others that still require further discussion.

**Table 3: Top 8 employment charges by respondent**

FY 2017	FY 2016	FY 2015	FY 2014
PRIVATE: 2095	PRIVATE: 2203	PRIVATE: 2364	PRIVATE: 2309
INDIVIDUALS: 189	LOCAL GOV: 205	INDIVIDUALS: 209	LOCAL GOV: 207
LOCAL GOV: 169	INDIVIDUALS: 205	LOCAL GOV: 188	INDIVIDUALS: 135
STATE GOV: 96	STATE GOV: 108	STATE GOV: 135	SCHOOLS: 134
SCHOOLS: 72	SCHOOLS: 78	SCHOOLS: 132	STATE GOV: 118
UNIVERSITIES: 58	UNIVERSITIES: 56	UNIVERSITIES: 62	UNIVERSITIES: 59
UNIONS: 36	UNIONS: 46	E. AGENCIES: 41	UNIONS: 36
E. AGENCIES: 33	E. AGENCIES: 32	UNIONS: 32	E. AGENCIES: 30

Source: Process for Charges Alleging Sexual Harassment.ppt, Ill. Dept. of Human Rights, (Jan. 29, 2018).

# III. LEGISLATION ENACTED IN THE 100<sup>TH</sup> GENERAL ASSEMBLY

Since the Task Force was created in November 2017, it has been instrumental in supporting a variety of bipartisan legislative proposals and ushering them into law, including major changes to the process for handling sexual harassment charges against elected officials and a significant expansion of the rights and remedies available to harassment victims under the Illinois Human Rights Act. While the Task Force believes more work remains to be done, the gains during the 100<sup>th</sup> General Assembly were substantial. Among the new laws supported by members of the Task Force are the following:

## A. ETHICS AND HARASSMENT IN STATE GOVERNMENT:

- **SB 402 (President Cullerton/Speaker Madigan):** Sexual harassment by elected State Officials and Lobbyists is clearly prohibited. Lobbyists and state officers and employees (including members of the General Assembly and legislative staff) are required to complete sexual harassment training on an annual basis. All state agencies are required to include a prohibition of sexual harassment and information on reporting in their personnel policies. It also clarified the procedure for making complaints of sexual harassment against state officials, General Assembly members, state employees, and lobbyists, and allowed the appropriate ethics commission to adjudicate sexual harassment claims and impose penalties. Local governments are required to include a prohibition of sexual harassment in their personnel policies. Last, the measure created a sexual harassment hotline at the Department of Human Rights. **(Effective November 16, 2017).**<sup>24</sup>
- **HB 138 (Bush/Currie):** Numerous changes to reform the legislative ethics process were made. These changes included allowing the Legislative Inspector General to investigate sexual harassment claims without first obtaining approval from the Legislative Ethics Commission; creating a search committee composed of former judges and prosecutors to recommend legislative inspector general candidates; making procedural changes regarding recusal of an LEC member; removing an LEC member who runs for higher office and increasing transparency regarding the complaint process at the Commission and before the Inspector General. The measure also clarified the enforcement process for lobbyists who commit sexual harassment, required State Central Committees to adopt sexual harassment and discrimination policies, modified the IDHR hotline to make it more user friendly as a helpline and extended the statute of limitations for filing a charge with IDHR from 180 days to 300 days. **(Effective June 8, 2018).**<sup>25</sup>
- **HB 4242 (McSweeney/T. Cullerton):** A unit of local government, school district, community college district, or other local taxing body is required to provide notice to the public if it enters into a severance agreement with an employee or contractor accused of sexual harassment or sexual discrimination. **(Effective August 23, 2018).**<sup>26</sup>
- **HB 4243 (McSweeney/T. Cullerton):** No public funds, including pay and allowances of members of the General Assembly, shall be used for a payout for sexual harassment claims against a legislator. **(Effective August 10, 2018).**<sup>27</sup>
- **SB 3604 (T. Cullerton/Kifowit):** The Government Severance Pay Act was created. If an agency of State government, unit of local government, college, university or school district enters into a contract with an employee and that contract contains a provision for severance pay, then the contract must include (1) a requirement that severance pay does not exceed more than 20 weeks of compensation, and (2) a prohibition on severance pay when the employee has been fired for misconduct, including sexual harassment. **(Effective January 1, 2019).**<sup>28</sup>

## B. ILLINOIS HUMAN RIGHTS ACT:

- **SB 20 (Steans/Currie):** This legislation included changes to reduce the backlog of harassment and discrimination claims at the Department of Human Rights and the Human Rights Commission. These changes included:
  - Restructuring the Human Rights Commission by reducing the Commission from 13 part-time commissioners to 7 full-time commissioners (including the Chairperson) and providing for training and support staff, including a staff attorney for each Commissioner;
  - Creating a temporary three-person panel to address the backlogged cases;

- Permitting claimants to opt out of the Department of Human Right's investigation within the first 60 days of filing a claim and commence an action in civil court (versus current law requiring the Department to conduct a full investigation which could be up to a year or longer);
- Requiring the Department to notify the parties of a determination by the EEOC within 10 business days;
- Creating online publication requirements for opinions issued by the Commission;
- Providing for administrative dismissal of charges if the charging party has filed a lawsuit or a proceeding before another administrative body and a final decision by the other body would preclude the charging party from bringing another charge based on the pending charge.
- Extending the time for filing an administrative claim under the Illinois Human Rights Act from 180 days to 300 days.<sup>29</sup>
- **(Effective August 24, 2018).**<sup>30</sup>

## C. PROCUREMENT AND LICENSING:

- **SB 405 (Hutchinson/Feigenholtz):** All companies that make a bid under the State's procurement code and all companies that claim credits under the Economic Development for a Growing Economy Tax Credit Program are required to include their sexual harassment policy in their annual report to the State. **(Effective January 1, 2019).**<sup>31</sup>
- **HB 4953 (McAuliffe/Bush):** For professionals licensed by the Illinois Department of Financial and Professional Regulation that have a continuing education requirement, the continuing education hours shall include at least one hour of sexual harassment prevention training. **(Effective January 1, 2019).**<sup>32</sup>
- **SR 1561 (Bush) and HR 783 (Wheeler, B.):** Urged the State and federal government to investigate the culture of harassment at Ford Motor Company's Illinois plants, and called for a review of United Automobile Worker's possible breach of its duty of fair representation to union members who reported harassment. Called upon the Governor to review all state contracts with Ford for compliance with anti-harassment laws. **(Adopted).**<sup>33</sup>

## D. EDUCATION:

- **HB 5148 (Kifowit/Holmes):** Course material and instruction on sex education in grades 6 through 12 shall include, with an emphasis on the workplace environment and life on a college campus, discussion of what constitutes sexual consent and what may be considered sexual harassment or sexual assault. **(Effective August 3, 2018).**<sup>34</sup>

## E. SEXUAL ASSAULT AND ABUSE:

- **SB 2271 (Tracy/Frese):** The statute of limitations for offenses involving sexual conduct or sexual penetration, where the victim was 18 years or older, is extended to allow the prosecution to be commenced within one year after discovery of the offense by the victim when corroborating physical evidence is available. **(Effective January 1, 2019).**<sup>35</sup>
- **SB 3404 (Raoul/Mitchell):** A "Survivors' Bill of Rights" was created which provides victims of sexual assault or abuse rights to: shower at the hospital post-examination, obtain a copy of the police report relating to the incident, have a sexual assault advocate and a support person of their choosing present for medical and physical examinations, retain their own counsel, as well as prohibits law enforcement from prosecuting the victim for a crime related to use of alcohol, cannabis, or a controlled substance based on the sexual assault forensic evidence collected from the victim. **(Effective January 1, 2019).**<sup>36</sup>



While Illinois made significant progress in 2018, more work remains to be done. In August 2018, the Task Force heard follow-up testimony from Reform for Illinois (“RFI”) on its recommendations to further improve the process for reporting and investigating sexual harassment complaints in the General Assembly. Although RFI recognized that many of its initial suggestions had been implemented in HB 138, it recommended four additional changes: granting the Legislative Inspector General subpoena power; increasing the statute of limitations for ethics complaints; requiring publication of reports by the Legislative Inspector General in cases where there is substantial evidence of wrongdoing by a public official; and adding members of the public to the Legislative Ethics Commission. Some of these suggestions are fairly straightforward, such as allowing more time for the ethics investigation and adjudication process to occur. Others may require further consideration by the General Assembly. For instance, a number of bills filed in the 100<sup>th</sup> General Assembly would make structural changes to the Legislative Ethics Commission, but there is some debate over how many members should be added, what their qualifications should be, and most crucially, how they should be selected.<sup>42</sup> Other legislative proposals that remain on the table for additional consideration include further increasing the Legislative Inspector General’s independence from the Commission (such as by permitting investigation of any ethics complaint without approval from the Commission)<sup>43</sup> and expanding the State Officials and Employees Ethics Act to prohibit racial discrimination and harassment, in addition to the existing prohibition against sexual harassment.<sup>44</sup> The Task Force encourages the General Assembly to continue examining ways to create transparency and accountability in the legislative ethics process and to consider policies that recognize that sexual harassment in state government intersects with other forms of discrimination and harassment.

## B. CAMPAIGNS AND REPRESENTATION OF WOMEN IN POLITICS

Over the past year, it has become clear that the campaign side of Illinois politics is as troubled by harassment and discrimination as is state government. While the Task Force’s principal focus was on changing the culture under the dome, there is also a role for the General Assembly to play in improving campaign culture. In September 2018, the Illinois Anti-Harassment, Equality, and Access Panel, created by the state Democratic Party,<sup>45</sup> issued a comprehensive report on sexual harassment in Illinois politics.<sup>46</sup> Much of the work recommended by the panel must be undertaken by the state political parties, including requiring clear anti-harassment policies on campaigns, providing anti-harassment training, providing independent reporting avenues, and establishing an independent body to receive and investigate complaints. But, where legislation can shift incentives or support these goals, the General Assembly should consider taking action. For instance, the panel specifically identified the social and economic impact child care can have on candidates for elected office, particularly women, but also any candidate with a young family.<sup>47</sup> One proposal presented to the Task Force would allow candidates, officeholders, campaign staff, and volunteers to use campaign funds to cover child-care expenses.<sup>48</sup> Reducing the demands of money and time on parents is likely to increase the number of women running for office or taking a leadership role on campaigns.<sup>49</sup> The panel also recommended increasing the diversity of women working in politics, specifically calling upon the General Assembly to hire and promote more women legislative staffers.<sup>50</sup>

## C. CIVIL REMEDIES FOR HARASSMENT

The Illinois Human Rights Act makes it a civil rights violation for any employer to subject an employee to unlawful discrimination on the basis of sex, race, color, religion, national origin, ancestry, age, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service. The Act additionally prohibits sexual harassment by any employer, employee, agent of any employer, employment agency, or labor organization, although an employer is responsible for sexual harassment by non-employees or nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. The Act defines “sexual harassment” as:

***“any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.”***<sup>51</sup>

While the Act thus protects many Illinois employees against unlawful discrimination or harassment, there are limits to its reach and to the remedies it provides. Many of the issues and legislative proposals examined by the Task Force would expand the Act to ensure that all Illinois workers have a meaningful, accessible way to report and remedy workplace harassment.

At the state level, the Illinois Department of Human Rights is charged with investigating claims of sexual harassment while the Illinois Human Rights Commission is the administrative adjudicatory body that resolves cases involving sexual harassment. At the federal level, the Equal Employment Opportunity Office (“EEOC”) is charged with enforcing the federal equivalent of the Human Rights Act, Title VII of the Civil Rights Act of 1964. The EEOC receives, investigates, and pursues appropriate legal recourse in cases of sexual harassment under federal law. In many cases, both federal and state law apply. The state and federal agencies have a worksharing agreement that outlines how each agency will handle the intake of claims in cases with dual federal and state jurisdiction. Complainants may then choose a forum in which to pursue their claims.

## I. WHO CAN BRING A CLAIM?

To assert a claim under the Illinois Human Rights Act, the charging party must be an “employee” as defined under the Act. The Act defines “employee” as “any individual performing services for remuneration within this State for an employer.”<sup>52</sup> “Employee” also includes apprentices, applicants for apprenticeships, and, under some circumstances, unpaid interns. However, the current definition has some notable exemptions.

### INDEPENDENT CONTRACTORS

Independent contractors are not considered “employees,” and therefore have no right to bring claims for workplace harassment or discrimination under the Human Rights Act.<sup>53</sup> Historically independent contractors have not been employees in the traditional sense, but rather worked for an employer in a limited scope according to a written or oral agreement and represented a small subset of all American workers.<sup>54</sup> However, in recent years, the number of employees classified as independent contractors has skyrocketed. A 2016 National Bureau of Economic Research study found that independent contractors and other nontraditional employees accounted for 94 percent of all employment growth over the last decade and made up nearly 16 percent of American workers in 2015, or 24 million people.<sup>55</sup> With large growth in the gig economy sector (for instance, Uber or TaskRabbit), this number has only increased.<sup>56</sup> Moreover, a disproportionate number of workers frequently classified as independent contractors, in industries like home healthcare or domestic work, are women of color or immigrants, who are at risk of harassment and discrimination based not only on sex, but also complicated and worsened by race or ethnicity-based discrimination. In the meantime, these workers are left with no recourse for discrimination or harassment they experience on the job. One legislative proposal presented to the Task Force, SB 577, would close this loophole by extending protections under the Illinois Human Rights Act to independent contractors.<sup>58</sup> SB 577 would add to the Human Rights Act’s existing definition of “employee” those workers who are a contractor, subcontractor, vendor, consultant, or other person providing

**Table 4: Outcome of all sexual harassment charges in employment**

FINDING	FY 2017	FY 2016	FY 2015	FY 2014
SUBSTANTIAL EVIDENCE	35	95	134	89
DISMISSAL	66	117	150	111
ADMINISTRATIVE CLOSURE (WITHDRAWN OR SETTLED)	123	170	184	133
PENDING / NO OUTCOME	179	15	1	1
<b>TOTAL:</b>	<b>403</b>	<b>397</b>	<b>469</b>	<b>334</b>

Source: *Process for Charges Alleging Sexual Harassment.ppt*, Ill. Dept. of Human Rights, (Jan. 29, 2018).

**Table 5: Increase in the percentage of alternative work arrangements between February 1995 and November 2015**

PERCENT OF EMPLOYED WHO ALSO WORKED DURING SURVEY WEEK	FEB 1995	FEB 2005	NOV 2015 *
ALTERNATIVE WORK ARRANGEMENTS	10.0%	10.7%	17.2%
INDEPENDENT CONTRACTORS	6.3%	6.9%	9.6%
ON-CALL WORKERS	1.6%	1.7%	2.8%
TEMPORARY HELP AGENCY WORKERS	1.0%	0.9%	1.6%
WORKERS PROVIDED BY CONTRACT FIRMS	1.3%	1.4%	3.3%
WORKERS PROVIDED BY CONTRACT FIRMS (SINGLE JOBHOLDERS)	1.2%	1.3%	2.1%
<b>NUMBER OF OBSERVATIONS</b>	<b>55,453</b>	<b>42,802</b>	<b>2,194</b>

\* This data has been weighted to accurately reflect the larger sample sizes of previous years. Source: Lawrence F. Katz & Alan B. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015*, National Bureau of Economic Research, 7 (Sept. 2016), <http://www.nber.org/papers/w22667>.

services pursuant to a contract in the workplace.

Other states are beginning to legislate on this issue. For example, New York recently enacted a law which provides that non-employees, including independent contractors, can bring claims of sexual harassment against an employer.<sup>59</sup> California's employment discrimination statute similarly prohibits harassment of any person "providing service pursuant to a contract," including independent contractors.<sup>60</sup> The Illinois proposal is modeled on the 2018 New York statute.

While expanding the Human Rights Act to encompass independent contractors would protect many additional Illinois workers from unlawful workplace discrimination and harassment, critics of this approach are concerned about increased employer liability, particularly for small businesses, which may not have the benefit of sophisticated legal counsel. Another concern is how this proposal would affect situations where the independent contractor has little to no interaction with the workplace. Others fear that changing the definition of "employee" under the Human Rights Act could create confusion over the proper classification of workers under a host of other laws, including the Unemployment Insurance Act, the Workers' Compensation Act, the Minimum Wage Law, the Employee Classification Act, or for tax purposes. Should the General Assembly choose to legislate on this issue, it may wish to consider how the Human Rights Act should be interpreted in the context of other state statutes.<sup>61</sup>

## STAFF OF ELECTED OFFICIALS

A second limitation on worker rights that holds particular importance for the General Assembly is the Human Rights Act's exclusion of "elected officials and their immediate personal staff" from the definition of "employees" who are entitled to the Act's protections.<sup>62</sup> While the legislative history sheds little light on the exemption's scope or the reason it was first enacted in 1963,<sup>63</sup> its continued relevance has been seriously questioned in light of the past year's allegations of pervasive sexual harassment under the dome.

One problem is that it is unclear what, precisely, the term "immediate personal staff" means. There is scant judicial guidance: only a lone Illinois Appellate Court case, from 1992, interprets the term as it is used in the modern Human Rights Act.<sup>64</sup> In that case, the court ruled that an Assistant State's Attorney in Lake County was not a member of the "immediate personal staff" of the state's attorney. She therefore could bring a human rights claim, because she was not a supervisor, did not participate in policy formation, did not make decisions about operations of office, and was not in a close, personal, and immediate relationship with the state's attorney. The court reasoned that the word "immediate" "implies a legislative intent to exempt only those employees who interact directly with the elected official without some intervening layer of supervisors."<sup>65</sup> Applying the Appellate Court's reasoning to staff of the General Assembly, there is an argument that the exemption does not cover non-supervisory employees, including the majority of legislative staff in Springfield. Those non-supervisory employees would arguably be able to file a charge with the Department of Human Rights and bring a civil suit for human rights violations under current law. Whether supervisory employees of the caucus staffs and district office employees are exempt is a closer question and would depend on the specific organizational structure and job duties of the individual employee.

In addition to the sparse legislative history and limited case law, a second problem is that it is not clear how the Department of Human Rights and the Human Rights Commission are currently applying the exemption, and the Department has not provided the Task Force with any guidance on its interpretation of the statute. Given that there is little legislative or judicial instruction on the meaning of the exemption, and considering the significant administrative confusion it has caused, the simplest way to ensure staff have a clear remedy for sexual harassment occurring in the course of their employment is to remove the exemption altogether.<sup>66</sup> Alternatively, the General Assembly could consider amending the Act to add a statutory definition of "immediate personal staff."

Removing the exemption entirely has been criticized on several grounds. Some opponents view this proposal, presented to the Task Force as SB 576,<sup>67</sup> as unnecessary because the 1992 Appellate Court case can be used to argue for a narrow reading of the term "immediate personal staff." Others, citing separation of powers concerns, are hesitant to give the executive branch (via the Department of Human Rights and the Human Rights Commission) power to review employment decisions made by the legislative or judicial branches. Still others want to preserve the ability to hire or fire legislative staff for any reason at all, citing the policy-making role legislative staff play and the value of hiring staff who share an elected official's political views. It is important to note, though, that if SB 576 were enacted, elected officials could still arguably base employment decisions on political grounds. Repealing the exemption would only prohibit adverse employment actions based on an employee's

membership in a protected class or on retaliation for reporting harassment or discrimination. It is also unclear what the effect of eliminating the “immediate personal staff” exemption will be at other levels of government since the exemption is not limited to elected members of the General Assembly.

## NUMBER OF EMPLOYEES

To bring a claim under the Human Rights Act, in addition to being an “employee” as defined by the Act, someone must also work for an “employer.” Under current law, most human rights claims require that an “employer” be a person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. Importantly, there are exceptions for certain human rights claims, including sexual harassment and discrimination based on pregnancy or disability. These claims require only that the employer employ one or more employees. Additionally, the state or other units of government, public contractors, and joint apprenticeship programs are subject to the Act without regard to the number of workers they employ.

In an effort to ensure that all workers in Illinois have the same protections from unlawful discrimination that they have from sexual harassment, HB 4572, which passed the General Assembly in 2018 but was vetoed by Governor Rauner, would allow employees of private employers with one or more employees to bring claims for discrimination based on race, color, religion, national origin, sex, marital status, order of protection status, military status, sexual orientation, or unfavorable discharge from military status.<sup>68</sup> Currently, these workers have no remedy for discrimination under Illinois state law. While this would not affect sexual harassment claims per se, it would allow workers who are targeted for harassment or discrimination based on their membership in more than one protected class to bring their claims in a single suit. Laws in 19 other states and territories cover businesses with one or more employees, including the laws of Wisconsin, Michigan, and Minnesota.<sup>69</sup> Moreover, at the local level, some Illinois municipalities have enacted ordinances prohibiting employment discrimination regardless of the number of employees, including Chicago, Peoria, Springfield, and Bloomington.<sup>70</sup> This has created a patchwork of laws in Illinois, where employees of small employers have protections against discrimination in some places but not in others. Nonetheless, critics of expanding the Act to cover all workers argue that it would place an unfair burden on small businesses and would create significant confusion for employers used to applying the same standard under state and federal civil rights laws, which generally apply to private employers with at least 15 employees.<sup>71</sup> Some critics have also voiced concern that this proposal would expose family-owned businesses to discrimination claims if they decline to hire outside the family.

## 2. WHAT IS HARASSMENT?

As discussed above, the Human Rights Act defines what constitutes “sexual harassment” under Illinois law.<sup>72</sup> While this definition is useful as far as it goes, some proposals presented to the Task Force would expand it to clarify what conduct falls under the umbrella of the Human Rights Act. SB 402, which added a prohibition against sexual harassment to the State Officials and Employees Ethics Act, built upon the existing Human Rights Act definition to clarify that the phrase “working environment” is not limited to a physical location an employee is assigned to perform his or her duties and does not require an employment relationship.<sup>73</sup> This broadened definition is particularly relevant in the context of state government, where many people who do not have formal workspace in the Capitol building nonetheless spend long days working there, where work frequently occurs at political events or restaurants, and where there is not a clearly articulated employment relationship between, for instance, a legislator and a lobbyist. But it applies just as forcefully to the lawyer whose work occurs at the courthouse, the pharmaceutical sales rep who works with physicians but is not employed by them, or a caterer who serves at off-site events. Moreover, there is a compelling argument that the definition of “sexual harassment” should be consistent across the Illinois statutes.

Another proposal for defining harassment would amend the Human Rights Act to prohibit “any harassment or discrimination on the basis of an individual’s actual or perceived sex or gender.”<sup>74</sup> This definition aims to accomplish two things. It would add to the existing definition the concept that Illinois law prohibits harassment regardless whether it is based on sex or gender, and regardless of the harasser’s perception of that sex or gender.<sup>75</sup> This is consistent with long-standing federal precedent that sexual harassment includes harassment based on a person’s non-conformance with social or cultural expectations of how men and women should act.<sup>76</sup> Moreover, it would ensure that transgender or gender-nonconforming Illinoisans are fully protected by the law.

The new definition also removes the requirement in current law that the harassment be “sexual” and requires rather that it be based on sex or gender. Supporters of this revision argue that it takes away any connotation under current law that

harassment is simply unwelcome flirtation rather than an abuse of power. It also recognizes that harassment and discrimination are intertwined and are not always two discrete things, and that someone can be harassed on the basis of sex without the harassment being sexual in nature.<sup>77</sup> Critics of the expanded definition argue that it is unnecessary because harassment that is based on sex or gender but not sexual in nature is actionable in other ways, such as under anti-discrimination laws or via tort or criminal action if the harassment is physically threatening. Should the General Assembly decide to legislate on this issue, it may wish to consider whether the expanded definition would have any duplicative effect.

### 3. TIME FOR FILING CHARGES

The statute of limitations is a legal time limit on how long someone has to initiate a legal proceeding seeking relief under law. Limitations periods and administrative filing deadlines matter because, once they have expired, plaintiffs are generally foreclosed from obtaining a remedy.<sup>78</sup> In a practical sense, an injured party needs to recognize that she may have a remedy under law, gather information sufficient to support her claim, secure legal counsel, and initiate legal action in the appropriate court or agency all before the time for filing runs out. Until 2018, an Illinois worker who experienced workplace harassment or discrimination had 180 days – approximately six months – to file a charge under the Human Rights Act with the Department of Human Rights.<sup>79</sup> Workers who missed that 180-day cutoff lost any right to redress under state law, since a complainant must exhaust administrative remedies at the Department before filing a civil suit. In comparison to the previous 180-day clock for civil rights claims, Illinois has a two-year statute of limitations for personal injury claims,<sup>80</sup> a three-year statute of limitations for minimum wage and overtime claims,<sup>81</sup> a five-year limitations period for injury to property or claims under the Equal Pay Act,<sup>82</sup> and a ten-year period to file contract claims or claims for wage theft.<sup>83</sup>

Granting victims of sexual harassment, who are already coping with the psychological and economic consequences of harassment, a mere 180 days to gather the resources to file a charge, was viewed as a significant bar to providing victims with a meaningful remedy. While the General Assembly considered proposals ranging from 300 days to five years, ultimately bipartisan negotiators reached a compromise on amending Illinois law to conform with the 300-day time frame already in place for analogous federal claims. As of June 8, 2018, the time for filing an administrative charge under the Illinois Human Rights Act now mirrors federal law at 300 days.<sup>84</sup>

### 4. RIGHT TO GO TO COURT

Like federal law and the laws of many states, the Human Rights Act requires that complainants must exhaust administrative remedies through the Department of Human Rights before obtaining a right to sue in state court.<sup>85</sup> But before 2018, Illinois was in the minority of states that delay the ability to file a civil suit until the administrative process is complete. In contrast, the EEOC and most other state agencies generally permit a complainant to opt out of the administrative process after a given time period (for instance, after 180 days a complainant can ask the EEOC for the right to sue in federal court).<sup>86</sup> The Illinois process may be extended even further because the Act gives the Department an additional 365 days to complete its investigation, a deadline which can be repeatedly extended by agreement from both parties.<sup>87</sup> This meant that complainants who knew up front that they intended to file a civil action in court were still required to file first with the Department and then wait at least one year while the Department expended its limited resources on a case that would be resolved in court anyway.

SB 20 amended the Act to provide that complainants may seek notice from the Department indicating that they have opted out of the administrative investigation and may commence a civil action in state court, so long as the request is submitted in writing within the first 60 days of filing.<sup>88</sup> Complainants who choose to opt out may not file or refile a substantially similar charge with the Department. This measure was an agreement between the various stakeholders after numerous bipartisan, bicameral negotiations. The 60-day opt out gives complainants greater access to the courts if they so choose, while also ensuring that neither the Department nor employers unnecessarily expend resources in the administrative process. This brings Illinois in line with federal procedure as well as at least a dozen states that give complainants a similar mechanism for accessing civil courts.<sup>89</sup>

## 5. REQUIREMENTS FOR EMPLOYERS

### POSTING NOTICE

Both state and federal law require that employers provide a workplace free from discrimination and harassment and provide reasonable accommodations in specified circumstances. Under the Human Rights Act, employers are additionally required to post notice of the rights employees have under the Act.<sup>90</sup> The notice must be posted in a conspicuous location on the premises, where notices to employees would be customarily posted (such as a break room), and it must summarize employee rights under the Act and provide information on how to file a charge. Before 2018, the Act's notice provision did not expressly include sexual harassment – rather, it only required employers to post notice of the right to be free from unlawful

**Figure 3: As a result of HB 138, this is notice must be conspicuously posted in all workplaces in Illinois**

**ILLINOIS DEPARTMENT OF Human Rights**

**YOU HAVE THE RIGHT TO BE FREE FROM JOB DISCRIMINATION AND SEXUAL HARASSMENT.**

The Illinois Human Rights Act states that you have **the right to be free from unlawful discrimination and sexual harassment**. This means that employers may not treat people differently based on race, age, gender, pregnancy, disability, sexual orientation or any other protected class named in the Act. This applies to all employer actions, including hiring, promotion, discipline and discharge.

**REASONABLE ACCOMMODATIONS**  
You also have the right to reasonable accommodations based on pregnancy and disability. This means you can ask for reasonable changes to your job if needed because you are pregnant or disabled.

**RETALIATION**  
It is also unlawful for employers to treat people differently because they have reported discrimination, participated in an investigation, or helped others exercise their right to complain about discrimination.

**REPORT DISCRIMINATION**

To report discrimination, you may:

1. Contact your employer's human resources or personnel department.
2. Contact the Illinois Department of Human Rights (IDHR) to file a charge.
3. Call the Illinois Sexual Harassment and Discrimination Helpline at 1-877-236-7703 to talk to someone about your concerns.

Chicago: James R. Thompson Center  
100 West Randolph Street, Suite 10-100  
Chicago, IL 60601  
(312) 814-6200  
(866) 740-3953 (TTY)  
(312) 814-6251 (Fax)

Springfield: 535 W. Jefferson Street  
1st Floor  
Springfield, IL 62702  
(217) 785-5100  
(866) 740-3953 (TTY)  
(217) 785-5106 (Fax)

Website: [www.illinois.gov/dhr](http://www.illinois.gov/dhr)  
Email: [IDHR.Intake@illinois.gov](mailto:IDHR.Intake@illinois.gov)

Employers shall make this poster available and display it where employees can readily see it.  
This notice is available for download at: [www.illinois.gov/dhr](http://www.illinois.gov/dhr)  
Printed by the Authority of the State of Illinois · 9/18 · web version · IOCI19-0181

discrimination and the right to a reasonable accommodation. Therefore, Task Force Co-Chairs Senator Melinda Bush and Senator Jil Tracy sponsored and Governor Rauner signed into law HB 138, which required employer notices to expressly identify the right to be free from sexual harassment.<sup>91</sup>

One additional issue is whether the enforcement of the notice provision should be mandatory. Currently, the Department of Human Rights may, but is not required to, investigate an alleged violation of the notice provision. The Department opposed any limitation of its discretion, arguing that requiring the state to investigate every single potential notice violation would leave far fewer resources to direct toward more significant violations, such as an allegation of sexual harassment. The Task Force recognizes that the Department should retain the ability to allocate its resources toward the most severe problems, but funding the Department at a level that will allow it to meet its enforcement obligations more comprehensively is something the General Assembly should consider going forward.

### REPORTING REQUIREMENTS

As workers have come forward with reports of sexual harassment over the past year, it has become clear that many cases involve either a corporate culture of pervasive harassment<sup>92</sup> or a single repeat offender.<sup>93</sup> However, there is no existing mechanism in Illinois to identify or rectify recurring problems short of harassed workers themselves bringing a class action suit. Moreover, one of the principal challenges in evaluating the scope of the problem of sexual harassment and developing effective solutions is the dearth of accurate data on where and why harassment occurs. As the EEOC has found,

sexual harassment is severely underreported; as many as three out of four victims never report harassment.<sup>94</sup> The proposed federal Sunlight in Workplace Harassment Act would fill this gap at the national level by requiring publicly traded companies to report data on harassment settlements and adverse judgments in their annual SEC filings.<sup>95</sup>

One proposal presented to the Task Force attempts to adapt the federal model to Illinois. It would require units of state or local government, parties to a public contract, and any person employing 100 or more people to file annual disclosure reports with the Department of Human Rights.<sup>96</sup> Covered employers would be required to disclose on an annual basis the total number of settlements, adverse judgments, adverse administrative rulings, and complaints relating to sexual harassment; the total and average dollar amount of settlements; the total and average dollar amounts from adverse judgments; any equitable relief awarded; the average length of time it took to resolve a sexual harassment complaint; and the measures taken to prevent sexual harassment in the workplace in the past year.<sup>97</sup> This proposal would also give the Department the ability to investigate an employer with more than ten separate settlements, adverse judgments, administrative rulings, or more than one million dollars in settlements and judgments in the previous year.

This concept was met with some criticism from both ends of the political spectrum. Victims' and workers' rights advocates argue that all Illinois employers should be required to report data on harassment and discrimination, not only those who contract with the state or employ large numbers of workers. In contrast, the business community suggests that the threshold should be pushed higher than the current 100-employee cutoff to reduce its impact on small businesses, which are defined as those with fewer than 500 employees.<sup>98</sup> For some perspective on this number, it is worth noting that, according to the U.S. Small Business Administration, small businesses comprise 46% of private employment in Illinois, and firms with fewer than 100 employees have the largest share of small business employment in the state.<sup>99</sup> Another question to examine is where the line should be drawn for number of incidents or dollar amount triggering the Department's investigative powers.<sup>100</sup> The business community has also voiced concern that reporting settlements presumes that all settlements involve guilty conduct, whereas in reality employers may have a financial incentive to settle even unfounded complaints of harassment. Should the General Assembly legislate on this issue, it should attempt to balance these concerns.

## NONDISCLOSURE CLAUSES

Nondisclosure agreements ("NDA") or clauses are contracts used to create a confidential relationship between two parties, traditionally to protect proprietary information or trade secrets. However, with the recent exposure of rampant sexual harassment in industries like film<sup>101</sup> or hospitality,<sup>102</sup> there is increasing evidence that some serial harassers use NDAs to prevent disclosure of sexual harassment allegations, silencing victims and enabling the harassment to continue unchecked. In some cases, not only did the victim have to sign an NDA as a part of a settlement agreement, but employers have required all employees to sign NDAs as a condition of their employment, precluding them from reporting or testifying as a witness to workplace sexual harassment. Over one-third of the U.S. workforce is bound by an NDA.<sup>103</sup>

Other states are increasingly passing legislation barring NDAs in sexual harassment settlement agreements or limiting the use of NDAs in standard employment contracts for workers who are not exposed to trade secrets or proprietary information.<sup>104</sup> States like Washington, Tennessee, Vermont, and Maryland have all banned nondisclosure or other confidentiality agreements related to claims of sexual harassment as a condition of employment.<sup>105</sup> Similarly, Arizona, New York, and California all limited such agreements or provisions in settlement agreements related to sexual harassment.<sup>106</sup> At the federal level, the Tax Cuts and Jobs Act of 2017 prohibits tax deductions for sexual harassment or abuse settlements including nondisclosure clauses.<sup>107</sup>

Some proposals considered by the Task Force would restrict use of NDAs to prevent victims or witnesses from reporting sexual harassment. One such proposal would prohibit nondisclosure clauses in sexual harassment settlement agreements unless it is the victim's choice.<sup>108</sup> Because employers typically hold more power to set the terms in settlement negotiations, this proposal gives the plaintiff 21 days to consider a nondisclosure clause. If, after the 21 days have expired, the plaintiff agrees with the terms, they may be made a part of the agreement. However, the plaintiff will be given an additional 7 days to revoke that portion of the agreement. Another proposal would limit standard nondisclosure clauses in contracts for low-wage workers, who are less likely to handle trade secrets or proprietary information.<sup>109</sup> Other legislation, such as the proposed bipartisan federal EMPOWER Act, would make it an unlawful practice for an employer to require an NDA as a condition of employment or other benefit if it covers workplace harassment, discrimination, or retaliation.<sup>110</sup> A version of the EMPOWER Act modified for Illinois use might make a nondisclosure clause related to harassment or discrimination void under Illinois law and a civil rights violation under the Human Rights Act. The EMPOWER Act also limits use of NDAs in settlement agreements, permitting their use only for issues that arose before the settlement agreement was executed and where the NDA was mutually agreed upon and mutually benefits both the employer and employee.

Attorneys representing both employers and employees in harassment suits have voiced some concern over limiting the use of NDAs in settlement agreements. Plaintiffs' counsel are concerned, on the one hand, that this proposal could take away an important tool in reaching agreement and prevent a plaintiff from making an affirmative, informed choice to negotiate a higher settlement in exchange for signing an NDA. Plaintiffs' counsel also fear that limiting an employer's ability to request an NDA might remove any incentive for the employer to settle at all and could force plaintiffs into public trial proceedings they might prefer to avoid. On the other hand, defense counsel argue that this proposal effectively gives the plaintiff the sole ability to determine confidentiality. In most settlement agreements, neither party admits fault. If NDA use is restricted, an employer's only option for settlement might be an agreement in which the plaintiff remains able to discuss the factual basis for the settlement, implying that the sexual harassment claims are credible and valid. This could dramatically change the settlement calculus on both sides.

This issue requires the General Assembly to carefully weigh both employee and employer rights. Nonetheless, because there is mounting evidence that NDAs are being systemically misused to conceal workplace sexual misconduct, and because other states are taking the lead in legislating in this arena, the General Assembly may wish to consider whether there is a way to fashion a compromise that permits continued NDA use for legitimate reasons like protecting proprietary information but protects victims of harassment and discrimination from being silenced. A model like the bipartisan EMPOWER Act might represent one path forward.

## 7. NONDISPARAGEMENT CLAUSES AND DEFAMATION

Much like the ways nondisclosure agreements can silence victims, nondisparagement clauses can also be enforced in a manner that deters victims from reporting harassment or discrimination. Traditionally, nondisparagement clauses were used in the context of business contracts to protect the reputation of a business's goods or services from disparaging statements by disgruntled employees or competitors.<sup>111</sup> However, there is a growing trend of using nondisparagement clauses in employment contracts or settlement agreements involving claims of sexual harassment or discrimination.<sup>112</sup> An employee who signs a nondisparagement clause in a standard employment contract may find herself charged with breach of contract if she later wishes to make legitimate or truthful statements regarding experiences of workplace sexual harassment or discrimination.<sup>113</sup> While the EEOC is currently litigating against retaliatory claims by employers alleging an employee reporting civil rights violations has breached a nondisparagement clause, this is a developing issue in the courts and legislative action at the state or federal level could help clarify the question.<sup>114</sup>

The proposed bipartisan federal EMPOWER Act would make it an unlawful practice for an employer to require a nondisparagement clause as a condition of employment or other benefit if it covers workplace harassment, discrimination, or retaliation.<sup>115</sup> Like the Act's treatment of nondisclosure clauses, it would void any nondisparagement clause related to harassment or discrimination and permit their use in settlement agreements only for issues that arose before the agreement was executed and where they were mutually agreed upon and mutually benefit both the employer and employee. Employers may fear that restricting use of nondisparagement clauses will allow disgruntled former employees to tarnish the employer's reputation. In developing state legislative solutions, the General Assembly must balance this concern against the importance of allowing employees to report sexual harassment and discrimination.

Other states have similarly sought to act on this issue. On September 30, 2018, California passed a new measure that prohibits requiring an employee to sign a nondisparagement agreement that would deny the employee the right to disclose information about unlawful acts in the workplace, including but not limited to sexual harassment.<sup>116</sup> Rhode Island and Connecticut both proposed legislation this year that would have prohibited some employers from requiring new employees to sign agreements barring them from talking about civil rights violations or other unlawful conduct.<sup>117</sup>

Another legal mechanism harassers or abusers are increasingly deploying to silence victims is a claim for defamation.<sup>118</sup> For example, after the Los Angeles Times published an article with stories from six different women who accused a Hollywood filmmaker of sexual misconduct, an additional victim decided to share her story of being assaulted on Facebook.<sup>119</sup> In response, the filmmaker sued her for defamation.<sup>120</sup> This is becoming a recurring problem. The Time's Up Legal Defense Fund has raised millions of dollars to provide legal services to women alleging sexual harassment and to defend women against claims of defamation.<sup>121</sup> Roberta A. Kaplan, one of the founders of Time's Up has said: "I and other women who are involved in Time's Up have felt pretty strongly for a while that it would be really important not only to represent women who have been harassed or assaulted, but also to defend women in efforts that have been undertaken to stop women from speaking."<sup>122</sup>

The issue does not just affect employees. Employers are also concerned about the threat of a defamation claim brought against them if they were to report to others the misconduct of their employees. In response to this issue, California's Chamber of Commerce advanced legislation that is intended to shield both victims and employers from defamation claims related to sexual harassment.<sup>123</sup> The new California law provides that sexual harassment complaints made to an employer, without malice and based on credible evidence, are considered privileged for the purposes of a defamation claim.<sup>124</sup> The privilege would encompass communications from witnesses who respond to an employer's questioning in the course of its investigation.<sup>125</sup> The law would also permit an employer to answer whether it would rehire a former employee and whether that decision is based on the employer's determination that the former employee engaged in sexual harassment.<sup>126</sup> This last provision is designed to allow employers to disclose information in response to a reference check regarding an employee's misconduct without fear of facing a defamation suit. Each provision requires that the actor communicate "without malice" to safeguard against false accusations and ensure that malicious or reckless statements continue to be subject to legitimate defamation claims.<sup>127</sup> Critics

of the California law note that it does not modify the law significantly given that “without malice” is already a defense to a defamation claim. The law simply makes that defense stronger by making certain communications privileged.

Other legislative proposals on defamation have suggested expanding existing law to give victims of sexual harassment or assault stronger defenses against frivolous lawsuits. One approach is to attack the defamation claim as a strategic lawsuit against public participation, or SLAPP. Numerous states have enacted anti-SLAPP lawsuits, including Illinois.<sup>128</sup> Illinois’s anti-SLAPP statute, the Citizen Participation Act, is intended to deter and effectively eliminate lawsuits used as a means of intimidating, harassing, or punishing citizens or organizations for involving themselves in public affairs and to protect citizen participation in public affairs. The Act immunizes individuals from lawsuits based on acts taken in furtherance of their rights to free speech and to petition government;<sup>129</sup> creates an accelerated legal process to dispose of such lawsuits; and provides attorney fees and costs to prevailing parties.<sup>130</sup> Advocates have suggested expanding the anti-SLAPP statute to include more forms of speech, so that even speech not made to the government would be protected under the Act. While the Task Force has not reviewed a specific proposal to amend Illinois’ anti-SLAPP statute, it believes retaliatory defamation claims are an issue that warrants further review by the General Assembly.

## 8. ARBITRATION AGREEMENTS

Like NDAs and nondisparagement clauses, forced arbitration clauses are another tool perpetrators of harassment can use to foreclose victim rights. Arbitration clauses allow employers to require employees to waive their right to sue the employer in a court of law, including suits related to sexual harassment or discrimination. Instead, any disputes related to employment are decided in private arbitration. Frequently, forced arbitration clauses require the employee to pursue only individual claims rather than joining a class or collective action. Some agreements also require the employee to pay exorbitant arbitration fees or arbitrate in a distant forum. According to an empirical review of arbitration data, employees are less likely to prevail in private arbitration than in litigation; when they do win, they are awarded less money; and there is evidence of a bias in favor of employers when the employer is involved in multiple arbitration cases or uses the same arbitrator repeatedly.<sup>131</sup> The Economic Policy Institute estimates that over half of non-union, private-sector workers in the United States are subject to mandatory arbitration procedures, meaning that more than 60 million employees no longer have access to the courts if they are victims of wage theft or unlawful discrimination and harassment.<sup>132</sup> Arbitration clauses have recently received particular scrutiny in light of their use to silence workers subject to a culture of harassment and abuse at prominent national companies.<sup>133</sup> In recognition of the role arbitration clauses play in depriving victims of harassment and discrimination of a meaningful remedy, employers like Google, Facebook, Microsoft, Uber, Lyft, and several large law firms have recently ended forced arbitration for sexual harassment claims.<sup>134</sup>

Historically, states have avoided enacting laws restricting use of forced arbitration clauses because there is a compelling legal argument that such laws are preempted by the Federal Arbitration Act (“FAA”).<sup>135</sup> The Act was enacted in 1925 and allows private dispute resolution through arbitration. It applies in both federal court and in state courts where the transaction contemplated by the parties involves interstate commerce. Although Congress’s purpose in enacting the FAA was to allow companies, bargaining at arm’s length, to settle on an alternative dispute resolution forum, a series of recent Supreme Court decisions has expanded the Act’s reach to cover almost all employment and consumer contracts, whether or not the parties actually bargained over the term. Most recently, in 2018 the United States Supreme Court ruled in *Epic Systems v. Lewis* that individual arbitration clauses in employment contracts are enforceable and are not prohibited by

**Table 6: The average amount of damages recovered in federal and state court proceedings far exceeds the average amount of damages recovered in arbitration proceedings.**

	EMPLOYMENT ARBITRATION DISCRIMINATION	FEDERAL COURT EMPLOYMENT DISCRIMINATION
EMPLOYEE WIN RATE	21.4%	36.4%
MEDIAN DAMAGES	\$36,500 ('05 \$)	\$150,500 ('05 \$176,426)
MEAN DAMAGES	\$109,858	\$336,291 ('05 \$394,223)
STANDARD DEVIATION	\$238,227	
MEAN INCLUDING ZEROS ('05 \$)	\$23,548	\$143,497
MEAN TIME TO TRIAL (DAYS)	361.5	709

Notes: Conversions of award statistics to standard 2005 \$ amounts are provided to facilitate comparison. “AAA-CC Data”: Dataset on all employment arbitration cases based on employer-promulgated procedures administered by the American Arbitration Association during the period of January 1, 2003 to December 31, 2007. Data assembled by the author from reports filed by the AAA under California Code arbitration service provider reporting requirements. “Eisenberg & Hill”: Litigation statistics reported in Eisenberg & Hill (2003). “Oppenheimer”: Litigation statistics reported in Oppenheimer (2003). Source: Alexander Colvin, *An empirical study of employment arbitration: Case outcomes and processes*, Cornell University ILR School, (2011), <http://digitalcommons.ilr.cornell.edu/articles/577>.

the National Labor Relations Act or the Federal Arbitration Act's savings clause.<sup>136</sup> This decision limits workers' ability to bring class-action suits against their employers and instead requires them to privately arbitrate claims on an individual basis, including claims of workplace discrimination or sexual harassment.

However, the FAA does leave some room for state action. It does not bar states from prohibiting entities with which they do business from forming or enforcing forced arbitration clauses in employment and consumer contracts. States may also ban forced arbitration clauses in employment contracts that are not covered by the FAA<sup>137</sup> and may create rules of civil procedure or evidentiary presumptions that make forced arbitration clauses harder to enforce.<sup>138</sup> In response to increased awareness of how mandatory arbitration clauses act to deny victims of workplace sexual harassment a meaningful remedy, in 2018 four states banned such clauses (Maryland, New York, Vermont, and Washington).<sup>139</sup> California similarly passed legislation limiting use of arbitration clauses in employment contracts, but Governor Brown vetoed it, citing Supreme Court precedent.<sup>140</sup> Whether courts will find that these new laws are preempted by the FAA remains an open question.

Moreover, bipartisan legislation pending at the federal level would limit the use of arbitration clauses in sexual harassment cases, therefore bypassing the preemption problem.<sup>141</sup> The Task Force supports bipartisan efforts to address this issue federally. Should the General Assembly choose to advance state legislation, it should consider both the severe limitation arbitration clauses can place on victim rights as well as the potential hazards of federal preemption.

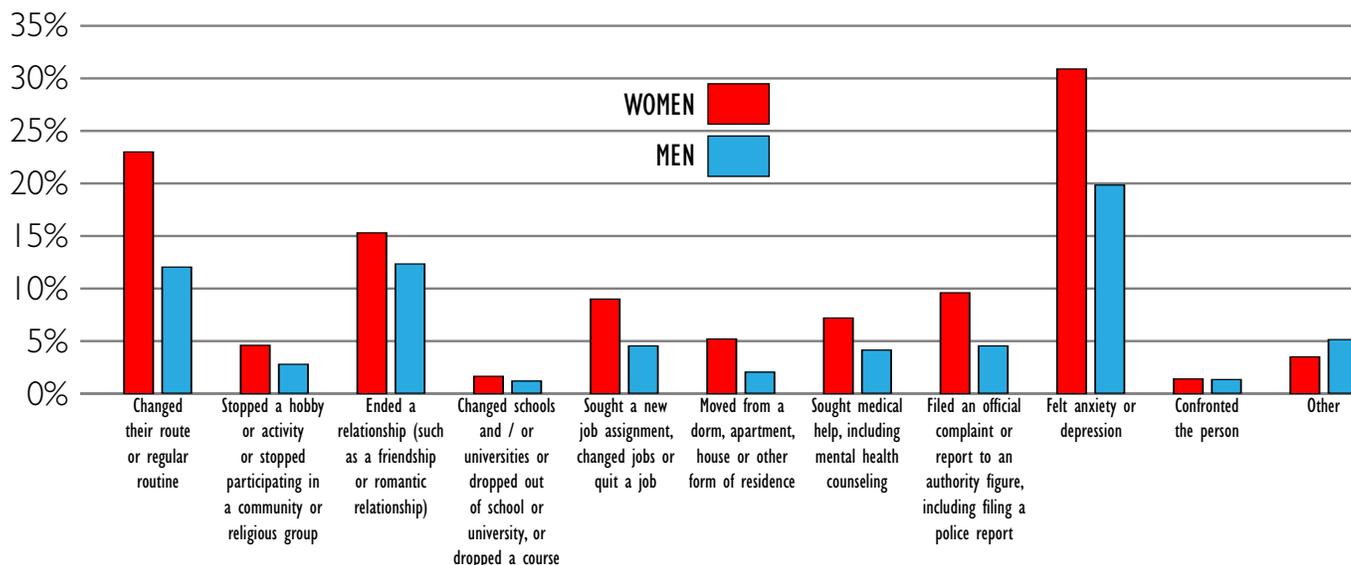
## 9. OTHER REMEDIES

### VICTIMS' ECONOMIC SECURITY AND SAFETY ACT

The Victims' Economic Security and Safety Act ("VESSA") was enacted in 2003 after a 1998 report from the U.S. General Accounting Office revealed between one-fourth and one-half of domestic violence victims lost a job due, at least in part, to domestic violence. VESSA addresses the pervasive problem of adverse workplace consequences for domestic and sexual violence victims by allowing workers to take up to 12 work weeks of unpaid leave and protecting their employment rights during that leave.<sup>142</sup> Leave may be used to seek medical attention, obtain services from a victim services organization, obtain psychological or other counseling, participate in safety planning, relocate temporarily or permanently, or seek legal assistance.<sup>143</sup> VESSA also prohibits employers from discriminating or retaliating against qualified employees who are or are perceived to be victims of domestic or sexual violence or have family or household members who are victims of domestic or sexual violence.<sup>144</sup> Employers may require the employee to certify that the employee or the employee's family or household member is a victim of domestic or sexual violence by providing a sworn statement and documentation, records, or other corroborating evidence.<sup>145</sup>

However, VESSA does not currently offer any recourse to victims of sexual harassment that has not escalated to

**Figure 4: The impact of Sexual Harassment and Assault**



Source: <https://www.vox.com/identities/2018/2/21/117036438/sexual-harassment-me-too-assault-hollywood>

violence. One proposal presented to the Task Force would therefore expand the scope of VESSA by affording victims of sexual harassment the same protections as victims of domestic and sexual violence.<sup>146</sup> Critics of this concept argue that it would extend time off and benefits to employees without any agency investigation or determination as to the merit of these allegations, which in theory could result in fabricated claims. Proponents note that employers would still have a right to request certification from the employee in order to verify the incident of sexual harassment, in the form of a sworn victim statement and a document, police record, or another piece of corroborating evidence. Moreover, a victim would only be entitled to take leave for the specific purposes already enumerated in VESSA, such as seeking medical or legal help.

Others have expressed concern that expanding the scope of VESSA to include sexual harassment victims runs afoul of the original intent of the Act. Proponents respond that sexual harassment, like domestic or sexual violence, threatens the economic security of employees, who are often fired or forced to leave their jobs.<sup>147</sup> VESSA's stated purpose is to reduce domestic violence, sexual assault, dating violence, and stalking by promoting a victim's financial independence through protection of employment rights.<sup>148</sup> Protecting the employment rights of sexual harassment victims through VESSA increases their likelihood of maintaining financial security while seeking to redress the sexual harassment. This aligns with the intent of VESSA.

Last, some opponents point out that employers are already required to make reasonable accommodations for sexual harassment victims under the Human Rights Act, which could encompass time off, and therefore a remedy under VESSA is arguably duplicative. However, VESSA creates an affirmative entitlement to time off without requiring a victim of harassment to file an administrative or civil action, or obtain an order requiring the employer to accommodate needs related to the harassment. Its procedures and remedies are therefore not the same as those available under the Human Rights Act. Moreover, victims of domestic or sexual violence, who are currently protected by VESSA, may similarly have additional civil claims that could provide overlapping though not identical relief. Courts have held that civil rights conferred under both the Human Rights Act and under other state statutes do not conflict or preempt one another, and the same logic should extend to rights afforded to harassment victims under VESSA.<sup>149</sup>

## GENDER VIOLENCE ACT

The Gender Violence Act, which is modeled after the federal Violence Against Women Act of 1994, was passed in 2003 to provide civil relief to victims of gender-related violence, in addition to existing criminal relief.<sup>150</sup> The Act defines gender-related violence as a form of sex discrimination where battery is committed at least in part on the basis of a person's sex, or in a coercive and sexual nature, or a realistic apprehension of this type of battery occurs.<sup>151</sup> An act may be considered gender-related violence regardless of whether criminal charges, prosecution, and conviction have occurred.<sup>152</sup> Under the Act, any victim of gender-related violence may bring a civil action for relief against a person who either commits the gender-related violence or encourages or assists in the act.<sup>153</sup> The court may award a victim actual damages, damages for emotional distress, punitive damages, injunctive relief, attorney's fees, costs, and other appropriate relief.<sup>154</sup> The remedies permitted under the Act are much broader than under the Human Rights Act or at common law for battery.<sup>155</sup>

However, the Act's utility has been somewhat limited due to court decisions narrowing its scope. For instance, federal courts have interpreted the Act to preclude corporate liability, because the statute allows only a cause of action against "a person or persons" perpetrating gender-related violence.<sup>156</sup> Although the fiction of corporate personhood is widespread elsewhere, federal courts have ruled in this specific context that the General Assembly's failure to broadly define the term "person" in the Act precludes an action against anyone or any entity other than an individual person. One potential way of expanding the Act would therefore be to clarify that the term "person or persons" includes corporate and governmental bodies. For example, this would permit a party to recover from an employer who refused to honor a victim's reasonable requests to be separated from a sexually aggressive coworker who later sexually assaults the victim.<sup>157</sup>

Courts have also narrowly construed the Act's requirement that for liability to attach, the defendant must have either personally committed the gender-related violence or personally encouraged or assisted the gender-related violence. For example, the Illinois Appellate Court has held that a fraternity did not "personally" encourage or assist a member in raping a college freshman, even though the fraternity hosted parties and served alcohol to underage students, because the plaintiff did not allege any connection between the national fraternal organization and the member.<sup>158</sup> Similarly, an Illinois court held that a township did not "personally" encourage or assist its supervisor in sexually assaulting six constituents, even though township employees had actual knowledge of the assaults and failed to take remedial action, because the township could only act through its agents and employees, who were under the control of the township supervisor.<sup>159</sup> Under current law, it is unclear whether any employer could be liable under the Act in the event that gender-related violence occurs in the workplace. The General

Assembly could, therefore, pass legislation defining the phrase “encouraging or assisting” to give victims the greatest possible redress in the event that gender-related violence complaints are ignored in the workplace. “Encouraging or assisting” could include an employer or unit of government ignoring complaints, threatening victims with retaliation, failing to take reasonable corrective measures to address ongoing harassment, protecting harassers, aiding harassers, planning harassment, affirming harassing behavior, or failing to implement organizational measures to discourage harassment. Expanding the Act’s scope could increase civil protections against gender-related violence and provide greater redress to the victims of these actions by holding corporate and governmental entities accountable.

## PANIC BUTTONS FOR HOSPITALITY AND CASINO WORKERS

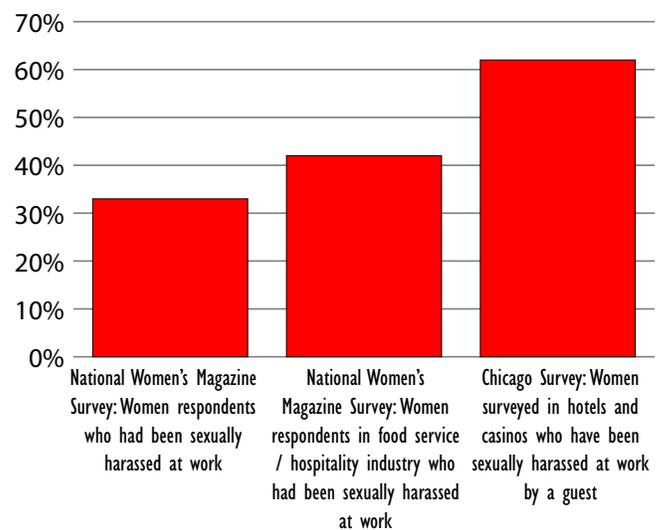
The rate of sexual harassment experienced by workers in the hospitality industry is significantly higher than that in most other industries. A 2016 report by UNITE HERE found that, in the Chicago area, 58% of hotel workers and 77% of casino workers had been sexually harassed by a guest.<sup>160</sup> Workers who clean hotel rooms or otherwise staff isolated areas are particularly vulnerable if a guest harasses or assaults them, since typically there is no one nearby to call for help. At its March 5, 2018 hearing, the Task Force heard testimony from UNITE HERE on its work to address pervasive sexual harassment and assault occurring against low-income workers in the hospitality industry. In an effort to protect workers, UNITE HERE partnered with the City of Chicago to pass an ordinance requiring all hotels in the city to provide panic buttons to staff for use in instances of attempted harassment or assault.<sup>161</sup> The City of Chicago now requires hotels to provide employees who work in isolated spaces with panic buttons, for use if they are sexually harassed or assaulted.

Similar measures have been adopted in Seattle, New York City, and Miami Beach.<sup>162</sup> In the wake of this movement, a number of prominent hotel operators have voluntarily pledged to roll out panic buttons by 2020, including Marriott, Hilton, Hyatt, Wyndham Hotels & Resorts, and InterContinental Hotels Group.<sup>163</sup> The American Hotel and Lodging Association has also organized a special task force to help hotels figure out the best technology and device to deploy.<sup>164</sup> Their focus has been on identifying technologies that could work for a broad range of hotels, from large urban high rises to sprawling resorts.

One proposal presented to the Senate Task Force would enact state-level legislation, similar to the City of Chicago ordinance, but modified to be practical at the state level. This would also encompass casinos, which have rates of sexual harassment exceeding those at hotels,<sup>165</sup> but were not included in the Chicago law for the simple reason that there are currently no casinos in the city. The proposal creates the Hotel and Casino Employee Safety Act, which would require Illinois hotels and casinos to provide their employees with panic buttons or electronic notification devices that they could use to alert security or law enforcement of a threat or ongoing crime.<sup>166</sup> It would also require hotels and casinos to establish policies against sexual harassment and for appropriate use of the panic buttons, and prohibits retaliation against an employee for reasonably using the device. The proposal would permit employees to sue the hotel or casino for damages and attorneys’ fees for a violation of the Act. Last, it would address questions of home rule and state preemption by allowing local units of government to enact similar rules, so long as the regulation is no less protective.

While the Task Force broadly agreed that the heightened risk of sexual harassment or assault for hospitality workers is unacceptable, some members voiced concerns about the burden statewide panic button legislation would place on small businesses, particularly downstate inns or bed and breakfasts with limited technological capabilities and financial means. One possible compromise might carve out small businesses or locales where hospitality workers are far less likely to work in secluded areas and are therefore less vulnerable. The Task Force additionally discussed, but did not arrive at a consensus, on drafting more open-ended language that would allow the law to accommodate changes in technology that might make panic

**Figure 5: Women in Chicago’s hospitality industry face higher levels of sexual harassment when compared nationally**



Source: Sarah Lyons, *Hands Off Pants On Sexual Harassment in Chicago’s Hospitality Industry*, Unite Here Local 1, 4 (Jul. 2016), <https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf>.

buttons obsolete in favor of more advanced solutions. As the General Assembly contemplates future legislation to address the particular risks of harassment faced by hotel and casino workers, it should keep these considerations in mind.

## PROTECTIVE ORDER FOR VICTIMS OF SEXUAL HARASSMENT

Under current Illinois law, protective orders are a valuable remedy for victims of domestic violence, stalking, or sexual assault. However, this protection does not extend to victims of persistent sexual harassment. Orders of protection are a civil remedy issued by a judge in either civil or criminal court. Although they are typically related to allegations of criminal conduct, a protective order is not equivalent to a criminal conviction for the person it is issued against, nor does it require a pending criminal charge. It does, however, create criminal consequences for someone who violates a court-issued protective order. Illinois law currently provides for a Domestic Violence Order of Protection where there is abuse by a family or household member, a Civil No Contact Order in cases of sexual assault (but not sexual harassment), and a Stalking No Contact Order where there is evidence or a conviction for stalking. To obtain an order of protection, the victim must show a specific set of facts, and cases involving sexual harassment often do not satisfy the factual prerequisites for any of the types of protective orders currently available. The Task Force heard testimony on multiple occasions from women who endured continuing sexual harassment because their employers failed to take corrective action, law enforcement declined to act, and the harassing conduct did not meet the factual requirements for obtaining a protective order under current Illinois law. This was most obviously felt by the plaintiffs in the Ford Motor Company sexual harassment litigation, who testified before the Task Force on March 5, 2018. One witness even testified that she brought law enforcement documentary evidence of persistent harassment in the form of text messages from her harasser, but was turned away because there was nothing law enforcement could do.

Other states have enacted legislation allowing harassment victims to seek protective or restraining orders. For example, in Minnesota, regardless of the relationship between the parties, someone may ask the court for a Harassment Restraining Order where there are repeated incidents of intrusive or unwanted acts, words, or gestures that have or are intended to have a significant negative effect on an individual's safety.<sup>167</sup> Similarly, California offers Civil Harassment Orders regardless of the relationship so long as there is evidence of "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner."<sup>168</sup> While neither of these laws expressly reference sexual harassment, they are designed to grant courts broader discretion to fashion a remedy in harassment cases.

The Task Force considered creating a new category of protective order for victims of sexual harassment when no other current protective order is applicable. The proposal to create a new no-contact order instead of modifying current no-contact orders was initially suggested by Task Force members and the Illinois Coalition Against Sexual Assault out of concern that modifications to the existing no-contact orders could disrupt or complicate remedies currently available to victims of sexual assault. The new proposed Sexual Harassment No Contact Order would permit someone who is being harassed to ask the court for a no-contact order upon a showing that the alleged harasser engaged in a course of conduct which included unwanted requests or advances that were sexual in nature.<sup>169</sup> The procedures and remedies are modeled on the no-contact orders currently available under Illinois law, although this type of protective order could only be issued by a criminal court when there is an associated criminal charge pending (for instance, assault, battery, or harassment through electronic communications). This is an important distinction from the other protective orders because sexual harassment on its own is not criminal. The measure would therefore permit a harassment victim to obtain a no-contact order in civil court under any circumstances, but that same victim would only be able to seek an order in criminal court if there was associated criminal conduct.

Critics of this proposal have voiced concerns that establishing a new type of no-contact order could create added burdens for employers. Since sexual harassment in Illinois is largely actionable in the employment context, the concern is that, should a victim obtain a no-contact order against her co-worker or supervisor, the employer will be placed in the precarious position of enforcing the order. However, proponents note that employers currently face precisely the same predicament when a protective order is issued in domestic or stalking cases where the parties work together. While the new order may increase the incidents of no-contact orders being issued related to misconduct between coworkers, this is not a new issue for employers to deal with. More importantly, judges have broad discretion in tailoring protective orders based on the circumstances of each individual case. If the parties work for the same employer, judges may weigh that fact, along with the facts provided and potential ramifications of issuing the order.

A second concern is how the new no-contact order would operate outside the employment context. The proposal would allow anyone experiencing persistent sexual harassment to seek an order, regardless whether it is against a coworker, neighbor, landlord, acquaintance, or even a complete stranger. Some critics fear that victims will request orders in cases of isolated or comparatively harmless conduct that should not give rise to legal action. However, judges will have broad discretion in whether to grant an order and the party seeking an order will be held to the “reasonable person” standard of proof. These should be adequate safeguards against abuse. Proponents additionally note that it is important not to confine sexual harassment no-contact orders to employment relationships because sexual harassment can occur in many different contexts. The proposed no-contact order legislation would offer broad relief for victims regardless of where they are experiencing harassment, while ensuring that judicial oversight acts as a check against misuse.

## D. BEST PRACTICES FOR HARASSMENT PREVENTION AND TRAINING

In addition to considering what legislative action the General Assembly should take, the Task Force also looked at ways employers can reduce workplace harassment and provide meaningful process to their employees who are victims of harassment. Employers’ primary goal in addressing sexual harassment should be prevention, both because it is the best outcome for workers at risk of harassment and because it is in employers’ own financial interests to deter workplace harassment. Costly and time-consuming legal representation and litigation can divert resources from a business.<sup>170</sup> Moreover, significant settlements and court awards have been secured by employees who experienced sexual harassment in the workplace.<sup>171</sup> However, there is more than just a potential monetary cost to instances of sexual harassment. A culture of harassment creates a hostile work environment which could have “detrimental organizational effects such as decreased workplace performance and productivity, increased employee turnover, and reputational harm.”<sup>172</sup>

Even before the #MeToo movement gained widespread traction, the EEOC released a report in June 2016 on the study of harassment in the workplace. The findings of this study were presented to the Task Force in August 2018, with specific recommendations for best practices in addressing this issue. The Task Force considered these recommendations, along with others provided by Seyfarth Shaw at Work, plaintiffs’ attorneys, representatives of employee and employer advocacy groups, and labor representatives. Below encompasses a list of recommendations the Task Force proposes based on the collective testimony and independent research conducted.

In reviewing these proposals, it is important to note that there is no “one size fits all” approach and that practices and policies should be tailored to the needs of each workplace. It is also critical to recognize that the importance of leadership cannot be overstated. In order to effectively eradicate a culture of harassment, a commitment must be made at the highest level of management; whether that be in the private or public sector.

### I. ESTABLISH AND REGULARLY REVIEW ANTI-HARASSMENT POLICIES

According to the EEOC, employees in workplaces devoid of an anti-harassment policy report the highest levels of harassment.<sup>173</sup> Comprehensive policies should prohibit all forms of harassment, including sexual harassment. They should provide the definition and various examples so that employees fully understand what conduct is appropriate and what is not. An important distinction to keep in

**Table 7: Employment Charges by Basis with the Illinois Department of Human Rights, FY 2017**

EMPLOYMENT CHARGES BY BASIS, FISCAL YEAR 2017	
BASIS OF DISCRIMINATION	
RETALIATION	948
RACE	768
AGE	628
PHYSICAL DISABILITY*	558
SEX	539
SEXUAL HARASSMENT	410
NATIONAL ORIGIN	382
MENTAL DISABILITY*	156
RELIGION	77
SEXUAL ORIENTATION	72
ARREST RECORD	31
COLOR	28
CITIZENSHIP	19
AIDING AND ABETTING	14
MARITAL STATUS	14
MILITARY STATUS	10
OTHER	10
GENDER IDENTITY	5
IMMIGRATION RELATED STATUS	4
ORDER OF PROTECTION	4
COERCION	1
<b>TOTAL BASES</b>	<b>4,678</b>
<b>TOTAL CHARGES FILED</b>	<b>2,748</b>

Note: Percent to Total Charges Filed is based on total number of charges filed and is greater than 100% because charges are often filed on more than one basis. \* Combined, physical and mental disability charges total 714, or 26% of total charges and 15% of total bases. \*\* Includes non-jurisdictional bases, such as personality conflict. Source: 2017 Annual Report, Ill. Dept. of Human Rights 12 (2018), [https://www2.illinois.gov/dhr/Publications/Documents/Annual\\_Report\\_FY\\_2017.pdf](https://www2.illinois.gov/dhr/Publications/Documents/Annual_Report_FY_2017.pdf).

mind when drafting workplace anti-harassment policies is the difference between sexual harassment and sex discrimination. While sexual harassment is generally sexual in nature, hostile behavior devoid of any sexual nature, but motivated by one's gender is still a form of illegal discrimination. Employers are also encouraged to set their expectations and policies in a manner more expansive than those provided by law. Whether inappropriate workplace conduct is illegal or not, it is unlikely conducive for an effective workplace. While an employer should not have to instruct their employees to refrain from engaging in criminal conduct in the workplace, some harassing conduct may rise to the level of criminal conduct. This topic is largely unaddressed in most employment policies and training. Employers are encouraged to include a section in their policies expressly prohibiting any criminal conduct and providing examples of such.

The policy should go on to provide the complaint procedure with clear reporting channels for employees. It is recommended there is more than one reporting channel, for the instances where the harasser happens to be the individual designated to receive such reports. The policy should also explain the investigation process and potential corrective action so that everyone in the workplace understands how the process may play out. Both state and federal law prohibit retaliation against an employee who reports instances of sexual harassment or other types of discrimination. Therefore, an employer's policy should also contain an anti-retaliation provision so that employees feel safe coming forward and reporting misconduct. This is particularly important, since retaliation is the most common basis for a charge with the Illinois Department of Human Rights.<sup>174</sup>

These policies should be reviewed and updated regularly. They should also be drafted in a manner that reduces complex concepts and creates a common language of respect for the workplace.<sup>175</sup> One method to gauge the effectiveness of current policies and trainings is to conduct an anonymous survey of employees to determine what issues may persist or what areas can be strengthened. These surveys can provide a sense of an organization's needs and how employees perceive the organization. The National Academies of Science, Engineering and Medicine released a report in June of this year recommending the use of such surveys to improve the culture in the fields of science, engineering, and medicine, observing that "creating a climate that prevents sexual harassment requires first having a clear understanding of the existing climate and tracking it over time."<sup>176</sup> That being said, it is important for employers to exercise reasonable care to address and correct any harassing behavior that may be discovered by such surveys, otherwise they could open themselves up to potential liability.

In an effort to improve the quality and prevalence of sexual harassment policies, the General Assembly has passed several laws that address this issue. SB 402 required all state and local governmental entities and lobbyists to adopt policies prohibiting sexual harassment.<sup>177</sup> More recently, the General Assembly passed SB 405 which will go into effect on January 1, 2019, and requires a sexual harassment policy for all companies that make a bid under the state procurement code and requires companies that claim Economic Development for a Growing Economy (EDGE) tax credits to include their sexual harassment policy in their annual report to the state. The Department of Human Rights also provides sample policies on their website for no-cost for employers to use for their organization, or at least consider in formatting their own.

As important as it is to adopt an anti-harassment policy, the policy is only effective where employees are regularly trained on its contents and it is vigorously enforced. Individuals in violation of an employer's policy must be held accountable to reinforce the effectiveness of the policy.

## **2. ESTABLISH REGULAR TRAINING**

Neither federal nor state law require all employers in the state to have an anti-harassment training. However, the 100<sup>th</sup> General Assembly was successful in enacting two important measures which the Task Force supported. SB 402 requires sexual harassment training for all state officers and employees (including members of the General Assembly and legislative staff) and HB 4953 requires professionals licensed under the Illinois Department of Financial and Professional Regulation to undergo at least one hour of sexual harassment prevention training per their continuing education requirements.

It is clear that regular training is crucial to ensure a consistently safe workplace, free from harassment. Each training should consider the target audience; whether it is aimed toward the entire staff or separate trainings for management and staff. The Task Force recommends providing training for the entire staff so that everyone is aware of the policies, procedures and expectations, but to also have a secondary training for just management, as those individuals can create a great risk of liability in cases of strict liability or mismanagement of a claim. The trainings should always be tailored to the industry and the practical realities of the employment environment. Industry-specific examples should be used to effectively get the message across. The examples should

include appropriate behavior, behaviors that may be considered harassing, and behaviors that may be considered harassing and criminal (for instance, sending obscene messages).

Organizations should also consider incorporating bystander training. This type of training would encourage bystanders to say something if they see something. An organization that promotes bystander intervention may convey a message of collective responsibility in eradicating this sort of conduct, as well as a sense of empowerment in taking corrective action against harassment.<sup>178</sup>

A study by the EEOC found that online training is not nearly as effective as in-person training.<sup>179</sup> When training is conducted effectively, immediate supervisors or members of lower-level management may be the most valuable resource in preventing and stopping harassment. It is just as important to ensure these individuals are effectively and properly handling allegations of sexual harassment brought to them, as it is to hold the actual harasser accountable. The EEOC recommends considering using a reward system to incentivize management to promptly report, investigate or address allegations of sexual harassment.<sup>180</sup>

Trainings can be designed and implemented internally, although numerous online, video-based, or live resources exist and more effective mechanisms are being developed every day. The Department of Human Rights established the Institute for Training and Development which now offers free and paid training opportunities for employers and employees. Similarly, the EEOC offers some no-cost trainings and more extensive fee-based trainings. There is also the EEOC Executive Leadership Conference available to senior leadership in the field of equal employment opportunity. Alternatively, organizations can look to third-parties, such as outside counsel, a consultant, or other state entity, to conduct the appropriate trainings.

### 3. EQUALITY AND DIVERSITY IN THE WORKPLACE

In designing anti-harassment policies and training, it is crucial that employers understand the cultural and intersectional nature of their workplace. In conjunction with the *2016 Study of Harassment in the Workplace*, the EEOC published *Promising Practices for Preventing Harassment* and a chart of risk factors which may give rise to a culture of harassment. The Task Force heard testimony from the EEOC regarding those risk factors at an August 21, 2018 Task Force hearing. The factors include a homogeneous workforce, workplaces where some employees do not conform to workplace norms, cultural and language differences in the workplace, coarsened social discourse outside the workplace, young workforces, workplaces with “high value” employees, workplaces with significant power disparities, workplaces that rely on customer service or client satisfaction, workplaces where work is monotonous or tasks are low intensity, isolated workplaces, workplaces that tolerate or encourage alcohol consumption, and decentralized workplaces. The Task Force suggests that all employers, both public and private, consider the EEOC risk factors in creating their policies and training.

## E. WHEN HARASSMENT BECOMES CRIMINAL BEHAVIOR

Sexual harassment is principally governed by civil law and does not, as a general rule, constitute a criminal act. However, in some instances, harassing conduct can cross the line into criminal behavior. In the most egregious cases, sexual harassment can be a precursor to acts of physical violence, such as sexual assault or rape. In considering how Illinois criminal law should treat these cases, the Task Force first surveyed the existing statutes and then considered whether the General Assembly should contemplate further legislation.

### I. CURRENT LAW

The Illinois Criminal Code imposes sanctions for a wide range of conduct potentially related to sexual harassment, from physical assault to stalking to harassment by telephone or social media. For instance, physical contact that is sexual in nature may constitute criminal sexual assault<sup>181</sup> or criminal sexual abuse.<sup>182</sup> Physical contact that does not rise to the level of sexual assault but is insulting or provoking may still constitute a battery.<sup>183</sup> (For example, if a harasser pushed a victim against a wall, that conduct could be charged as a battery.) Even without any physical contact, conduct which places a victim in reasonable apprehension of receiving a battery can be charged as an assault under Illinois law.<sup>184</sup> The Criminal Code also creates penalties for harassment in various forms of communication. For instance, transferring obscene messages with the intent to offend while using a telephone or computer is a criminal offense,<sup>185</sup> as are harassment through electronic communications,<sup>186</sup> so-called “revenge porn,”<sup>187</sup> and unauthorized video recording and live video transmission.<sup>188</sup> Stalking or cyberstalking are similarly criminal offenses.<sup>189</sup>

## 2. NEED FOR IMPROVED TRAINING AND AWARENESS

At a series of hearings, the Task Force heard testimony suggesting that while the existing statutory framework adequately addresses cases where sexual harassment crosses over onto criminal behavior, law enforcement officials may benefit from increased education on how to enforce these laws. In December 2017, the Cook County State's Attorney's Office offered an overview of criminal laws potentially related to harassment, many of which are relatively new and aim to target expanding use of technology in sex crimes. The Task Force also heard from victims of harassment, whose testimony vividly showed that workplace harassment can escalate into physical attacks. For instance, workers at the Ford Motor Company's Chicago plants shared stories of men forcefully grabbing and assaulting them in the workplace, including one woman whose harasser pushed her into a closet and another who was followed in the company parking lot. One witness testified that, although she reported her harasser's abusive text messages to local law enforcement, she was turned away and told the harassing communications were a civil matter, not criminal. While this specific instance may not be an accurate representation of all of law enforcement, it was an issue the Task Force sought to investigate further.

There does not appear to be a need to criminalize more conduct, or enhance the relevant penalties, but rather a need to promote awareness of the applicable laws and when law enforcement involvement in instances of sexual harassment may be necessary. In Illinois, local law enforcement is subjected to rigorous training requirements pursuant to state law, which is overseen by the Illinois Law Enforcement Training Standards Board. The Illinois State Police is equally mandated by law to ensure officers have a thorough understanding of Illinois law. Not only must officers be trained at the onset of their service, they have numerous continuing education requirements. These various training programs include instruction on the laws related to sexual harassment.

Similarly, prosecutors are all subjected to the same continuing legal education requirements as other attorneys in the state; although, these are not necessarily specific to the area of law for which they practice. However, many state's attorneys participate in the State's Attorney's Appellate Prosecutor's Office's annual summer training to stay up-to-date on changes in the law. When the Task Force reached out to State's Attorney's Appellate Prosecutor's Office about the concerns with lack of criminal enforcement in cases involving sexual harassment, the current Director committed to developing and presenting a program on sexual assault in the workplace at the 2019 Summer Training, and maintaining an ongoing focus on sexual assault, including in workplace settings, moving forward.

While training and awareness of the applicable laws may adequately exist among law enforcement and state's attorneys, a greater effort must be made for employers, employees, and the general population to have the same. For that reason, the Task Force recommends that the Illinois State Police instruct their safety educational officers to create content and/or a program on when sexual harassment in the workplace can turn criminal and offer it for both public and private employers, universities, and schools throughout the state. This may also be a valuable opportunity for education on developing criminal laws related to technology, such as cyberstalking, the transfer of obscene messages, and harassment through electronic communications.

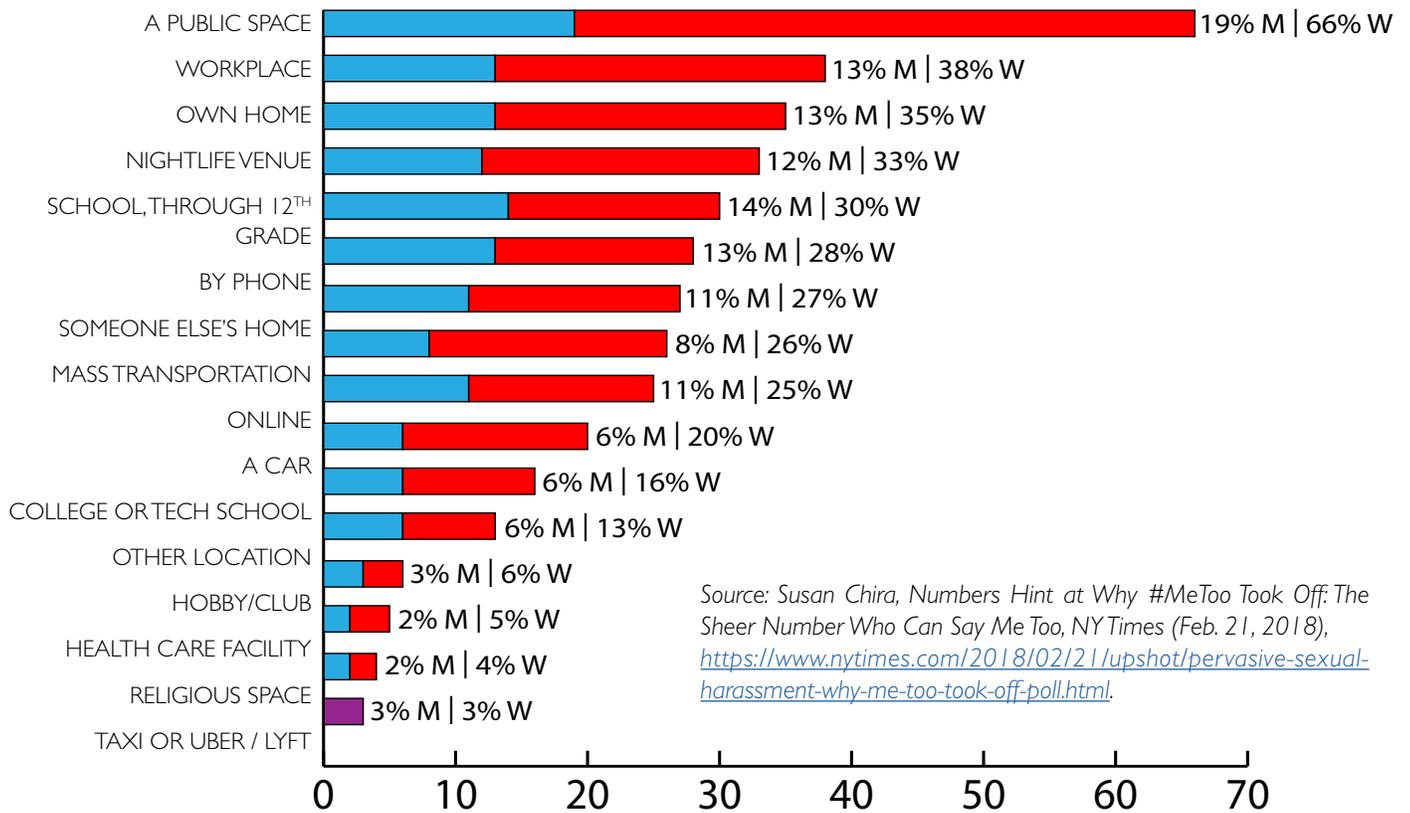
The Illinois Department of Human Rights should additionally coordinate with representatives of law enforcement and state's attorneys about this issue so that they may provide better guidance and training. Many businesses in the state, from small local businesses to large chain corporations, rely on the Department to produce model anti-discrimination and harassment policies and training programs. These policies and programs need to include sections intended to educate both employers and employees about how sexual harassment can turn criminal. The Department should also implement internal policies to ensure that if they are investigating a charge and believe criminal conduct may have occurred, they refer that matter to the proper jurisdictional authority.

## 3. STREET HARASSMENT

Although sexual harassment is generally not currently a criminal offense, some jurisdictions have considered laws that criminalize street harassment. In May of this year, Washington D.C. passed the Street Harassment Prevention Act of 2018, the first legislation of its kind in the country.<sup>190</sup> The ordinance defines street harassment as "disrespectful, offensive or threatening statements, gestures or other conduct directed at an individual in a high-risk area without the individual's consent and based on the individual's actual or perceived ... protected trait identified in the [DC] Human Rights Act of 1977."<sup>191</sup> The ordinance also establishes an advisory committee consisting of community representatives on street harassment that will propose model policies and training materials no later than September 30, 2019. Proponents of the legislation indicated the focus of the measure is "education and culture change instead of criminalization, since the latter could disproportionately penalize the

very communities most vulnerable to harassment, such as communities of color.”<sup>192</sup> In addition to the concerns of a potential disparate impact, some critics fear that limiting public speech could implicate First Amendment concerns. While the measure is intended to prohibit offensive or threatening conduct based on a protected trait, such as sex, there is a concern that this could be enforced in a manner that stifles speech on these issues, even where it is not intended to be harassing.

**Figure 6: Locations where women and men say they have experienced some form of sexual harassment**



Source: Susan Chira, *Numbers Hint at Why #MeToo Took Off: The Sheer Number Who Can Say Me Too*, NYTimes (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/upshot/pervasive-sexual-harassment-why-me-too-took-off-poll.html>.

While expressly criminalizing street harassment is a newer movement, numerous other states have laws that may already be applicable under similar circumstances. For example, New York’s disorderly conduct law bars obscene language or gestures in a public place.<sup>193</sup> Other states, such as Arkansas, Arizona, Colorado, Georgia, Kentucky, Minnesota, and Pennsylvania, have all passed laws making it illegal to follow people.<sup>194</sup> Even Illinois law prohibits a person from knowingly committing an act in such an “unreasonable manner as to alarm or disturb another and to provoke a breach of peace” under the offense of disorderly conduct.<sup>195</sup> That being said, the Task Force recognizes that there is an overall lack of data and information about this specific issue in Illinois and may be something for the legislature to consider further in the future.

## V. CONCLUSION

The Task Force was created to study the harm caused by sexual harassment and discrimination in both the public and private sectors and to make recommendations to the General Assembly on how Illinois can better respond to and prevent sexual harassment. While Illinois made significant progress in 2018, more work remains to be done. This report documents the feedback and legislative proposals the Task Force heard from stakeholders over the past year and provides a roadmap for issues the General Assembly should consider going forward.

Respectfully submitted,

**SENATE TASK FORCE ON SEXUAL DISCRIMINATION AND HARASSMENT AWARENESS AND PREVENTION**

Senator Melinda Bush, Co-Chair

Senator Jil Tracy, Co-Chair

## VI. END NOTES

- <sup>1</sup> S.R. 1076, <http://ilga.gov/legislation/billstatus.asp?DocNum=1076&GAID=14&GA=100&DocTypeID=SR&LegID=108276&SessionID=91>.
- <sup>2</sup> See #MeToo? It's Time to Demand #NoMore in Illinois (2017), <https://drive.google.com/file/d/0B2I4co-dU1JJUko3U2thcXRHNmc/view>.
- <sup>3</sup> Agendas and supporting materials for each of the Task Force hearings are available at <http://ilga.gov/senate/committees/TaskForceDocuments.asp?CommitteeID=SDHA&GA=100>.
- <sup>4</sup> Senator Althoff was replaced by Senator Sue Rezin (R-Peru) upon her resignation from the Senate.
- <sup>5</sup> Senator McConnaughay was replaced by Senator Tim Bivins (R-Dixon) upon her resignation from the Senate.
- <sup>6</sup> Virginia Sapiro, Sexual Harassment: Performances of Gender, Sexuality, and Power, 16 Pers. on Pol. 1053 (2018), <https://doi.org/10.1017/S1537592718002815>.
- <sup>7</sup> 29 C.F.R. § 1604.11(a) (2016).
- <sup>8</sup> 775 ILCS 5/et. seq.
- <sup>9</sup> 42 U.S.C. §§ 2000e – 2000e-17.
- <sup>10</sup> Sapiro, supra note 6.
- <sup>11</sup> Chai R. Feldblum & Victoria A. Lipnic, Report of the Co-Chairs of the EEOC Select Task Force on the Study of Harassment in the Workplace, EEOC 16-17 (Jun. 2016), [https://www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm).
- <sup>12</sup> 2017 Annual Report, Ill. Dept. of Human Rights 12 (2018), [https://www2.illinois.gov/dhr/Publications/Documents/Annual\\_Report\\_FY\\_2017.pdf](https://www2.illinois.gov/dhr/Publications/Documents/Annual_Report_FY_2017.pdf).
- <sup>13</sup> Id.
- <sup>14</sup> Id. at 15.
- <sup>15</sup> Id.
- <sup>16</sup> See, e.g., Jocelyn Frye, The Pervasiveness of Sexual Harassment Across Industries Affects All Workers, Ctr. For Am. Progress (Nov. 20, 2017), <https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/> (analyzing EEOC data).
- <sup>17</sup> Sarah Lyons, Hands Off Pants On Sexual Harassment in Chicago's Hospitality Industry, Unite Here Local 1 (July 2016), <https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf>.
- <sup>18</sup> The Glass Floor Sexual Harassment in the Restaurant Industry, The Restaurant Opportunities Ctrs. United Forward Together 1, 30 (Oct. 7, 2014), [http://rocunited.org/wp-content/uploads/2014/10/REPORT\\_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf](http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf).
- <sup>19</sup> Maya Raghu & Joanna Suriani, #MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability, Nat'l Women's L. Ctr. (Dec. 2017), [http://dls.maryland.gov/pubs/prod/NoPblTabMtg/WrkHarsCmsn/NWLC\\_MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf](http://dls.maryland.gov/pubs/prod/NoPblTabMtg/WrkHarsCmsn/NWLC_MeToo-Strengthening-Workplace-Sexual-Harassment-Protections.pdf).
- <sup>20</sup> Feldblum, supra note 11 at 13.
- <sup>21</sup> Id. at 14.
- <sup>22</sup> S.B. 402/Public Act 100-0554, <http://ilga.gov/legislation/BillStatus.asp?DocNum=402&GAID=14&DocTypeID=SB&LegID=100343&SessionID=91&GA=100>.
- <sup>23</sup> Kim Geiger & Monique Garcia, Lawmaker tells of being objectified by colleague as sexual harassment bills pass in Springfield, Chi. Trib. (Nov. 8, 2017), <https://www.chicagotribune.com/news/local/politics/ct-met-illinois-legislature-sexual-harassment-20171107-story.html>.
- <sup>24</sup> S.B. 402, supra note 22.
- <sup>25</sup> H.B. 138/Public Act 100-0588, <http://ilga.gov/legislation/BillStatus.asp?DocNum=138&GAID=14&DocTypeID=HB&LegID=99088&SessionID=91&GA=100>.

- <sup>26</sup> H.B. 4242/Public Act 100-1040, <http://ilga.gov/legislation/BillStatus.asp?DocNum=4242&GAID=14&DocTypeID=HB&LegId=108686&SessionID=91&GA=100>.
- <sup>27</sup> H.B. 4243/Public Act 100-0748, <http://ilga.gov/legislation/BillStatus.asp?DocNum=4243&GAID=14&DocTypeID=HB&LegId=108687&SessionID=91&GA=100>.
- <sup>28</sup> S.B. 3604/Public Act 100-0895, <http://ilga.gov/legislation/BillStatus.asp?DocNum=3604&GAID=14&DocTypeID=SB&LegId=112348&SessionID=91&GA=100>.
- <sup>29</sup> The extended time for filing was also enacted in H.B. 138 (P.A. 100-0588), *supra* note 25. Note that this provision applies to all human rights violations, not just those related to employment; it also includes violations related to financial credit, public accommodations, education, and retaliation.
- <sup>30</sup> S.B. 20/Public Act 100-1066, <http://ilga.gov/legislation/BillStatus.asp?DocNum=20&GAID=14&DocTypeID=SB&LegId=98863&SessionID=91&GA=100>.
- <sup>31</sup> S.B. 405/Public Act 100-0698, <http://ilga.gov/legislation/BillStatus.asp?DocNum=405&GAID=14&DocTypeID=SB&LegId=100346&SessionID=91&GA=100>.
- <sup>32</sup> H.B. 4953/Public Act 100-0762, <http://ilga.gov/legislation/BillStatus.asp?DocNum=4953&GAID=14&DocTypeID=HB&LegId=110373&SessionID=91&GA=100>.
- <sup>33</sup> S.R. 1561, <http://ilga.gov/legislation/BillStatus.asp?DocNum=1561&GAID=14&DocTypeID=SR&LegId=112277&SessionID=91&GA=100>; H.R. 783, <http://ilga.gov/legislation/BillStatus.asp?DocNum=783&GAID=14&DocTypeID=HR&LegId=109092&SessionID=91&GA=100>.
- <sup>34</sup> H.B. 5148/Public Act 100-0684, <http://ilga.gov/legislation/BillStatus.asp?DocNum=5148&GAID=14&DocTypeID=HB&LegId=110770&SessionID=91&GA=100>.
- <sup>35</sup> S.B. 2271/Public Act 100-1010, <http://ilga.gov/legislation/BillStatus.asp?DocNum=2271&GAID=14&DocTypeID=SB&LegId=108350&SessionID=91&GA=100>.
- <sup>36</sup> S.B. 3404/Public Act 100-1087, <http://ilga.gov/legislation/BillStatus.asp?DocNum=3404&GAID=14&DocTypeID=SB&LegId=111348&SessionID=91&GA=100>.
- <sup>37</sup> S.B. 402, *supra* note 22.
- <sup>38</sup> See Joint Task Force Hearing, House Task Force on Sexual Discrimination and Harassment & Senate Sexual Discrimination and Harassment Awareness and Prevention Task Force, <http://ilga.gov/senate/committees/100Documents/SDHA/Joint%20Task%20Force%20Hearing%20Packet%20March%202027.pdf> [hereinafter Hearing Packet].
- <sup>39</sup> 2018 Legislation on Sexual Harassment in the Legislature, Nat'l Conf. of State Legislatures (June 6, 2018), <http://www.ncsl.org/research/about-state-legislatures/2018-legislative-sexual-harassment-legislation.aspx>.
- <sup>40</sup> See Hearing Packet, *supra* note 38. <http://ilga.gov/senate/committees/100Documents/SDHA/Joint%20Task%20Force%20Hearing%20Packet%20March%202027.pdf>.
- <sup>41</sup> See S.B. 402, *supra* note 22; H.B. 138, *supra* note 25.
- <sup>42</sup> See, e.g., S.B. 2263, <http://ilga.gov/legislation/billstatus.asp?DocNum=2263&GAID=14&GA=100&DocTypeID=SB&LegID=108273&SessionID=91>; S.B. 2264, <http://ilga.gov/legislation/billstatus.asp?DocNum=2264&GAID=14&GA=100&DocTypeID=SB&LegID=108285&SessionID=91>; S.B. 2266, <http://ilga.gov/legislation/billstatus.asp?DocNum=2266&GAID=14&GA=100&DocTypeID=SB&LegID=108310&SessionID=91>; S.B. 2276, <http://ilga.gov/legislation/billstatus.asp?DocNum=2276&GAID=14&GA=100&DocTypeID=SB&LegID=108446&SessionID=91>; S.B. 2302, <http://ilga.gov/legislation/billstatus.asp?DocNum=2302&GAID=14&GA=100&DocTypeID=SB&LegID=108631&SessionID=91>; S.B. 2499, <http://ilga.gov/legislation/billstatus.asp?DocNum=2499&GAID=14&GA=100&DocTypeID=SB&LegID=109251&SessionID=91>; S.B. 3159, <http://ilga.gov/legislation/billstatus.asp?DocNum=3159&GAID=14&GA=100&DocTypeID=SB&LegID=110825&SessionID=91>; S.B. 3161, <http://ilga.gov/legislation/billstatus.asp?DocNum=3161&GAID=14&GA=100&DocTypeID=SB&LegID=110827&SessionID=91>; S.B. 3389, <http://ilga.gov/legislation/billstatus.asp?DocNum=3389&GAID=14&GA=100&DocTypeID=SB&LegID=111332&SessionID=91>; H.B. 4151, <http://ilga.gov/legislation/billstatus.asp?DocNum=4151&GAID=14&GA=100&DocTypeID=HB&LegID=108275&SessionID=91>.
- <sup>43</sup> S.B. 38, <http://ilga.gov/legislation/billstatus.asp?DocNum=38&GAID=14&GA=100&DocTypeID=SB&LegID=98881&SessionID=91>.
- <sup>44</sup> H.B. 5877, <http://ilga.gov/legislation/billstatus.asp?DocNum=5877&GAID=14&GA=100&DocTypeID=HB&LegID=112644&SessionID=91>.

<sup>45</sup> The AHEA Panel was comprised of three Democratic appointees, Comptroller Susana Mendoza, Senator Melinda Bush, and Representative Carol Ammons.

<sup>46</sup> Sen. Melinda Bush, Comptroller Susana A. Mendoza & Rep. Carol Ammons, The Illinois Anti-Harassment, Equality and Access Panel's Report on Advancing Women in Politics and Addressing Sexual Harassment in Political Campaigns, Ill. Anti-Harassment, Equality and Access Panel (2018), <https://static1.squarespace.com/static/5b1ac0062971146aa33a72d9/t/5bab43e0e2c4833a6f80dec9/1537950731631/AHEA+Panel+Report.pdf>.

<sup>47</sup> See id. at 29.

<sup>48</sup> See S.B. 3628, <http://ilga.gov/legislation/billstatus.asp?DocNum=3628&GAID=14&GA=100&DocTypeID=SB&LegID=113171&SessionID=91>. In May 2018, the Federal Election Commission ruled unanimously that, under federal campaign finance law, a Congressional candidate could use campaign funds to pay for child care expenses incurred as a direct result of the campaign so long as the expenses would not exist irrespective of the candidacy. See <https://www.fec.gov/files/legal/aos/2018-06/2018-06.pdf>. SB 3628 would create by statute a similar interpretation of state campaign finance rules. Note that while this may qualify as a non-taxable benefit under federal tax law as to employees, the General Assembly should consider SB 3628's tax impact on all types of campaign workers.

<sup>49</sup> Bush, supra note 46 at 25.

<sup>50</sup> Id. at 26.

<sup>51</sup> See 775 ILCS 5/2-101(E).

<sup>52</sup> See 775 ILCS 5/2-101(A).

<sup>53</sup> Federal law and the laws of many other states similarly do not allow independent contractors to bring claims for workplace discrimination or sexual harassment. For a survey of relevant laws, see, e.g., Raghu, supra note 19.

<sup>54</sup> For a survey of the appropriate classification of workers and why classification is important, see Sarah Leberstein & Catherine Ruckelshaus, Independent Contractor vs. Employee: Why independent contractor misclassification matters and what we can do to stop it, Nat'l Emp. L. Project (May 2016), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

<sup>55</sup> See Lawrence F. Katz & Alan B. Krueger, The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015, National Bureau of Economic Research, 7 (Sept. 2016), <http://www.nber.org/papers/w22667>.

<sup>56</sup> See, e.g., Sarah A. Donovan et al., What Does the Gig Economy Mean for Workers?, Congressional Research Service (Feb. 5, 2016), <https://fas.org/sgp/crs/misc/R44365.pdf>; Lawrence Mishel, Uber and the labor market: Uber drivers' compensation, wages, and the scale of Uber and the gig economy, Economic Policy Institute (May 15, 2018), <https://www.epi.org/files/pdf/145552.pdf>.

<sup>57</sup> See Raghu, supra note 19.

<sup>58</sup> See S.B. 577, Sen. Am. I at 56, <http://ilga.gov/legislation/fulltext.asp?DocName=10000SB0577sam001&GA=100&SessionId=91&DocTypeId=SB&LegID=100521&DocNum=577&GAID=14&Session=>

<sup>59</sup> See S. 7848A, Subsection F, 2018 Leg. Sess. (N.Y. 2018), <https://www.nysenate.gov/legislation/bills/2017/s7848>.

<sup>60</sup> See Cal. Gov. Code § 12940(j)(1), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12940.&lawCode=GOV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12940.&lawCode=GOV).

<sup>61</sup> It is worth noting, however, that these other statutes are also not consistent on the definition of an independent contractor. For instance, under the Illinois Unemployment Insurance Act, a worker is presumed to be an employee unless she can meet the requirements of the so-called "ABC test," which asks whether the worker is (a) free from the employer's control and direction, (b) engaged in an independent trade, occupation, business or profession, and (c) performs services that are outside the course of the employer's business or performed outside the place of business. 820 ILCS 405/212. Administrative regulations add an additional thirteen factors determining whether a worker is engaging "in an independently established trade, occupation, or business" and twenty-five factors determining whether a worker is subject to her employer's "direction or control." See 56 Ill. Adm. Code 2732.200. In contrast, the Workers' Compensation Commission applies a case-by-case common law test that overlaps with, but is not identical to the Unemployment Insurance Act, and the Employee Classification Act applies only to construction workers. Since courts, state agencies, and employers are already accustomed to using different definitions of "independent contractor" and "employee" in different contexts, amending the Human Rights Act may not actually wreak the kind of havoc some critics predict.

<sup>62</sup> See 775 ILCS 5/2-101(A)(2)(c). Note that this exemption pertains only to "employees" – the Act does not preclude elected public officials or their staff from being considered "employers" against whom human rights complaints, including sexual harassment, can be made.

<sup>63</sup> Office of Lake Cty. State's Attorney v. Human Rights Comm'n, 601 N.E.2d 1294, 1302 (Ill. Ct. App. 1992) (finding no legislative guidance as to the intent of the term "immediate personal staff").

<sup>64</sup> Id.

<sup>65</sup> This interpretation is bolstered somewhat by an analogous provision in federal law, which exempts all "personal staff" of elected officials from Title VII of the Civil Rights Act of 1964 and has been construed more broadly than the more restrictive Illinois "immediate personal staff" exemption. See 42 U.S.C. § 2000e(f). Federal courts apply a six-factor test to determine whether someone falls within Title VII's "personal staff" exemption: (1) whether the elected official has plenary powers of appointment and removal; (2) whether the person in the position at issue is personally accountable to only that elected official; (3) whether the person in the position at issue represents the elected official in the eyes of the public; (4) whether the elected official exercises a considerable amount of control over the position; (5) the level of the position within the organization's chain of command; and (6) the actual intimacy of the working relationship between the elected official and the person filling the position. Teneyuca v. Bexar County, 767 F.2d 148 (5th Cir. 1985); Leving v. City of Chicago, No. 87 C 1077 (N.D. Ill. 1988).

<sup>66</sup> Another alternative to removing the exemption would be to follow the model set by federal law, which similarly exempts staff of elected officials but also supplements that gap in Title VII protections by creating a separate remedy against sexual harassment under the Government Employee Rights Act of 1991, 42 U.S.C. § 2000e-16a et seq. If Illinois policymakers choose to retain the Human Rights Act's exemption, they may wish to consider fashioning a supplemental statutory process. (S.B. 402 goes some ways toward the federal model by creating consequences for harassment perpetrated by state officials and employees, but does not provide a remedy for harassment victims as GERA does.)

<sup>67</sup> See S.B. 576, Sen. Am. I, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=576&GAID=14&GA=100&DocTypeID=SB&LegID=100520&SessionID=91>. S.B. 576 passed the Senate 56-0-0 during the 2018 spring legislative session but stalled in the House.

<sup>68</sup> See H.B. 4572, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=4572&GAID=14&GA=100&DocTypeID=HB&LegID=109500&SessionID=91>.

<sup>69</sup> Other Midwestern states impose a higher threshold but still protect more workers against discrimination than Illinois, including Iowa, Kansas, and Ohio (4 or more employees); Indiana and Missouri (6); and Kentucky (8). See IA ST § 216.6; KS ST 44-1002(b); OH ST § 4112.01(A)(2); IN ST 22-9-1-3(h); MO ST 213.010(8); KY ST § 344.030(2).

<sup>70</sup> Chi., Ill., Code, Ch. 2-160-030, [http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago\\_il/title2citygovernmentandadministration/chapter2-160humanrights?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago\\_il\\$sanc=JD\\_2-160-030](http://library.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/title2citygovernmentandadministration/chapter2-160humanrights?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il$sanc=JD_2-160-030); Peoria, Ill., Code, § 6-6, [https://library.municode.com/az/peoria/codes/city\\_code?nodeId=PTIPECO\\_CH6PE\\_S6-6EMORUNLAPR](https://library.municode.com/az/peoria/codes/city_code?nodeId=PTIPECO_CH6PE_S6-6EMORUNLAPR); Springfield, Ill., Code, § 93.09, <https://www.springfield.il.us/Departments/CorporationCouncil/Documents/liqcode.pdf>; Bloomington, Ill., Code, Ch. 22.2 § 4, <http://www.cityblm.org/government/codes-ordinances/city-code>.

<sup>71</sup> Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act both apply only to private employers with at least 15 employees. 42 U.S.C. § 1981 does prohibit discrimination on the basis of race, color, and ethnicity in making and enforcing contracts, including employment contracts, for private employers and labor organizations regardless of size. However, § 1981 prohibits only intentional discrimination, and does not allow disparate impact claims as Title VII does. Section 1981 also does not protect workers against discrimination toward other protected classes, such as sex or sexual orientation, or allow employees an administrative remedy rather than filing a civil suit.

<sup>72</sup> Id.

<sup>73</sup> See 5 ILCS 430/5-65.

<sup>74</sup> S.B. 577, Sen. Am. I, supra note 58, at 59-60.

<sup>75</sup> According to the World Health Organization, "sex" means the different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, and hormones. "Gender," in contrast, refers to the socially constructed characteristics of women and men, such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. See Glossary of Terms and Tools, World Health Organization (2011), <https://www.who.int/gender-equity-rights/knowledge/glossary/en/>.

<sup>76</sup> See, e.g., Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) ("[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.") (internal citations and quotation marks omitted).

<sup>77</sup> One example presented to the Task Force was that of a construction worker who is the only woman at an otherwise all-male work site, and whose co-workers shake the scaffolding she is required to stand on to perform her job. This conduct is not sexual in nature, but it is plainly harassment intended to send the message that women are not welcome in this workplace. For more information about harassment and discrimination in the construction industry and other male-dominated workplaces, see <http://chicagowomeninrades2.org/>.

<sup>78</sup> There are some limited exceptions, such as a delay in discovering the injury or if the injured party is a minor; but as a general rule claims are time-barred if they are not filed within the requisite limitations period. 775 ILCS 5/7A-102(a).

<sup>79</sup> See 775 ILCS 5/7A-102(A) (2017), <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0492&GA=100>; compare 42 U.S.C. § 2000e, which requires complainants under federal law to file a charge with the EEOC within 300 days.

<sup>80</sup> 735 ILCS 5/13-202.

<sup>81</sup> 820 ILCS 105/12.

<sup>82</sup> 735 ILCS 5/13-205; 820 ILCS 112/30.

<sup>83</sup> 735 ILCS 5/13-206; 735 ILCS 5/13-206.

<sup>84</sup> See H.B. 138, *supra* note 25. Note that the extended filing period applies to all claims under the Illinois Human Rights Act, not just claims of sexual harassment.

<sup>85</sup> 775 ILCS 5/7A-102(B).

<sup>86</sup> See, e.g., 42 U.S.C. § 2000e.

<sup>87</sup> 775 ILCS 5/.

<sup>88</sup> S.B. 20, *supra* note 30.

<sup>89</sup> 42 U.S.C. § 2000e; Cal. Govt. Code § 12965; Del. Code 19 § 712; 44 Fl. Stat. § 760.11; Iowa Acts § 216.16; La. R.S. 51:2257H(1)(a), (b); Me. Rev. Stat. 5 § 4612(6); Mass. Gen. Laws ch. 93 § 102; Mo. Rev. Stat. § 213.11; Nev. Rev. Stat. § 613.420; N.H. Rev. Stat. § 354-A:21; N.M. Stat. § 28-1-10; 1956 R.I. Gen. Laws § 28-5-24.1; Tex. Labor Code § 21.252

<sup>90</sup> 775 ILCS 5/2-102(K).

<sup>91</sup> See H.B. 138, *supra* note 25, p. 66-67.

<sup>92</sup> Susan Chira & Catrin Einhorn, How Tough Is It to Change A Culture of Harassment? As Women at Ford, NYTimes (Dec. 19, 2017), <https://www.nytimes.com/interactive/2017/12/19/us/ford-chicago-sexual-harassment.html>.

<sup>93</sup> Jodi Kantor & Megan Twohey, Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades, NYTimes (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

<sup>94</sup> Feldblum, *supra* note 11 at v.

<sup>95</sup> S. 2454, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/2454/all-actions?overview=closed#tabs>.

<sup>96</sup> S.B. 577, Sen. Am. I, *supra* note 58, at 71-77. Because there is no state analogue to the federal Securities Exchange Commission, the state version of the legislation applies to businesses that enter into contracts with the state under the Procurement Code, as well as units of government and large private employers.

<sup>97</sup> *Id.* The disclosures would not reveal the names of victims.

<sup>98</sup> Small Business Profile Illinois, U.S. Small Bus. Admin. (2017), [https://www.sba.gov/sites/default/files/advocacy/illinois\\_1.pdf](https://www.sba.gov/sites/default/files/advocacy/illinois_1.pdf).

<sup>99</sup> *Id.*

<sup>100</sup> While some critics have argued that 10 incidents is too low a threshold, given the fact that sexual harassment is severely underreported, as many as 10 incidents over the course of a year might well signal a much greater problem even for a very large employer.

<sup>101</sup> Caitlin Gibson, How NDAs Kept the Lid on Harassment Scandals – and Why That Might Be Changing, Washington Post (Oct. 25, 2017), [https://www.washingtonpost.com/lifestyle/style/how-ndas-kept-the-lid-on-harassment-scandals--and-why-that-might-be-changing/2017/10/25/62af1e30-b99d-11e7-a908-a3470754bbb9\\_story.html?noredirect=on&utm\\_term=.8d11f602ab94](https://www.washingtonpost.com/lifestyle/style/how-ndas-kept-the-lid-on-harassment-scandals--and-why-that-might-be-changing/2017/10/25/62af1e30-b99d-11e7-a908-a3470754bbb9_story.html?noredirect=on&utm_term=.8d11f602ab94).

- <sup>102</sup> Jessica Sidman, Lawyers Say Mike Isabella's Nondisclosure Agreements Are Unusual, *Washingtonian* (Apr. 4, 2018), <https://www.washingtonian.com/2018/04/04/lawyers-say-mike-isabellas-nondisclosure-agreements-are-unusual/>; Maura Judkis and Tim Carman, Mike Isabella's restaurants used nondisclosure agreements to silence sexual harassment accounts, lawsuit alleges, *Washington Post* (Apr. 3, 2018), [https://www.washingtonpost.com/lifestyle/food/mike-isabellas-restaurants-used-nondisclosure-agreements-to-silence-sexual-harassment-accounts-new-lawsuit-alleges/2018/04/03/aaf6f766-373e-11e8-9c0a-85d477d9a226\\_story.html?utm\\_term=.82b5194179c9](https://www.washingtonpost.com/lifestyle/food/mike-isabellas-restaurants-used-nondisclosure-agreements-to-silence-sexual-harassment-accounts-new-lawsuit-alleges/2018/04/03/aaf6f766-373e-11e8-9c0a-85d477d9a226_story.html?utm_term=.82b5194179c9).
- <sup>103</sup> Orly Lobel, NDAs Are Out of Control. Here's What Needs to Change, *Harvard Business Review* (Jan. 30, 2018), <https://hbr.org/2018/01/ndas-are-out-of-control-heres-what-needs-to-change>.
- <sup>104</sup> Michelle Kaminsky, The Harvey Weinstein Effect: The End of Nondisclosure Agreements In Sexual Assault Cases?, *Forbes* (Oct. 26, 2017), <https://www.forbes.com/sites/michellefabio/2017/10/26/the-harvey-weinstein-effect-the-end-of-nondisclosure-agreements-in-sexual-assault-cases/#28ed530f2c11>.
- <sup>105</sup> P.A. 138, 2017-2018 Sess., (Vt. 2018), <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT183/ACT183%20As%20Enacted.pdf>.
- <sup>106</sup> H.B. 2020, 52rd Leg., 2nd Reg. Sess. (Az. 2018), <https://www.azleg.gov/legtext/53leg/2R/bills/hb2020s.pdf>; S. 7505-C (NY 2018), <https://legislation.nysenate.gov/pdf/bills/2017/s7507c>; S.B. 820, 2017-2018 Sess. (Ca. 2018), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB820](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB820).
- <sup>107</sup> See Section 13307 of the Tax Cuts and Job Act, H.R. 1, 115th Cong. (2017-2018), <https://www.congress.gov/bill/115th-congress/house-bill/1/text>.
- <sup>108</sup> See, e.g., S.B. 577, Sen. Am. 1, supra note 58, at 55.
- <sup>109</sup> See id. at 124 (amending the Illinois Freedom to Work Act to prohibit NDAs in employment contracts for workers who make less than \$13.00 per hour). This proposal has been criticized by stakeholders on several grounds: first, that it may have the effect of inadvertently depriving low-wage workers of the right to settle sexual harassment claims even if that is the worker's choice, and second, that it could impact legitimate trade secrets concerns in, for instance, fast food restaurants.
- <sup>110</sup> See S. 2994, 115th Cong. (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/2994>.
- <sup>111</sup> See, e.g., 33 A.L.R.7th Art. 7 (2017); see also *Right Field Rooftops, LLC v. Chicago Cubs Baseball Club, LLC*, 870 F.3d 682, 692 (7th Cir. 2017), cert. denied, 138 S. Ct. 2621 (2018) (citing *Lexmark Int'l, Inc. v. Transp. Ins. Co.*, 761 N.E.2d 1214, 1225 (2001)) (disparagement in a commercial case is defined as "statements about a competitor's goods which are untrue or misleading and are made to influence or tend to influence the public not to buy.")
- <sup>112</sup> See Katie Benner, Abuses Hide in the Silence of Nondisparagement Agreements, *NY Times* (Jul. 21, 2017), <https://www.nytimes.com/2017/07/21/technology/silicon-valley-sexual-harassment-non-disparagement-agreements.html>.
- <sup>113</sup> For example, many tech start-ups require new employees to agree to nondisparagement clauses when starting their employment. See, e.g., Katie Benner, Women in Tech Speak Frankly on Culture of Harassment, *NY Times* (June 30, 2017), <https://www.nytimes.com/2017/06/30/technology/women-entrepreneurs-speak-out-sexual-harassment.html?module=inline>; The New York Times has reported on a lawsuit against Binary Capital, a venture capital firm in San Francisco, where a former employee reported sexism, discrimination, and inappropriate behavior in the workplace, but the company responded by using the nondisparagement provision in her employment contract to attempt to prevent her from talking about the culture at her previous job. See Katie Benner, Abuses Hide in the Silence of Nondisparagement Agreements, *NY Times* (July 21, 2017) available at <https://www.nytimes.com/2017/07/21/technology/silicon-valley-sexual-harassment-non-disparagement-agreements.html>.
- <sup>114</sup> See, e.g., *Equal Employment Opportunity Comm'n v. CollegeAmerica Denver, Inc.*, 869 F.3d 1171 (10th Cir. 2017).
- <sup>115</sup> EMPOWER Act of 2018, S. 2994, 115th Cong. (2nd Sess. 2018).
- <sup>116</sup> S.B. 1300, 2017-2018 Sess. (CA. 2018), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1300](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1300).
- <sup>117</sup> H.B. 8278, 2018 Sess. (RI. 2018), <http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H8278.pdf>; S.B. 508, 2018 Sess. (CT. 2018), [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=SB-0508](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB-0508).
- <sup>118</sup> See, e.g., Bruce Johnson & Davis Wright Tremaine, Worried About Getting Sued for Reporting Sexual Abuse? Here Are Some Tips. *ACLU* (Jan. 22, 2018), <https://www.aclu.org/blog/womens-rights/worried-about-getting-sued-reporting-sexual-abuse-here-are-some-tips>. While the truth is an absolute defense to a defamation case, merely the threat of defamation litigation can pose a daunting obstacle to victims of harassment or assault in sharing their stories.
- <sup>119</sup> Amy Kaufman, She Accused Director Brett Ratner of Rape in a Facebook Post. Then he Sued Her for Defamation, *LA Times* (Nov. 2,

2017), <https://www.latimes.com/business/hollywood/la-fi-ct-brett-ratner-melanie-kohler-lawsuit-20171102-story.html>.

<sup>120</sup> Id.

<sup>121</sup> Sharyn Tejani, The TIME'S UP Legal Defense Fund Is Here to Help, Nat'l Women's L' Ctr. (May 30, 2018), <https://nwlc.org/blog/the-times-up-legal-defense-fund-is-here-to-help/>.

<sup>122</sup> Jonah Engel Bromwich & Jaclyn Peiser, Time's Up Co-Founder to Represent 'Media Men' List Creator, NY Times (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/style/media-men-list-lawsuit.html>.

<sup>123</sup> See Anthony J. Oncidi, Elaine H. Lee, New California Statute Shields Victims/Employers from Defamation Claims, The National Law Review (July 12, 2018), <https://www.natlawreview.com/article/new-california-statute-shields-victimsemployers-defamation-claims>; See also Paul M. Hutson, New California Law Extends Defamation Privilege to Communications Related to Sexual Harassment Claims and Investigations, The Nat'l L. Rev. (July 27, 2018), <https://www.natlawreview.com/article/new-california-law-extends-defamation-privilege-to-communications-related-to-sexual>.

<sup>124</sup> A.B. 2770, 2017-2018 Sess. (CA. 2018), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2770](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2770).

<sup>125</sup> Id.

<sup>126</sup> Id.

<sup>127</sup> See supra note 123.

<sup>128</sup> See 735 ILCS 110/et seq.

<sup>129</sup> For examples of protected speech, see Wright Development Group, LLC v. Walsh, 2010, 345 Ill.Dec. 546, 238 Ill.2d 620, 939 N.E.2d 389. (Statements made by condominium association president to reporter during public forum inside alderman's office, based on statements that limited liability company (LLC) was being sued for fraud for its conversion of building into condominiums, were immune from LLC's defamation suit under Anti-SLAPP (strategic lawsuit against public participation) provisions of Citizen Participation Act; statements were in furtherance of president's right to speech, association, petition or otherwise participate in government, because Act expressly encompassed exercise of political expression directed at electorate as well as government officials) in contrast with Ditto Holdings, Inc. v. Simons, App. 1 Dist.2015, 2015 WL 8527825, Unreported (E-mail sent to corporate shareholders by chief executive officer (CEO) of shareholder-owned corporation's sole subsidiary, which was a registered dealer operating as an online retail stock trading company, was not an act in furtherance of CEO's First Amendment rights of petition, speech, association, or to otherwise participate in government, and thus e-mail was not a protected act under Citizen Participation Act, precluding dismissal of corporation's subsequent claims based on e-mail for breach of fiduciary duty and breach of contract as a Strategic Lawsuit Against Public Participation (SLAPP); e-mail related solely to CEO's own private concern.).

<sup>130</sup> Helping Others Maintain Environmental Standards v. Bos, App. 2 Dist.2010, 346 Ill.Dec. 789, 406 Ill.App.3d 669, 941 N.E.2d 347, appeal denied 350 Ill.Dec. 866, 949 N.E.2d 658.

<sup>131</sup> Alexander Colvin, An empirical study of employment arbitration: Case outcomes and processes, Cornell University ILR School, (2011), <http://digitalcommons.ilr.cornell.edu/articles/577>.

<sup>132</sup> See Alexander Colvin, The Growing Use of Mandatory Arbitration, The Econ. Pol'y Inst., (2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.

<sup>133</sup> Drew Harwell, Hundreds allege sex harassment discrimination at Kay and Jared jewelry company, Wash. Post (Feb. 27, 2017), [https://www.washingtonpost.com/business/economy/hundreds-allege-sex-harassment-discrimination-at-kay-and-jared-jewelry-company/2017/02/27/8dcc9574-f6b7-11e6-bf01-d47f8cf9b643\\_story.html?noredirect=on&utm\\_term=.0e0a916321d9](https://www.washingtonpost.com/business/economy/hundreds-allege-sex-harassment-discrimination-at-kay-and-jared-jewelry-company/2017/02/27/8dcc9574-f6b7-11e6-bf01-d47f8cf9b643_story.html?noredirect=on&utm_term=.0e0a916321d9).

<sup>134</sup> See, e.g., Jena McGregor, Google and Facebook ended forced arbitration for sexual harassment claims. Why more companies could follow, Wash. Post (Nov. 12, 2018), [https://www.washingtonpost.com/business/2018/11/12/google-facebook-ended-forced-arbitration-sex-harassment-claims-why-more-companies-could-follow/?utm\\_term=.5b32b4625a8e](https://www.washingtonpost.com/business/2018/11/12/google-facebook-ended-forced-arbitration-sex-harassment-claims-why-more-companies-could-follow/?utm_term=.5b32b4625a8e); see also Joint Statement from Law Women's Associations Regarding Mandatory Arbitration Agreements, (Dec. 3, 2018), [https://docs.google.com/document/d/1nSU-Llf9AxXoKYlp8DSD\\_g7sn0TMXQFsvHv7uL2NIBs/edit#](https://docs.google.com/document/d/1nSU-Llf9AxXoKYlp8DSD_g7sn0TMXQFsvHv7uL2NIBs/edit#) (statement from women's law student associations at Yale, Stanford, the University of Chicago, and other law schools announcing that they will no longer accept funding from or promote as future employers any law firms that force employees to sign away their right to sue over sexual harassment and other forms of discrimination).

<sup>135</sup> Federal Arbitration Act, 9 U.S.C. § 1 et seq.

<sup>136</sup> Epic Systems Corp. v. Lewis, 138 S. Ct. 1612 (2018); 9 U.S.C. § 2 (the savings clause allows challenges to arbitration agreements based on state-law contract defenses like unconscionability, duress, or fraud, so long as those state-law defenses apply to contracts generally and

do not single out arbitration agreements).

<sup>137</sup> 9 U.S.C. § 1.

<sup>138</sup> See, e.g., S.B. 983, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=983&GAID=14&GA=100&DocTypeID=SB&LegID=103184&SessionID=91> (creating limitations for state contractors and evidentiary presumptions for arbitration clauses in recognition of the potential federal preemption issues).

<sup>139</sup> H. 707 (Vt. 2018), <https://legislature.vermont.gov/assets/Documents/2018/Docs/BILLS/H-0707/H0707%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf>; S.B. 5996, 65th Leg. (Wa. 2018), <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Passed%20Legislature/5996S.PL.pdf>.

<sup>140</sup> A.B. 3080, 2017-2018 Sess. (Ca. 2018), [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB3080](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3080).

<sup>141</sup> See Ending Forced Arbitration of Sexual Harassment Act, H.R. 4734, 115th Cong. (2017), [https://bustos.house.gov/wp-content/uploads/2017/12/BUSTOS\\_016\\_xml\\_Ending-Forced-Arbitration-of-Sexual-Harrassment-Act.pdf](https://bustos.house.gov/wp-content/uploads/2017/12/BUSTOS_016_xml_Ending-Forced-Arbitration-of-Sexual-Harrassment-Act.pdf).

<sup>142</sup> 820 ILCS 180/15.

<sup>143</sup> *Id.*

<sup>144</sup> 820 ILCS 180/30.

<sup>145</sup> *Id.*

<sup>146</sup> See S.B. 577, Sen. Am. I, *supra* note 58, at 124-151. This report discusses only those of S.B. 577's proposed changes to VESSA that are relevant to sexual harassment; however, it should be noted that S.B. 577 makes additional revisions to the Act including creating a civil right of action and prohibiting an employer from requiring an employee to submit more than one document certifying the reason for leave if multiple uses of leave are related to the same incident or perpetrator of violence or harassment.

<sup>147</sup> The economic impact of experiencing or reporting harassment can be devastating. As the Task Force memorably heard at a March 2018 hearing, one victim of the pervasive sexual harassment at the Ford Motors plants in Chicago was forced to live in her car after she was fired in retaliation for reporting the harassment. Another victim whose pay was reduced had to give up primary custody of her child because of her financial circumstances. See also Noreen Farrell, *Moving Women Forward on the 50th Anniversary of Title VII of the Civil Rights Act*, Equal Rights Advocates (2014), <https://www.equalrights.org/wp-content/uploads/2014/11/ERA-Moving-Women-Forward-Report-Part-One-Sexual-Harassment-Oct-2014.pdf> (nearly 50% of callers who reported sexual harassment to the Equal Rights Advocates hotline reported some form of retaliation).

<sup>148</sup> 820 ILCS 180/15.

<sup>149</sup> See, e.g., *Maksimovic v. Tsogalis*, 687 N.E.2d 21, 23-24 (Ill. 1997) (where a claim exists independent of any legal duty of the Illinois Human Rights Act, that claim is not preempted); *McCaleb v. Pizza Hut of America, Inc.*, 28 F. Supp. 2d 1043, 1049-50 (N.D. Ill. 1998) (claims brought under the Illinois Hate Crimes Act were not preempted by the Illinois Human Rights Act because they arose from different statutory entitlements).

<sup>150</sup> Catherine D. Battista & Priti Nemani, *Defining personhood under the Illinois Gender Violence Act: A summary of the Illinois Gender Violence Act and whether its applicability extends to entities, corporations and municipalities*, 8 ISBA Diversity Matters 1 (2015) <https://www.isba.org/committees/diversityleadershipcouncil/newsletter/2015/06/definingpersonhoodunderillinoisge> (citing State of Illinois 93rd General Assembly House of Representatives Transcription Debate, 26th Legislative Day, Mar. 6, 2003).

<sup>151</sup> 740 ILCS 82/5.

<sup>152</sup> *Id.*

<sup>153</sup> 740 ILCS 82/10.

<sup>154</sup> 740 ILCS 82/15.

<sup>155</sup> See 775 ILCS 5/8A-104 (permits a claimant to recover specific types of injunctive relief, actual damages, and attorney's fees and costs); *Scott v. Hamilton*, 71 Ill. 85 (Ill. 1873) (held that punitive and compensatory damages were appropriate relief for battery); see also *Hough v. Mooningham*, 487 N.E.2d 1281 (Ill. App. Ct. 1986) (same); *Walker v. Dominick's Finer Foods, Inc.*, 415 N.E.2d 1213 (Ill. App. Ct. 1980) (same). Because the Act's remedies are more expansive than other relief available to victims of gender-related violence, addressing some of the legislative deficiencies courts have identified would have the effect of strengthening victims' rights under Illinois law.

<sup>156</sup> 740 ILCS 82/10; see also *Doe ex rel. Smith v. Sobeck*, 941 F.Supp.2d 1018 (S.D. Ill. 2013) (interpreting Illinois Gender Violence Act).

Note, however, that these rulings turn on federal court predictions of how Illinois courts would rule; because the Illinois Supreme Court has not yet weighed in on this question, it remains possible that state courts would give the Act more latitude.

<sup>157</sup> See, e.g., *Sobeck*, 941 F.Supp.2d 1018.

<sup>158</sup> See *Doe v. PSI Upsilon Intern.*, 963 N.E.2d 327 (Ill. App. Ct. 2011).

<sup>159</sup> See *Watkins v. Steiner*, 2013 IL App. (5th) 110421-U (unpublished order under Supreme Court Rule 23).

<sup>160</sup> Lyons, *supra* note 17 at 4.

<sup>161</sup> See Chi., Ill., Code §§ 4-6-180, 2-160-090 (2018), <https://www.laborandemploymentlawcounsel.com/wp-content/uploads/sites/224/2017/10/SO2017-3260.pdf>; Mayor's Press Office, Chicago Hotels Required to Provide Panic Buttons to Protect Workers from Sexual Harassment or Assault, City of Chi. (July 1, 2018), [https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2018/July/070118\\_HotelPanicButtons.pdf](https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2018/July/070118_HotelPanicButtons.pdf).

<sup>162</sup> Miami Beach: Hotels to give housekeepers panic buttons, *The Seattle Times* (July 26, 2018), <https://www.seattletimes.com/business/miami-beach-hotels-to-give-housekeepers-panic-buttons/>.

<sup>163</sup> Seema Moody, Hotels are arming workers with panic buttons to combat harassment, *CNBC* (Sept. 6, 2018 9:49 AM), <https://www.cnb.com/2018/09/06/major-hotels-arm-workers-with-panic-buttons-to-fight-harassment.html>.

<sup>164</sup> Hotel Industry Announces Added Safety Measures for Employees; Builds on Layers of Security Procedures, *American Hotel and Lodging Association* (Sept. 6, 2018), <https://www.ahla.com/press-release/hotel-industry-announces-added-safety-measures-employees-builds-layers-security>.

<sup>165</sup> Lyons, *supra* note 17.

<sup>166</sup> S.B. 577, Sen. Am. I, *supra* note 58, at 117-123.

<sup>167</sup> Minn. Stat. § 609.748(1)(a), <https://www.revisor.mn.gov/statutes/cite/609.748>.

<sup>168</sup> Cal. Civ.Proc. Code § 527.6(b), [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=527.6.&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=527.6.&lawCode=CCP).

<sup>169</sup> See S.B. 577, Sen. Am. I, *supra* note 58, at 1-54.

<sup>170</sup> Feldblum *supra* note 11, at 17-18.

<sup>171</sup> *Id.* at 19.

<sup>172</sup> *Id.* at 18.

<sup>173</sup> *Id.* at 38.

<sup>174</sup> Ill. Dept. of Human Rights, *supra* note 12, at 5.

<sup>175</sup> Phillippe R. Weiss, *Seyfarth Shaw at Work*, *Seyfarth Shaw* 124 (2018), <http://ilga.gov/senate/committees/100Documents/SDHA/Full%20Packet%208.21.18%20hearing.pdf>.

<sup>176</sup> Nat'l Acads. of Scis. *Engineering Medicine, Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine* (Paula A. Johnson et al. eds. 2018), <https://www.nap.edu/read/24994/>.

<sup>177</sup> S.B. 402, *supra* note 22.

<sup>178</sup> See generally Feldblum *supra* note 11, at 57.

<sup>179</sup> *Id.* at 52.

<sup>180</sup> *Id.* at 35.

<sup>181</sup> 720 ILCS 5/11-1.20 (defining criminal sexual assault as an act of sexual penetration involving use of force or the threat of force, where the victim is unable to give knowing consent, or where the perpetrator is a family member of a victim under age 18 or is 17 or older and holds a position of trust, authority, or supervision over a victim aged 13-17. "Sexual penetration" includes any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, anus of another person, or any intrusion, however slight, of any part of the body of one person, animal, or object into the sex organ or anus of another person. Evidence of emission of semen is not required to prove sexual penetration.)

<sup>182</sup> 720 ILCS 5/11-1.50 (defining “criminal sexual abuse” as an act of sexual conduct by the use of force or threat of force, an act of sexual conduct where the victim is unable to give knowing consent, or an act of sexual penetration or sexual conduct with a victim between the ages of 13 and 16 where the defendant is less than 5 years older than the victim. “Sexual conduct” includes any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim for the purpose of sexual gratification or arousal of the victim or the accused.)

<sup>183</sup> 720 ILCS 5/12-3.05. Additional factors may enhance the charge to an aggravated battery if the contact occurred on or about a public way or public property, if the victim was 60 or older, pregnant or an employee of the state. See 720 ILCS 5/12.

<sup>184</sup> 720 ILCS 5/12-1.

<sup>185</sup> 720 ILCS 5/26.5-1 (applies to sending messages or using language or terms which are obscene, lewd, or immoral with the intent to offend).

<sup>186</sup> 720 ILCS 5/26.5-3 (applies to any comment, request, suggestion, or proposal which is obscene with an intent to offend).

<sup>187</sup> 720 ILCS 5/11-23.5 (non-consensual dissemination of private sexual images).

<sup>188</sup> 720 ILCS 5/26-4 (making it unlawful to knowingly make a video record or transmit live video of a person without his or her consent in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom; in the person’s residence either with or without remote transmission; or under or through the person’s clothing for the purpose of viewing the person’s body or undergarments).

<sup>189</sup> 720 ILCS 5/12-7.3; 720 ILCS 5/12-7.5.

<sup>190</sup> The ordinance was a part of the much larger Washington DC budget for FY 2019. See B. 22-753, 2018 Council of the Dist. Of Columbia (D.C. 2018), <http://lms.dccouncil.us/Download/39944/B22-0753-Amendment3.pdf>.

<sup>191</sup> Id.

<sup>192</sup> Holly Kearl, DC passes historic law to combat street harassment, Women’s Media Center (Aug. 1, 2018), <http://www.womensmediacenter.com/news-features/dc-passes-historic-law-to-combat-street-harassment>.

<sup>193</sup> N.Y. Penal Law § 240.20 (McKinney 2018).

<sup>194</sup> Emily Badger, Harassing women on the street isn’t just offensive. It’s also often illegal., Wash. Post, (Oct. 29, 2014), [https://www.washingtonpost.com/news/wonk/wp/2014/10/29/catcalling-women-on-the-street-isnt-just-offensive-its-also-often-illegal/?utm\\_term=.c9db93066196](https://www.washingtonpost.com/news/wonk/wp/2014/10/29/catcalling-women-on-the-street-isnt-just-offensive-its-also-often-illegal/?utm_term=.c9db93066196).

<sup>195</sup> 720 ILCS 5/26-1.