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Stopping Sexual Harassment in the Empire State: Past, Present, and a Possible Future

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Stopping Sexual Harassment in the Empire State: Past, Present, and a Possible Future

Abstract

This report maps current patterns of workplace sexual harassment and their impact in New York State. It also provides a broader frame for understanding how efforts to confront sexual and gender-based harassment and assault have evolved over time, and charts possible directions for future organizing, policy, and research in New York and beyond.

The findings presented here are drawn from the 2018 Empire State Poll, an annual statewide survey of 800 New Yorkers conducted by the Cornell Survey Research Institute. Questions added to the survey reflecting existing legal definitions of workplace sexual harassment reveal the following:

- 10.9 percent of New York residents have experienced quid pro quo workplace sexual harassment, and 21.9 percent have experienced workplace sexual harassment that created a hostile work environment; 31.1 percent of women and 18.9 percent of men have experienced at least one of these forms of harassment.
- 13.9 percent of people of color and people of Hispanic origin have experienced quid pro quo workplace sexual harassment, as opposed to 8.5 percent of non-Hispanic whites.
- 38.9 percent of those experiencing at least one form of workplace sexual harassment say it impacted their work or careers; 48.9 percent who experienced quid pro quo harassment reported such an impact.
- 83.4 percent of New York residents think their leaders should do more to address workplace sexual harassment. There is notable variation by politics and ideology, but regardless of worldview, strong majorities think leaders should do more.

In addition to sharing the survey findings, the report discusses experiences and responses of survivors and how they are shaped by different identities and relations of power. It highlights black women's leadership in propelling wide-reaching shifts in law and culture; efforts initiated by diverse survivors to effect change in specific industries; and culture change work engaging men and women as allies.

Keywords

workplace sexual harassment, gender-based violence, workplace discrimination, New York State

Disciplines

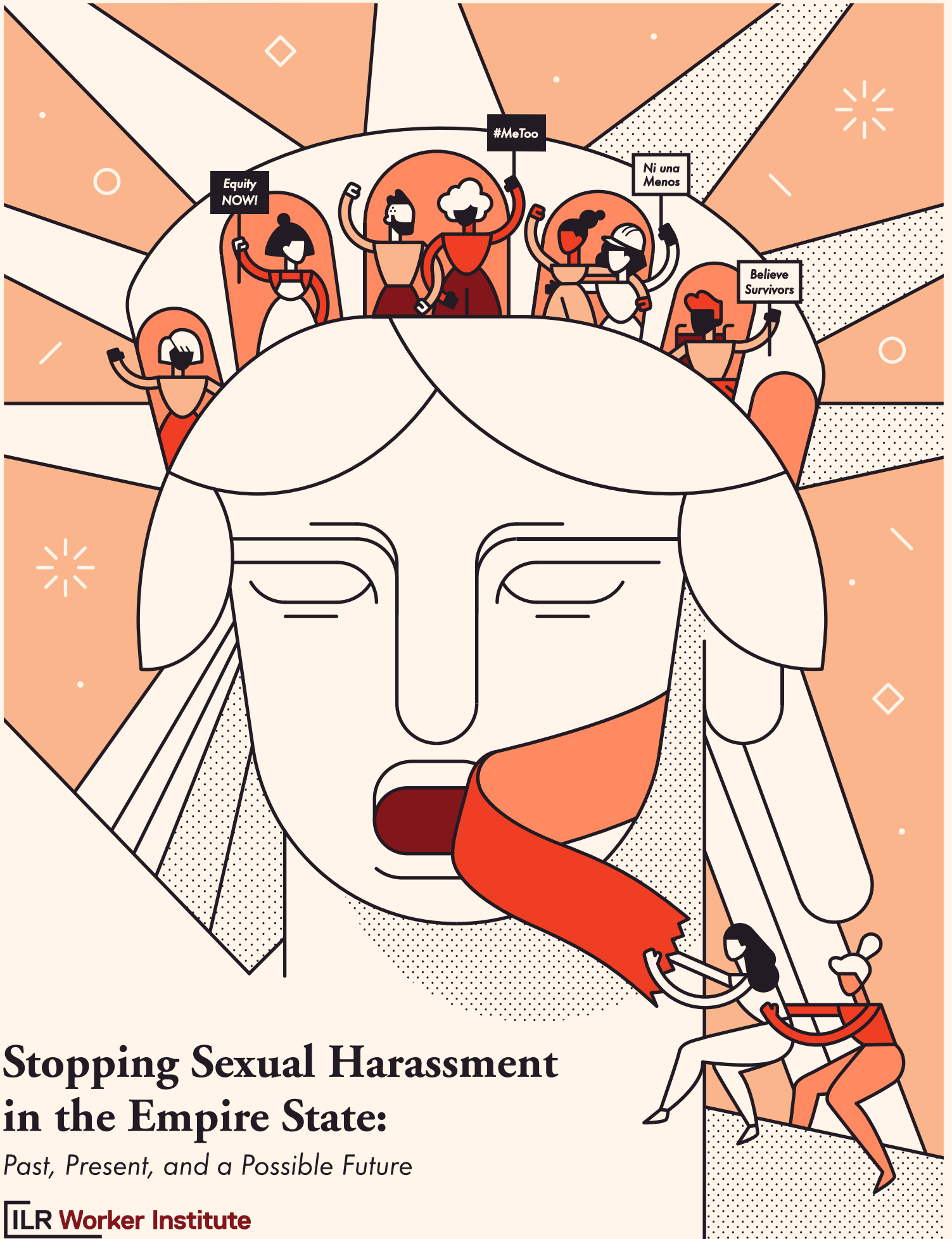
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Stopping Sexual Harassment in the Empire State:

Past, Present, and a Possible Future

ILR Worker Institute

Table of Contents

Executive Summary.....	3
Preface: Some Context for this Report.....	4
Introduction: The Recent Rise in Activism Around Workplace Sexual Harassment.....	7
Background: Workplace Sexual Harassment, Culture Change, and the Law in New York State.....	9
Placing Sexual and Gender-Based Harassment in Context.....	10
Centering the Leadership of Black Women.....	13
Responding at the Industry Level.....	16
Methodology.....	19
Findings.....	21
Voices of Survivors.....	24
Looking Ahead.....	28
Engaging Men as Allies.....	30
Changing Workplace Practices: A Conversation with Gillian Thomas.....	34
Acknowledgements.....	36
Author Bios.....	37

Executive Summary

This report maps current patterns of workplace sexual harassment and their impact in New York State. It also provides a broader frame for understanding how efforts to confront sexual and gender-based harassment and assault have evolved over time, and charts possible directions for future organizing, policy, and research in New York and beyond.

The findings presented here are drawn from the 2018 Empire State Poll, an annual statewide survey of 800 New Yorkers conducted by the Cornell Survey Research Institute. Questions added to the survey reflecting existing legal definitions of workplace sexual harassment reveal the following:

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- 83.4 percent of New York residents think their leaders should do more to address workplace sexual harassment. There is notable variation by politics and ideology, but regardless of worldview, strong majorities think leaders should do more.

In addition to sharing the survey findings, the report discusses experiences and responses of survivors and how they are shaped by different identities and relations of power. It highlights black women's leadership in propelling wide-reaching shifts in law and culture; efforts initiated by diverse survivors to effect change in specific industries; and culture change work engaging men and women as allies.

Looking ahead, the report sketches some elements of the holistic approach needed to address a problem of such magnitude:

- Treat workplace sexual harassment as a deeply embedded institutional problem rather than a matter of "a few bad apples" solvable by punishing individual culprits.
- Expand organizing and policy approaches that not only provide redress for survivors but also help to promote prevention through multiple points of intervention.
- Form survivor-led working groups to spearhead culture change, inform effective enforcement, and foster high-road practices that go beyond mere compliance.
- Consolidate a statewide research network to advance knowledge about workplace harassment and discrimination and assess the efficacy of workplace interventions.

Preface: Some Context for this Report

This report adds to an ongoing conversation that has gained momentum since the recent rise in activism around sexual and gender-based harassment and violence starting in late 2017. Using new data from the Cornell Survey Research Institute's 2018 Empire State Poll, we document patterns of workplace sexual harassment and its impact across New York State. We also draw on past writings and documents, recent testimony by survivors, and discussions with advocates and practitioners to capture how the conversation around workplace sexual harassment has evolved, highlight deep challenges and insights from the vantage point of those targeted, and suggest some possible future directions for advancing our collective response in New York and elsewhere.

The Empire State Poll connects to Cornell's broader mission as a land grant university, which entails educating and improving the lives of all New Yorkers. The Cornell School of Industrial and Labor Relations (ILR) addresses key problems in the contemporary workplace, and the Worker Institute at Cornell ILR seeks to advance worker rights and collective representation. Against this backdrop, this report from the Equity at Work Initiative seeks to raise awareness around workplace sexual harassment in New York while lifting up promising strategies and approaches that could help to transform workplaces across the state, confronting the broad human impact of the problem.

We focus on the world of work as an expansive set of institutional locations in which sexual harassment and sexual assault are endemic, and as a site for shifting rules, norms, and practices in ways that can have wide ripple effects across society (please see footnote for more on our use of the term, "workplace sexual harassment").¹ Previous work has shown that workplace sexual harassment often has significant consequences for the careers and basic wellbeing of those targeted.² This report builds on the efforts of survivors, advocates, and other allies who have raised awareness about the issue, developed response strategies, and helped to shed light on broader patterns of discrimination based on gender, race, sexuality, and citizenship.³ It also extends from Cornell ILR's own history of engagement around workplace sexual harassment through research and training conducted in a variety of settings, including with employers and labor organizations.

At the same time, we recognize the need to critically examine how and why the workplace gets centered within larger discussions around sexual and gender-based harassment and violence. The investment of resources and the particular shape of responses to workplace sexual harassment have often been heavily conditioned on the costs to employers—in legal liability, lost productivity, and higher turnover.⁴ Employer incentives to avoid these costs should absolutely be leveraged to mobilize resources and foster organizational change. Yet they should not delimit the scope of change or deflect attention from the social and moral dimensions of the problem. Nor should the focus

¹ The International Labor Organization has recently proposed a convention to address violence and harassment in the "world of work." It has argued for the use of this language to address a range of work situations that are not fully captured by the term "workplace." For more, see International Labor Organization. "Ending Violence and Harassment in the World of Work." International Labor Conference, 108th Session, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_637108.pdf. Although we agree with this framing conceptually, we use the term "workplace sexual harassment" in this report since it is the most commonly understood term within the US context. We also address issues of sexual assault under this simplified rubric, while recognizing that the term "harassment" does not sufficiently do justice to experiences with physical assault of a sexual nature.

² See Schneider, Kimberly T., Suzanne Swan, and Louise F. Fitzgerald. "Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations." *Journal of Applied Psychology*, vol. 82, no.3, 1997, pp. 401.

³ For more information on cutting-edge strategies for addressing workplace sexual harassment and assault as well as the workplace impacts of various forms of sexual and gender-based violence, see Workplaces Respond to Domestic and Sexual Violence: A National Resource Center, led by Futures Without Violence: <https://www.workplacesrespond.org/>.

⁴ For more on these issues, see McLaughlin, Heather, et al. "The Economic and Career Effects of Sexual Harassment on Working Women." *Gender & Society*, vol. 31, no. 3, June 2017, pp. 333–358; Faley, Robert H., et al. "Estimating the Organizational Costs of Same-Sex Sexual Harassment: The Case of the US Army." *International Journal of Intercultural Relations*, vol. 30, no. 5, 2006, pp. 557–577; Raver, Jana L., and Michele J. Gelfand. "Beyond the Individual Victim: Linking Sexual Harassment, Team Processes, and Team Performance." *The Academy of Management Journal*, vol. 48, no. 3, 2005, pp. 387–400; Feldblum, Chai R. & Victoria A. Lipnic. "Select Task Force on the Study of Harassment in the Workplace." United States Equal Employment Opportunity Commission. June 2016.

on sexual harassment in the workplace come at the expense of addressing other forms of harassment and violence that do not carry such clear and direct costs for those in positions of authority.

In focusing on workplace sexual harassment within this report, we are keenly interested in how the power dynamics that enable harassing behaviors can be shifted, and we highlight the ways in which some labor organizations, including unions and worker centers, have advanced more robust responses to the problem. Even with worker voice increasingly under threat, labor organizations continue to develop innovative strategies that build collective power and advance worker rights—rights that include respect, dignity, and freedom from violence.⁵ At the same time, the current reckoning demands that labor organizations recognize the ways in which they, too, have often reinforced cultures and practices of exclusion, violence, and disrespect—both in the workplaces where they operate, and within their own internal structures.⁶ To this end, promising practices developed by certain unions and worker centers can provide a yardstick for self-assessment. But labor organizations also need to look further afield, forging connections with other movements. Groups operating at the intersection of the anti-violence against women, racial justice, immigrant rights, and LGBTQ+ rights movements have long responded to violence and harassment of different kinds, often in ways that far outpace their counterparts in the worker justice field.⁷

Breaking down movement silos can help form a deeper reservoir of knowledge for responding to sexual and gender-based harassment and violence in all their forms. In that context, we want to acknowledge the limits of the perspective conveyed in this brief report on workplace sexual harassment, and we hope to extend the analysis in the future. This includes making connections across different movements and forms of identity; multiple stages of the life course; and different, though overlapping, forms of sexual and gender-based violence, including workplace sexual harassment, intimate partner violence, and sexual abuse and assault. It entails joining with others to help ensure that the attention and resources devoted to addressing different forms and experiences of sexual and gender-based



⁵ For more on resources and approaches developed by unions, see AFL-CIO, “Addressing Sexual Harassment in the Workplace: There is Power in my Union.” 2019. <https://aflcio.org/reports/addressing-sexual-harassment-workplace-there-is-power-my-union>

⁶ See Avendaño, Ana. “#MeToo Inside the Labor Movement.” *New Labor Forum*, vol. 28, no.1, 2019.

⁷ Of course, the lines of demarcation among movements are not hard and fast—e.g., many worker centers straddle the worker justice and immigrant rights movements, among others. See Fine, Janice Ruth. *Worker Centers: Organizing Communities At the Edge of the Dream*. Cornell University Press, 2006.

Witnessing and Testifying: The Right to Truth and the Duty of Memory, The Riverside Church, April 2016, Photographer: Maybelline McCoy. This photo is from the 2016 Tribunal of the Black Women's Truth and Reconciliation Commission, convened by Black Women's Blueprint, which addressed black women's experiences of sexual assault across multiple arenas.

violence are not determined by which ones are deemed costliest to those with power and influence, or whose lives are seen to matter. Ultimately, it involves opening up an even broader conversation around contemporary discrimination and social exclusion, one that foregrounds larger systems of structural violence and the vast toll they exact.⁸

Moving a conversation and a set of practices that promote the respect, dignity, and safety of all people clearly has urgency at the current moment. From our institutional location, we want to do our small part in holding space for a diverse range of actors to do just that.

⁸ For a classic statement distinguishing “structural” and “direct” violence, see Galtung, Johan, and Tord Höivik. “Structural and Direct Violence: A Note On Operationalization.” *Journal of Peace Research*, vol. 8, no. 1, 1971, pp. 73-76.

Introduction: The Recent Rise in Activism Around Workplace Sexual Harassment

Workplace sexual harassment and efforts to confront it are not new. But the waning months of 2017 saw the start of a new chapter in the public conversation around sexual and gender-based harassment and violence in the workplace and other arenas. Since then, numerous women and some men have come forward in highly publicized stories in the media, giving accounts of their distressing experiences with sexual harassment and assault at the hands of iconic figures across a range of sectors, including arts and entertainment, media, hospitality, and politics.⁹ The revelations involving workplace sexual harassment have often centered around behaviors defined under the law as creating a hostile environment, including cases of sexual assault. Many instances have involved those in positions of authority and influence leveraging their power on a *quid pro quo* (i.e., “this for that”) basis, cornering their targets and compelling them into silence.

Millions of individuals in the US and around the world have been inspired to share their own experiences—largely through various online channels—as part of the #MeToo movement. Activist Tarana Burke, a sexual abuse survivor, coined the phrase “me too” more than a decade ago to create a community of empathy among fellow survivors and center their experiences with sexual abuse.¹⁰ In October 2017, actor Alyssa Milano was sent a screenshot of the phrase from a friend and tweeted it out as an invitation for others to share their experiences of being “sexually harassed or assaulted.”¹¹ No one could have fully imagined what was to follow, as this became the spark for countless stories to be shared in traditional and social media, rallies and meetings, and watercooler conversations.¹²

Despite these developments, many experiences of sexual and gender-based harassment and violence remain hidden. In the world of work, as elsewhere, coming forward remains challenging, especially when the harassment is ongoing and perpetrated by individuals who may still have a measure of control over the target’s livelihood. Even when survivors report workplace sexual harassment through the designated channels, non-disclosure agreements and other factors often prevent word of these incidents from seeing the light of day. The #MeToo movement has helped to amplify awareness around problems of sexual and gender-based harassment and violence across a range of arenas. Yet the costs of speaking out are prohibitively high for many survivors. People of color, immigrants, and those in low-paying or unstable jobs often face particular barriers around seeking recourse for workplace sexual harassment, including inadequate channels for reporting, gaps in legal coverage, and the fact that they often cannot afford to risk losing their jobs.¹³ They are also less likely to see their claims given credence or rendered visible.¹⁴

Much work remains in opening up channels for disclosing and confronting workplace sexual harassment, and important steps have been taken since late 2017. For example, in November 2017, Alianza Nacional de Campesinas, a national alliance of women farmworkers in the US, wrote a letter of solidarity to a group of

⁹ Glamour. “Every Powerful Man Facing Sexual Harassment Allegations.” *Glamour*, 3 December 2018, <https://www.glamour.com/gallery/post-weinstein-these-are-the-powerful-men-facing-sexual-harassment-allegations>.

¹⁰ Isaacs, David. “Sexual harassment.” *Journal of Paediatrics and Child Health*, vol. 54, no. 4, 2018, pp. 341-2.

¹¹ Zacharek, Stephanie, Eliana Dockterman, and Haley Sweetland Edwards. “TIME Person of the Year 2017: The Silence Breakers.” *Time*, 4 December 2018, time.com/time-person-of-the-year-2017-silence-breakers.

¹² Bernstein, Jacob, Matthew Schneier and Vanessa Friedman. “Male Models Say Mario Testino and Bruce Weber Sexually Exploited Them.” *New York Times*, 13 January 2018, www.nytimes.com/2018/01/13/style/mario-testino-bruce-weber-harassment.html.

¹³ See Semuels, Alana. “Low-Wage Workers Aren’t Getting Justice for Sexual Harassment.” *The Atlantic*, 27 December 2017, <https://www.theatlantic.com/business/archive/2017/12/low-wage-workers-sexual-harassment/549158/>.

¹⁴ For a discussion of race, gender, and public visibility as they relate to sexual harassment and violence, see Fraser, Nancy. “Sex, Lies, and the Public Sphere: Some Reflections on the Confirmation of Clarence Thomas.” *Critical Inquiry*, vol. 18, no. 3, 1992, pp. 595–612.

Hollywood celebrities who were publicly grappling with the problem in their industry.¹⁵ This became the spark for the creation of the Time's Up movement, which includes the Time's Up Legal Defense Fund. Housed and administered by the National Women's Law Center Fund LLC, the Fund addresses workplace sexual harassment across different industries while also dealing with a broader range of issues related to workplace equity.¹⁶

Using data from questions we added to the Cornell Survey Research Institute's 2018 Empire State Poll, this report seeks to illuminate the magnitude of the problem of workplace sexual harassment in New York State. Many of the most highly publicized cases in the #MeToo movement emerged from New York City's celebrity spotlight. The findings presented here provide, as far as we know, the first statistically representative picture of workplace sexual harassment and its impact across the state. The report begins by discussing relevant aspects of the context in New York State, which, at key junctures, has played an important role in efforts to define and address the problem of workplace sexual harassment. We then discuss the survey methodology and share the main findings. The report concludes by building on these findings to suggest some future directions for research, policy, and culture change efforts in New York and beyond.

¹⁵ For more on Alianza Nacional de Campesinas, see <https://www.alianzanacionaldecampesinas.org/what-we-do>.

¹⁶ According to Time's Up Legal Defense Fund 2018 Annual Report, the Fund "connects those who experience sexual misconduct including assault, harassment, abuse, and related retaliation in the workplace or in trying to advance their careers with legal and media assistance. And it helps defray legal and media costs in many of these cases." The report also notes that "The Fund prioritizes cases involving low-wage workers; people of color; LGBTQ people; individuals with disabilities; people facing legal retaliation because they dared speak out; women in male-dominated occupations; workers facing harassment or threats by especially high-profile individuals; multiple workers within one workplace; novel or precedent settings areas in the law; and extreme retaliation against those alleging harassment such as a lawsuit or media campaign." See Time's Up Legal Defense Fund. "Annual Report 2018." National Women's Law Center Fund. 2019, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/12/TIMES-UP-2018-Version-2.pdf> A recent research brief put out by the Fund notes that the it has also awarded \$750,000 in outreach grants to 18 organizations that "work with low-wage workers, immigrant workers, LGBTQ workers, and young workers to help these workers get more information about workplace sexual harassment and to support workers who come forward." See Time's Up Legal Defense Fund. "Stats and Numbers" National Women's Law Center. 2019, https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/2019.03.04-Final_nwlc_TimesUpOneSheet.pdf For more on the Time's Up Safety Agenda in New York State, see <https://www.nywift.org/times-up-new-york-safety-agenda/>.

Background: Workplace Sexual Harassment, Culture Change, and the Law in New York State

There is a long history of advocacy around sexual and gender-based harassment and violence in the world of work and others arenas (see box on p.10 for more on how these two forms of harassment are distinguished). In the 19th century, the sexual violation of black women by white slaveholders was a mobilizing issue for the abolitionist movement.¹⁷ Women's rights to sexual consent and bodily autonomy in the context of marriage and intimate partner relationships were secured through persistent agitation against patriarchal norms and legal standards, and the struggle to protect these rights is ongoing.¹⁸ Sexual harassment and assault have long been documented as a problem in workplace settings ranging from private homes to the factory floor to Hollywood, serving as rallying points for women's and worker justice movements at different stages in their evolution.¹⁹

Following the passage of civil rights legislation in the 1960s and as part of a broader groundswell of women's movement activism, the 1970s marked a watershed for efforts to define different forms of sexual and gender-based harassment and violence as social problems demanding a response.²⁰ Asserting that relations between spouses and other intimate partners were not simply a "private" matter, the battered women's movement mobilized around what came to be referred to as "domestic violence" and, eventually, "intimate partner violence."²¹ The first shelters and hotlines for domestic violence survivors began to emerge in the 1970s as an outgrowth of these efforts.²² New York City was an early mover in local law enforcement pursuing incidents of domestic violence following a settlement from a legal case brought by area feminist advocates against the New York City Police Department.²³ Local and state-level legal and organizational responses have continued to evolve since that period. The mid-1990s saw an important shift in the national landscape with the enactment of the Violence Against Women Act, which defined intimate partner violence and assault as crimes at the federal level.²⁴

Efforts to address workplace sexual harassment also gained ground in the 1970s, building on a long history of agitation and resistance.²⁵ Women of color and immigrant women were compelled to work at significantly higher rates than their white and native-born counterparts during the late 19th century and the early decades of the 20th,

¹⁷ See Jones, Jacqueline. *Labor of Love, Labor of Sorrow*. Basic Books, 2010; Siegel, Reva B. "A Short History of Sexual Harassment." *Directions in Sexual Harassment Law*, edited by Catherine MacKinnon and Reva B. Siegel, Yale Press, 2003. Farah Tanis incisively traces the links between sexual and reproductive violence under slavery: "For us as Black women, sexual assault and reproductive violence are inextricably linked. Under slavery, sexual assault had a clear purpose: it was a tool of terror to break the spirits of the enslaved, but the rapes of Black women also fueled and were fueled by capitalist accumulation. The rapes and forced pregnancies of Black women were a means to produce generations and generations of enslaved people to labor for their masters and be sold as property at will." Tanis, F., Ericka, D., Mills, L., & Richter-Montpetit, M. "Sexualized violence and torture in the afterlife of slavery: an interview with Farah Tanis and Ericka Dixon of Black Women's Blueprint." *International Feminist Journal of Politics*, 20.3 (2018): 446-461. For more on this point, see Morgan, Jennifer L. *Laboring women: Reproduction and gender in New World slavery*. University of Pennsylvania Press, 2011.

¹⁸ Yllö, Kersti, and M. Gabriela Torres, eds. *Marital rape: Consent, marriage, and social change in global context*. Oxford University Press, 2016.

¹⁹ As one early example of awareness raising around workplace sexual harassment, Upton Sinclair's 1904 book *The Jungle* highlighted the kinds of sexual assault and harassing behavior that were common in the meatpacking industry and other factory settings at the turn of the 20th century. See Siegel, 2003.

²⁰ Arnold, Gretchen. "US women's movements to end violence against women, domestic abuse, and rape." *The Oxford handbook of US women's social movement activism* (2017): 270.

²¹ Sack, Emily J. "Battered women and the state: The struggle for the future of domestic violence policy." *Wis. L. Rev.* (2004): 1657.

²² New York City Human Resources Administration. "Timeline of Battered Women's Movement." NYC Department of Social Services, 2008. http://www.ncdsv.org/images/NYCHRADSS_TimelineBWM_2008.pdf

²³ Bush, Diane Mitsch. "Women's movements and state policy reform aimed at domestic violence against women: A comparison of the consequences of movement mobilization in the US and India." *Gender & Society* 6.4 (1992): 587-608.

²⁴ Rivera, Jenny. "The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements." *JL & Pol'y* 4 (1995): 463.

²⁵ Baker, Carrie N. *The women's movement against sexual harassment*. Cambridge University Press, 2008.

and their confrontations with workplace sexual harassment and assault were central to early struggles around the issue.²⁶ The post-war period saw a general increase in women's employment and a narrowing of the gaps in employment rates among different groups of women—a set of processes that accelerated in the 1970s and 1980s.²⁷ During these decades, black women continued to play a pivotal role in challenging workplace sexual harassment, which included serving as plaintiffs in key legal cases (for more on this history, see “Centering the Leadership of Black Women” on p. 13 of this report). Women joining male-dominated lines of work developed strategies for addressing the harassment to which they were subjected, as did women working in areas traditionally regarded as “women’s work” (for more on how industry and occupational sex ratios shape workplace sexual harassment, see “Voices of Survivors” on p. 24 of this report).²⁸

Placing Sexual and Gender-Based Harassment in Context

The terms “sexual harassment” and “gender-based harassment” are often used interchangeably, but there are important distinctions both legally and in practice. While this report focuses on sexual harassment, it is critical to recognize how the roots and manifestations of both forms of harassment are connected. Future research and advocacy should also further address the particular impacts of different forms of gender-based harassment, including those based on gender identity and sexual orientation. Below are some basic definitions to clarify how sexual and gender-based harassment are defined under the law.²⁹

“Sexual Harassment is unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when... (1) [s]ubmission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person’s employment, also known as quid pro quo harassment; (2) [s]uch conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual’s participating in or benefitting from employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

Gender-Based Harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise.”

For more on how these categories are interpreted within New York City, see reference in footnote.³⁰

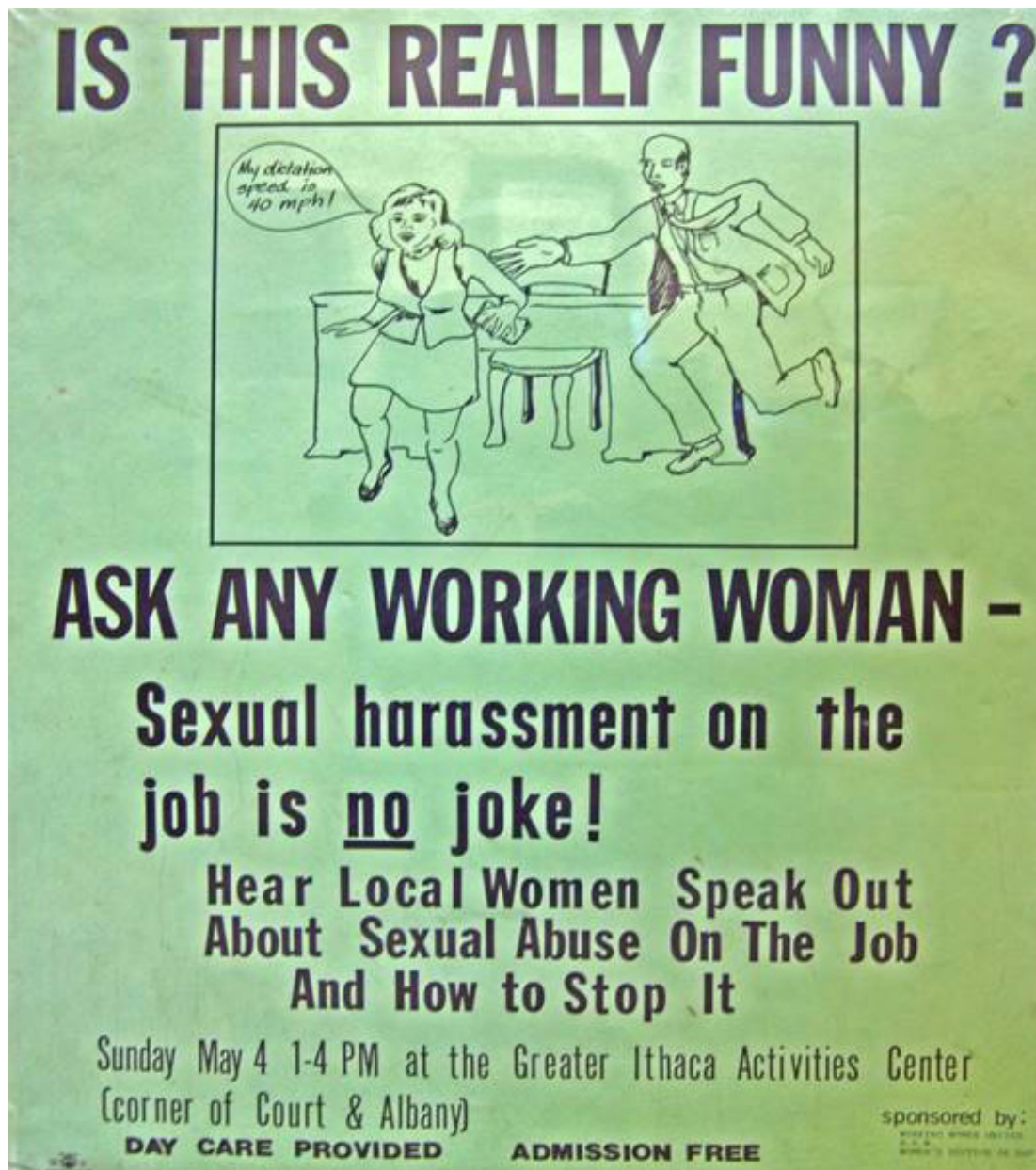
²⁶ For more on higher rates of women’s employment among women of color and immigrants in the late 19th and early 20th centuries, see Goldin, Claudia. “The Work and Wages of Single Women, 1870 to 1920.” *The Journal of Economic History*; vol. 40, no. 1, 1980, pp. 81-88; Goldin, Claudia. “Female Labor Force Participation: The Origin of Black and White Differences, 1870 and 1880.” *The Journal of Economic History*, vol. 37, no. 1, pp. 81-108. For more on actions against workplace sexual harassment involving immigrants and women of color during this period, see Baker, 2008. For an historical account of women of color and immigrant women’s employment as domestic workers, and how it helped enable many white, middle class women *not* to take up paid employment, see Glenn, Evelyn Nakano. “From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor.” *Signs: Journal of Women in Culture and Society* vol 18, no. 1, 1992, pp. 1-43.

²⁷ For more on the increase in women’s employment during this period, see Mosisa, Abraham, and Steven Hipple. “Trends in labor force participation in the United States.” *Monthly Lab. Rev.*, vol 129, 2006, pp. 35.

²⁸ Baker, 2008.

²⁹ These definitions are from Cornell University Title IX website: <https://titleix.cornell.edu/prohibited-conduct/sexual-and-gender-based-harassment/>

³⁰ Testimony of Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy at the New York City Commission on Human Rights, at New York State Senate and New York State Assembly’s “Public Hearing: Sexual Harassment in the Workplace,” February 13, 2019.



Flyer for an early sexual harassment speak-out, 1975. (K.C. Wagner/ Cambridge University Press)

Some have attributed the emergence of the term “sexual harassment” to a course on women and work taught by Lin Farley at Cornell University in the mid-1970s, after class participants shared experiences with unwanted sexual behavior from their summer internships. Around that time, Carmita Wood, a Cornell employee, filed for unemployment compensation after becoming ill from the stress of repeated sexual advances by her boss, a physicist at the university. Wood located a lawyer through Farley and two other Cornell colleagues, Susan Meyer and Karen Sauvigné, and the group linked up with others on campus to organize a speak-out on sexual harassment. Shortly thereafter, Farley testified at the first-ever hearing in the US on the topic of gender discrimination, which was organized by then-chair of the New York City Commission on Human Rights, Eleanor Holmes Norton. Media coverage of the event helped bring national attention to the issue of workplace sexual harassment.³¹

³¹ Brownmiller, Susan and Dolores Alexander. “How We Got Here: From Carmita Wood to Anita Hill.” *Ms. Magazine*. January/February 1992 Issue.

In the movement crucible of the 1970s, there was a national constellation of groups grappling with how to confront existing legal constraints and challenge the long-standing normalization of sexual and gender-based harassment and violence in its different forms. In New York as elsewhere, organizations were engaged in advocacy, research, and community organizing around these issues; this included women of color and immigrant-led groups whose work has often gone unrecognized in standard narratives. Points of tension emerged—for example, given the disproportionate impact of rising incarceration and criminalization on communities of color, a number of groups led by women of color challenged the growing emphasis on punitive legal responses within the mainstream of the anti-violence against women movement.³²

It was in the context of this broader ferment that developments in New York helped to articulate the concept of workplace sexual harassment in the national consciousness. Wood ultimately lost her case on the grounds that she had left her job due to a “personal” matter. But her case and others like it helped to assert the significance of workplace sexual harassment and clarify those areas where the law fell short, including in its interpretation of sex discrimination under Title VII of the Civil Rights Act.³³ By the 1980s, a series of legal challenges—including the pivotal *Meritor Savings Bank v. Vinson* rape case that went to the Supreme Court—led to workplace sexual harassment being recognized as a form of sex discrimination under Title VII, subject to legal oversight by the US Equal Employment Opportunity Commission.³⁴ Drawing on the foundational work of legal scholar Catharine MacKinnon, the legal definition of workplace sexual harassment encompassed both “quid pro quo” (offering an employment benefit or threatening consequences contingent on sexual favors) and “hostile environment” (severe or pervasive sexual conduct) forms of harassment.³⁵ The definition of workplace sexual harassment was subsequently revised in 1998, after a decision in the Supreme Court case, *Oncale v. Sundowner Offshore Services*, expanded it to explicitly incorporate cases of same-sex harassment.³⁶

Since the late 1990s, advocates have also broken new ground in addressing the impact of intimate partner violence and sexual assault within the world of work, resulting in legal changes at the local and state levels.³⁷ In 2003 in New York City, the impact of domestic violence was recognized as having workplace consequences through the inclusion of victims of domestic violence as a protected class under New York City Human Rights Law, prohibiting employment discrimination against survivors of intimate partner violence, sexual assault, and stalking.³⁸ New York State followed suit in 2009, extending similar workplace protections under New York State Human Rights Law; there are still no such specific protections at the federal level.³⁹

³² Richie, Beth. *Arrested Justice: Black Women, Violence, and America’s Prison Nation*. NYU Press, 2012. See also Goodmark, Leigh. *Decriminalizing domestic violence: A Balanced Policy Approach to Intimate Partner Violence*. Vol. 7. Univ of California Press, 2018.

³³ Brownmiller and Alexander, 1992.

³⁴ Grose, Carolyn. “Same-Sex Sexual Harassment: Subverting the Heterosexist Paradigm of Title VII.” *Yale Journal of Law and Feminism*, vol. 7, no. 2, 1995, pp. 375.

³⁵ Catharine MacKinnon’s pathbreaking 1979 book, *The Sexual Harassment of Working Women*, played a key role in drawing attention to the subject and shaping the development of the basic legal categories. See MacKinnon, Catharine A. *Sexual Harassment of Working Women: A Case of Sex Discrimination*. No. 19. Yale University Press, 1979. It is worth noting that the severity and pervasiveness standards apply to all kinds of hostile environment workplace harassment claims, including but not limited to workplace sexual harassment.

³⁶ Grose, 1995.

³⁷ See Runge, Robin R., Marcellene E. Hearn, and Spenta R. Cama. “Domestic Violence as a Barrier to Employment.” *Clearinghouse Rev.* vol. 34, no. 9-10, 2000, pp. 552.

³⁸ Legal Momentum. “A Legal Toolkit for Women’s Economic Equality: Guidance for Women and Advocates,” 2019, pp. 39-44. The New York City Human Rights Law also requires that employers provide accommodations to victims of domestic violence.

³⁹ New York State Office for the Prevention of Domestic Violence. “Domestic Violence and the Workplace: A Handbook for Employers,” <https://opdv.ny.gov/professionals/workplace/dv-workplace-handbook.pdf>. For more on expanded protections for survivors through paid and unpaid leave provisions, see Runge, Robin R. “Redefining Leave from Work.” *Georgetown Journal on Poverty Law & Policy*, vol. 19, no. 3, 2012, pp. 445.

Centering the Leadership of Black Women

The story of Recy Taylor reflects a deep history of black women’s activism around sexual and gender-based harassment and violence. In 1944, Taylor, a 24-year-old mother and sharecropper, was abducted and gang raped by six white supremacist men in Alabama, an act of terror that was dismissed by local law enforcement. Rosa Parks, who was then the branch secretary of the Montgomery chapter of the NAACP, was part of an activist movement to document widespread sexual violence targeting black women. After collecting Recy Taylor’s testimony herself, Parks started a national campaign with other activists to draw attention to the case; solidarity groups for Recy Taylor were created nationwide and the campaign was supported by numerous African-American groups, women’s groups, and national labor unions. While Taylor never saw justice in a court of law, her act of speaking out in the face of intimidation served as a source of solidarity for other survivors and helped to expose sexual violence as a weapon of white supremacy. The national campaign to support her case represented a key moment in the early stages of the Civil Rights Movement.⁴⁰

Taylor is part of a long lineage of black women survivors who have advanced awareness around sexual violence and harassment in different arenas and helped to change the law. Federal appeals court plaintiff Sandra Bundy and Supreme Court plaintiff Mechelle Vinson were pioneers in making workplace sexual harassment legally actionable as a form of workplace discrimination.⁴¹ Brandeis Professor Anita Hill, whose testimony in the Clarence Thomas Supreme Court confirmation hearings helped to spark a national conversation around workplace sexual harassment, is also part of this lineage.⁴² So is Bronx-born Tarana Burke, who founded #MeToo and continues to be a leader in the movement from her base at Girls for Gender Equity in Brooklyn.⁴³

Historically, women of color and immigrant women have been overrepresented in areas of the economy where they have been exposed to particularly severe forms of workplace sexual harassment and assault.⁴⁴ Many of these industries and occupations have been characterized by racialized carve-outs from labor and employment protections.⁴⁵ Assumptions about who is “accessible” for sexual imposition have also made women of color and immigrant women more vulnerable to such advances.⁴⁶ Given such factors, women of color often experience

⁴⁰ McGuire, Danielle L. *At the dark end of the street: Black women, rape, and resistance—A new history of the civil rights movement from Rosa Parks to the rise of black power*. Vintage, 2010. See, also, Recy Taylor’s story in the archive of the Black Women’s Truth and Reconciliation Commission convened by Black Women’s Blueprint.

⁴¹ See *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), <https://caselaw.findlaw.com/us-supreme-court/477/57.html>

⁴² See Isaacs, David. “Sexual Harassment.” *Journal of Paediatrics and Child Health* vol. 54, no. 4, 2018, pp.391-392. Fraser, Nancy. “Sex, Lies, and the Public Sphere: Some Reflections on the Confirmation of Clarence Thomas.” *Critical Inquiry*, vol. 18, no. 3, 1992, pp. 595.. For more on how race shapes media coverage of violence against women, see Marian, Myers. *News Coverage of Violence Against Women: Engendering Blame*. Sage, 1997.

⁴³ See <https://metoomvmt.org/about/>

⁴⁴ See “Rape in the Fields.” *Frontline: Season 31*, produced by Lowell Bergman and Andrés Cediel, PBS and Univision, 2013; Burnham, Linda and Nik Theodore. “Home Economics the Invisible and Unregulated World of Domestic Work.” National Domestic Workers Alliance, 2012.

⁴⁵ Intent on preventing black women and men from building collective power and improving their conditions of work, white Southern Democrats in the US Congress mobilized successfully to exclude both domestic workers and farm workers from the 1935 National Labor Relations Act (NLRA), which established ground rules for unionization and collective bargaining, and from the Fair Labor Standards Act (FLSA), which set wage and hour standards. See Perea, Juan F. “The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act.” *Ohio State Law Journal*, vol. 72, no. 1, 2011, pp. 95. The practice of tipping can also be traced to efforts to maintain conditions of white supremacy following the end of slavery, as restaurant and railway companies sought to shift responsibility for paying black workers to customers. See Segrave, Kerry. *Tipping: An American social history of gratuities*. McFarland, 2009. As discussed in the “Voices of Survivors” section in this report, the practice of tipping and the existence of a lower federal minimum wage for tipped workers contributes to contemporary patterns of workplace sexual harassment in the restaurant industry.

⁴⁶ Hernandez, 2001.

workplace sexual harassment in ways that are qualitatively different from their white counterparts.⁴⁷

In a seminal 1991 article, Columbia and UCLA Law Professor Kimberlé Crenshaw used Hill's historic testimony in the Thomas hearings as a jumping-off point for developing an "intersectional" perspective on workplace sexual harassment and sexual and gender-based violence more broadly.⁴⁸ According to Crenshaw, the intersection of race and gender shapes exposure to various forms of harassment and violence. They also affect whose claims are believed. For example, because credibility has often been linked with chastity, and black women have been assumed not to be "chaste," their claims have often been dismissed out of hand.⁴⁹ This dynamic was evident in the Recy Taylor case, where four of the assailants denied the accusation by falsely claiming that Taylor was a sex worker.⁵⁰ Crenshaw argues

that the unique vulnerabilities created by the confluence of sexism and racism in black women's lives lie beyond the grasp of mainstream gender and racial justice movements.⁵¹

According to a recent study by the National Women's Law Center, "Black women filed sexual harassment charges with the EEOC [Equal Employment Opportunity Commission] at nearly 3 times the rate of white, non-Hispanic women."⁵² Yet, these experiences often remain less visible in the public eye. Black women have spearheaded responses to workplace sexual harassment that have had far-reaching benefits. However, there is still much work to be done so these gains can be realized more fully at all intersections in the struggle for justice.



Clockwise from top left: Sandra Bundy, Tarana Burke, Mechelle Vinson, and Anita Hill

⁴⁷ Cho, Sumi K. "Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong," *Journal of Gender, Race and Justice*, vol. 1, no. 1, 1997, pp. 177-212.

⁴⁸ Crenshaw, Kimberlé. "Race, Gender, and Sexual Harassment," *Southern California Law Review*, vol. 65, no. 3, 1992, pp. 1467-1476. The concept of intersectionality has been elaborated and applied across different fields of inquiry. See Cho, Sumi, Kimberlé Williams Crenshaw, and Leslie McCall. "Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis." *Signs: Journal of Women in Culture and Society* vol. 38, no. 4, 2013, pp. 785-810. For a perspective on the relevance of intersectionality amid the recent rise in activism around workplace sexual harassment, see Onwuachi-Willig, Angela. "What About #UsToo: The Invisibility of Race in the #MeToo Movement." *Yale Law Journal*, vol. 128, 2018, pp. 105. For a decade-old but still-germane critical review of the concept and its usage, see Nash, Jennifer C. "Re-thinking Intersectionality." *Feminist Review* vol. 89, no. 1, 2008, pp. 1-15.

⁴⁹ Crenshaw, 1992.

⁵⁰ McGuire, 2010.

⁵¹ For more on this issue, see Richie, Beth E. "A Black Feminist Reflection on the Antiviolence Movement." *Signs: Journal of Women in Culture and Society* vol. 25, no. 4, 2000, pp. 1133-1137.

⁵² Rossie, Amanda, Jasmine Tucker and Kayla Patrick. "Out of the Shadows: An Analysis of Sexual Harassment Charges Filed by Working Women." National Women's Law Center. August 2, 2018, <https://nwlc.org/resources/out-of-the-shadows-an-analysis-of-sexual-harassment-charges-filed-by-working-women/>



In the restaurant industry, sexually charged interactions may be regarded as something that simply comes with the territory of waitressing.

The eruption of the #MeToo movement shows that, despite important legal advances to address different forms of sexual and gender-based violence and harassment, there is still enormous work to be done in extending legal protections and changing culture and daily practice.⁵³ Once again, New York has occupied a significant place in the unfolding conversation around workplace sexual harassment, with many of the most highly publicized cases occurring in New York City. Film director James Toback has been accused of targeting hundreds of women on Manhattan's Upper West Side for unwanted sexual advances on the pretext of offering work in an upcoming film.⁵⁴ Restaurateur Ken Friedman stands accused of sexual harassment and assault by employees at his Michelin-starred Spotted Pig restaurant in Manhattan's West Village neighborhood.⁵⁵ Several allegations involving actor Bill Cosby and media mogul Harvey Weinstein, each of whom played a key role in helping to spark the #MeToo movement, also stem from incidents in New York City.⁵⁶ These and other high-profile cases illustrate the power imbalances that often enable workplace sexual harassment to occur with impunity despite the protections enshrined in law.⁵⁷

⁵³ Oliphant, Baxter. "Women and Men in Both Parties Say Sexual Harassment Allegations Reflect 'Widespread Problems in Society.'" Pew Research Center. 7 December 2017. <http://www.pewresearch.org/fact-tank/2017/12/07/americans-views-of-sexual-harassment-allegations> For the text of the *Oncale v. Sundowner* decision, see *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), <https://www.law.cornell.edu/supct/html/96-568.ZO.html>

⁵⁴ Whipp, Glen. "200 More Women Share their James Toback Stories after 38 Accuse Director of Sexual Harassment." *Los Angeles Times*, 18 Dec. 2018 <http://www.latimes.com/entertainment/movies/la-et-mn-toback-follow-up-20171023-story.html>

⁵⁵ Klein, Danny. "Chilling Details Emerge from Ken Friedman's Sexual Harassment Scandal." *Food Newsfeed*, 14 Dec. 2017.

⁵⁶ Ryan, Lisa. "Our Year of Reckoning: An Exhaustive Timeline." *The Cut*. 5 Oct. 2018, www.thecut.com/2018/10/sexual-harassment-harvey-weinstein-allegations.html. <https://www.thecut.com/2018/10/sexual-harassment-harvey-weinstein-allegations.html>

⁵⁷ Uggen, Christopher, and Amy Blackstone. "Sexual Harassment as a Gendered Expression of Power." *American Sociological Review*, vol. 69, no. 1, 2004, pp. 64–92. Other prominent headlines from New York City across a range of industries involved Mario Batali, Peter Martins, Terry Richardson, Mario Testino, Bruce Weber, Charlie Rose, and Bill O'Reilly.

Responding at the Industry Level

In 2011, a high-profile case prompted a response to workplace sexual harassment in New York City's hotel industry. Nafissatou Diallo, a hotel housekeeper of Guinean origin, reported a sexual assault in a room she was cleaning in Manhattan's upscale Sofitel hotel. The man she implicated was Dominique Strauss-Kahn, then president of the International Monetary Fund and a contender for the French presidency. Diallo's credibility was questioned by city law enforcement, and prosecutors decided not to file charges; Strauss-Kahn eventually settled out of court with Diallo for an undisclosed sum.⁵⁸ After Diallo's claim came to light, Strauss-Kahn faced sexual assault claims from other women in the US and France.⁵⁹

The Diallo case inspired the New York Hotel and Motel Trades Council (HTC), AFL-CIO, to act. In February 2012, the union body concluded negotiations on a collective bargaining agreement with the Hotel Association of New York City, which represents the city's hotel owners. The agreement, which covered a majority of Council members, included groundbreaking collective bargaining language that addressed the particular nature of workplace sexual harassment in the hotel industry, where workers are often subjected to unwanted sexual behavior by hotel guests (relevant passages of this historic language have been excerpted on p. 17). By including protections for immigrant workers against employer harassment regarding their legal status, the agreement also addressed a key factor that prevents many hotel workers from reporting workplace sexual harassment and other workplace violations.⁶⁰



UNITE HERE workers in Chicago on Oct. 11, 2017, after the winning the right to have panic buttons on the job. Their fingers are poised to press the button.

⁵⁸ Williams, Matt. "Dominique Strauss-Kahn Settles Sexual Assault Case with Hotel Maid." *The Guardian*, 10 Dec. 2012, www.theguardian.com/world/2012/dec/10/dominique-strauss-kahn-case-settled.<https://www.theguardian.com/world/2012/dec/10/dominique-strauss-kahn-case-settled>

⁵⁹ BBC. "Strauss-Kahn Faces New Rape Case." *BBC News*, 28 Feb. 2019, www.bbc.com/news/world-europe-18143545; Weisenthal, Joe. "Update: French Writer Tristane Banon Files Sexual Assault Charges Against Dominique Strauss-Kahn." *Business Insider*, 5 July 2011, www.businessinsider.com/french-writer-tristane-banon-to-file-sexual-assault-charges-against-dominique-strauss-kahn-2011-7.

⁶⁰ For the text of the full collective bargaining agreement, see https://hotelworkers.org/images/uploads/NYC_Hotel_Industry_Wide_Agreement.pdf.

The HTC’s response—including equipping hotel workers with panic buttons or other devices enabling them to call for help in threatening situations—preceded similar actions in other parts of the country. UNITE-HERE union locals have taken a legislative route in other cities. In June 2018, Chicago became the second city in the country, after Seattle, to pass legislation requiring all hotels—both union and non-union—to provide housekeepers with panic buttons.⁶¹ Even as workplace sexual harassment is taken up as a broad problem that cuts across different parts of the economy, these approaches illustrate the potential for developing responses that attend to the particularities of different workplace settings. Following is the historic collective bargaining language negotiated by the HTC:

(A) General Obligation of the EMPLOYER to Protect Employees

The EMPLOYER reaffirms that the safety of Employees is of paramount concern and includes safety from harassment by hotel guests. The EMPLOYER shall take reasonable steps to address inappropriate guest advances, harassment and threats and to respond promptly and adequately should such incidents occur.

(B) Devices

Within one (1) year of the date of this Agreement, the EMPLOYER will equip Room Attendants, Housekeeping Attendants, Minibar Attendants, Room Service Servers and any other employee who is required to enter an occupied guest room with devices to be carried on their persons at work that they can quickly and easily activate to effectively summon prompt assistance to their location. It is recognized that because of the varying size and physical layout of each hotel, different devices may be appropriate for different hotels.

(C) Right to Request Accompaniment to Entering an Occupied Guest Room

An employee who has a reasonable good faith belief that entering an occupied guest room alone poses a risk to his/her safety from guest conduct shall promptly notify management of the perceived safety risk if asked to enter the guest room shall be accompanied by a security officer, manager or other appropriate staff member, as determined by the EMPLOYER. As an alternative the EMPLOYER shall have the right to reassign the Employee to another guest room or to refuse service, in whole or in part, to said room.

(D) Employee Complaints

The EMPLOYER shall promptly and adequately respond to Employee complaints of inappropriate advances, harassment or threats by guests. The EMPLOYER shall not discipline nor otherwise adversely affect any employee for making a good faith complaint against a guest.

(E) Purpose of Article

The purpose of this Article is to protect employees and the device may not be used for any purpose other than employee protection.

As these cases have played out, reforms addressing workplace sexual harassment have been passed in New York, filling in some of the existing legal gaps and promoting legal enforcement and culture change through mandated training.⁶² At the state level, a series of laws enacted in April 2018 mandate that all employers implement an anti-sexual harassment policy and annual training program; ban non-disclosure agreements and mandatory arbitration clauses related to sexual harassment claims; expand protections against sexual harassment for workers who are not employees; and require that state employees liable for wrongdoing in connection with sexual harassment pay back a proportional share of payments made to plaintiffs.⁶³ In conjunction with the rollout of the new law, the state

⁶¹ Elejalde-Ruiz, Alexia. “Chicago Hotels Roll out Panic Button Systems to Protect Housekeepers from Sexual Harassment.” *The Chicago Tribune*, 7 June 2018, <https://www.chicagotribune.com/business/ct-biz-hotel-housekeepers-panic-buttons-xxxx-20180605-story.html>

⁶² Noguchi, Yuki and Shane McKeon. “Amid #MeToo, New York Employers Face Strict New Sexual Harassment Laws.” *NPR*, 9 Oct. 2018. <https://www.npr.org/2018/10/09/654537942/amid-metoo-new-york-employers-face-strict-new-sexual-harassment-laws>

⁶³ A Better Balance. “FACT SHEET: New York State Legislation Combating Sexual Harassment In The Workplace.” April 2018. https://www.abetterbalance.org/resources/newyork_sexualharassment/

has developed toolkits and other public education materials.⁶⁴

In 2019, the New York State Legislature built on the package of laws passed in 2018 and passed a bill that eliminated the requirement that discriminatory harassment be severe or pervasive to be unlawful. Instead, discriminatory harassment will be illegal unless an employer can prove that the conduct amounts to no more than petty slights or trivial inconveniences. The bill also makes clear that an employee need not have complained about the harassment to their employer in order for the employer to be liable. In addition, the bill extends the statute of limitations to file a sexual harassment complaint with the State Division of Human Rights from one to three years, lowers the employee threshold in the human rights law so that all employees are now covered, protects independent contractors against all forms of discrimination, and protects domestic workers against all forms of discriminatory harassment. The bill awaits the Governor's signature and he is expected to sign it.⁶⁵

New York City also passed a raft of legislation in April 2018 containing new measures to combat workplace sexual harassment. The city law contains a mandated training protocol for certain employers, including a requirement to share information on how bystanders to workplace sexual harassment can respond. It also eliminates the employee threshold for gender-based harassment; extends the statute of limitations for filing complaints concerning gender-based harassment with the New York City Commission on Human Rights from one to three years; and establishes a range of measures designed to enhance workplace sexual harassment-related research and reporting among city agencies and contractors.⁶⁶ The 2018 legislation builds on previous actions in New York City, including 2005 legislation establishing that workplace sexual harassment is actionable when an individual is "treated less well than other employees because of gender" rather than having to meet a "severe and pervasive" standard.⁶⁷

In the lead-up to the passage of the city laws, the New York City Commission on Human Rights organized a public hearing on workplace sexual harassment.⁶⁸ More than 40 years after the groundbreaking hearing that she organized as chair of the Commission, now-Congresswoman Eleanor Holmes Norton opened the December 2017 event, which provided an opportunity both to mark progress and take stock of the work that remains (see "Voices of Survivors" on p. 24 for excerpts of testimony delivered at the hearing).⁶⁹

This report seeks to provide a snapshot of workplace sexual harassment and its widespread impact across New York State. It also offers some recommendations on the kinds of additional measures and commitments that might help to more fully address a problem of such magnitude. Continuing to change law and policy so they reflect our best understanding of workplace sexual harassment remains an important front for future advocacy. Equally important is ensuring that people are empowered to meaningfully implement these mandates, and advancing a broader array of movement building and organizational change strategies that address the problem at its roots.

⁶⁴ A Better Balance. "FACT SHEET: NYC Stop Sexual Harassment in the Workplace Act." April 2018. <https://www.abetterbalance.org/resources/nyc-stop-sexual-harassment-in-the-workplace-act-april-2018/>. Recent legislation in New York State builds on decades of advocacy, organizing, and awareness-raising, including work addressing the contours of workplace sexual harassment and assault in specific parts of the economy. As an example, see this report from nearly a decade ago that draws on interviews with farmworker women in New York and other states: Bauer, Mary, and Mónica Ramirez. "Injustice on Our Plates." Southern Poverty Law Center, 2010, https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf. For more on sector-specific experiences and responses, see the "Responding at the Industry Level" and "Voices of Survivors" sections in this report.

⁶⁵ See <https://www.nysenate.gov/legislation/bills/2019/s6577>.

⁶⁶ Ibid.

⁶⁷ NYC Commission on Human Rights and Sexuality and Gender Law Clinic at Columbia Law School. "Combating Sexual Harassment in the Workplace: Trends and Recommendations Based on 2017 Public Hearing." NYC Commission on Human Rights. 2017. https://www1.nyc.gov/assets/cchr/downloads/pdf/SexHarass_Report.pdf

⁶⁸ Ibid.

⁶⁹ Huang, Georgene. "From Clarence Thomas to Harvey Weinstein: U.S. Representative Eleanor Holmes Norton Speaks Out." *Forbes*, 8 Dec. 2017. <https://www.forbes.com/sites/georgenehuang/2017/12/07/from-clarence-thomas-to-harvey-weinstein-u-s-representative-eleanor-holmes-norton-speaks-out/#4496df716370>

Methodology

In order to create a broad snapshot of workplace sexual harassment in New York, we added four questions to the 2018 Empire State Poll conducted by the Cornell Survey Research Institute. The Poll is a general phone survey administered in English and Spanish to adults age 18 and over who are residents of New York State. Each year, the survey includes a set of modules that are added to its core questions on topics such as community, government, work, the economy, and basic demographics.⁷⁰ In total, more than 60 questions were included in the 2018 version of the survey. We included four questions that sought to address the prevalence of different forms of workplace sexual harassment, their impact, and how New Yorkers would like to see leaders in the state respond:

- 1) Have you ever experienced workplace sexual harassment that created an uncomfortable or hostile work environment? This could include unwanted words, signs, jokes, pranks, intimidation, or physical violence.
 - 1 Yes
 - 2 No
 - 3 Not applicable- never had a job

- 2) Have you personally experienced someone in a position of authority at your workplace trying to trade job benefits for sexual favors? Benefits might include being hired, promoted, or maintaining employment.
 - 1 Yes
 - 2 No

- 3) [If “Yes” to 1 or 2] At the time you had these experiences or afterwards, have they had an impact on your work life, your career advancement, or your ability to obtain, keep, or perform a job?
 - 1 Yes
 - 2 No

- 4) Do you think elected officials and business, union, and other community leaders in New York State should do more to address problems of workplace sexual harassment and violence?
 - 1 Yes
 - 2 No

With 800 respondents, the margin of error for the survey is ± 3.5 percentage points at a 95 percent confidence level. Data collection for the 2018 Empire State Poll occurred between February 1, 2018, and April 1, 2018. More than two-thirds of the interviewees (68 percent) were reached over their cell phones and the rest were reached via landlines. The survey oversamples upstate residents in order to provide an even split of upstate and downstate residents, and the findings reported below are adjusted to provide a representative picture of residents across the state.⁷¹ We conducted all data analysis using Stata 15.1.

There are limitations arising from the limited number of questions, the scope of the questions, and the timing of the survey. The questions addressing prevalence of workplace sexual harassment closely mirror the definitions of “hostile environment” and “quid pro quo” sexual harassment codified in New York State law and do not capture the full range of behaviors that might be regarded as workplace sexual harassment in a broader cultural

⁷⁰ For more on the Empire State Poll, see <https://www.sri.cornell.edu/sri/esp.introduction.cfm>.

⁷¹ The sampling design for the Empire State Poll is described here: <https://sri.cornell.edu/sri/esp.sampling.cfm>.

sense (see footnote for more on the wording of the hostile environment question).⁷² The question on the impact of workplace sexual harassment focuses on how people’s work lives are affected and leaves out a range of other potential effects, including psychological effects and the impact on people’s family lives.⁷³ Since the survey was completed in early April 2018, responses to the question on how New York leaders should respond do not account for legislative and other actions taken after that point. Finally, due to the relatively small sample size, the limited demographic and employment variables, and the fact that we did not differentiate experiences of workplace sexual harassment in current versus previous jobs, the survey data are not well suited for fine-grained analysis of differences across occupations, sectors, and different kinds of work arrangements.

A general phone survey is a useful albeit imperfect tool for assessing experiences and views related to workplace sexual harassment. For a topic as sensitive and potentially difficult to talk about as sexual harassment, the impersonal format of a phone survey has its limits—not everyone will feel comfortable being forthcoming about the issue with a stranger.⁷⁴ At the same time, the anonymity of the format and the broad if not total reach across the population of New York State provides a more representative picture of the problem than was available before the survey was conducted. In the final section of the report, we offer some suggestions on questions and issues we were not able to unpack that future research might address.

⁷² Shultz, Vicki. “Reconceptualizing Sexual Harassment, Again.” *Yale Law Journal*, vol. 128, 2018, no. 22. Under New York State law, the “severe and pervasive” standard is used to determine if harassing behavior meets the “hostile environment” threshold. As discussed above, a broader standard has been established in New York City—that “an individual is treated less well than other employees because of gender”—and there has been debate around the country about shifting the threshold in this direction. We included the word “uncomfortable” in our survey question on hostile environment workplace sexual harassment to relax the threshold somewhat while maintaining clarity and staying relatively close to the statewide legal definition.

⁷³ Schneider, Kimberly T., Suzanne Swan, and Louise F. Fitzgerald. “Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence from Two Organizations.” *Journal of Applied Psychology* vol. 82, no. 3, 1997, 401.

⁷⁴ Lensvelt-Mulders, G. J. L. M. “Surveying sensitive topics.” *International Handbook of Survey Methodology* vol. 46, 2008, pp. 41..

Findings

Our descriptive analysis of the 2018 Empire State Poll indicates that workplace sexual harassment is widespread across New York State, has broad impact, and is a problem about which New Yorkers would like to see their leaders do more. The “Voices of Survivors” section on p. 24 draws on testimony from the 2017 New York City Human Rights Commission hearing on sexual harassment to sketch some individual experiences of workplace sexual harassment and how they were shaped by the different work settings in which they occurred. In the final section of the report, we highlight remaining gaps in knowledge that future research could address. Below, we share key findings from our analysis.

Workplace sexual harassment is widespread across New York State. A large number of New Yorkers report experiences of workplace sexual harassment that may be legally actionable under state law. Most strikingly, more than 1 in 10 New Yorkers (10.9 percent) above age 18 report experiencing “someone in a position of authority at [their] workplace trying to trade job benefits for sexual favors,” including 12.2 percent of women and 9.5 percent of men. This translates to some 1.7 million people across the state having experienced workplace sexual harassment that involves a *quid pro quo* dimension. Fully 21.9 percent of adult New Yorkers—which adds up to 3.4 million people—said they had experienced workplace sexual harassment that created an “uncomfortable or hostile work environment,” including 29.5 percent of women and 14.2 percent of men. Overall, 25.1 percent of New Yorkers report experiencing at least one of the two forms of workplace sexual harassment we asked about, including 31.1 percent of women and 18.9 percent of men. That amounts to nearly 3.9 million people across the state having experienced some form of workplace sexual harassment with potential legal implications.⁷⁵

Quid pro quo workplace sexual harassment varies along ethno-racial lines. Reported rates of hostile environment workplace sexual harassment did not vary significantly along lines of income, age, or race, or across different geographic areas within New York State. However, people of color and people of Hispanic origin were significantly more likely than their non-Hispanic white counterparts to say they experienced *quid pro quo* sexual harassment at some point over the course of their working careers.⁷⁶ Fully 13.9 percent of people of color and people of Hispanic origin in New York said they had experienced “someone in a position of authority at [their] workplace trying to trade job benefits for sexual favors,” as opposed to 8.5 percent of non-Hispanic whites (see footnote for more on how we tested for statistical significance).⁷⁷

Workplace sexual harassment impacts the work and careers of New Yorkers. Experiences of workplace sexual harassment have an impact on the work and careers of many New Yorkers. Among those reporting at least one of the two forms of workplace sexual harassment we asked about, 38.9 percent said these experiences “had an impact on [their] work life...career advancement...or ability to obtain, keep, or perform a job.” For those saying they experienced *quid pro quo* workplace sexual harassment, nearly half (48.9 percent) reported such an impact. Drawing on one of the core questions in the Empire State Poll, we also found that past experiences of workplace sexual harassment were correlated with job seeking: of those who were employed at the time of the survey, 41.4 percent of those who had recently looked for new work reported having experienced workplace sexual harassment, as opposed to 23.4 percent of those who had not (see footnote for more on the limitations of the data

⁷⁵ Estimates of the number of people who have experienced sexual harassment in New York State were calculated by multiplying the percentages from the survey results by the total adult population in New York. For relevant statistics on the size of the adult population, see <https://www.census.gov/quickfacts/ny>

⁷⁶ We use the term “Hispanic” to reflect the language used in the survey. Due to the relatively small size of the survey sample, we created a non-Hispanic white category that excludes blacks, Asians, Hispanics, and those of mixed race.

⁷⁷ We ran a simple logistic regression model in which the response variable was a dichotomous indicator for experiences of *quid pro quo* workplace sexual harassment, and the explanatory variable was our dichotomous race/ethnicity indicator. The analysis showed that the difference between the two groups is statistically significant at a 95 percent confidence level.

and how to interpret this result).⁷⁸

New Yorkers want their leaders to address workplace sexual harassment. More than 80 percent of New York residents (83.4 percent) think “elected officials and business, union, and other community leaders in New York State should do more to address problems of workplace sexual harassment and violence.” Strong majorities hold this view across different demographic groups and regions of the state. Most also support leaders taking action regardless of party or ideology, though there is some significant variation along these dimensions. Looking at party differences, 90.5 percent of Democrats say leaders in the state should do more to address workplace sexual harassment, along with 83.0 percent of Independents, and 68.1 percent of Republicans (see footnote for more on how we tested for statistical significance).⁷⁹ The numbers roughly line up with corresponding ideological distinctions: 92.2 percent of liberals say leaders should do more to address workplace sexual harassment, along with 82.4 percent of moderates, and 73.6 percent of conservatives.⁸⁰

⁷⁸ We ran a logistic regression model that showed this difference to be statistically significant at a 99 percent confidence level. A dichotomous workplace sexual harassment indicator (combining the *quid pro quo* and hostile environment variables) was the response variable, and a dichotomous indicator for whether people had looked for work within the past four weeks was the explanatory variable. Since our questions asked about experiences of workplace sexual harassment in general, we cannot directly link experiences of workplace sexual harassment in the *current* job with the propensity to seek out new work; furthermore, even if we could distinguish experiences of harassment in the current job, the limited set of variables available for inclusion as controls in the Empire State Poll dataset would prevent us from establishing a causal link. However, it is worth noting that our result could be reflecting both immediate and longer-term implications of workplace sexual harassment for people’s labor market trajectories. Research in labor economics has demonstrated that, in addition to its short-term impact on wellbeing and financial security, unemployment can have lasting “scarring” effects on people’s career paths. See, for example, Arulampalam, Wiji. “Is Unemployment Really Scarring? Effects of Unemployment Experiences on Wages.” *The Economic Journal*, vol. 111, no. 475, 2001, pp. F585–F606. Workplace sexual harassment has also been shown to have both short-term and longer-term effects on people’s work and careers, generating adverse outcomes—e.g., higher job turnover and weaker labor market attachment—that connect to our result. See McLaughlin, Heather, Christopher Uggen, and Amy Blackstone. “The economic and career effects of sexual harassment on working women.” *Gender & Society* 31.3 (2017): 333-358; Willness, Chelsea R., Piers Steel, and Kibeom Lee. “A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment.” *Personnel Psychology*, vol. 60, no. 1, 2007, pp. 127-162.

⁷⁹ To assess this variation by party and ideology, we used the Bonferroni method for conducting simultaneous pairwise comparisons across more than two groups. The analysis showed that support for leaders doing more to address workplace sexual harassment differed significantly across party (Democrat, Independent, Republican) and ideology (Liberal, Moderate, Conservative) at a 99 percent confidence level.

⁸⁰ Granted, “independents” may be positioned across the political spectrum, so this category does not necessarily correspond with the “moderates” category.

Table 1: New Yorkers of All Political Stripes Want Leaders in the State to Do More to Address Workplace Sexual Harassment

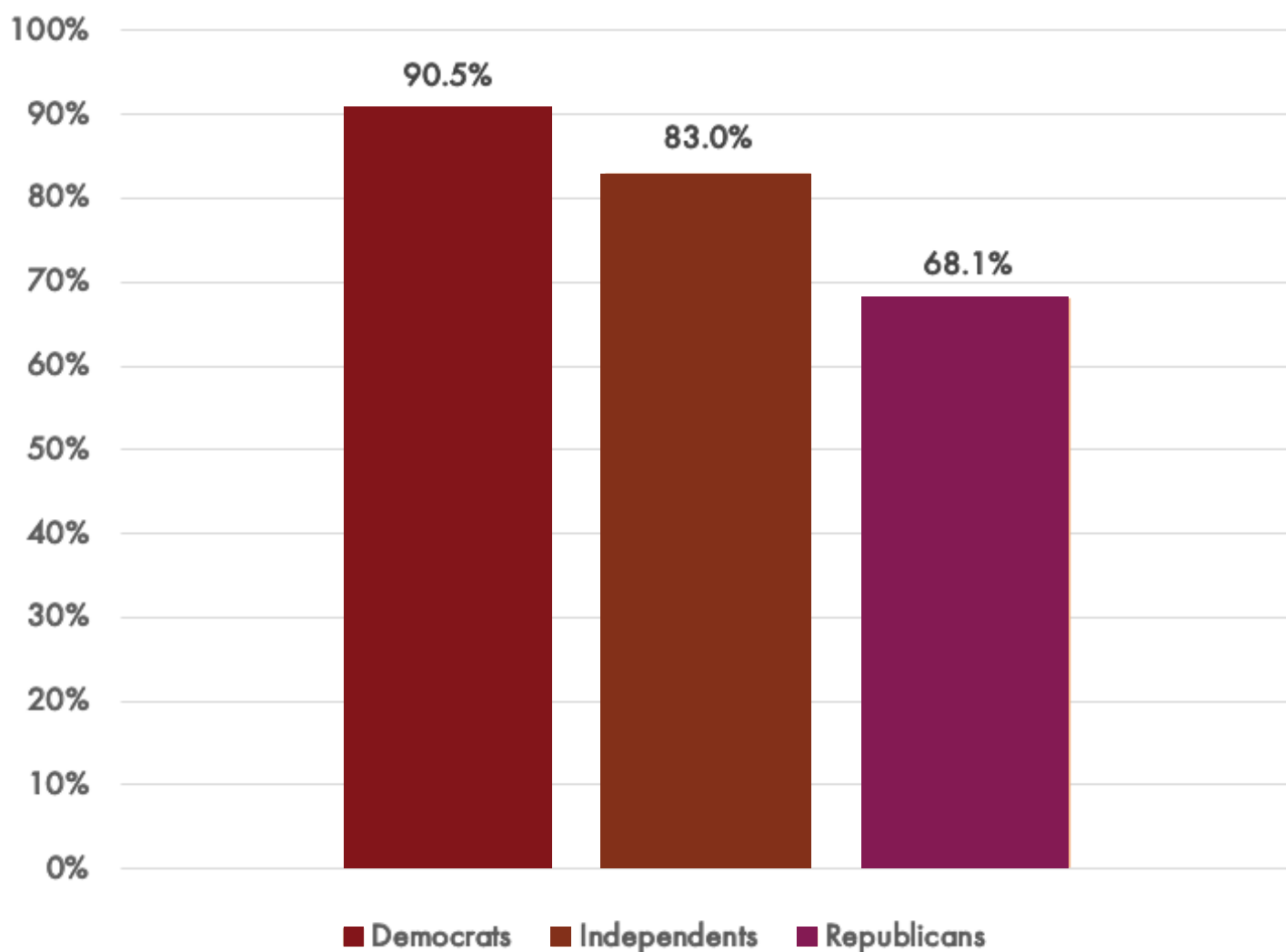


Table 1 indicates “yes” responses to the question, “Do you think elected officials and business, union, and other community leaders in New York State should do more to address problems of workplace sexual harassment and violence?” The results of that question were cross-tabulated with results from a question on respondents’ stated political affiliation.

Voices of Survivors

Behind the statistics are stories. The findings from the 2018 Empire State Poll provide a picture of workplace sexual harassment in New York State through a wide-angle lens. They do not capture the nuances of people's lived experiences. Testimony delivered at the 2017 New York City Human Rights Commission public hearing on sexual harassment offers a window into these experiences and some of the particular challenges that arise in different sectors of the economy. The quotes excerpted below draw from this testimony.

Generations of domestic workers in New York and across the US have dealt with workplace sexual harassment, often behind closed doors in the intimate space of the home.⁸¹ The hidden and fragmented nature of domestic work together with exclusions from federal labor and employment protections—a product of institutionalized racism—mean that domestic workers are often unable to assert basic workplace rights, including the right to work in a harassment-free environment.⁸² A former nanny who works as a New York organizer with the National Domestic Worker's Alliance (NDWA) described being harassed at age 16 by the father of the child in her charge:

One day I was in the house where I worked when the father came home and went to take a bath. All of a sudden I heard him calling me, and when I went to see what he needed, he opened the door to the bathroom and exposed himself to me. I was embarrassed by the incident and I was very fearful, so I took the child to another room, but when he came out of the bathroom, he began touching me and tried to abuse me in the presence of the child.

At that moment a neighbor began knocking on the door and I managed to go out running from the house. Because of fear and embarrassment, I was silent about this for many years and I have never told anyone and I tried to forget about it completely. But all of these cases that have been coming to light had made me see that this is the moment I have been waiting for.⁸³



⁸¹ Dresser, Laura. "Cleaning and caring in the home: shared problems? shared possibilities?" 2008 Industry Studies Conference Pa Pen, 2008.

⁸² Perea, 2011.

⁸³ Testimony of Daniela Contreras, National Domestic Workers Alliance, at New York City Human Rights Commission's "Public Hearing on Sexual Harassment in the Workplace," December 6, 2017.



In 2010, NY State becomes the first state to pass “The Domestic Workers Bill of Rights.”

Another domestic worker spoke about being harassed by an older man whose house she was cleaning. Eventually he started stalking her at her home, forcing her to move.⁸⁴ In response to these kinds of abuses, domestic worker organizations and their allies have been pushing legislative reform and partnering with domestic employers, government agencies, and others on legal enforcement and culture change work. The New York Domestic Workers' Bill of Rights, legislation passed in 2010, includes the creation of a special cause of action for domestic workers who suffer sexual or racial harassment.⁸⁵ Still, the terrain for changing practices in New York and other states remains challenging given that many employers still do not see their homes as a workplaces subject to legal regulation.⁸⁶

Looking broadly across the economy, prior research suggests that skewed gender ratios at the workplace often promote workplace sexual harassment.⁸⁷ In male-dominated occupations, workplace sexual harassment is frequently part of a broader set of behaviors aimed at preserving gendered occupational boundaries and making female entrants feel like outsiders.⁸⁸ A staffer for a construction union local described the harassment and violence she had encountered and observed in her 29 years in the industry:

⁸⁴ Testimony of Teresa Guzman, National Domestic Workers Alliance, at New York City Human Rights Commission's "Public Hearing on Sexual Harassment in the Workplace," December 6, 2017.

⁸⁵ For details about the NY Domestic Workers Bill of Rights, see: <https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>. More recently, testimony delivered by the National Domestic Workers Alliance at the 2017 NYC hearing was cited by the New York City Commission on Human Rights when it reduced the employee threshold for pursuing sexual and gender harassment claims under New York City Human Rights Law from four to one.

⁸⁶ Testimony of Marris Senteno, National Domestic Worker Alliance, at New York City Human Rights Commission's "Public Hearing on Sexual Harassment in the Workplace," December 6, 2017.

⁸⁷ Gutek, Barbara A., and Bruce Morasch. "Sex-Ratios, Sex-Role Spillover, and Sexual Harassment of Women at Work." *Journal of Social Issues* vol. 38, no. 9, 1982, pp. 55-74..

⁸⁸ See Gruber and Bjorn, 1982, for a discussion of these dynamics based on research in the auto industry. Ruber, James E., and Lars Bjorn. "Blue-Collar Blues: The Sexual Harassment of Women Autoworkers." *Work and Occupations*, vol. 9, no. 3, 1982, pp. 271–298.

I've been grabbed, kissed, slapped on the butt, subjected to lewd and vulgar remarks around me, towards me, and simply cannot count the amount of unwanted sexual advances. And these might be considered to be mild for many in my industry because there certainly have been women that I know personally that have been raped within the industry and even one of my sisters, a carpenter [...], who paid the ultimate price when she was killed on the job by one of her male co-workers.⁸⁹



Photo of architectural sheet metal worker by Esther D. Minton.

In female-dominated occupations, including large segments of the service economy, the performance of “female” roles by women workers often opens the way for workplace sexual harassment from co-workers as well as customers. In the restaurant industry, for example, sexually charged interactions frequently come to be regarded as something that simply comes with the territory of waitressing.⁹⁰ As the Restaurant Opportunities Center has highlighted, the fact that restaurant servers earn a substantial portion of their pay through tips can contribute to this dynamic.⁹¹ Moreover, even in workplace settings with large numbers of women, the fact that supervisory roles are often male-dominated can play into dynamics of sexual harassment. A carpenter and current member of another union spoke about an experience of *quid pro quo* harassment while working at a grocery store:

My first job was working in a supermarket where a manager would send me to the stockroom in the basement and then follow me. Multiple times he tried to kiss me and finally I let him for fear of losing my job. He said if I was nice to him, I could be assistant manager within a year. I remember being confused and naively flattered. Years later, thinking back to that time, I realized how predatory his behavior was as a 32-year-old trying to seduce a 13-year-old, and that was just my first job [she then went on to describe several other cases of harassment she experienced in different industries].⁹²

⁸⁹ Testimony of Leah Rambo, Sheet Metal Workers Local 28, at New York City Human Rights Commission’s “Public Hearing on Sexual Harassment in the Workplace,” December 6, 2017.

⁹⁰ Huebner, Lisa C. “It is Part of the Job: Waitresses and Nurses Define Sexual Harassment.” *Sociological Viewpoints*, vol. 24, 2008, pp. 75-90.

⁹¹ For an analysis of how tipping feeds into sexual harassment in the restaurant industry, see a 2014 report from the Restaurant Opportunities Center. The Restaurant Opportunities Centers United. “The Glass Floor: Sexual Harassment in the Restaurant Industry,” The Restaurant Opportunities Centers United and Forward Together, October, 2014.

http://rocunited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf

⁹² Testimony of Carey Castro, United Brotherhood of Carpenters, at New York City Human Rights Commission’s “Public Hearing on Sexual Harassment in the Workplace,” December 6, 2017.

Many of the most highly publicized recent cases of workplace sexual harassment have occurred in the arts and entertainment sector. One factor that enables sexual harassment in this sector and increases barriers to seeking redress is that many workers are independent contractors whose workplace rights are more limited than those of employees.⁹³ A former model who founded the Model Alliance to advocate for the rights of models described her own experiences and the kinds of challenges that come with being an independent contractor:

...[M]y peers and I have experienced inappropriate demands including routinely being put on the spot to pose nude and provide sexual favors. In some cases, models are being treated more like escorts with their agencies sending them to known predators and putting them in compromising situations that no child, no person should have to deal with... Because the primary purpose and activity of the modeling agencies is to obtain this employment for their models, they should be treated as employment agencies under New York State law, which would subject them to that necessary licensing and regulation. Instead, though, these agencies call themselves management companies creating a huge loophole through which they evade this closer look.⁹⁴



Individuals and organizations such as those represented at the hearing are leading efforts to confront workplace sexual harassment in different parts of the economy. Some aspects of the remedies being developed are particular to the challenges within certain occupations, industries, and work arrangements, but there are also many promising practices that hold potential for wider application. One question for the future is how organizing, policy, and culture change strategies that work can be shared more effectively in New York and around the country.⁹⁵

⁹³ Gray, Lois, Maria Figueroa, and Jacob Barnes. "State of the Artist: Challenges to the New York State Art and Entertainment Industry & its Workforce." The ILR Worker Institute, Cornell University. June 2017. <https://www.ilr.cornell.edu/worker-institute/new-york-state-projects/state-artist-challenges-new-york-state-arts-entertainment-industry-and-its-workforce>

⁹⁴ Testimony of Sara Ziff, Model Alliance, at New York City Human Rights Commission's "Public Hearing on Sexual Harassment in the Workplace," December 6, 2017.

⁹⁵ There is also a global conversation on these issues. See International Labour Organization, 2019.

Looking Ahead

The 2018 Empire State Poll results show that workplace sexual harassment is a problem affecting the lives of millions of New Yorkers. Women are more likely to experience workplace sexual harassment than men, but a substantial share of men experience it, too. The survey findings indicate that workplace sexual harassment impacts the work and careers of both women and men, though we are unable to assess the precise nature of these effects and how they may vary according to gender and other factors. Nor did the survey capture the demographics of perpetrators and other important issues relevant to how gender and sexuality shape experiences of workplace sexual harassment. Given prior research indicating that men who stray from traditional norms of masculinity face a greater likelihood of experiencing workplace harassment, often from other men, more work is needed to unpack these nuances within the New York context.⁹⁶ In light of previous studies showing that transgender and gender non-conforming people are frequently targeted for intense harassment and violence, more work is also needed to capture their experiences.⁹⁷

Because the questions included in the survey were meant to capture experiences that generally fit the definitions of “quid pro quo” and “hostile environment” workplace sexual harassment, it is worth underscoring that the findings reported here do not present a full picture of the experiences of workplace sexual harassment, including those that may not conform to a narrow legal definition.⁹⁸ Previous research that spells out in greater detail a broader range



⁹⁶ For a recent study on the relationship between performance of masculinity and experiences of workplace sexual harassment, see Holland, Kathryn J., Verónica Caridad Rabelo, Amber M. Gustafson, Rita C. Seabrook, and Lilia M. Cortina. “Sexual harassment Against Men: Examining the Roles of Feminist Activism, Sexuality, and Organizational Context.” *Psychology of Men & Masculinity* vol. 17, no. 1, 2016. For more on how men target other men for such treatment, see Lee, Deborah. “Hegemonic Masculinity and Male Feminisation: The Sexual Harassment of Men at Work.” *Journal of Gender Studies* vol. 9, no. 2, 2000, pp. 141 - 145.

⁹⁷ See Lombardi, Emilia L., et al. “Gender Violence: Transgender Experiences with Violence and Discrimination.” *Journal of Homosexuality* vol. 42, no. 1, 2002, pp. 89-101. General Surveys such as the Empire State Poll usually fail to capture gender identity. In much larger surveys, this could be remedied by adding questions on the topic. However, given the sample size of the Empire State Poll, adding such questions would be unlikely to yield results with any statistical significance. To address this limitation, it is important to complement general surveys such as the Empire State Poll with other, more targeted methods.

⁹⁸ See Schultz, 2018.

of behaviors associated with workplace sexual harassment has found substantially higher rates.⁹⁹ Other issues we were unable to address include the frequency and intensity of experiences of workplace sexual harassment—for example, whether they involved repeated behaviors or physical violence—and people’s understandings of why they were targeted.¹⁰⁰

The findings on *quid pro quo* sexual harassment point to the importance of situating workplace sexual harassment within a broad and multilayered understanding of discrimination. To the extent that a large number of New Yorkers have experienced people in authority seeking to trade sexual favors for job-related benefits, we need to understand more fully how workplace sexual harassment is connected to problems such as discrimination in hiring, promotions, and pay.¹⁰¹ The particularly high rates of *quid pro quo* sexual harassment reported by people of color and those of Hispanic origin point to the ways in which race and ethnicity can shape experiences of workplace sexual harassment. The limited number of questions we included in the Empire State Poll and the overall size and scope of the survey prevent us from being able to say very much about these patterns, or how factors such as gender identity, immigration status, and disability shape vulnerabilities to workplace sexual harassment. Further research could help to tease out the complex intersections of identity and status that shape these vulnerabilities.¹⁰²

The widespread reported impact of workplace sexual harassment on people’s work and careers suggests that there are implications for survivors, families, employers, and others that need to be further explored. The correlation between experiences of workplace sexual harassment and job-seeking points to one possible set of linkages between workplace sexual harassment and job turnover. Again, because our questions did not ask about experiences in the *current* job, we cannot directly link experiences of workplace sexual harassment with the propensity to seek out new work. However, workplace sexual harassment may inflict lasting scars that need to be better understood, and psychological and health impacts are a related set of issues that also warrant further study within New York State.

The findings on what people want from their leaders suggest there is broad-based support for further action around workplace sexual harassment. The results do not account for recent legislative changes that occurred after the survey was fielded in early 2018. However, significant as they were, we think it is quite unlikely that most New Yorkers would consider these actions to be endpoints in the change process. Below, we recommend some areas for further action and leadership in addressing workplace sexual harassment across the state:

Recognize workplace sexual harassment as an institutional problem. In New York as elsewhere, workplace sexual harassment is not a matter of a “few bad apples.” The 2018 Empire State Poll survey results underscore the widespread nature of the problem and its broad impact on people’s lives and careers. More specifically, our findings on *quid pro quo* workplace sexual harassment suggest that, on a large scale, people with power over the livelihoods of others are frequently abusing this authority. To mobilize a response that matches the magnitude of the problem of workplace sexual harassment, the strategy cannot just be one of containment: dealing with the few individual culprits who happen to get caught, and moving on to business as usual. Instead, we need a transformative approach that gets at the institutional roots of workplace sexual harassment, confronting issues such

⁹⁹ According to a 2016 report from the EEOC Select Task Force on the Study of Harassment in the Workplace, estimates on the percentage of women who experience workplace sexual harassment range from 25 percent to 85 percent due largely to differences in how workplace sexual harassment is defined in survey questionnaires. See Feldblum and Lipnic, 2016.

¹⁰⁰ Fitzgerald, Loius and Lila Cortina. "Sexual Harassment in Work Organizations: A View from the Twenty-First Century" in eds. C.B. Traris et al, "APA Handbook of the Psychology of Women: Perspectives on Women's Private and Public Lives." American Psychological Association, 2018, pp. 215 - 234.

¹⁰¹ Jacobs, Jerry A. *Revolving doors: Sex segregation and women's careers*. Stanford University Press, 1989.

¹⁰² Hernandez, Tanya Kateri. "Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race," *Journal of Gender, Race and Justice*, vol. 4, no. 2, 2001, pp. 183-224.

Engaging Men as Allies

The prevalence of workplace sexual harassment across New York State suggests the need for a response that addresses the problem at its roots. This includes confronting unequal power dynamics and workplace cultures that foster unhealthy norms of masculinity and male dominance. Advocates across the state have recognized that promoting broad, long-term culture change at this level requires engaging men as allies in the struggle against workplace sexual harassment and assault.¹⁰³

Quentin Walcott, co-executive director of CONNECT in New York City and a longtime anti-violence activist and educator, highlights the importance of seeing workplace sexual harassment as part of a broad spectrum of gender-based violence ranging from intimate partner violence to workplace bullying to sexual harassment in different arenas. Informed by this vision, he has partnered in developing a “Men and Women as Allies” workplace training program that engages men to intervene in addressing entrenched patterns of sexual harassment and violence. Rather than a narrow focus on limiting liability, the program seeks long-term change in workplace cultures and pushes for accountability and complaint mechanisms that can be shaped and accessed by those most affected.¹⁰⁴

The “Men and Women as Allies” program explores how gender roles and stereotypes are enforced at work and in broader society, perpetuating sexual harassment and violence against women and LGBTQ+ people. By encouraging men to break the silence about workplace sexual harassment and to take an active bystander role, the program reinforces the value of proactive approaches to prevention that do not place the full burden on those



Quentin Walcott, co-executive director of CONNECT.

¹⁰³ For more on the approach of “engaging men as allies,” see Wagner, KC, Diane Yates, and Quentin Walcott. “Engaging Men and Women as Allies: A Workplace Curriculum Module to Challenge Gender Norms about Domestic Violence, Male Bullying and Workplace Violence and Encourage Ally Behavior.” vol. 42, no. 1, 2012, pp. 107-113.

¹⁰⁴ Ibid.

experiencing workplace sexual harassment.¹⁰⁵ By addressing how larger power dynamics uphold workplace sexual harassment, it recognizes how those affected by multiple forms of discrimination and exclusion can be uniquely vulnerable. Evaluations of the program indicate that they increase men’s willingness to hold each other accountable and interrupt cycles of harassment and violence.¹⁰⁶ One example of this program includes a joint labor-management initiative involving Verizon, the CWA, and the IBEW that used the vehicle of a work/family committee to implement a “Men and Women as Allies” initiative within a predominantly male workforce.¹⁰⁷

Another program that has focused on engaging men as allies is the “12 Men Model” created by Vera House, a Syracuse-based organization that seeks to “prevent, respond to, and partner to end domestic and sexual violence and all other forms of abuse.” The program facilitates small group discussions that seek to mobilize men as change agents in their families, communities, and workplaces. The Worker Institute recently conducted an assessment of the program that found that a strong majority of the 29 participants who were surveyed push reported pushing back against restrictive gender expectations, engaging other men in domestic violence prevention, and implementing what they learned in their communities.¹⁰⁸

as entrenched power differentials, unchecked managerial authority, diversity and inclusion (or a lack thereof) at all levels of organizational hierarchies, and deeply ingrained workplace cultures that subtly or outwardly sanction harassing behaviors.¹⁰⁹

The correlation of race and Hispanic identity with patterns of *quid pro quo* workplace sexual harassment warrants a more thorough institutional analysis. For example, people of color and people of Hispanic origin may experience *quid pro quo* harassment at higher rates due in part to their overrepresentation in low-paying or lower-status jobs. Yet, to what extent are these experiences of harassment also part and parcel of the very institutionalized discrimination that keeps people in such jobs, cutting off their chances at upward mobility? From our limited data, it is impossible to tease out these complexities. But this is an area that clearly deserves further attention. Following from Crenshaw’s analysis (see “Center the Leadership of Black Women” on p. 13), we need an approach that examines the institutional foundations of harassing behavior along multiple intersecting dimensions.¹¹⁰

Continue pursuing measures that promote both redress and prevention. At the state and city levels, New York has recently taken important steps to address workplace sexual harassment. Our survey findings suggest that there is support across the political spectrum for continuing to do more. In testimony delivered at the February 2019 New York State public hearing on workplace sexual harassment, Dina Bakst and Sarah Brafman of A Better Balance outlined several measures that could move the ball further in addressing the problem at the state level. Some of these measures, such as lowering the threshold for what is considered legally actionable, passed through the legislature in 2019. Other measures they called for, such as enhancing employer reporting requirements and developing policies and investigative strategies that focus particular attention on industries where harassment is

¹⁰⁵ For more on bystander intervention in the context of bullying and sexual harassment, see Nickerson, Amanda B., et al. “Measurement of the Bystander Intervention Model for Bullying and Sexual Harassment.” *Journal of Adolescence* vol. 37, no. 4, 2014, pp. 391-400..

¹⁰⁶ Wagner, KC, and Diane Yates, and Quentin Walcott, 2012.

¹⁰⁷ The initiative engaged more than 1,600 workers with help from the Worker Institute and CONNECT, NYC.

¹⁰⁸ The response rate among all those to whom the survey was distributed was 16.1 percent. 89.3 percent of survey respondents reported that they were implementing such strategies in their own lives. When asked to evaluate the impact of domestic violence prevention strategies they learned, 84.0 percent of participants said the strategies were very or somewhat impactful on their community or networks.

¹⁰⁹ For more on how unchecked managerial discretion connects to dynamics of workplace sexual harassment, see Schultz, 2018. For more on the impact of gender inclusion in the managerial ranks, see Dobbin, Frank, and Alexandra Kalev. “Training Programs and Reporting Systems Won’t End Sexual Harassment. Promoting More Women Will.” *Harvard Business Review*, 15 November 2017..

¹¹⁰ Crenshaw, 1992.

widespread,¹¹¹ are still needed.

In addition to promoting redress for those who have experienced harassment, it is critical to deepen support for prevention. The recent city- and state-level policy shifts that mandate training are a step in this direction. We need to build on this with an array of creative approaches aimed at addressing root causes. For example, bullying in schools and youth dating violence are ongoing problems of significant concern, and more effective responses could help cut off the oxygen for harassing and violent behavior at earlier points in the life cycle. Organizations and communities in New York have taken action to build effective programs in this realm, and more support is needed to grow such efforts at scale.¹¹²

Form working groups to help implement policy and culture change.

As the fourth most populous state, New York is marked by complicated differences across its varied geographic, social, and political terrain. The sheer magnitude of the problem of workplace sexual harassment as captured in the 2018 Empire State Poll suggests that efforts to respond will need to be broad based, enlisting the support and engagement of a range of constituencies and movements, including survivors, service providers, anti-violence advocates, workplace safety and health educators, unions, worker centers, employers, policymakers, and concerned individuals.¹¹³ Such efforts are already in motion—e.g., the New York City Commission on Human Rights has organized a series of meetings highlighting



New Yorkers of color and of Hispanic origin are significantly more likely to have experienced quid pro quo workplace sexual harassment than their white counterparts.

¹¹¹ For the full testimony that Bakst and Brafman delivered at the 2019 New York State public hearing on sexual harassment in the workplace, see <https://www.abetterbalance.org/resources/testimony-new-york-state-2019-public-hearing-on-sexual-harassment-in-the-workplace/>

¹¹² Examples of such programs include workshops and peer education programs developed by Day One: <https://www.dayoneny.org/programs/>; youth organizing and after-school programs developed by Girls for Gender Equity: <https://www.ggenyc.org/programs/>; and the Westchester Board of Cooperative Educational Services (BOCES) initiative for vocational high schoolers that was designed to educate students and instructors about gender-related issues, bullying, and workplace violence. For more about the BOCES initiative, see The Worker Institute. "Building Healthy Relationships in Our Communities, in School and at Work." Cornell University, ILR School. 2014. See also Monks, Claire P., et al. "Bullying in different contexts: Commonalities, differences and the role of theory." *Aggression and violent behavior* 14.2 (2009): 146-156. For more on model policies and other tools for preventing workplace sexual harassment, see this resource page from the New York State Department of Labor: <https://www.labor.ny.gov/immigrants/sexual-harassment-prevention.shtml>

¹¹³ For more on addressing workplace sexual harassment as a safety and health issue, see <http://coshnetwork.org/our-turn>.

the voices and experiences of workers facing particular vulnerabilities to workplace sexual harassment, and a collective of women who experienced sexual harassment while working for New York legislators recently wrote a report and played a key role in organizing the February 2019 public hearing in Albany.¹¹⁴

To more effectively enforce recent mandates, promote high-road practices that go beyond mere compliance with minimum legal requirements, and foster changes to a broader culture that often breeds harassment in the workplace and other arenas, we recommend the creation of multi-stakeholder working groups across the state. These working groups should be survivor-led. They should be organized both by sector and geographic area, be broadly inclusive along lines of citizenship, gender, income, race, and sexuality, and be accessible based on language, work schedules, and other factors that often limit access.¹¹⁵ They could connect people to relevant systems of support and advance targeted prevention strategies. Special efforts should be made to engage those who may not be accessible through the usual workplace channels—e.g., domestic workers and their employers. By addressing challenges and supporting promising practices, these working groups could help to lead the response to workplace sexual harassment in different regions and parts of the economy within New York State.

Establish a research network on discrimination and harassment. The findings presented above scratch the surface of the problem of workplace sexual harassment in New York State. Future quantitative and qualitative research could further address a range of issues that would help shape more effective responses to workplace sexual harassment. This includes research on how race, citizenship, gender identity, and other factors create particular vulnerabilities; how the problem is conditioned by different work arrangements and industry and occupational contexts; factors that reduce or increase reporting; psychological, social, and economic impacts; connections with other forms of workplace discrimination and mistreatment; what constitutes effective training in relation to other organizational interventions; impacts of collective bargaining language addressing workplace sexual harassment; and the enforcement and impact of city- and state-level policy shifts.

To advance knowledge in these and other areas, we recommend formalizing an independent research network devoted to advancing the study of discrimination and harassment in New York State. Like the working groups, this network should be survivor-led. It should comprise research and thought leaders from around the state and should be advised by a broad cross-section of relevant stakeholders. Following the lead of initiatives such as the Black Women’s Truth and Reconciliation Commission convened by Black Women’s Blueprint, the network should have a trauma-informed approach that centers and amplifies narratives of survivors in ways that can inform public discourse and action.¹¹⁶ Critically, in an environment where hate crimes and other expressions of hate based on different forms of identity have recently surged, the focus of this network should also encompass a variety of forms of workplace harassment and discrimination.¹¹⁷

¹¹⁴ Bennett, Danielle, Elizabeth Crothers, Leah Hebert, Eliyanna Kaiser, Tori Burhans Kelley, Rita Pasarell, and Erica Vladimer. “Fixing Albany’s #MeToo Problem: What’s Next?” Sexual Harassment Working Group. June 2018. https://static1.squarespace.com/static/5b2852b24611a0e9ecdad36c/t/5b28a7490e2e72a750b7a32d/1529390922095/Sexual+Harassment+Working+Group_White+Paper.pdf

¹¹⁵ Fine’s concept of “co-enforcement,” whereby government agencies partner with civil society organizations to provide legal protections, is useful for thinking about the role these working groups might play. See Fine, Janice. “Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone has Failed?” *Politics & Society* vol. 45, no. 3, 2017, pp. 359-388.

¹¹⁶ The Black Women’s Truth and Reconciliation Commission focused on black women in the US and their historical and contemporary experiences with sexual assault. See <https://www.blackwomensblueprint.org/> and <https://www.movetoendviolence.org/blog/black-womens-truth-reconciliation-commission/>.

¹¹⁷ Eligon, John. “Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports.” *The New York Times*, 13 Nov. 2018. <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>

Changing Workplace Practices: A Conversation with Gillian Thomas

Gillian Thomas is the New York City-based Senior Staff Attorney for the ACLU Women's Rights Project. She is the author of the recent book, "Because of Sex: One Law, Ten Cases, and Fifty Years that Changed American Women's Lives at Work."

Q: What has the #MeToo movement done for the conversation around sexual harassment?

I think what's historic is that we have a wave of legislators and employers saying, "How do we get rid of this problem? It's been illegal for 30 years and it's still happening." The sheer explosion in the number of legislators thinking about ways of incentivizing better behavior, punishing behavior, and increasing scrutiny of the behavior overall is just unprecedented and it can only be helpful to have the public also partnering in those efforts.

What has also been incredibly valuable in the last year is how much we've heard from *non*-famous women, women in fields that are exceptionally exploitative—farm workers, custodians, hotel housekeepers, domestic workers, home health care aides—those workers who labor in isolation. I think having that acknowledgment out there has spurred some very inventive public policy solutions.



Q: What are some of the biggest barriers that continue to stand in the way of people coming forward?

Social science tells us that the vast majority of people who experience harassment never do anything about it—they don't report it internally, let alone pursue legal action. And the primary reason for that is reported to be fear of retaliation. That's definitely what I've seen among women I've worked with—fear of retaliation, fear they won't be believed, fear it won't be taken seriously or that anything will even happen.

It's also sort of baked into the law, this undue focus on the behavior of the complaining employee, including making it impossible to get legal redress if she didn't complain hard enough, kind of incentivizing employers to not do great investigations, not have great policies, just to have something. [The focus] hasn't really been geared toward actually stamping out harassment, it's been geared toward trying to avoid liability.

Q: What needs to happen from here?

Employers can change how they do things if they really want to and it's making them care about doing it enough. That's the challenge at this point—whether it happens through legislation, public disapprobation, or shareholder lawsuits.

We've also seen blowback against #MeToo — most recently there was an article about Wall Street guys saying, "OK, then I'm not going to mentor any women, I'm not going to add them to my teams, and I'm not gonna hire women—the risk is too great." It's incredibly frustrating and to me it says how much work is left to be done in terms of educating people.

So, let's focus not on excluding women from the workplace, but on ensuring you create a workplace where women receive respect, where they're represented in leadership, where they're paid equally, where they have equal opportunity to advance—that creates an environment where it's less likely that harassment will occur.

Q: What does a more robust approach to changing workplace culture actually look like?

When trainings are done well, frequently, and as part of an overall program that includes overhauling internal policies and procedures, they can be a critical tool in transforming workplace culture.¹¹⁸ Employers should be required to provide multiple reporting mechanisms—not to leave the burden on employees to seek out the right person—to make it easier for them to alert someone they’re comfortable with. Anonymous climate surveys and exit interviews are also useful to identify problem employees or segments of the workplace.

Other important steps are getting rid of employer-imposed secrecy in the form of pre-employment non-disparagement or non-disclosure agreements, which stop workers from speaking to each other, sharing information, and seeking redress collectively, while preventing enforcement agencies from knowing about systemic abuse; removing various barriers to access to justice (such as short statutes of limitations and forced arbitration); and expanding existing laws to cover more people (such as domestic workers and those without employee status, like interns).

¹¹⁸ See https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm

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