

**Testimony of Andrea Johnson
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**California Bicameral Subcommittee on Sexual Harassment Prevention & Response
Hearing on Sexual Harassment in the Legislature**

February 15, 2018

Thank you for the opportunity to submit testimony on behalf of the National Women's Law Center on the issue of reforms to address sexual harassment in the Legislature. The National Women's Law Center has worked for 45 years to advance and protect women's equality and opportunity, and has long worked to remove barriers to equal treatment of women in the workplace.

We appreciate your ongoing efforts to address the problem of sexual harassment in the Legislature, including the formation of a joint Senate-House committee to examine procedures to receive and address complaints and impose discipline,¹ holding hearings, and making public information detailing the number and nature of complaints against lawmakers and legislative staff.²

We hope that these steps are only the first of many and urge you, as you move forward, to ensure that any reforms of the existing system look beyond the current crisis, and seek to implement systemic, sustainable reforms that will benefit the entire legislative workforce and set an example. Specifically, we encourage you to ensure that any final administrative and legislative changes include the recommendations below to expand the scope of protections and the types of individuals covered; improve the reporting and dispute resolution process; promote accountability and transparency; and implement prevention practices. Ultimately, the goal of these reforms must be to prevent and remedy workplace harassment and discrimination and ensure a safe and fair workplace culture in the Legislature.

I. Sexual Harassment is a Substantial Barrier to Gender Equality, Economic Security, and Safety.

Despite laws at the federal, state, and local levels prohibiting sexual harassment as a form of sex discrimination, sexual harassment remains a widespread problem, affecting workers in every state, in every kind of workplace setting and industry, and at every level of employment.

¹ Melanie Mason & Patrick McGreevy, *Amid uproar over sexual harassment, California lawmakers return to work*, LOS ANGELES TIMES (Jan. 3, 2018), <http://www.latimes.com/politics/la-pol-ca-state-legislature-returns-sexual-harassment-20180103-story.html>

² John Myers & Melanie Mason, *California Legislature releases a decade's worth of records on sexual harassment investigations*, LOS ANGELES TIMES (Feb. 2, 2018), <http://www.latimes.com/politics/la-pol-ca-legislature-sexual-harassment-records-released-20180202-story.html>

With the law on your side, great things are possible.

Sexual harassment isn't about sexual desire; it is an expression of power. It is used to reinforce cultural norms about appropriate roles, behavior, and work for women and men, and to exert control over people with less power and status in society, and in the workplace – particularly women, women of color, immigrants, and LGBTQ people. The sexual or sex-based element of the workplace harassment these individuals experience, including demands for sexual favors, or denigrating and humiliating comments, is a way of enforcing and perpetuating sexist and racist power structures in our workplaces that value women—and especially women of color—less.

And sexist stereotypes and outdated workplace structures—like the lack of paid leave, predictable work schedules, affordable child care, and union support—make it hard for women to get and keep good jobs and advance in the workplace. This leaves women with less power in the workplace, increasing their vulnerability to exploitation. Sexual harassment is a stark manifestation of that power imbalance.

Sexual harassment and assault infect our workplaces and deny workers equal employment opportunities, safety, and dignity. For too long, victims of harassment and assault have lived in silence because of fear of jeopardizing their safety, jobs, financial security, and career prospects, while too often perpetrators -- mostly powerful men -- have escaped accountability for their actions, enabled by many who have turned a blind eye to these transgressions. As recent events have demonstrated, no workplace is immune from harassment, whether in the entertainment industry, restaurant kitchens, or the halls of the Legislature.³

And the power imbalance is especially acute here, where 80 percent of the lawmakers in the State are men, and they interact with lobbyists seeking influence, and young men and women starting their careers serving as legislative aides and interns.⁴ But in contrast to many private workplaces, the Legislature's workforce lacks a comprehensive, credible system to enable staff and others who have been harassed to report safely; to respond consistently and appropriately to complaints; to assess culpability; and to impose appropriate penalties based on fair and transparent principles that are consistently applied. Moreover, the avenues for protection and redress that do currently exist may be largely unknown to many staff, place many obstacles in the way of those bringing complaints of harassment, and do not serve as a deterrent to offenders.

II. Recommendations to Strengthen Protections, Promote Reporting and Accountability, Improve Transparency, and Advance Prevention of Harassment.

A. The Legislature Should Expand the Scope of Protections and the Categories of Individuals Protected.

While this current moment of national reckoning is focused on sexual harassment, no one working for or interacting with the Legislature should be subjected to harassment on the basis of any protected characteristic. Sexual harassment does not occur in a vacuum. Many women experience harassment based

³ Jess Bidgood, Miriam Jordan & Adam Nagourney, *Sexual misconduct in California's capitol is difficult to escape*, THE NEW YORK TIMES (Oct. 29, 2017), <https://www.nytimes.com/2017/10/29/us/sacramento-sexual-harassment-california.html>

⁴ *Id.*

on their race and sex combined, or their national origin and sex, or their disability and sex. Harassment often contains offensive comments based on multiple identities including sex or gender. Also, sexual harassment often occurs with other forms of sex-based discrimination. Crafting policies only focused on sexual harassment limits our ability to truly address gender and racial inequality in the workplace. Accordingly, we urge you to ensure that any reforms also apply to claims of workplace harassment and discrimination based on sex (including sexual orientation, gender identity, pregnancy and childbirth), race, disability, age, ethnicity/national origin, color, religion, and other protected statuses under state law.

Moreover, protections against harassment and employment discrimination should be extended to those who work for the Legislature but may not be “employees” within the meaning of the law or an internal policy, including interns, fellows, detailees, and pages. It should also include protections and recourse for those who do not work for the Legislature, but who interact with members and legislature staff in the course of business or due to professional relationships, such as lobbyists and vendors.

B. The Legislature Should Improve the Reporting and Dispute Resolution Process.

Any reforms by the Legislature must ensure that it promotes reporting in a safe and confidential manner, and provides a well-understood, timely, credible process for reporting, investigating, and resolving complaints.

A common issue in many legislative bodies is that staff and other individuals do not know, understand, or trust the existing mechanism for receiving and resolving complaints. In addition to including information about the reporting and dispute resolution process in trainings, the Legislature could promote staff awareness by ensuring information about workplace rights and reporting is posted in every legislator’s office and in common areas. The Legislature could also provide a mechanism whereby harassment and discrimination complainants are given meaningful legal and non-legal advice and support through, for example, a counsel program.

The Legislature must also take steps to promote safe and confidential reporting. Often workplaces fail to take complaints seriously when individuals gather the courage to come forward, or employers look the other way because the harasser is powerful or a superstar. Women and other vulnerable individuals develop informal networks to warn and protect each other about harassers and predators in the fields, kitchens, and conference rooms. Thanks to the bravery of many California legislators, current and former staff, and lobbyists last year, the culture of harassment and assault in the Legislature is no longer an unspoken secret.⁵ These women spoke up publicly to hold harassers accountable for their unacceptable — and in some cases unlawful behavior — which often went unchecked. They also exposed themselves to significant adverse workplace and career consequences. Fear of losing a job and otherwise hurting their careers is a major reason why many victims of harassment and assault, and bystanders who observe this behavior, never come forward. And this is despite the fact that retaliation against workers because they speak up against harassment is illegal.

⁵ *Id.*

The Legislature could promote reporting by ensuring that there are multiple bodies or individuals, including an independent authority, to whom a person could report harassment and discrimination, beyond only their supervisor (who may be the harasser). Moreover, it is important to ensure that nondisclosure agreements are neither a prerequisite to initiating a complaint nor a mandatory condition of settlement. And it is critical that the Legislature provide strong anti-retaliation and whistleblower protection to encourage reporting not only by the victims of harassment, but by bystanders as well.

C. Any Reforms Must Ensure Greater Accountability for Harassers and Increase Transparency.

Elected officials should be held to the highest ethical and professional standards and, as stewards of public trust, must be held accountable for harassment and discrimination, no matter how powerful they are. Part of that accountability includes establishing appropriate consequences, and informing the public about the number and nature of claims against legislators and their staff, and any settlements made using taxpayer funds.

The appropriate consequence will often depend on the nature of the harassment: for instance, its severity, duration, and whether it was a pattern of behavior that continued over a long period of time or that affected many people. “Zero tolerance” is a popular term, but it should not mean that the only consequence for any incident that is inappropriate or illegal is terminating the harasser. If you adopted that standard, one consequence would be that in practice decisionmakers would ignore less severe forms of harassment, because they would feel like they could not terminate someone for making vulgar remarks, for example. They would protect employees who harassed others but did not engage in sufficiently “severe” conduct that they felt merited termination.

Instead, “zero tolerance” should mean that there are real consequences for all forms of harassment – just not the same consequence in all cases. While all sexual harassment and assault is wrong and illegal, there is a difference between sexually assaulting an employee and making a handful of inappropriate sexual remarks to a subordinate. Thus, different, and proportionate, consequences are appropriate in those situations.

And in the Legislature, what compounds the problem are secretive processes for receiving and addressing complaints of harassment by legislators, with inconsistent outcomes.

Accordingly, we urge you to develop guidelines that identify harassing and discriminatory conduct, the proportionate corrective actions and sanctions that may be assessed when violations are substantiated, and the process for doing so. These guidelines should be made available to the entire legislative workforce and the general public and should be fairly and consistently applied, thereby establishing expectations for behavior and promoting accountability for legislators and staff. Only then will accountability become a reality.

Moreover, it is crucial that where taxpayer funds are used to settle a claim that a legislator has unlawfully harassed or discriminated against a legislative staff member or other individual, the legislator should

personally reimburse the state treasury for funds expended on his/her behalf as expeditiously as possible. Use of office funds by legislators to pay settlement amounts should be disallowed.

In order to promote transparency regarding the use of public funds, the Legislature should periodically collect and make publicly available a report that details the number of harassment and discrimination claims asserted (regardless of whether they were resolved), the number of settlements, and total award amounts by office. Taxpayers and constituents will have a clearer understanding of the workplace culture and practices in each office if this information is made publicly available, because not every claim of discrimination will result in a settlement or award.

However, any such report must protect the identity and confidentiality of the complainant. Publicly revealing victims' identities, such as when the Legislature recently released previously sealed records of sexual harassment complaints,⁶ can result in retaliation and adverse consequences for complainants, including being blackballed from other jobs within the Legislature, effectively ruining careers. For that reason, reporting should not occur more than once a year, and should avoid detailing the number of each type of discrimination claim filed per office per year, in order to strike a careful balance between the need for transparency regarding harassment and discrimination claims and resolutions, and safeguarding the identity and privacy of complainants, which may be more easily breached if reporting occurs more frequently and in more detail.

D. Reforms Must Promote Comprehensive Prevention Practices.

Preventing workplace harassment and discrimination should be a top priority and goal of every leader in the legislative workforce.

Every office should be required to have strong anti-discrimination and anti-harassment policies in place that help employees understand what prohibited conduct looks like; explain how to report harassment or discrimination within the office or to an independent authority, and provide multiple avenues for reporting; outline the process for investigating and responding to complaints; assure confidentiality; detail the consequences for harassment, discrimination and retaliation; and provide internal and external resources for support, including information about the role of the independent authority.

While California law currently mandates training every two years for legislators and staff, recent reports suggest that the current two-hour mandatory training is not particularly effective or taken seriously.⁷ To strengthen effectiveness, the training must do more than merely seek to ensure compliance with the law, and instead should help instill a culture of respect within the Legislature; enable members of the legislative workforce to understand their rights and responsibilities; empower them to intervene in a situation or to report safely without retaliation; and most importantly, set out standards that will ensure that legislators

⁶ THE SACRAMENTO BEE, *These documents detail sexual harassment findings in the California Legislature* (Feb 2, 2018), <http://www.sacbee.com/news/politics-government/capitol-alert/article198107114.html>

⁷ Kathleen Ronayne, *California lawmakers' sexual harassment training like '4th grade lecture'*, THE ASSOCIATED PRESS (Dec. 19, 2017), <https://www.mercurynews.com/2017/12/19/lawmakers-sex-harassment-training-like-4th-grade-lecture/>

and their staff do not engage in conduct that leads to a workplace culture that increases the likelihood of unlawful behavior.

We recommend that the trainings for staff be conducted separately from those for legislators. Staff members may be reluctant to reveal or discuss issues of harassment or discrimination they confront in their day-to-day work in front of senior staff or legislators for fear of retaliation, or developing a reputation for being a “troublemaker” or for “disloyalty.” Additionally, legislators’ role as the head of their individual office and as a supervisor of their staff suggests they should receive extra training about their appropriate roles and responsibilities.

The Legislature also should take steps to ensure that legislators and staff fulfill the mandatory training requirement. A recent news story indicated that many legislators have not completed the training, and there do not appear to be any consequences for failing to do so.⁸ The Legislature could provide each participant who has completed the mandatory training with a certificate, and then make publicly available on the Legislature’s website a list of members that have and have not completed the required training.

Additionally, the creation and implementation of a regular, anonymous climate survey of the legislative workforce will help offices understand the true nature and scope of harassment and discrimination in the Legislature, and any failures in the policies and procedures designed to prevent and address harassment and discrimination.

Finally, in order to ensure the changes outlined here can achieve the stated goals of preventing and remedying harassment and discrimination in the Legislature, any independent authority tasked with conducting investigations and hearings must have the additional resources, authorities, and access to staff and members of the Legislature needed to do its job effectively.

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In conclusion, as the movement ignited by #MeToo shows, for too long, individuals have suffered workplace harassment in silence, with little or no accountability for harassers. Now more than ever, the Legislature must step forward to implement reforms that will refashion systems, laws, and culture to ensure that victims are no longer afraid to come forward, a fair and credible system for assessing complaints, harassers are held accountable, and harassment is prevented.

We appreciate your critical efforts to ensure that the Legislature is a safe and equitable workplace, and we welcome the opportunity to assist you.

⁸ *Id.*