



April 30, 2021

Senator Hickman, Representative Sylvester, and Members of the Joint Standing Committee on Labor and Housing:

My name is Elizabeth Ward Saxl and I am submitting testimony today on behalf of the Maine Coalition Against Sexual Assault (MECASA), the organization which represents and serves Maine's [sexual violence prevention and response programs](#). MECASA initiates and advocates for victim-centered public policy; provides expert training, technical assistance, and resources for providers and partners; and funds the service providers in your communities.

We are here today in support of LD 965, "An Act Concerning Nondisclosure Agreements in Employment." Many thanks to Representative Harnett for sponsoring this legislation.

A recent survey revealed 81% of women and 43% of men experience some form of sexual harassment during their lifetime,ⁱ the majority of whom do not report.ⁱⁱ And sadly, more than one in three women who filed charges alleging sexual harassment also alleged retaliation.ⁱⁱⁱ Sexual harassment can have long-term impacts on victims, can decrease workplace productivity and impact workplace morale and the bottom line.

Research indicates there are a range of factors which can significantly increase the likelihood of sexual harassment in the workplace.^{iv} Unfortunately, many are common features in workplaces across our state:

- **Significant Power Disparities:** Though power disparities exist in most workplaces, significant disparities can create additional risk. High status employees, board members or donors may be emboldened to exploit employees who may fear the possible ramifications of making a report.^v
- **Young Employees:** The presence of young employees, particularly in their first or second jobs, can increase the risk of harassment. In addition to contributing to the problem of power disparities, these employees may be less aware of laws and norms and may lack the self-confidence to challenge inappropriate conduct.^{vi}
- **"High Value" Employees:** Another risk factor includes organizations where some employees are considered particularly valuable – the person with the big ideas or the one with a strong relationship with a board member or major donor. These

employees may believe the rules don't apply to them, and organizational leadership may be reluctant to discipline them.^{vii} Similarly, other employees may be reluctant to make a report against a high value employee.

- **Homogenous Employees:** Where employees are primarily male, sexual harassment of women is more; workplaces which are predominantly one race (usually white) can also be a contributing factor.
- **Isolated and/or Decentralized Workplaces:** Harassment is more likely when employees are physically isolated, have few opportunities to work with others, and/or where there is limited communication between levels of the organization – employees to management/director to board. In these situations, there are fewer “eyes on” and harassment can go unchecked.
- **Alcohol Consumption:** Workplace cultures that allow or encourage alcohol consumption as part of enterprise norms have an increased risk of sexual harassment.^{viii}

Given the pervasiveness and impact of sexual harassment in Maine's workplaces, it is time to carefully examine the range of laws, policies, and practices which allow harassment to go unchecked and which disempower its victims. Among those practices are non-disclosure agreements (NDAs) as a term of employment or as a result of changes in a contractual relationship. Mandatory NDAs limit victim self-determination which is counter to a trauma-informed approach and complicate the path to healing. It is critical that Maine workplaces empower survivors support a survivor's choice whether or not to enter into an NDA in cases of discrimination or harassment.

Thank you and I would be happy to answer any questions you might have.

About Maine's Sexual Assault Service Providers

Maine's sexual violence service providers provide free and confidential services across the state to victims/survivors of sexual harassment and sexual assault and those close to them, as well as to individuals who wish to increase their understanding of the issues. Just some of the services include a 24-hour statewide sexual assault helpline, crisis intervention and information, support groups, in-person accompaniment and advocacy through the medical and legal systems, and school- and community-based prevention education. Services are provided for a victim/survivor regardless of when they experienced sexual violence, and regardless of what type of sexual violence they experienced. Types of sexual violence include, but are not limited to, sexual harassment and gender-based bullying, child sexual abuse, elder sexual abuse, stalking, sex trafficking, and sexual violence within an intimate partner relationship.

Call or text the Maine Sexual Assault Helpline at [1-800-871-7741](tel:1-800-871-7741).

ⁱ Stop Street Harassment, *The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault*, (Reston, VA: 2018), 7.

ⁱⁱ U.S. Equal Employment Opportunity Commission, "Select Task Force on the Study of Harassment in the Work Place" (2016), accessed August 13, 2018. https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

ⁱⁱⁱ Amanda Rossie et al. *Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women*, (Washington, DC: 2018), 5 <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wpcontent/uploads/2018/08/SexualHarassmentReport.pdf>.

^{iv} Just in case this list looks familiar, it was excerpted from mainecando.org, but I wrote the text, so I'm plagiarizing myself.

^v Feldblum & Lipnic. (2016). U.S. Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace Report. Retrieved from: https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

^{vii} Ibid.

^{vii} Ibid.

^{viii} Samuel B. Bacharach *et al.*, *Harassing Under the Influence: The Prevalence of Male Heavy Drinking, the Embeddedness of Permissive Workplace Drinking Norms, and the Gender Harassment of Female Coworkers*, 12 *J. Occup. Health Psychol.* 232 (2007).