

REPORT ON SEXUAL HARASSMENT IN THE WORKPLACE

Senator Alessandra Biaggi

Chair of Senate Standing Committee on Ethics and Internal Governance

Senator James Skoufis

Chair of Senate Standing Committee on Investigations and Operations

Senator Julia Salazar

Chair of Senate Standing Committee on Women's Issues

DATE OF HEARING: May 24, 2019
DATE OF REPORT: December 17, 2021

Table of Contents

Introduction	2
Analysis of Testimony	4
New York State Division of Human Rights	4
New York City Commission on Human Rights	5
Governor’s Office of Employee Relations	6
Fair Food Program, Coalition of Immokalee Workers	8
Model Alliance	9
Marissa Hoechstetter - Survivor	10
National Women’s Law Center	11
National Employment Lawyers’ Association/ NY Affiliate	12
Girls for Gender Equity	13
National Domestic Workers Alliance	14
Panel of Survivors	16
City Council Member Helen Rosenthal	17
Black Women’s Blueprint	18
Dr. Red Washburn	18
New York City Anti-Violence Project	19
Restaurant Opportunity Center	20
Summary of Legislation Passed in 2019	21
Legislation Under Consideration	21
Next Steps	26

Introduction

Over the last few years, survivors of sexual harassment and assault around the country and across industries have bravely stepped into the light and decided to share their stories. What began with Tarana Burke’s organization Me Too, became a hashtag used more than 12 million times by people around the world. Survivors of sexual harassment and assault spoke out in solidarity — revealing the failures of our culture and laws to create meaningful accountability. The #MeToo Movement made clear that New York, and other states, need to treat sexual harassment and workplace discrimination with the seriousness the issues deserve and transform, from top to bottom, the systems and laws that have allowed harassers to evade responsibility for so long.

New York made modest adjustments to state law in 2018 in response to the #MeToo Movement. However, these changes fell short of what was needed and the process failed to center the voices of survivors. In 2019, the legislature began a more thorough and rigorous process, beginning with two groundbreaking joint public hearings on sexual harassment and discrimination in the workplace. Together the hearings lasted more than 24 hours, and marked the first time in 27 years New York State convened hearings on the topic. Over the course of the hearings, legislators heard from survivors, advocates, representatives of agencies, and organizations whose voices informed landmark legislation passed in June of 2019.

These historic hearings would not have been possible without the brave voices and persistence of survivors and advocates. The first hearing, which was held in Albany on February 13th, 2019, centered on New York City and State agencies tasked with implementing existing law, and former employees of the legislature who shared their experiences trying to report sexual harassment and assault. The second hearing, held on May 24, 2019 in New York City, which this report focuses on, was an opportunity to hear from a more diverse group of voices. Witnesses spoke to the experiences of models, restaurant workers, domestic workers, and sex workers. Representatives from the New York State Division of Human Rights, New York City Commission on Human Rights, and the Governor’s Office of Employee Relations shared their perspective as officials tasked with implementing the law.

Testimony from both hearings highlighted gaps in the law and opportunities to transform the way New York State addresses sexual harassment and discrimination in the workplace. Throughout the testimony, representatives of government agencies and activists pointed to the need to eliminate the unattainable “severe or pervasive” standard. The standard creates an unnecessary burden for survivors and makes it harder for people experiencing harassment on the basis of multiple protected classes to pursue their cases.

The hearing also revealed the benefits of lengthening the statute of limitations for filing a complaint with the New York State Division of Human Rights (DHR). Witnesses highlighted the time it takes for victims to process, remove themselves from the situation they are in, and decide what next steps they want to take. Extending the statute of limitations will give survivors more meaningful access to the DHR process.

Witnesses pointed to the frequency of cases involving multiple forms of harassment and the need to think intersectionally. The way workers experience harassment and discrimination in the workplace varies by their race, gender, sexual orientation, the kind of job they work in, etc. This hearing made important headway by creating space for a myriad of voices. But it also demonstrated how important it is for diverse voices to continue to be front and center in New York State's work to combat harassment.

Lastly, and perhaps most importantly, witnesses pointed to the importance of belief in the system. Victims of harassment need to trust the systems that exist and feel confident in the process. From Human Resources (HR) departments to government agencies, a pervasive sense of cynicism prevents many victims of harassment from even choosing to report. While reporting does not necessarily mean the same thing for each survivor, it is critical that New York build trust in the existing system so that survivors feel they will be treated fairly and have meaningful opportunities for justice. They need to feel empowered, not ignored by the system.

These hearings lead to an omnibus bill, sponsored by Senator Alessandra Biaggi and Assemblymember Aravella Simotas. The legislation, now law, addresses these key issues along with other points raised at both hearings, beginning to transform the way New York State addresses sexual harassment and workplace discrimination.

Analysis of Testimony

New York State Division of Human Rights

The New York State Division of Human Rights (DHR) is charged with enforcing human rights law in New York State. In that capacity, DHR investigates, and adjudicates complaints of sexual harassment and other forms of workplace discrimination.

Melissa Franco - Deputy Commissioner of Enforcement

Gina Martinez - Regional Affairs and Federal Programs

Melissa Franco (MF) and Gina Martinez (GM) detailed what they described as DHR's effective handling of complaints and outreach efforts. However, when questioned about policy matters or potential changes to the law, both MF and GM demonstrated an unwillingness to weigh in. MF argued that in order to enforce the law as it is written, as representatives of DHR, both she and GM must remain "neutral." As Sen. Lui, and numerous other members of the legislature pointed out, it is the role of agencies to provide advice and feedback to the legislature as subject matter experts in their fields. Sen. Biaggi also raised concerns about how effectively DHR is communicating internally, especially about policy proposals, and with New York City.

MF and GM were also unprepared to answer many of the legislators' questions, including about the demographic break-down of cases, how many cases are filed after the statute of limitations has expired and how many cases are filed that are otherwise outside of DHR's jurisdiction.

Several senators questioned whether DHR's one-year statute of limitations was sufficient, noting that complainants have three years to file a claim in State court, and three years to file a complaint with the New York City Commission on Human Rights, if applicable. MF and GM said that in their experience the closer someone makes a complaint to the last act of discrimination, the fresher their memory. A/M Niou contested this argument, sharing that as a survivor, she still remembers the details well, despite the passage of time. MF and GM also noted that as time goes on, it becomes harder for DHR to access documents or track down respondents or businesses. GM additionally pointed out that extending the statute of limitations would likely increase the number of complaints received, but not necessarily the rate of probable cause. However, neither MF or GM offered an opinion on changing the statute of limitations.

Members also asked about the use and frequency of non-disclosure agreements. GM noted that if there is a settlement agreement at the regional level, the State is party to the agreement and reviews all the provisions. They only allow an NDA if the complainant wants one, which GM pointed out is a new policy based on changes made to state law in 2018. However, the

complainant and respondent may also enter into a private agreement at any stage of the process or after a determination is made which the state is not party to and cannot enforce. A/M Epstein raised concerns about respondents using NDAs as leverage in settlements with complainants.

MF noted that DHR has seen a 62% increase in sexual-harassment related cases since 2016. Sen. Gounardes and other members, asked whether DHR receives sufficient funding to handle the increased volume of cases. GM could not answer whether DHR has received additional funding since 2016, but noted that DHR would like to be able to open additional regional offices and hire additional investigators for each office.

Throughout their testimony, MF and GM repeatedly pointed to DHR's 25% probable cause rate for sexual harassment, which they noted is much higher than all other cases they investigate. However, Sen. Lui expressed concern about the 75% of cases where DHR is unable to make a probable cause determination. GM noted that not all cases make it to the probable cause determination stage: the complainant and respondent might settle, the complainant might withdraw their case, or the complainant might decide to pursue an alternate avenue. Sen. Lui asked whether the "severe or pervasive" standard plays a role in the high number of cases that are not considered probable cause, noting that very few claims of sexual harassment are false. GM argued that DHR takes a "liberal" interpretation of the law, but would not comment further on why cases get dismissed.

New York City Commission on Human Rights

The New York City Commission on Human Rights (CCHR) is responsible for enforcing the Human Rights Law in the New York City Administrative Code. They have their own process for investigating and adjudicating complaints of sexual harassment and discrimination in the workplace.

Dana Sussman - Deputy Commissioner, Intergovernmental Affairs and Policy

Dana Sussman (DS), who testified previously in the February hearing, reiterated that New York City Human Rights Law could serve as a model for New York State. She identified four key areas where State law should be updated to match City law: lowering the severe or pervasive standard, rejecting the Faragher-Ellerth affirmative defense, expanding liability for sexual harassment to employers and supervisors without "ownership interest" in an employee, and establishing punitive-damage awards. In contrast to the representatives of DHR, she was open to providing her feedback on proposed changes to state law. A/M Crespo asked about the impact of NYC's lower standard for pursuing sexual harassment cases over the last ten years. DS noted that rather than being a drag on businesses, NYC's standard matches the expectations of employees

and employers for workplace conduct. Indeed, she noted that people are surprised to learn that elsewhere in the state the standard is “severe or pervasive.”

DS shared that CCHR has a gender-based harassment unit that focuses on assisting low wage workers. While the unit works on all types of sexual harassment cases, they have found that workers in private security, building management, and the hospitality industry make up a disproportionate number of cases. These workers tend to be isolated and often lack clear or central management and reporting structure. In response to Sen. Gounardes questions about trauma training, DS noted that having a designated unit for gender-based violence cases ensures that investigators gain experience being sensitive to victim’s trauma. A/M Niou asked how CCHR handles complaints where an employee is a member of multiple protected classes. DS said that CCHR aims to be as inclusive as possible in considering potential violations of the law, so it includes as many protected categories as makes sense based on the case. She noted that they see a lot cases with multiple identities at play, pointing out that women of color, young people, those who are undocumented, and LGBTQ people are often more vulnerable to workplace harassment and discrimination.

DS spoke out in support of CCHR’s extension of the statute of limitations from one year to three years. She noted that many people come to the commission between one year and three years after the last act of harassment or discrimination. It often takes time for victims to leave a situation, process, determine their options, and decide what they want to do.

A/M Walker asked DS about non-disclosure agreements. DS noted that when cases are fully resolved through the CCHR process, the final conciliation agreement never includes non-disclosure provisions because it is against public interest. However, if the parties negotiate and choose to remove the case from CCHR, they may decide to sign a non-disclosure agreement. CCHR still retains the ability to investigate the workplace in question. When questioned by A/M Epstein about whether non-disclosure agreements had “exceeded their useful life,” DS was of two minds. She noted that some people genuinely want to move on and view non-disclosure agreements as a way to quietly resolve their case. However, DS also raised concerns that NDAs have been used to systematically silence victims of harassment.

Governor’s Office of Employee Relations

The Governor’s Office of Employee Relations (GOER) is responsible for conducting investigations of all employment-related discrimination complaints in all agencies and departments over which the Executive Branch has authority.

Michael Volforte - Director, Governor's Office of Employee Relations

Director Michael Volforte (MV) made little effort to simplify and explain the convoluted processes and procedures that GOER is involved in. Per MV, GOER requires all supervisors to be mandated reporters, and provides assistance to agencies to investigate and provide technical guidance. However, it was unclear which agencies and individuals qualify for this assistance. MV did not effectively clarify when they track, oversee, or become involved in complaints. At first he stated that GOER does not handle, or track the DHR. However, Sen. Biaggi stated that she had a record of DHR complaints maintained by GOER. When asked to explain this discrepancy, MV then said GOER only maintains a record of complaints made by state employees. Sen. Biaggi and Sen. Liu urged MV to stop speaking in jargon and simply explain the duties of the office.

MV did not come prepared to provide specific statistics that fall under his purview with GOER. GOER monitors reported complaints and outcomes internally. They do not publish the information or even make it easily available to legislators because, MV said, they are not mandated to do so. He was unable to provide how many complaints GOER has received, or how many employees they have recommended for termination. GOER does not have purview over most authorities, and MV was unaware of who oversees other complaints. When an employee moves between agencies, GOER does not inform the agency and does not deem it relevant unless another complaint is filed. MV also admitted that GOER has not fully developed the procedure for complaints within the agency.

MV attempted to illustrate the accessibility of the rights and responsibilities afforded to complainants stated in the office's handbook. However, Sen. Salazar highlighted that the online form provided to complainants who wish to file a report of discrimination lacked a disclaimer of their rights and protections. The form also lacked a phone number to the office, further decreasing accessibility for victims. Furthermore, correspondence in general with complainants was limited. GOER is only mandated to communicate with complainants to acknowledge that an investigation is taking place, and once completed, to let them know if their claim was substantiated or not. When questioned by A/M Niou, MV acknowledged that complainants do not receive status updates on their case, and must instigate correspondence to the office.

Lastly, when asked by A/M Niou about Trauma Informed Investigations (TII), MV shared that there is no formal certification needed or standardization for those investigating complaints. MV stated that employees within GOER generally have experience in the field. GOER trains employees on questioning but the office does not provide TII training specifically.

Fair Food Program, Coalition of Immokalee Workers

The Fair Food Program (FFP) operates in 35 farms across 7 states, serving 35,000 workers. They work from the ground up to empower farm workers to combat sexual discrimination and violence in their workplace.

Reverend Noelle Damico - Board Member & Senior Fellow at the National Economic & Social Rights Initiative

Reverend Noelle Damico (ND) detailed the approach taken by FFP, arguing that it represents a paradigm shifting model for creating safe workplaces. FFP leverages conscientious consumers to put pressure on big corporations, like McDonalds and Walmart, to sign legally binding agreements to purchase produce only from growers that implemented a worker friendly code of conduct. This includes zero-tolerance for sexual assault and other protections for workers. FFP uses this agreement to prohibit growers who do not meet those standards from accessing a large portion of the market. As a result, they have shifted the risk of reporting harassment or violence from the workers to the employer. Growers who fail to address harassing behavior or poor work conditions are at risk of losing their business with big purchasers. Workers receive training on the program in their native language via their preferred method of communication, to ensure maximum effectiveness. Employers also receive training.

Sen. Biaggi asked ND for recommendations on how to apply the principles and success of FFP's program to state law. She suggested using a pilot program to test the approach. Although ND said she would consult her colleagues, she suggested beginning with the basic principles of the FFP model and noted that FFP began with a one year pilot program with just two growers.

Sen. Biaggi pointed to the key role of legally binding contracts in the FFP model and asked ND to think about how the state could utilize the model to improve the conduct of elected officials. ND replied that the best form of risk management is to eliminate the problem at its source. The FFP uses a worker driven social responsibility model, that has resulted in a virtual elimination of sexual violence at the farms they work with. She encouraged the legislature to think about how to incorporate that model in the government. ND also pointed to a similar program that has been used in the Vermont dairy industry by an organization called Migrant Justice. ND felt that this model can be adapted to other industries with minor adjustments.

ND credits much of the success of the program with the 24/7 hotline and the fast action taken on complaints. The hotline is staffed by people who speak several languages, helping non-English speaking workers feel comfortable with the process. ND argued that in order for a program to be accepted and utilized by the workers, they must feel that it is responsive and effective. They need

to see results. To that end ND claimed that 50% of the complaints are adjudicated within 2 weeks, 80% in 1 month. ND credited much of the success to three main areas: training, communication and monitoring, and redressing the imbalance of power. This observation is applicable to all adjudication processes for sexual harassment and workplace discrimination. If workers do not view those processes as effective, they may not utilize them.

Model Alliance

The Model Alliance works with models, and other stakeholders in the fashion industry to promote safe workplaces and fair treatment.

Sara Ziff - Founder and Executive Director

Sara Ziff (SZ) argued that New York should change its laws to give models and other employees in the fashion industry the same rights and protections afforded other workers under State sexual harassment and labor laws.

Currently models are employed through fixed term contracts with agencies who in turn contract with clients such as magazines or stores. Models then work as independent contractors for those clients. Agencies sometimes send models to work with known predators, who ask models to perform sexual favors and make other inappropriate demands. Models suffering from harassment have no place to turn: their agency blames the client and the client claims no contractual relationship with the model. Modeling agencies claim they are not regulated by New York State in the way employment agencies are.

To address these issues, SZ worked with Assemblywoman Rozic to introduce the “Models’ Harassment Protection Act” (A313) which would extend protections to models specifically. SZ argued that models need an enforceable right to work in a safe environment free of sexual harassment. A/M Crespo asked if any other states implemented anything similar and SZ pointed to California’s “Talent Protections Act.” Sen. Biaggi said that there are known abusers in every industry and with modeling it is everywhere, arguing that passing this law would be a good step and help hold abusers to account.

Sen. Biaggi asked how New York can change the broader culture and power imbalances that allow for the abuse. SZ replied that the abusers do it because they can, because they face no repercussions. She pointed to the #MeToo Movement which raised public awareness. The movement helped create publicity around the experiences and challenges faced by models.

Sen. Biaggi asked about unionization. SZ replied that models have tried but are independent contractors and under federal law cannot unionize. Sen. Biaggi then asked what distinguished models from actors in their employment status. SZ noted that legally actors are considered employees, which Sen. Biaggi found nonsensical. A/M Quart asked about the contracts, noting that he had seen contracts that were very one sided. He wanted to know what she thought could be changed to give the models more leverage and make the contracts more equitable. SZ acknowledged the problem and said they are examining it but did not have an answer at present. Sen. Biaggi wondered if possibly there is a mechanism in contract law.

SZ's testimony revealed the unique challenges faced by models due to their unclear employment status under the law and the need to change the law to create meaningful accountability.

Marissa Hoechstetter - Survivor

Marissa Hoechstetter (MH) spoke about the need for transparency in the licensed medical professional field, especially from doctors and in hospitals. She argued that patient safety should supersede profit or institution reputation.

MH was abused by a doctor who victimized 20 other patients at Columbia University and New York Presbyterian Hospital. Nurses made numerous complaints to their supervisors and several women complained to the police and the Manhattan District Attorney. Ultimately, the doctor pleaded guilty to two minor counts against one woman and surrendered his license to practice medicine in NY. His employers have not yet taken any responsibility for his actions.

As many as 96% of known abuse cases involving doctors are cases of repeat offenders. In 2014, the New York Public Interest Research Group found that over 77% of doctors sanctioned for negligence by the Office of Professional and Medical Conduct (OPMC) were allowed to keep practicing. MH said that OPMC was not involved with the doctor in her case losing his license. Because of a lack of transparency, there is no way of telling if he had prior complaints or sanctions.

Doctors in NY are licensed by the State Education Department and investigated by the OPMC; the Board of Medical Conduct adjudicates and decides punishment over those cases. NY is one of six states that does not require background checks for medical professionals. MH pointed out California was the first state to require doctors to notify their patients if they are on probation by the Medical Board of California for wrongdoing, including sexual misconduct. She argued that this system puts the responsibility to inform the public on the provider and state, not the patient. She also pointed out that OPMC's website was inadequate and did not even use the term sexual misconduct or sexual harassment.

Sen. Biaggi raised concerns about MH's experience with the Manhattan DA and asked if she could comment about the timing of the process. MH said that could be the subject of a whole hearing by itself. She said she felt like she was giving them work to do, another thing to address. She added that she did not think they cared one way or the other about the doctor but felt they were trying to protect the institution. Sen. Biaggi then asked MH's about the statute of limitations. MH said that she was informed by the DA's office that the statute of limitations had expired but she did not feel that was the case. She said it would depend upon how you classified the crime and she viewed it as first-degree rape, which has no limit. Sen. Biaggi noted that there is a larger theme of the criminal justice system not serving justice.

National Women's Law Center

The National Women's Law Center (NWLC) fights for gender justice through advocating for changes to the law. They administer the Times Up Legal Defense Fund which helps workers find lawyers and pursue cases related to sexual harassment in the workplace.

Andrea Johnson - Senior Counsel

Andrea Johnson (AJ) was very forthcoming with her recommendations which were informed by bills and proposals from around the country and NWLC's work on the Times Up Legal Defense Fund. AJ argued that policy response to the #MeToo Movement cannot be limited to sexual harassment, but must cover all forms of harassment and discrimination in the workplace. Often, workers experience overlapping forms of discrimination. The reforms New York passed in 2018 only extend to cases of sexual harassment, giving New Yorkers experiencing intersecting violations only partial protection under the law.

AJ pointed to California in particular as a model for sexual harassment legislation. She noted that they have extended the statute of limitations to three years and also passed legislation addressing their "severe or pervasive" standard. Additionally, she highlighted Vermont's legislation that required settlements to include a provision explaining that any non-disclosure agreement does not bar an employee from filing a complaint, participating in a state or federal investigation, or using collective action to address workplace violations.

Several members asked about potential pushback against some of her proposals and the impact they might have on the business community. AJ argued that creating safe workplace environments is critical to productivity and the health of employees. Unsafe environments or workplaces where employees do not feel valued lead to high turnover. The #MeToo Movement

has also changed workers expectations — having robust and worker-friendly sexual harassment policies in New York State is now important to recruiting talent.

National Employment Lawyers' Association/ NY Affiliate

The National Employment Lawyers Association (NELA) is made up of lawyers who represent employees in employment cases, including instances of discrimination and harassment. They advocate for justice and equality in the workplace.

Miriam Clark - President

Laurie Morrison - Employee Advocate & Member

Miriam Clark (MC) and Laurie Morrison (LM) shared their strong support for Sen. Biaggi and A/M Simotas's omnibus legislation, S3817 and A7083A, which NELA helped craft. MC pointed to an increasingly hostile environment for employees in the State, as New York courts have aligned themselves with federal law. The proposed legislation would address many of the current barriers survivors of harassment face, and benefit businesses in the state. MC and LM pointed to the occupational health issues harassment and discrimination cause, leading to high turnover and a loss in productivity.

Both MC and LM were highly critical of the “severe or pervasive” standard which they saw as a central barrier to survivors of harassment seeking recourse. LM argued that the standard effectively tells survivors that they need to be deemed “worthy of protection” under the law. It is also especially damaging to cases that involve intersectional harassment. The law segregates forms of discrimination by relevant protected class, so the discrimination an individual suffers on the basis of their gender, for example, is considered separately from the discrimination they suffer on the basis of their race, or any other protected class. Each case has to individually meet the bar of “severe or pervasive,” despite the fact that the individual is experiencing both forms of discrimination at once. As a result, cases of discrimination or harassment based on multiple protected class statuses tend to be the least protected under the law, causing particular harm to women of color. MC and LM shared numerous horrifying examples of discrimination that did not meet the severe or pervasive standard in New York State.

MC and LM pointed to other shortcomings in New York State law, including the insufficient accountability for workplaces. Employers can easily turn to the Faragher-Ellerth defense to avoid any liability. MC also noted that changes to the law last year to expand liability to employers for independent contractors only cover sexual harassment, failing to address the numerous cases where multiple forms of discrimination are at play. She also argued that New York should allow punitive damages. Under current law, workers can only receive damages based on their

economic loss and emotional distress. For low income workers, this results in very small awards, and disincentives the employer from taking action against an accused harasser given the minimal financial consequences.

A/M Quart asked if there were barriers to survivors bringing charges in the court system not addressed by Sen. Biaggi and A/M Simotas' legislation or other areas the legislature should consider. MC pointed to mandatory arbitration clauses as well as judges lacking sufficient knowledge of the law. LM also pointed to the lack of diversity in the judiciary.

Girls for Gender Equity

Girls for Gender Equity (GGE) seeks to advance the physical, psychological, social, and economic development of women and girls through harnessing a multi-generation coalition. GGE has a special focus on girls and women of color, working to elevate their voices and experiences.

Neillah, Rose, Zoraida, Stacey, Marie - Students and Members

The students from Girls for Gender Equality (GGE) shared their experiences of harassment in school, comparing those experiences to harassment adults face in the workplace. They identified school safety officers and administrators as a source of harassment and discomfort. Despite their responsibility for maintaining a safe school environment, the students detailed how school safety officers acted inappropriate toward them or made inappropriate comments. However, they have no official process to follow to report harassment by a school safety officer or seek recourse.

They noted that school policies to prevent sexual harassment are aimed at victims, and not at potential perpetrators. Schools police young girls with unfair standards for dress, continuing a pernicious cycle of victim blaming. The students noted how these standards were especially onerous on girls who were considered to be more curvy. Two girls may be wearing the same top, but one may be inherently judged as more sexualized about her appearance and told to change. The students informed the committee that these policies made them feel like their worth was tied to appearance, and that this directly affects their academic performance.

Ashely Sawyer - Director of Policy and Government

Ashley Sawyer (AS) discussed that young people are not afforded the same protections as adults in the workplace. In a study conducted by GGE, they found that one in three students experience sexual harassment in school. AS emphasized that the lack of correction in school develops a culture of sexual harassment that will follow these children into the working world. Preventative

measures need to be taken at the K-12 level because the culture of compliance and victim blaming is the root of sexual harassment in the work place.

Kylynn Grier - Policy Manager

Kylynn Grier (KG) addressed the impunity with which police and school safety officers engage in sexual harassment. KG made the connection between sexual harassment by police officers and Civil Rights law 50-a which makes personnel records including performance reviews that may include evidence of sexual misconduct confidential. Highlighting the easily overlooked connection between this law and sexual harassment justice shows how multifaceted and consistent this issue across various policy areas. KG argued for transparency in policing because street level discrimination and sexual harassment continues as officers face no accountability. Sexual misconduct is the second most reported police misconduct. KG makes a point of discussing that most victims of police sexual harassment are members of marginalized groups, including women, people of color, and those who are trans, gender non-conforming, gender non-binary (TGNCNB). Consequently, this injustice is historically underreported or overlooked by media and policy makers.

National Domestic Workers Alliance

The National Domestic Workers Alliance (NDWA) is a coalition of over 60 affiliate organizations and local chapters which fight for improved working conditions and benefits for domestic workers. The New York Chapter serves 3,000 people across the state.

Marissa Senteno - Enforcement Program Manager, New York Chapter

Under federal law, domestic workers are excluded from many labor protections, including anti-discrimination and harassment provisions. These exclusions translate into a feeling of disrespect, as well as wage theft and forced time away from their families. New York has taken concrete steps to expand workplace protections, leading the way as the first state to pass a Domestic Workers Bill of Rights.

Since the law passed, NDWA has begun to follow a worker-led enforcement process. They help workers develop leadership skills, so they can disseminate information about their rights and resources that exist to their peers. Domestic workers have no HR department — they often do not know what resources exist or what their rights are. NDWA also works closely with the Department of Labor (DOL), flagging wage violations, which are usually the first sign of a problem, and can reveal other issues such as harassment. NDWA helps workers file complaints with DOL and meet with investigators in the evening hours. Marissa Senteno (MS) noted that

there are many barriers in the way of workers filing complaints ranging from the lack of evening hours at government agencies to fear of retaliation and loss of residence for live-in help from their employer.

MS shared three areas of focus: outreach, education, and engagement. NDWA offers training sessions to workers to improve their knowledge of their rights and resources. These trainings are most effective when included in existing training programs. For instance, they ran a training with the Commission on Human Rights and a self-defense class that was well received and provided a connection for the workers. She also pointed out a need for a forum where the group's worker leaders could engage with other domestic workers.

Sen. Biaggi then asked if it would be helpful if New York develops flip cards with information about both employer responsibilities and domestic worker rights to share with constituents. MS supported the idea, adding that it is up to everyone, employer's workers and government, to make sure rights are enforced.

Daniella Contreras - Organizer

Daniella Contreras (DC) shared her personal experience being harassed as a domestic worker. She is a DREAMer and started working as a nanny when she was 16 while her mother worked as a live-in domestic with a different family. DC related that while she did speak English, language and status would make her and her family reluctant to go to the authorities if there was a problem. DC told the panel that while she was taking care of the family's 3-year-old child the father would come home and they would be alone. She went on to explain how he would exit the bathroom in just a towel or ask her to bring him a towel. This behavior culminated with him attacking her in front of the child she was caring for. Fortunately, she said, someone banged on a window and while he was distracted, she was able to escape. She was never contacted by the family nor was she paid for her time. DC said that between embarrassment and fear, she kept quiet for almost 20 years. DC relayed two more instances of sexual harassment that she experienced. The first was working in a restaurant where the owner would make her wear tight fitting, revealing clothing and make sexual advances towards her. When she refused his advances, he began verbally abusing her and when she complained, she was fired. DC said she filed a complaint but it was thrown out because he claimed she was pursuing him. The next incident she shared occurred working in a delicatessen. There the owner's son asked her for sex and not wanting it to escalate, she told him she was going to report him to the DOL and he stopped.

Sen. Biaggi pointed out that it is no accident that it is difficult to know where to go for help; the systems are designed to be inaccessible and make people feel like their voices are being ignored.

Sen. Biaggi asked DC how she knew where to go for help and how we can better disseminate that information to others. DC responded that she found out from a local community center that she volunteered in. She added that her organization distributes cards to workers with their phone number on it and they answer that phone at any hour of any day. She also shared that they talk to workers out in the field and give them information while attempting to collect data for reference.

Panel of Survivors

The panel consisted of three women, along with one husband, who had experienced sexual harassment and retaliation by different levels of government in NY. Cynthia T. Lowney (CL) was a lawyer from the NYS Department of Labor, Marie Guerrea Tooker (MT) was an advocate from Suffolk County, and Christine Reardon (CR) was with the MTA/LIRR. The three women related their cases of sexual harassment and the retaliation that they endured along with the ordeal each faced when reporting and trying to address the abuse with superiors.

Cynthia T. Lowney

CL shared her definition of harassment and suggested adding racial discrimination to the definition. CL related that she was one of twenty-one Administrative Law Judges (ALJ) hired in 1991 by the NYS Department of Labor. Over the course of her career, she witnessed multiple instances of inappropriate behavior. In one case, she saw several newly hired ALJs kissing supervisory judges at a party. Later pictures were posted on all of their mailboxes. She ultimately spoke to the Employee Assistance Program who in turn disclosed her confidential discussion to the Office of Equal Opportunity. Rather than resolving the problem, CL's work was scrutinized at a higher level and she was eventually terminated. She argued that there was no real mechanism to address the problem. The private attorneys she consulted wanted large retainers to represent her so she had to rely on the State Division of Human Rights who would only represent her complaint, but not her personally. It took 15 years for her case to reach a conclusion. But she felt it was not equitable and did not take into account the total financial impact the abuse and subsequent retaliation had on her. She argued that there is no incentive for public attorneys to win or work in a timely fashion because there's no consequences for losing and no financial incentive for winning.

Marie Guerrera Tooker

MT stated she was, as she put it, a victim of the "Suffolk Crime Family." MT shared that she owned a 134 acre parcel that the government was trying to take from her. She said that she wanted to use the land to help children and veterans but that she was being abused in an attempt to force her to give up her property. MT claimed that the Suffolk County Police (SCPD) physically abused her and falsely charged her with crimes. She also said that SCPD officers would force prostitutes and drug addicts to perform sex acts to avoid arrest. She shared an

instance where a Federal Judge named Grossman forced her to expose herself and made other degrading comments to her. She said she would like to see the laws changed to protect women everywhere, not just the workplace.

Cynthia Reardon and Dennis Reardon

CR shared that she started with the LIRR in 1983 and worked as a manager in benefits administration. After 27 years she used her seniority and took a position as a crew dispatcher so she could start a family. CR said her daughter was born in April of 2010 and she took maternity leave until August. Upon her return, she was assigned a male trainee who then made verbal threats against her in October of 2010. She promptly reported the incident, but her managers handled it poorly so she went over their heads. CR stated that this action resulted in retaliation in the form of harassment, bullying and the filing of false charges by her managers. When she confronted this retaliation, her managers colluded to misrepresent her performance and file unspecified charges. She said that when she attempted to investigate the new charges, she was threatened with termination and the loss of her and her husband's pension along with arrest unless she resigned immediately. So under extreme duress, she resigned her position. Several months later she was contacted by the MTA's Office of the Inspector General to be a witness in a colleague's complaint proceeding. CR reported that she felt relieved that a state agency was finally going to investigate what was going on. Instead, she felt like their investigation was an attempt to silence her. In the end she took her case to the Governor's office and is still waiting for a resolution. Her husband, DR, shared the personal toll the ordeal has had on their family and how it affected every aspect of their lives.

All the women on the panel argued that there needs to be more education on what constitutes harassment and how to report it. They also argued that the process should be transparent in that the victim should be included throughout the process and privy to all the information contained in the reports. They additionally argued that the people doing the investigation should not be connected to the ones being investigated as was the case with the MTA and the DOL.

City Council Member Helen Rosenthal - Chair of the New York City Council Committee on Women and Gender Equity

As chair of the Women and Gender Equity Committee, Council Member Helen Rosenthal (HR) provided an invaluable perspective on New York City policy and shared several future agenda items in the City Council related to sexual harassment. Per HR, the City Council has previously mandated surveys and data collection among council staffers. But she stressed the need to make these studies clear and concise, instead of using confusing jargon. HR pointed to the need for a common sense approach to sexual harassment investigations, including conducting in depth analyses, using agency specific standards, and reaching meaningful conclusions instead of simply regurgitating facts. HR also expressed her interest in requiring agencies to clearly

communicate accommodations for victims of sexual harassment. Victims need the right to be interviewed by those properly trained in trauma informed investigations, not just someone who has simply read one training manual. HR also acknowledged the City Council can still improve its operations by requiring mandatory public updates to the sexual harassment procedures.

The New York City Council laid down the groundwork for the state to follow by replacing the “severe or pervasive” standard with the “reasonable person” standard. Sen. Biaggi pointed out that the “severe or pervasive” standard is out of touch and antiquated, and argued that the state needs to follow the city’s lead in conducting common sense sexual harassment investigations.

Black Women’s Blueprint

Black Women’s Blueprint (BWB) elevates the challenges Black women and girls face within the racial-justice movement. BWB has created culturally relevant prevention resources, including bystander intervention training used at more than a hundred HBCUs.

Dr. Leeja Carter - Development and Management Manager

Dr. Leeja Carter (LC) stressed the importance of centering the most marginalized voices, including low-income people, women of color, LGBTQ people, etc., in conversations about sexual harassment and workplace discrimination.

LC pointed out that institutions often find ways to make people uncomfortable without crossing the line of harassment. She also highlighted that many employees are reluctant to bring their complaints to HR because they do not feel like HR prioritizes their interests. Instead, they see HR as primarily responsible for protecting their company or institution, not as a viable pathway for justice.

Throughout her testimony, LC pointed to accountability as a goal of BWB’s work and a critical goal in broader work to combat sexual harassment and workplace discrimination. A/M Simon asked LC what accountability meant to her. Although LC noted that that was a large and difficult question to answer, she pointed to the need to build a culture from an early age that is trauma informed, and prioritizes ethics and allyship.

Dr. Red Washburn - Director, Women’s and Gender Studies and Associate Professor of English at Kingsborough Community College

Dr. Red Washburn (RW), who is trans, non-conforming and non-binary, detailed being subject to a sustained campaign of harassment and retaliation by Kingsborough after coming out. RW

filed a complaint with the New York City Commission on Human Rights but noted the challenges of finding a lawyer at an affordable rate and the length of time it took for CCHR to process their complaint. RW supported the proposed legislation.

New York City Anti-Violence Project

The New York City Anti-Violence Project works with LGBTQ and HIV-affected communities to fight violence. They organize, educate, and work to support survivors.

Audacia Ray - Director of Community Organizing and Public Advocacy

Briana Silberberg - Community Organizer

Throughout their testimony, Audacia Ray (AR) and Briana Silberberg (BS) stressed the added challenges that LGBTQ+ people, especially trans, gender non-conforming, gender non-binary (TGNCNB) people, and sex workers face in addressing workplace discrimination and harassment. BS shared research done by the Anti-Violence Project (AVP) that found that high numbers of TGNCNB people had experienced harassment, including being outed by their co-workers. People who were not out at work cited fear of discrimination, and uncertainty about how their supervisors and coworkers would respond as barriers to coming out. Almost all respondents who had experienced discrimination did not report it to HR and of those who did, most felt that the response was inadequate.

Both AR and BS pointed to the challenges many vulnerable populations have reporting harassment. Often TGNCNB people worry that HR will be insensitive especially to their trauma and may out them. They also may worry about finding another job if they have to leave their current one, especially given the high unemployment rate TGNCNB people have in New York. For sex workers, reporting is not an option due to the criminalization of their industry. A/M Niou shared a story of a sex worker who came into her prior office with serious injuries but would not even go to the hospital for fear of being targeted by law enforcement. Many TGNCNB similarly fear going to the police to report anything. AR did note that the New York City Commission on Human Rights (CCHR) has a trans woman of color who specifically works as a liaison to the trans community. She suggested that hiring trans people within organizations like CCHR was critical to making them more accessible spaces for TGNCNB people.

AR also pointed to the need to reframe the conversation about what reporting can mean. Reporting harassment does not necessarily have to mean going to HR or turning to a government agency like CCHR. It can also mean calling a hotline like the one AVP runs. A/M Niou suggested increasing accessibility to reporting could be about creating space for someone.

Restaurant Opportunity Center

The Restaurant Opportunity Center of NY (ROC) is an advocacy group that fights for improved working standards in the restaurant industry.

Veronica Avila - Organizer

Yasmine - Member

Yasmine shared testimony from Gemma Rossi (GR) who had to leave. GR has worked in the restaurant industry for fifteen years, largely working for tips. She supports the “One Fair Wage” proposal, noting that tips relying on tips forces her to endure constant harassment. GR shared that she has experienced inappropriate touching, been pressured for dates and told to dress “sexy.” One restaurant owner told her to wear tight, revealing clothing. GR noted that working for tips forced her to tolerate inappropriate behavior not only from owners and customers but also from her coworkers because they all had the power to affect her salary.

GR said that she did not approach management with her concerns because she did not think anything would change. Management and owners are concerned with sales and believe that a sexualized environment drives sales leaving servers to deal with the consequences. When working for tips, GR explained, tolerating sexual harassment is a way of life, it is expected. GR added that if she did not have to work for tips it would free her from having to tolerate sexual harassment.

Veronica Avila (VA) noted that there are over 400,000 restaurant workers in NY and that is one of the largest private employers in the state. Most of the workers in this group derive their salary from tips. A majority of restaurant workers are people of color; 60% are women. The system of working for tips creates an imbalance of power where the workers are dependent on their guests, managers, and coworkers for the tips they need to survive. Given this, she added, it is not surprising that this industry is one of the largest sources of EEOC complaints. According to an ROC study, 80% of restaurant workers reported harassment, including 40% who reported weekly harassment. VA explained that in the seven states without subminimum wages, workers made 50% fewer sexual harassment complaints. VA urged New York to adopt the “One Fair Wage” (OFW).

A/M Crespo asked several questions about how the OFW would change the dynamics in the workplace and reporting of harassment. AV responded that the minimum wage would reduce the imbalance of power and workers would not be as fearful. She added that the states that have OFW have seen a reduction in the number of complaints. Sen. Biaggi asked if the mandated department of labor policy on sexual-harassment training changed anything about the daily

harassment that you endure. VA replied no. Sen. Biaggi commented that is what she thought the answer would be.

Summary of Legislation Passed in 2019

In 2019, Senator Alessandra Biaggi and Assemblymember Aravella Simotas passed an omnibus package (S6577/ A8421) to expand protections against sexual harassment and discrimination in the workplace, and hold New York employers, agencies, and organizations liable for all forms of workplace sexual harassment and discrimination. This legislation was informed by the voices of survivors, advocates, government officials, and other organizations who testified during the over 24 hours of sexual harassment hearings.

The legislation addresses several key issues raised in testimony during the February and May hearings, including:

- Expanding protections from discrimination and retaliatory harassment to all protected classes;
- Eliminating the onerous “severe or pervasive” standard;
- Eliminating the portion of the Faragher/Ellerth defense that allows employers to avoid liability if an employee failed to report harassment;
- Extending the statute of limitations for DHR complaints to three years;
- Barring non-disclosure agreements from prohibiting victims to disclose the underlying facts and circumstances of the claim or action unless the condition of confidentiality is in the plaintiff’s preference in all discrimination cases;
- Prohibiting mandatory arbitration clauses related to discrimination;
- Expanding protections for domestic workers;
- Requiring employers to provide information on sexual harassment prevention policies both in English and an employees primary language.

The legislation explicitly states that the statute is to be interpreted liberally, regardless of how federal civil and human rights laws are construed. S.6557 was signed into law by Governor Andrew M. Cuomo in August 2019. The law took full effect August 2020.

Legislation Under Consideration

Despite the transformative legislation passed in 2019 to expand protections for survivors of harassment and discrimination and increase accountability, there remain shortcomings in the law. Legislators in both the Assembly and Senate have introduced numerous bills that build on the legislation passed in 2019. An exhaustive list of this legislation is detailed in the February

hearing report. Below are several key pieces of legislation, as well as new legislation introduced since the last report was released.

Disclosure of Civil Settlement (S2049B Biaggi / A3643A Simotas)

S2049/ A3643A mandates the disclosure of discrimination, sexual harassment and sexual assault settlements to the Civil Rights Bureau of the Attorney General's Office.

Confidential settlements have long been a tool for protecting serial abusers and preventing public accountability. This legislation would require all civil settlements related to allegations of discrimination, harassment and sexual assault to be disclosed to the Civil Rights Bureau of the Attorney General's Office. While preserving the privacy of victims of harassment, this would help break the cycle of abuse and create accountability for perpetrators. The bill would also allow the Attorney General's office to monitor settlements to strengthen the State's ability to hold repeat offenders accountable.

Protections for Models (S4144 Savino/ A313 Rozic)

S4144 establishes unlawful discriminatory practices relating to models, requires models to be informed of what constitutes an unlawful discriminatory practice and how to file a complaint, and requires modeling entities to provide adult models with educational materials regarding nutrition and eating disorders.

As Sara Ziff shared in her testimony, modeling agencies often claim they are not employers but management companies under New York State law, denying models clear workplace protections. This bill would make clear that it is an unlawful discriminatory practice for an agency to subject a model to harassment, regardless of their employment status. This would help protect models from sexual harassment and other discrimination on the basis of protected class status.

Campaign Funds (S4311A Biaggi/ A7834A Quart)

S4311A/ A7834A prohibits the use of campaign funds to pay any settlement fees for sexual harassment civil or criminal actions.

In the first sexual harassment hearing, members of the Sexual Harassment Working Group shared their frustration with the lack of accountability in Albany for legislators and staffers who had harassed and assaulted. One small way to increase personal accountability for elected officials and candidates is to bar them from using campaign funds to pay settlement fees. Current election law prohibits people from using campaign funds to pay any fines or penalties associated

with a criminal charge or a sanction by JCOPE. This legislation would extend the same ban to individuals using campaign funds for settlement fees related to sexual harassment.

Hotline (S4313A Biaggi/ A7474A Niou)

S4313A/ A7474A establishes a pilot program to create a legal hotline for complainants of workplace sexual harassment to be administered by the attorney general.

Many victims of sexual harassment do not report their harassment because they do not know their rights or are unaware of how they can report. This bill creates a toll-free, confidential, and safe legal hotline for victims of harassment. The hotline will refer victims to volunteer attorneys who will help them get information about their legal rights and advise them on their options.

Harassment by Non-Employees (S4513 Krueger/ A7220 Cruz)

S4513/ A7220 makes it unlawful for an employer to fail to take immediate and appropriate corrective action when he or she knows of a non-employee sexually harassing certain employees.

Many workers interact with people not employed by their company throughout their day. Whether they are waiters or legislative staffers taking meetings, workers may be vulnerable to sexual harassment by people outside of their company. This bill makes clear that employers have a responsibility to protect their employees from harassment, including from non-employees.

Electronic Harassment (S4689A Biaggi/ A1348B Quart)

S4689A/ A1348B requires the municipal police training council to develop policies and procedures regarding the use of internet technology and the use of such technology to perpetuate harassment or other crimes.

Under current law, crimes like stalking, harassment and wrongful impersonation, are not illegal if committed online. Victims of these crimes often suffer from mental and emotional harm. This legislation requires the municipal police training council to develop training on internet technology and harassment, and updates the penal law to allow civil action in online harassment cases.

Settlement Agreements (S5469A Biaggi/ A849-B Simotas)

S5469/ A849B requires independent consideration for each confidentiality provision in a settlement agreement and prohibits settlement agreements in any claim involving sexual

harassment or any other form of discrimination prohibited by law from containing any condition that requires the complainant to pay the defendant liquidated damages in the event that the plaintiff violates any nondisclosure agreement included in such settlement agreement.

As was highlighted in testimony, victims of sexual harassment are often coerced into signing non-disclosure agreements, especially in order to receive any compensation for harm. This bill would require settlement agreements to separate any confidentiality provisions so that victims can consider them separately and thus have enhanced bargaining power. Additionally, the bill provides protections for people who violate non-disclosure agreements.

Education Programs (S6332 Mayer/ A 5159A Arroyo)

S6332/ A5159A establishes an educational program related to the prevention of sexual harassment in schools.

This bill would require the State Education Commissioner to develop age-appropriate model curriculum in sexual harassment. Eradicating sexual harassment will require changes from the bottom up in our workplaces and culture. By ensuring that every student in New York learns about sexual harassment, including how to prevent harassment and report it, students in New York will have the tools they need to combat harassment and learn from an early age that harassment is not acceptable.

Statute of Limitations (S6322 Gounardes/ A304 Rosenthal)

S6322/ A304 extends the statute of limitations for actions based on harassment to six years.

Throughout both hearings, survivors, advocates, and others spoke out in support of extending New York State's statute of limitations. It takes time for survivors to process their trauma, learn about their options, and decide if they want to pursue a case. In recognition of those factors, the omnibus package that passed in 2019 extended DHR's statute of limitations to three years. This bill would further extend the statute of limitations in civil cases to six years.

State & Public Employees (S6828 Gounardes/ A8847 Niou)

S6828/ A8847 includes the state and all public employers as employers subject to the provisions of the human rights law.

While New York State should be considered an employer and thus subject to the omnibus legislation passed in 2019, in several court decisions, judges have argued otherwise. In multiple

cases, judges have determined that the state is not the direct employer of staff who work for members in Senate and Assembly or for State judges, thus absolving New York State of responsibility for the harassment of its employees. This bill rectifies this issue by clarifying that the State is the direct employer of elected and appointed officials and their staff, for the purpose of the Human Rights Law.

Disclosure from Doctors (S6678 Salazar/ A7991 Simotas)

S6678/ A 7991 requires the office of professional medical conduct to post on its website information on patients' reporting rights regarding professional misconduct involving sexual harassment and assault and requires doctors' offices to post signage directing their patients to the office of professional medical conduct's website for information about their rights and how to report professional misconduct.

Marissa Hoechstetter's testimony highlighted the challenges survivors of assault and harassment by physicians have navigating the reporting system and seeing real accountability for perpetrators. This legislation would require the Office of Professional Medical Conduct and doctor's offices to post information on their websites about patients' rights and reporting options related to sexual assault and harassment.

Unsolicited images (S7076 Martinez)

S7076 establishes the crime of unsolicited disclosure of an intimate image as a class B misdemeanor; requires sexual harassment prevention training.

Airdrop and other file sharing services have led to a new phenomena called "cyber flashing" by which someone sends an unsolicited intimate image without consent. This behavior constitutes a form of harassment and can harm victims emotional and mental wellbeing. Sen. Martinez's bill creates a misdemeanor crime punishable by a fine or mandatory training for sharing an intimate image without consent.

The Sexual Harassment Working Group has also proposed the following changes. Bills have not yet been introduced to address these priorities.

- Require all settlements related to workplace harassment to be filed with the Office of Attorney General Civil Rights Division. Require filers to pay a fee to support the work of the office. Any settlement that is not reported will be unenforceable.
- Prohibit individuals with substantiated charges of sexual harassment or who have been convicted of or plead guilty to sex crimes from lobbying. (Known as the Boxley bill)

- Eliminate JCOPE and create an independent body that can appropriately address harassment and discrimination claims.
- Require government agencies to give victims basic rights in investigations, including increased transparency and ongoing communication about the status of their investigation.
- Ensure that whistleblower protections cover staff of elected officials.

Next Steps

The #MeToo Movement revealed the need for widespread legal and cultural change to the way our society addresses sexual harassment. New York has begun to make key legal changes to fundamentally shift the balance of power in sexual harassment cases, giving survivors a real path to holding their abusers accountable. New York's law also makes clear to employers that they must proactively work to prevent harassment and build robust systems to address harassment cases. But it will take time for these changes to permeate our culture — and there remain opportunities for improvement and revision. Our work will not be complete until the scourge of gender based violence is eradicated from all workplaces.

These hearings gave Legislators valuable opportunities to hear from a diverse range of voices across employment sectors. However, there are always more voices to include in the conversation. The legislature must continue to seek out survivors of harassment and advocates working with impacted communities to ensure that New York's laws protect *all* workers in New York State.

Additionally, as the 2019 omnibus bill takes complete effect and new legislation is considered, it is critical that the legislature takes time to review and make changes to the law as needed. New York should continue to look for ways to innovate and pursue new ideas to best address harassment in the workplace. New York took vital steps in 2019, but the work cannot end here.