



The Women's Legal Defense and Education Fund

Carol Robles-Román, President and CEO

BOARD OF DIRECTORS

Chair: G. Elaine Wood
Duff & Phelps, LLC

First Vice Chair: Loria B. Yeadon
Yeadon IP LLC

Vice Chair: Deborah L. Rhode
Stanford Law School

Vice Chair: Jay W. Waks
American Kennel Club

Vice Chair: Laura A. Wilkinson
Weil, Gotshal & Manges LLP

General Counsel: Beth L. Kaufman+
Schoeman Updike Kaufman & Gerber LLP

Secretary: Eileen Simon
Mastercard

Treasurer: Robert M. Kaufman
Proskauer Rose LLP

Executive Committee At Large:
Elizabeth J. Cabraser
Lief Cabraser Heilmann & Bernstein, LLP

Dede Thompson Bartlett
Corporate Alliance to End Partner Violence

Sabine Chalmers
Anheuser-Busch InBev

Ethan Cohen-Cole, PhD, MPA, MA
Econ One Research Inc.

Alexis S. Coll-Verly
Simpson Thacher & Bartlett LLP

Meena L. Elliott
Aviat Networks, Inc.

Kim Gandy
National Network to End Domestic Violence
(NNEDV)

Vilia B. Hayes
Hughes Hubbard & Reed LLP

Matthew S. Kahn
Gibson, Dunn & Crutcher LLP

Amy Dorn Kopelan
Bedlam Productions, Inc.

Lori B. Leskin
Arnold & Porter Kaye Scholer LLP

Susan B. Lindenauer
The Legal Aid Society (retired)

Carol A. Baldwin Moody
CAB Moody LLC (on leave)

Stephanie A. Sheridan
Sedgwick LLP

Karen E. Silverman
Latham & Watkins LLP

Brandt Stellings
Catalyst Inc.

HONORARY DIRECTORS

Muriel Fox, Chair

Barbara M. Cox

Etta Froio
Women's Wear Daily (retired)

Stephanie George
Fairchild Fashion Media Inc.

Ralph I. Knowles, Jr. (deceased)
Doffernyre Shields Canfield
& Knowles LLC

Michele Coleman Mayes
New York Public Library

Lisa Specht
Manatt, Phelps & Phillips, LLP

+Non-Board Officer

*Organizational affiliations for
purposes of identification only.

TESTIMONY ON SEXUAL HARASSMENT IN THE WORKPLACE BEFORE THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Submitted by Seher Khawaja, Gender Justice Fellow,
on behalf Legal Momentum, The Women's Legal Defense and Education Fund

December 6, 2017

Legal Momentum is a national women's civil rights organization. Advocating on behalf of women's equality for over 40 years, we continue to harness the law to advance economic and personal security for all women and girls by challenging barriers to equal treatment and pursuing access to equal opportunity. We commend the New York City Commission on Human Rights for holding a public hearing on the longstanding problem of sexual harassment in the workplace and welcome the opportunity to submit testimony on ways to address this critical issue.

As high-profile sexual harassment complaints proliferate, shedding much needed light on the endemic nature of sexual harassment in the workplace, it is essential that we capitalize on this opportunity to safeguard the most vulnerable members of our workforce who remain in the shadows. Low-wage and immigrant workers in New York City and across the United States remain particularly vulnerable to exploitative workplace conditions, a hardship that has become all the more acute for immigrant workers as a result of current federal immigration policy.

Through Legal Momentum's Helpline, we regularly speak with, advise, and represent women facing sexual harassment in the workplace. What we know, and what we continue to see, is that sexual harassment often results from an imbalance in power. Sexual harassers target individuals they perceive to be vulnerable: women who are in positions with less authority; who have something to gain or lose; or who are perceived to lack economic stability, self-esteem, or credibility. And while sexual harassment often emboldens perpetrators, it isolates victims.

For low-wage immigrant women, this power imbalance is all the more pronounced, and the vulnerabilities are all the more severe. They include: fear of deportation or loss of eligible immigration status, lack of economic security, limited English proficiency, lack of education regarding existing legal protections and reporting procedures, lack of access to legal counsel or legal resources, and physically isolating workplaces. Taken together, these factors significantly increase the costs and risks of reporting abuse for low-income immigrant women.

Well aware of these vulnerabilities, abusers exploit them. Consequently, sexual harassment is



especially prevalent in low-wage sectors and industries with higher levels of labor and employment violations such as agriculture, manufacturing, retail, hotel and restaurant services, home health care and child care, and cleaning and janitorial services.¹ Moreover, the most vulnerable women tend to be subject to the worst violations: sexual harassment in this context frequently involves sexual violence and abuse.²

Through Legal Momentum's work, we have found that just as sexual harassment itself is endemic, employer inaction, reticence, and misguidance is also commonplace, and we need to shine more light on this problem. Working with victims of sexual harassment, we have seen that even large employers often lack legitimate investigatory protocols for investigating sexual harassment claims, even when they appear to have anti-harassment policies in place. Employers are frequently unfamiliar with legal requirements or purposefully misinform employees about the type of conduct that constitutes sexual harassment or about whether they are entitled to legal protection based on their immigration status.

While many organizations and agencies have recently reported a surge in sexual harassment complaints, this coincides with a decline in sexual abuse complaints in jurisdictions with large immigrant populations.³ In light of New York City's "sanctuary" status, we have an obligation to ensure that all workers in this City can access much needed benefits, report crimes, and seek accountability for sexual harassment without fear of retaliation. We also have an obligation to ensure that all individuals—regardless of their gender, class, race, ethnicity, religion, sexual orientation, or immigration status— can participate and benefit from this growing movement.

In order to safeguard the most vulnerable workers in New York City, we need to hold employers to higher standards for investigating and responding to sexual harassment and guarantee that low-wage workers, particularly undocumented workers, have access to information, support services, and privacy protections when it comes to reporting sexual harassment in the workplace.

For the reasons stated above, we respectfully urge the New York City Commission on Human Rights to consider the following recommendations on steps the City can take to better address sexual harassment:

1. **Educate Employees:** Often misled or uninformed, immigrants are frequently unaware that various provisions, including anti-harassment and anti-retaliation protections under Title VII of the Civil Rights Act and the NYC Human Rights Law, apply regardless of one's immigration status. The City should allocate resources to execute a broad outreach and education initiative on available protections for low-wage immigrant workers in New York City.
2. **Penalize Retaliation:** The City should consider implementing more robust measures and penalties to disincentivize retaliation. Employers should never be able to use their employees' immigration status as a bargaining chip in perpetuating sexual harassment.

¹ See AMERICAN CIVIL LIBERTIES UNION & NATIONAL EMPLOYMENT LAW PROJECT, NO FREE PASS TO HARASS: PROTECTING THE RIGHTS OF UNDOCUMENTED IMMIGRANT WOMEN WORKERS IN SEXUAL HARASSMENT CASES 4 (2007), https://www.aclu.org/sites/default/files/pdfs/womensrights/no_free_pass_20071119.pdf.

² Katie Johnston, *For Low-Wage Workers, Many Obstacles to Reporting Sexual Harassment*, THE BOSTON GLOBE (Nov. 27, 2017), <https://www.bostonglobe.com/business/2017/11/26/for-low-wage-workers-many-obstacles-reporting-sexual-harassment/UVAXy8XrnkkzWUCyShC8oJ/story.html>.

³ Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*. N.Y. TIMES (April 30, 2017), https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html?_r=0.

3. **Improve Reporting Mechanisms:** The City should develop dedicated and confidential channels for low-wage immigrant workers to report sexual harassment in the workplace or seek legal guidance, taking into account the specialized risks and barriers these workers encounter.
4. **Improve Reporting Deadlines:** Low-wage immigrant workers are more likely to miss essential reporting deadlines because of language barriers, a lack of familiarity with legal requirements and reporting procedures, and fear of retaliation. The City should consider revising reporting deadlines for sexual harassment complaints or establishing applicable tolling provisions.
5. **Monitor Industries:** The City should establish mechanisms to better monitor low-wage industries and sectors where exploitation is more likely.
6. **Improve Employer Practices:** In Legal Momentum's work we regularly see employers perpetuate a culture of sexual harassment in the workplace by turning a blind eye and failing to take corrective action. We need a citywide assessment of employer practices in order to identify gaps in procedure and protocol and potential ways to fill those gaps.
7. **Train HR Employees:** For various skilled or technical trades, the City imposes mandatory training and assessment requirements. Identifying and responding to sexual harassment is similarly a skill that requires specialized training. Human Resources (HR) staff are often the first point of contact when an employee makes a sexual harassment complaint, and yet we frequently see HR staff providing legally inaccurate and discouraging guidance to complainants. Imposing mandatory, comprehensive, and high quality training will better equip HR employees to appropriately respond to sexual harassment complaints in a more consistent manner across the City and in a way that safeguards both employees and employers.