



Senate Sexual Discrimination and Harassment Awareness and Prevention Task Force

Senator Melinda Bush, Co-Chair

Senator Jil Tracy, Co-Chair

Subject Matter Hearing

Tuesday, April 10, 2018

10:00 a.m., Room 400 – Capitol Building, Springfield, IL



AGENDA

Senate Task Force on Sexual Discrimination and Harassment Awareness and Prevention

**Senator Melinda Bush, Co-Chair
Senator Jil Tracy, Co-Chair**

**Tuesday, April 10, 2018
10:00 A.M. Room 400**

I. Opening Remarks

Senator Bush
Senator Tracy

II. Pending Legislation Related to Sexual Harassment and Discrimination

Subject Matter Only:

A. Human Rights Act

HB 4572 (Rep. Guzzardi)
HB 5498 (Senator Hutchinson)

B. Procurement

SB 405 (Senator Hutchinson)

C. Legislative Ethics

SB 2266, SB 3389 (Senator Castro)
SB 2263 (Senator Bivins)
SB 3159, SB 3161 (Senator McConaughay)

D. Other Issues Related to Harassment in Government

SB 3296 (Senator Bush)
HB 4242, HB 4243 (Senator T. Cullerton)

III. New Legislative Proposals For Discussion

- A. Sexual Harassment No Contact Order
- B. Aggregate harassment settlement and judgment amounts reported to the Illinois Department of Human Rights
- C. Expansion of Illinois Human Rights Act to independent contractors
- D. Limiting non-disclosure agreements which would foreclose an individual from filing a labor, discrimination, or sexual harassment claim with a state agency
- E. Statewide panic button statute for hotel workers



Senate Task Force on Sexual Discrimination and Harassment Awareness and Prevention

**Senator Melinda Bush, Co-Chair
Senator Jil Tracy, Co-Chair**

Member List

President Cullerton's Appointees:

Senator Omar Aquino
Senator Scott M. Bennett
Senator Melinda Bush
Senator Bill Cunningham
Julie Curry, Curry & Associates
Felicia Davis, Olive-Harvey College
Carrie Herschman, Choate Herschman Levison
Senator Mattie Hunter
Senator Toi W. Hutchinson
Rikeesha Phelon, Phelon Strategies
Polly Poskin, Illinois Coalition Against Domestic Violence
Senator Heather Steans

Leader Brady's Appointees:

Senator Pamela Althoff
Senator John F. Curran
Ahlam Jbara, Illinois Coalition for Immigrant and Refugee Rights
Leslie Quade Kennedy, Odelson & Sterk
Maureen Maffei, Ice Miller
Senator Karen McConnaughay
Julie Proscia, Smith Amundsen
Senator Dale A. Righter
Dr. Kathleen Robbins, Equality Illinois
Anita Rodriguez, Assistant State's Attorney, Adams County
Maria Rodriguez, Former Mayor of Long Grove
Senator Jil Tracy

PROTECTIVE ORDERS

Protective Orders Under Current Illinois Law

Minnesota Harassment Restraining Order Statute

Illinois Orders of Protection and No Contact Orders

	Domestic Violence Order of Protection	Civil No Contact Order	Sexual Assault No Contact Order	Stalking No Contact Order
Who is eligible for these protections?	<ul style="list-style-type: none"> ■ Family or household members who: <ul style="list-style-type: none"> ■ are related by blood, or by current or former marriage to the offender; ■ share or formerly shared a common dwelling (home) with the offender; ■ have or allegedly have a child in common with the offender; ■ share or allegedly share a blood relationship with the offender ■ have or had a dating or engagement relationship with the offender; ■ high risk adult with disabilities abused by a family member or caregiver. 	<p>Any person who is a victim of non-consensual sexual conduct or sexual penetration can petition for this order.</p> <p>These orders also can protect the following people:</p> <ul style="list-style-type: none"> ■ Family or household member of the victim. ■ Rape crisis center employees and volunteers. 	<p>Any person who is the victim of a course of conduct that causes the victim to hear for his or her safety or the safety of another person. Or to suffer emotional distress, and relief is not available to the victim under the Illinois Domestic Violence Act or from a Sexual Assault Civil No Contact Order.</p>	<p>Any person who is the victim of a course of conduct that causes the victim to hear for his or her safety or the safety of another person. Or to suffer emotional distress, and relief is not available to the victim under the Illinois Domestic Violence Act or from a Sexual Assault Civil No Contact Order.</p>
Remedies & Protections	<p>The judge can grant up to 18 remedies, from prohibiting further abuse to ordering the offender to stay away, prohibiting the offender from having a FOID card or firearms to requiring financial support, providing temporary care of children, and ordering exclusive possession of the home.</p> <ul style="list-style-type: none"> ■ Prohibit contact with victim; ■ Stay away from victim generally and/or stay away from specific locations; ■ Protection of property and pets; ■ Order the offender to transfer to another school if the victim and offender attend the same school. ■ Other injunctive relief necessary to protect the petitioner. 	<ul style="list-style-type: none"> ■ Prohibit further stalking or threats of stalking; ■ Prohibit contact with victim; ■ Stay away from specific locations; ■ Prohibit stalker from having a FOID card or owning firearms; ■ Other injunctive relief necessary to protect the petitioner. 	<p>Attorneys' fees are the only financial remedy available.</p>	<p>First violation is a class A misdemeanor. Subsequent violation is class 4 felony.</p>
Violations	<p>First violation is class A misdemeanor. Subsequent violation or violation following other domestic convictions is a class 4 felony.</p>	<p>First violation is a class A misdemeanor. Subsequent violation is class 4 felony.</p>	<p>First violation is a class A misdemeanor. Subsequent violation is class 4 felony.</p>	<p>15</p>

609.748 HARASSMENT; RESTRAINING ORDER.

Subdivision 1. **Definition.** For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(1) a single incident of physical or sexual assault, a single incident of stalking under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

(3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

(b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:

(1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Subd. 2. **Restraining order; court jurisdiction.** A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. An application for relief under this section may be filed in the county of residence of either party or in the county in which the alleged harassment occurred. There are no residency requirements that apply to a petition for a harassment restraining order.

Subd. 3. **Contents of petition; hearing; notice.** (a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent

may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a peace officer was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 20 days of service of the petition.

Subd. 3a. **Filing fee; cost of service.** The filing fees for a restraining order under this section are waived for the petitioner and the respondent if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5, or sections 609.342 to 609.3451. The court administrator and any peace officer in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when a peace officer is unavailable or if service is made by publication.

Subd. 4. **Temporary restraining order; relief by court.** (a) The court may issue a temporary restraining order that provides any or all of the following:

- (1) orders the respondent to cease or avoid the harassment of another person; or
- (2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(c) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

(d) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

(e) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

(f) A request for a hearing under this subdivision must be made within 20 days of the date of completed service of the petition.

Subd. 5. Restraining order. (a) The court may issue a restraining order that provides any or all of the following:

- (1) orders the respondent to cease or avoid the harassment of another person; or
- (2) orders the respondent to have no contact with another person.

(b) The court may issue an order under paragraph (a) if all of the following occur:

- (1) the petitioner has filed a petition under subdivision 3;
- (2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and
- (3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years. In all other cases, relief granted by the restraining order must be for a fixed period of not more than two years. When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

(c) An order issued under this subdivision must be personally served upon the respondent.

(d) If the court orders relief for a period of up to 50 years under paragraph (a), the respondent named in the restraining order may request to have the restraining order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order. Application for relief under this paragraph must be made in the county in which the restraining order was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the restraining

order not less than 30 days before the date of the hearing. At the hearing, the respondent named in the restraining order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting the restraining order no longer apply and are unlikely to occur. If the court finds that the respondent named in the restraining order has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the restraining order has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the restraining order until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the restraining order.

Subd. 5a. Short-form notification. (a) In lieu of personal service of a harassment restraining order, a peace officer may serve a person with a short-form notification. The short-form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the temporary restraining order or restraining order was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short-form notification must be in bold print in the following form:

"The restraining order is now enforceable. You must report to your nearest sheriff's office or county court to obtain a copy of the restraining order. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the restraining order or this short-form notification."

(b) Upon verification of the identity of the respondent and the existence of an unserved harassment restraining order against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short-form notification.

(c) When service is made by short-form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

[See Note.]

Subd. 5b. Service by others. In addition to peace officers, corrections officers, including but not limited to probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve a temporary restraining order or restraining order.

Subd. 6. Violation of restraining order. (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates the order:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A person who commits violations in two or more counties may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(f) A person may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

(g) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(h) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(i) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

Subd. 7. Copy to law enforcement agency. An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

Subd. 8. Notice. (a) An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

(b) If the court grants relief for a period of up to 50 years under subdivision 5, the order must also contain a conspicuous notice to the respondent that the respondent must wait five years to seek a modification of the order.

Subd. 9. Effect on local ordinances. Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

Subd. 10. Prohibition against employer retaliation. (a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

History: 1990 c 461 s 5; 1991 c 170 s 1,2; 1992 c 571 art 6 s 15-17; 1993 c 326 art 2 s 14-21; 1Sp1993 c 5 s 4; 1994 c 636 art 2 s 48; 1995 c 226 art 6 s 13; 1995 c 259 art 3 s 17; 1997 c 96 s 5; 1997 c 239 art 11 s 5; 1998 c 367 art 5 s 8,9; 2000 c 476 s 1-3; 1Sp2001 c 8 art 10 s 13,14; 1Sp2003 c 2 art 8 s 14-16; 2004 c 145 s 2; 2004 c 228 art 1 s 72; 2005 c 136 art 8 s 21; art 17 s 44-45; 2006 c 260 art 1 s 28; 2008 c 316 s 6-8; 2012 c 218 s 2-4; 2012 c 223 s 1,2; 2013 c 47 s 4; 2014 c 204 s 10; 2016 c 126 s 6; 2017 c 95 art 2 s 16; art 3 s 20-24; art 4 s 2

NOTE: Subdivision 5a, as added by Laws 2017, chapter 95, article 3, section 23, is effective 30 days following publication of a notice on the Bureau of Criminal Apprehension's Web site that a computer system is available to send harassment restraining order data from the Minnesota judicial branch to law enforcement. Laws 2017, chapter 95, article 3, section 23, the effective date.

REPORTING REQUIREMENTS FOR EMPLOYERS RELATING TO SEXUAL HARASSMENT

**Proposed Federal Legislation: Sunlight in
Workplace Harassment Act**

115TH CONGRESS
2D SESSION

S.

To amend the Securities Exchange Act of 1934 to require disclosure of payments for settlements of disputes regarding sexual abuse and certain types of harassment and discrimination, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. WARREN (for herself, Mr. MARKEY, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. DURBIN, Mr. BLUMENTHAL, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Securities Exchange Act of 1934 to require disclosure of payments for settlements of disputes regarding sexual abuse and certain types of harassment and discrimination, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Sunlight in Workplace
- 5 Harassment Act”.

1 **SEC. 2. DISCLOSURE OF PAYMENTS FOR SETTLEMENTS OF**
2 **DISPUTES REGARDING SEXUAL ABUSE AND**
3 **CERTAIN TYPES OF HARASSMENT AND DIS-**
4 **CRIMINATION.**

5 Section 13 of the Securities Exchange Act of 1934
6 (15 U.S.C. 78m) is amended by adding at the end the
7 following:

8 “(s) **DISCLOSURE OF CERTAIN ACTIVITIES REGARD-**
9 **ING SETTLEMENTS OF DISPUTES RELATING TO SEXUAL**
10 **ABUSE AND CERTAIN TYPES OF HARASSMENT OR DIS-**
11 **CRIMINATION.—**

12 “(1) **DEFINITIONS.—**In this subsection—
13 “(A) the term ‘covered discrimination’
14 means—

15 “(i) discrimination described in any of
16 clauses (i) through (vi) of subparagraph
17 (B); or

18 “(ii)(I) a violation of section 704(a) of
19 the Civil Rights Act of 1964 (42 U.S.C.
20 2000e-3(a)) that is related to discrimina-
21 tion described in subparagraph (B)(i) or
22 (B)(vi)(I);

23 “(II) a violation of section 4(d) of the
24 Age Discrimination in Employment Act of
25 1967 (29 U.S.C. 623(d)) that is related to

1 discrimination described in subparagraph
2 (B)(ii);

3 “(III) a violation of subsection (a) or
4 (b) of section 503 of the Americans with
5 Disabilities Act of 1990 (42 U.S.C. 12203)
6 that is related to discrimination described
7 in subparagraph (B)(iii);

8 “(IV) a violation of section 207(f) of
9 the Genetic Information Nondiscrimination
10 Act of 2008 (42 U.S.C. 2000ff–6(f)) that
11 is related to discrimination described in
12 subparagraph (B)(iv);

13 “(V) a violation of section 4311(b) of
14 title 38, United States Code, that is re-
15 lated to discrimination described in sub-
16 paragraph (B)(v); and

17 “(VI) a violation of section
18 40002(b)(13)(A) of the Violence Against
19 Women Act of 1994 (34 U.S.C.
20 12291(b)(13)(A)) that—

21 “(aa) may cover retaliation de-
22 scribed in a provision specified in any
23 of subclauses (I) through (V); and

24 “(bb) is related to discrimination
25 described in subparagraph (B)(vi)(II);

1 “(B) the term ‘covered harassment’ means
2 harassment that is—

3 “(i) discrimination because of race,
4 color, religion, sex, or national origin under
5 title VII of the Civil Rights Act of 1964
6 (42 U.S.C. 2000e et seq.);

7 “(ii) discrimination because of age
8 under the Age Discrimination in Employ-
9 ment Act of 1967 (29 U.S.C. 621 et seq.);

10 “(iii) discrimination on the basis of
11 disability under—

12 “(I) title I of the Americans with
13 Disabilities Act of 1990 (42 U.S.C.
14 12111 et seq.); or

15 “(II) section 501 of the Rehabili-
16 tation Act of 1973 (29 U.S.C. 791);

17 “(iv) discrimination because of genetic
18 information under title II of the Genetic
19 Information Nondiscrimination Act of
20 2008 (42 U.S.C. 2000ff et seq.);

21 “(v) discrimination on the basis of
22 status concerning service in a uniformed
23 service under section 4311(a) of title 38,
24 United States Code; or

1 “(vi) discrimination because of sexual
2 orientation or gender identity under—

3 “(I) title VII of the Civil Rights
4 Act of 1964 (42 U.S.C. 2000e et
5 seq.); or

6 “(II) section 40002(b)(13)(A) of
7 the Violence Against Women Act of
8 1994 (34 U.S.C. 12291(b)(13)(A));

9 “(C) the term ‘covered issuer’ means an
10 issuer that is required to file Form 10-K;

11 “(D) the term ‘Form 10-K’ means the
12 form described in section 249.310 of title 17,
13 Code of Federal Regulations, as in effect on the
14 date of enactment of this subsection;

15 “(E) the term ‘gender identity’ means the
16 gender-related identity, appearance, manner-
17 isms, or other gender-related characteristics of
18 an individual, regardless of the designated sex
19 of the individual at birth;

20 “(F) the term ‘settlement’ means any com-
21 mitment or agreement—

22 “(i) without regard to whether the
23 commitment or agreement, as applicable, is
24 in writing; and

1 “(ii) under which an issuer directly or
2 indirectly—

3 “(I) provides to an individual
4 compensation or other consideration
5 because of an allegation that the indi-
6 vidual has been a victim of covered
7 harassment, covered discrimination, or
8 sexual abuse; or

9 “(II) establishes conditions that
10 affect the terms of the employment,
11 including by terminating the employ-
12 ment, of the individual with the
13 issuer—

14 “(aa) because of the experi-
15 ence of the individual with, or the
16 participation of the individual in,
17 an alleged act of covered harass-
18 ment, covered discrimination, or
19 sexual abuse; and

20 “(bb) in exchange for which
21 the individual agrees or commits
22 not to—

23 “(AA) bring legal, ad-
24 ministrative, or any other

1 type of action against the
2 issuer; or

10 “(G) the term ‘sexual abuse’ means any
11 type of sexual contact or behavior that occurs
12 without the explicit consent of the recipient, in-
13 cluding forced sexual intercourse, forcible sod-
14 omy, child molestation, incest, fondling, and at-
15 tempted rape; and

16 “(H) the term ‘sexual orientation’ means
17 homosexuality, heterosexuality, or bisexuality.

18 "(2) DISCLOSURE REQUIREMENTS.—

19 “(A) IN GENERAL.—Beginning in the first
20 fiscal year that begins after the date of enact-
21 ment of this subsection, each covered issuer
22 shall disclose annually on Form 10-K, to share-
23 holders of the covered issuer, and to the pub-
24 lic—

1 “(i) with respect to the previous
2 year—

3 “(I) the total number of settle-
4 ments entered into by the covered
5 issuer, a subsidiary, contractor, or
6 subcontractor of the covered issuer, or
7 a corporate executive of the covered
8 issuer that relate to any alleged act of
9 sexual abuse, covered harassment, or
10 covered discrimination that—

11 “(aa) occurred in the work-
12 place of the covered issuer or a
13 subsidiary, contractor, or subcon-
14 tractor of the covered issuer; or

15 “(bb) involves the behavior
16 of an employee of the covered
17 issuer, or a subsidiary, con-
18 tractor, or subcontractor of the
19 covered issuer, toward another
20 such employee, without regard to
21 whether that behavior occurred in
22 the workplace of the covered
23 issuer or the subsidiary, con-
24 tractor, or subcontractor, as ap-
25 plicable;

1 “(II) the total dollar amount
2 paid with respect to the settlements
3 described in subclause (I);

4 “(III) the total number of settle-
5 ments entered into by the covered
6 issuer, a subsidiary, contractor, or
7 subcontractor of the covered issuer, or
8 a corporate executive of the covered
9 issuer that relate to any alleged act of
10 sexual abuse, covered harassment, or
11 covered discrimination that—

12 “(aa) was committed by a
13 corporate executive of—

14 “(AA) the covered
15 issuer; or

16 “(BB) a subsidiary,
17 contractor, or subcontractor
18 of the covered issuer; and

19 “(bb)(AA) occurred in the
20 workplace of the covered issuer
21 or a subsidiary, contractor, or
22 subcontractor of the covered
23 issuer, as applicable; or

24 “(BB) involved the behavior
25 of a corporate executive described

10

1 in item (aa) toward another em-
2 ployee of the covered issuer or a
3 subsidiary, contractor, or subcon-
4 tractor of the covered issuer, as
5 applicable, without regard to
6 whether that behavior occurred in
7 the workplace of the covered
8 issuer or a subsidiary, contractor,
9 or subcontractor of the covered
10 issuer;

11 “(IV) the total dollar amount
12 with respect to the settlements de-
13 scribed in subclause (III); and

14 “(V) the average length of time
15 required for the covered issuer to re-
16 solve a complaint relating to covered
17 discrimination, covered harassment, or
18 sexual abuse; and

19 “(ii) as of the date on which the dis-
20 closure is made, the total number of com-
21 plaints relating to covered discrimination,
22 covered harassment, and sexual abuse that
23 the covered issuer is working to resolve
24 through—

11

1 “(I) processes that are internal
2 to the covered issuer; and

3 “(II) litigation.

4 “(B) CATEGORIES.—Subject to subparagraph (C), in each disclosure required under
5 subparagraph (A), a covered issuer shall report
6 the total number of settlements in subclauses
7 (I) and (III) of subparagraph (A)(i) and the
8 total dollar amounts in subclauses (II) and (IV)
9 of subparagraph (A)(i) in the aggregate and list
10 each such settlement by any of the following
11 categories that apply to the settlement:

13 “(i) Settlements relating to sexual
14 abuse, covered discrimination, or covered
15 harassment because of sex.

16 “(ii) Settlements relating to covered
17 discrimination or covered harassment be-
18 cause of race, color, or national origin.

19 “(iii) Settlements relating to covered
20 discrimination or covered harassment be-
21 cause of religion.

22 “(iv) Settlements relating to covered
23 discrimination or covered harassment be-
24 cause of age.

12

1 “(v) Settlements relating to covered
2 discrimination or covered harassment on
3 the basis of disability.

4 “(vi) Settlements relating to covered
5 discrimination or covered harassment be-
6 cause of genetic information.

7 “(vii) Settlements relating to covered
8 discrimination or covered harassment on
9 the basis of status concerning service in a
10 uniformed service.

11 “(viii) Settlements relating to covered
12 discrimination or covered harassment be-
13 cause of sexual orientation or gender iden-
14 tity.

15 “(C) PROHIBITIONS ON CERTAIN DISCLO-
16 SURES.—

17 “(i) PROHIBITION ON DISCLOSURES
18 BY COVERED ISSUERS.—

19 “(I) IN GENERAL.—A covered
20 issuer may not—

21 “(aa) in any disclosure made
22 under subparagraph (A), or in
23 any other public disclosure, dis-
24 close the name of a victim of an
25 alleged act of sexual abuse, cov-

13

ered harassment, or covered discrimination on which a settlement or complaint, as applicable, described in subparagraph (A) is based; or

“(bb) under subparagraph (B), categorize a settlement described in subclause (I) or (III) of subparagraph (A)(i) if the victim of the alleged act of sexual abuse, covered harassment, or covered discrimination on which the settlement is based objects to that categorization.

“(II) INDICATION OF OBJECT
N.—A covered issuer shall indicate
any disclosure made under sub-
paragraph (A) whether any objection
been made under subclause
(bb) of this clause.

) PROHIBITION ON DISCLOSURES
COMMISSION.—The Commission
disclose the name of a victim of
ed act of sexual abuse, covered har-
or covered discrimination on

1 which a settlement or complaint, as appli-
2 able, described in subparagraph (A) is
3 based.

4 “(D) PREVENTION OF SEXUAL ABUSE,
5 COVERED HARASSMENT, AND COVERED DIS-
6 CRIMINATION.—In each disclosure required
7 under subparagraph (A), the covered issuer
8 making the disclosure shall include a descrip-
9 tion of the measures taken by the covered
10 issuer and any subsidiary, contractor, or sub-
11 contractor of the covered issuer to prevent em-
12 ployees of the covered issuer and any sub-
13 sidiary, contractor, or subcontractor of the cov-
14 ered issuer from committing or engaging in sex-
15 ual abuse, covered harassment, or covered dis-
16 crimination.

17 “(3) REGULATIONS.—The Commission may
18 promulgate such regulations as the Commission con-
19 siders necessary to implement the requirements
20 under paragraph (2).”.

INDEPENDENT CONTRACTORS AND SEXUAL HARASSMENT

**Proposed Legislation: New York's Subpart F Sexual
harassment relating to non-employees.**

1 CONCERNING EMPLOYEES' RIGHTS OF REDRESS AND ALL AVAILABLE FORUMS FOR
2 ADJUDICATING COMPLAINTS.

3 B. THE DEPARTMENT SHALL INCLUDE INFORMATION IN SUCH MODEL SEXUAL
4 HARASSMENT PREVENTION TRAINING PROGRAM ADDRESSING CONDUCT BY SUPERVISORS
5 AND ANY ADDITIONAL RESPONSIBILITIES FOR SUCH SUPERVISORS.

6 C. EVERY EMPLOYER SHALL UTILIZE THE MODEL SEXUAL HARASSMENT PREVENTION
7 TRAINING PROGRAM PURSUANT TO THIS SUBDIVISION OR ESTABLISH A TRAINING
8 PROGRAM FOR EMPLOYEES TO PREVENT SEXUAL HARASSMENT THAT EQUALS OR
9 EXCEEDS THE MINIMUM STANDARDS PROVIDED BY SUCH MODEL TRAINING. SUCH
10 SEXUAL HARASSMENT PREVENTION TRAINING SHALL BE PROVIDED TO ALL EMPLOYEES
11 ON AN ANNUAL BASIS.

12 3. THE COMMISSIONER MAY PROMULGATE REGULATIONS AS HE OR SHE DEEMS
13 NECESSARY FOR THE PURPOSES OF CARRYING OUT THE PROVISIONS OF THIS
14 SECTION.

15 S 2. This act shall take effect on the one hundred eightieth day after
16 it shall have become a law. Effective immediately, the department of
17 labor, in consultation with the division of human rights, is authorized
18 to create the model sexual harassment prevention policy and the model
19 sexual harassment prevention training program required to be created and
20 published pursuant to section 201-g of the labor law as added by section
21 one of this act.

22

SUBPART F

23 Section 1. The executive law is amended by adding a new section 296-d
24 to read as follows:

25 S 296-D. SEXUAL HARASSMENT RELATING TO NON-EMPLOYEES. IT SHALL BE AN
26 UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO PERMIT SEXUAL
27 HARASSMENT OF NON-EMPLOYEES IN ITS WORKPLACE. AN EMPLOYER MAY BE HELD
28 LIABLE TO A NON-EMPLOYEE WHO IS A CONTRACTOR, SUBCONTRACTOR, VENDOR,
29 CONSULTANT OR OTHER PERSON PROVIDING SERVICES PURSUANT TO A CONTRACT IN
30 THE WORKPLACE OR WHO IS AN EMPLOYEE OF SUCH CONTRACTOR, SUBCONTRACTOR,
31 VENDOR, CONSULTANT OR OTHER PERSON PROVIDING SERVICES PURSUANT TO A
32 CONTRACT IN THE WORKPLACE, WITH RESPECT TO SEXUAL HARASSMENT, WHEN THE
33 EMPLOYER, ITS AGENTS OR SUPERVISORS KNEW OR SHOULD HAVE KNOWN THAT SUCH
34 NON-EMPLOYEE WAS SUBJECTED TO SEXUAL HARASSMENT IN THE EMPLOYER'S WORK-
35 PLACE, AND THE EMPLOYER FAILED TO TAKE IMMEDIATE AND APPROPRIATE CORREC-
36 TIVE ACTION. IN REVIEWING SUCH CASES INVOLVING NON-EMPLOYEES, THE EXTENT
37 OF THE EMPLOYER'S CONTROL AND ANY OTHER LEGAL RESPONSIBILITY WHICH THE
38 EMPLOYER MAY HAVE WITH RESPECT TO THE CONDUCT OF THE HARASSEUR SHALL BE
39 CONSIDERED.

40 S 2. Subdivision 4 of section 292 of the executive law, as amended by
41 chapter 97 of the laws of 2014, is amended to read as follows:

42 4. The term "unlawful discriminatory practice" includes only those
43 practices specified in sections two hundred ninety-six, two hundred
44 ninety-six-a [and], two hundred ninety-six-c AND TWO HUNDRED
45 NINETY-SIX-D of this article.

46 S 3. This act shall take effect immediately.

47 S 2. Severability clause. If any clause, sentence, paragraph, subdivi-
48 sion, section or subpart of this act shall be adjudged by any court of
49 competent jurisdiction to be invalid, such judgment shall not affect,
50 impair, or invalidate the remainder thereof, but shall be confined in
51 its operation to the clause, sentence, paragraph, subdivision, section
52 or subject thereof directly involved in the controversy in which such
53 judgment shall have been rendered. It is hereby declared to be the

1 intent of the legislature that this act would have been enacted even if
2 such invalid provisions had not been included herein.

3 S 3. This act shall take effect immediately; provided, however, that
4 the applicable effective dates of Subparts A through F of this Part
5 shall be as specifically set forth in the last section of such Subparts.

PART LL

NONDISCLOSURE AGREEMENTS

**Harvard Business Review: NDAs Are Out of Control.
Here's What Needs to Change.**

**Proposed Legislation: New Jersey limits use of NDAs
in employment contracts**

**Proposed Legislation: New York's Subpart D
Nondisclosure Agreements.**



BUSINESS LAW

NDAs Are Out of Control. Here's What Needs to Change

by Orly Lobel

JANUARY 30, 2018



HANS NELEMAN/GETTY IMAGES

Nondisclosure agreements, or NDAs, which are increasingly common in employment contracts, suppress employee speech and chill creativity. The current revelations surfacing years of harassment in major organizations are merely the tip of the iceberg.

New data shows that over one-third of the U.S. workforce is bound by an NDA. These contracts have grown not only in number but also in breadth. They not only appear in settlements after a victim of sexual harassment has raised her voice but also are now routinely included in standard employment contracts upon hiring. At the outset, NDAs attempt to impose several obligations upon a new employee. They demand silence, often broadly worded to protect against speaking up against corporate culture or saying anything that would portray the company and its executives in a negative light. NDAs also attempt to expand the definitions of secrecy to cover more information than the traditional bounds of trade secret law, in effect preventing an employee from leaving their employer and continuing to work in the same field.

For example, beyond the technical secrets of research and development that companies rightfully want to protect from leaking, plaintiffs in trade secrecy litigation frequently try to claim client lists and even general know-how as protected trade secrets. However, judges are rightly skeptical. In the ongoing Waymo v. Uber trade secrecy trial, Judge Aslup reminded the parties of this key distinction between actual secrets and general know-how: “Is an engineer supposed to get a frontal lobotomy before they go on to the next job?” Alsup asked. “The answer’s got to be no, but say they know the recipe for Coca-Cola. They have to forget that before their next job.” In other words, trade secret law tries to balance companies’ need to keep certain things secret with employees’ desire to transfer skills between employers. That’s as it should be. The problem is that NDAs are often written broadly, and once an employee signs one, the case against them is stronger should they take their know-how to a competitor. Moreover, not all courts are diligent in policing the lines between general knowledge and confidential information. Therefore, signing a broad NDA opens employees up to legal risk beyond what trade secret law otherwise would protect.

NDAs chill competition, through expansive definitions of what must remain confidential and proprietary, reducing the ability of a discontent employee or an employee working in a hostile work environment to go elsewhere. Importantly, as recent studies show clearly, preventing workers from using their knowledge and skills beyond a single workplace is harmful not simply to the worker but to entrepreneurship, competition, and economic growth.

NDAs thus often attempt to achieve two things simultaneously: silence a worker during employment and confine them to their current job. Thankfully, there are already several important legal exceptions to the enforceability of NDAs (though courts still enforce them more broadly than they should). First, an NDA can never prevent an employee from assisting in official agency investigations. Even more important, NDAs cannot lawfully prohibit employees from officially reporting illegal conduct. Title VII of the Civil Rights Act invalidates agreements that prohibit employees from filing charges with or assisting the Equal Employment Opportunity Commission in its investigation of any charges. The newly enacted Defend Trade Secrets Act (DTSA) similarly preserves the rights of employees to blow the whistle even if that means revealing trade secrets or breaching an NDA. The DTSA even requires employers to describe this exception in the NDAs themselves, though compliance with this new law has been spotty at best.

Despite these exemptions, employers threaten litigation even under those circumstances in which NDAs would be void. New empirical studies show that employees are largely uninformed about these protections, and the routinely broad language of confidentiality clauses along with the threat of litigation chills even this protected speech.

Moreover, a new common extension of NDAs is the inclusion of a non-disparagement clause, which beyond the protection of concrete corporate information requires employees to never speak negatively about their employer or former employer. A boilerplate non-disparagement clause from a major corporation's employment contract, illustrating the breadth of the prohibition, reads "you shall not at any time, directly or indirectly, disparage the Company, including making or publishing any statement, written, oral, electronic or digital, truthful or otherwise, which may adversely affect the business, public image, reputation or goodwill of the company, including its operations, employees, directors and its past, present or future products or services." The National Labor Relations Board has recently held that non-disparagement clauses unlawfully conflict with the rights of *all* workers – not only unionized workers – to engage in concerted activity on the terms and conditions of their employment. The EEOC has similarly become concerned about these clauses mushrooming, and has taken action against major corporations such as CVS, which require its workers to sign them as part of the standard NDA.

Given all of this, efforts to ban secret settlements in the case of sexual harassment claims should be welcomed. Several states, including California, Pennsylvania, and New York, are contemplating new legislation to this effect, and Congress has introduced a bipartisan bill, named the ME TOO Congress Act, that would similarly limit NDAs in harassment settlements. Banning secrecy as part of settlement agreements is an important step forward, as these certainly aid the code of silence and prisoner's dilemma that have been the reality for employees in corporations with cultures of harassment.

While such legislation may raise concerns that victims of harassment would have less leverage against their employer if they cannot offer their silence, thus decreasing the payouts plaintiffs can get in a settlement in return for secrecy, the greater goal of our anti-discrimination laws is equality and a harassment-free workplace for all women

and men. Legislation that brings light to dark places is key in achieving this goal. Employment protections are meant primarily to prevent harm and to create a future of better, safer, and more-ethical work environments, not simply to provide victims maximum monetary compensation after each wrongdoing.

But policy makers shouldn't limit reforms to sexual harassment settlements. Instead, they should enact reforms to restrict the scope of NDAs in general – to help workers and to promote competition and economic dynamism. As it stands, countless workers are swallowing the whistle and forgoing new career opportunities because of the threat of litigation.

Legislatures and courts should develop clearer boundaries about the enforceable scope of NDAs and should penalize employers that weaponize these contracts in a way that stifles speech and creativity. The law should make it clear that NDAs cannot expand upon the statutory definitions of trade secrecy to demand confidentiality about information that has little to do with a company's innovative edge. Trade secret laws have already balanced the trade-offs inherent in fencing some types of information; these laws have weighed the risks and benefits, striking a reasonable policy bargain. Through education campaigns and policies that require employer transparency when drafting employment contract clauses, employees should be made aware of the limits of boilerplate language in their employment contracts. And employers should be incentivized to draft enforceable contracts and eliminate unenforceable provisions. This can be done by imposing penalties on overreaching contracts and adopting a "red pencil doctrine" rendering any contract with unenforceable scope void in its entirety.

NDAs have become a standard feature of employment contracts, but we must not allow them to conceal misconduct or monopolize jobs markets under the guise of protecting company secrets.

SENATE, No. 121

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Bars provisions in employment contracts that waive rights or remedies; bars agreements that conceal details relating to discrimination claims.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2018)

S121 WEINBERG, GILL

2

1 **AN ACT** concerning discrimination and supplementing Title 10 of
2 the Revised Statutes.

3

4 **BE IT ENACTED by the Senate and General Assembly of the State**
5 **of New Jersey:**

6

7 1. a. A provision in any employment contract that waives any
8 substantive or procedural right or remedy relating to a claim of
9 discrimination, retaliation, or harassment shall be deemed against
10 public policy and unenforceable.

11 b. No right or remedy under the “Law Against Discrimination,”
12 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law
13 shall be prospectively waived.

14 c. This section shall not apply to the terms of any collective
15 bargaining agreement between an employer and the collective
16 bargaining representative of the employees.

17

18 2. A provision in any employment contract or agreement which
19 has the purpose or effect of concealing the details relating to a
20 claim of discrimination, retaliation, or harassment shall be deemed
21 against public policy and unenforceable.

22

23 3. A person who enforces or attempts to enforce a provision
24 deemed against public policy and unenforceable pursuant to P.L. ,
25 c. (C.) (pending before the Legislature as this bill) shall be
26 liable for the employee’s reasonable attorney fees and costs.

27

28 4. No person shall take any retaliatory action, including but not
29 limited to failure to hire, discharge, suspension, demotion,
30 discrimination in the terms, conditions, or privileges of
31 employment, or other adverse action, against a person, on grounds
32 that the person does not enter into an agreement or contract that
33 contains a provision deemed against public policy and
34 unenforceable pursuant to P.L. , c. (C.) (pending before the
35 Legislature as this bill).

36

37 5. Any person claiming to be aggrieved by a violation of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) may
39 initiate suit in Superior Court. An action pursuant to this section
40 shall be commenced within two years next after the cause of any
41 such action shall have accrued. All remedies available in common
42 law tort actions shall be available to prevailing plaintiffs. These
43 remedies are in addition to any provided by P.L. , c. (C.)
44 (pending before the Legislature as this bill) or any other statute. A
45 prevailing plaintiff shall be awarded reasonable attorney fees and
46 costs.

1 6. This act shall take effect immediately and shall apply to all
2 contracts and agreements entered into, renewed, modified, or
3 amended on or after the effective date.

4

5

STATEMENT

7

8 This bill would bar provisions in employment contracts that
9 waive certain rights or remedies. It would also bar certain
10 agreements that conceal details relating to discrimination claims.

Under the bill, a provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment would be deemed against public policy and unenforceable.

15 The bill provides that no right or remedy under the “Law Against
16 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other
17 statute or case law could be prospectively waived.

18 The above described provisions of the bill would not apply to the
19 terms of any collective bargaining agreement between an employer
20 and the collective bargaining representative of the employees.

The bill also provides that a provision in any employment contract or agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment, including claims that are submitted to arbitration, would be deemed against public policy and unenforceable.

Under the bill, a person who enforces or attempts to enforce a provision deemed against public policy and unenforceable would be liable for the employee's reasonable attorney fees and costs.

The bill provides that no person shall take any retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions, or privileges of employment, or other adverse action, against a person, on grounds that the person does not enter into an agreement or contract that contains a provision deemed against public policy and unenforceable pursuant to the bill.

Under the bill, any person claiming to be aggrieved by a violation of the bill may initiate suit in Superior Court. An action would be required to be commenced within two years next after the cause of any such action shall have accrued. All remedies available in common law tort actions would be available to prevailing plaintiffs, in addition to the remedies provided by the bill. A prevailing plaintiff would be awarded reasonable attorney fees and costs.

44 The bill would take effect immediately and apply to all contracts
45 and agreements entered into, renewed, modified, or amended on or
46 after the effective date.

1 OTHER PERSON HOLDING A POSITION BY ELECTION, APPOINTMENT OR EMPLOYMENT
2 IN THE SERVICE OF A PUBLIC ENTITY, WHETHER OR NOT COMPENSATED. THE TERM
3 "EMPLOYEE" SHALL INCLUDE A FORMER EMPLOYEE OR JUDICIALLY APPOINTED
4 PERSONAL REPRESENTATIVE.

5 2. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY EMPLOYEE WHO HAS BEEN
6 SUBJECT TO A FINAL JUDGMENT OF PERSONAL LIABILITY FOR INTENTIONAL WRONG-
7 DOING RELATED TO A CLAIM OF SEXUAL HARASSMENT, SHALL REIMBURSE ANY
8 PUBLIC ENTITY THAT MAKES A PAYMENT TO A PLAINTIFF FOR AN ADJUDICATED
9 AWARD BASED ON A CLAIM OF SEXUAL HARASSMENT RESULTING IN A JUDGMENT, FOR
10 HIS OR HER PROPORTIONATE SHARE OF SUCH JUDGMENT. SUCH EMPLOYEE SHALL
11 PERSONALLY REIMBURSE SUCH PUBLIC ENTITY WITHIN NINETY DAYS OF THE PUBLIC
12 ENTITY'S PAYMENT OF SUCH AWARD.

13 3. IF SUCH EMPLOYEE FAILS TO REIMBURSE SUCH PUBLIC ENTITY PURSUANT TO
14 SUBDIVISION TWO OF THIS SECTION WITHIN NINETY DAYS FROM THE DATE SUCH
15 PUBLIC ENTITY MAKES A PAYMENT FOR THE FINANCIAL AWARD, THE CHIEF FISCAL
16 OFFICER OF SUCH PUBLIC ENTITY SHALL, UPON OBTAINING A MONEY JUDGMENT,
17 WITHHOLD FROM SUCH EMPLOYEE'S COMPENSATION THE AMOUNTS ALLOWABLE PURSU-
18 ANT TO SECTION FIFTY-TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW
19 AND RULES.

20 4. IF SUCH EMPLOYEE IS NO LONGER EMPLOYED BY SUCH PUBLIC ENTITY, SUCH
21 PUBLIC ENTITY SHALL HAVE THE RIGHT TO RECEIVE REIMBURSEMENT THROUGH THE
22 ENFORCEMENT OF A MONEY JUDGMENT PURSUANT TO ARTICLE FIFTY-TWO OF THE
23 CIVIL PRACTICE LAW AND RULES.

24 S 3. This act shall take effect immediately.

25 SUBPART D

26 Section 1. The general obligations law is amended by adding a new
27 section 5-336 to read as follows:

28 S 5-336. NONDISCLOSURE AGREEMENTS. NOTWITHSTANDING ANY OTHER LAW TO
29 THE CONTRARY, NO EMPLOYER, ITS OFFICERS OR EMPLOYEES SHALL HAVE THE
30 AUTHORITY TO INCLUDE OR AGREE TO INCLUDE IN ANY SETTLEMENT, AGREEMENT OR
31 OTHER RESOLUTION OF ANY CLAIM, THE FACTUAL FOUNDATION FOR WHICH INVOLVES
32 SEXUAL HARASSMENT, ANY TERM OR CONDITION THAT WOULD PREVENT THE DISCLO-
33 SURE OF THE UNDERLYING FACTS AND CIRCUMSTANCES TO THE CLAIM OR ACTION
34 UNLESS THE CONDITION OF CONFIDENTIALITY IS THE COMPLAINANT'S PREFERENCE.
35 ANY SUCH TERM OR CONDITION MUST BE PROVIDED TO ALL PARTIES, AND THE
36 COMPLAINANT SHALL HAVE TWENTY-ONE DAYS TO CONSIDER SUCH TERM OR CONDI-
37 TION. IF AFTER TWENTY-ONE DAYS SUCH TERM OR CONDITION IS THE
38 COMPLAINANT'S PREFERENCE, SUCH PREFERENCE SHALL BE MEMORIALIZED IN AN
39 AGREEMENT SIGNED BY ALL PARTIES. FOR A PERIOD OF AT LEAST SEVEN DAYS
40 FOLLOWING THE EXECUTION OF SUCH AGREEMENT, THE COMPLAINANT MAY REVOKE
41 THE AGREEMENT, AND THE AGREEMENT SHALL NOT BECOME EFFECTIVE OR BE
42 ENFORCEABLE UNTIL SUCH REVOCATION PERIOD HAS EXPIRED.

43 S 2. The civil practice law and rules is amended by adding a new
44 section 5003-b to read as follows:

45 S 5003-B. NONDISCLOSURE AGREEMENTS. NOTWITHSTANDING ANY OTHER LAW TO
46 THE CONTRARY, FOR ANY CLAIM OR CAUSE OF ACTION, WHETHER ARISING UNDER
47 COMMON LAW, EQUITY, OR ANY PROVISION OF LAW, THE FACTUAL FOUNDATION FOR
48 WHICH INVOLVES SEXUAL HARASSMENT, IN RESOLVING, BY AGREED JUDGMENT,
49 STIPULATION, DECREE, AGREEMENT TO SETTLE, ASSURANCE OF DISCONTINUANCE OR
50 OTHERWISE, NO EMPLOYER, ITS OFFICER OR EMPLOYEE SHALL HAVE THE AUTHORITY
51 TO INCLUDE OR AGREE TO INCLUDE IN SUCH RESOLUTION ANY TERM OR CONDITION
52 THAT WOULD PREVENT THE DISCLOSURE OF THE UNDERLYING FACTS AND CIRCUM-
53 STANCES TO THE CLAIM OR ACTION UNLESS THE CONDITION OF CONFIDENTIALITY
54 IS THE PLAINTIFF'S PREFERENCE. ANY SUCH TERM OR CONDITION MUST BE

1 PROVIDED TO ALL PARTIES, AND THE PLAINTIFF SHALL HAVE TWENTY-ONE DAYS TO
2 CONSIDER SUCH TERM OR CONDITION. IF AFTER TWENTY-ONE DAYS SUCH TERM OR
3 CONDITION IS THE PLAINTIFF'S PREFERENCE, SUCH PREFERENCE SHALL BE MEMO-
4 RIALIZED IN AN AGREEMENT SIGNED BY ALL PARTIES. FOR A PERIOD OF AT LEAST
5 SEVEN DAYS FOLLOWING THE EXECUTION OF SUCH AGREEMENT, THE PLAINTIFF MAY
6 REVOKE THE AGREEMENT, AND THE AGREEMENT SHALL NOT BECOME EFFECTIVE OR BE
7 ENFORCEABLE UNTIL SUCH REVOCATION PERIOD HAS EXPIRED.

8 S 3. This act shall take effect on the ninetieth day after it shall
9 have become a law.

10

SUBPART E

11 Section 1. The labor law is amended by adding a new section 201-g to
12 read as follows:

13 S 201-G. PREVENTION OF SEXUAL HARASSMENT. 1. THE DEPARTMENT SHALL
14 CONSULT WITH THE DIVISION OF HUMAN RIGHTS TO CREATE AND PUBLISH A MODEL
15 SEXUAL HARASSMENT PREVENTION GUIDANCE DOCUMENT AND SEXUAL HARASSMENT
16 PREVENTION POLICY THAT EMPLOYERS MAY UTILIZE IN THEIR ADOPTION OF A
17 SEXUAL HARASSMENT PREVENTION POLICY REQUIRED BY THIS SECTION.

18 A. SUCH MODEL SEXUAL HARASSMENT PREVENTION POLICY SHALL: (I) PROHIBIT
19 SEXUAL HARASSMENT CONSISTENT WITH GUIDANCE ISSUED BY THE DEPARTMENT IN
20 CONSULTATION WITH THE DIVISION OF HUMAN RIGHTS AND PROVIDE EXAMPLES OF
21 PROHIBITED CONDUCT THAT WOULD CONSTITUTE UNLAWFUL SEXUAL HARASSMENT;
22 (II) INCLUDE BUT NOT BE LIMITED TO INFORMATION CONCERNING THE FEDERAL
23 AND STATE STATUTORY PROVISIONS CONCERNING SEXUAL HARASSMENT AND REMEDIES
24 AVAILABLE TO VICTIMS OF SEXUAL HARASSMENT AND A STATEMENT THAT THERE MAY
25 BE APPLICABLE LOCAL LAWS; (III) INCLUDE A STANDARD COMPLAINT FORM; (IV)
26 INCLUDE A PROCEDURE FOR THE TIMELY AND CONFIDENTIAL INVESTIGATION OF
27 COMPLAINTS AND ENSURE DUE PROCESS FOR ALL PARTIES; (V) INFORM EMPLOYEES
28 OF THEIR RIGHTS OF REDRESS AND ALL AVAILABLE FORUMS FOR ADJUDICATING
29 SEXUAL HARASSMENT COMPLAINTS ADMINISTRATIVELY AND JUDICIALLY; (VI)
30 CLEARLY STATE THAT SEXUAL HARASSMENT IS CONSIDERED A FORM OF EMPLOYEE
31 MISCONDUCT AND THAT SANCTIONS WILL BE ENFORCED AGAINST INDIVIDUALS
32 ENGAGING IN SEXUAL HARASSMENT AND AGAINST SUPERVISORY AND MANAGERIAL
33 PERSONNEL WHO KNOWINGLY ALLOW SUCH BEHAVIOR TO CONTINUE; AND (VII)
34 CLEARLY STATE THAT RETALIATION AGAINST INDIVIDUALS WHO COMPLAIN OF SEXU-
35 AL HARASSMENT OR WHO TESTIFY OR ASSIST IN ANY PROCEEDING UNDER THE LAW
36 IS UNLAWFUL.

37 B. EVERY EMPLOYER SHALL ADOPT THE MODEL SEXUAL HARASSMENT PREVENTION
38 POLICY PROMULGATED PURSUANT TO THIS SUBDIVISION OR ESTABLISH A SEXUAL
39 HARASSMENT PREVENTION POLICY TO PREVENT SEXUAL HARASSMENT THAT EQUALS OR
40 EXCEEDS THE MINIMUM STANDARDS PROVIDED BY SUCH MODEL SEXUAL HARASSMENT
41 PREVENTION POLICY. SUCH SEXUAL HARASSMENT PREVENTION POLICY SHALL BE
42 PROVIDED TO ALL EMPLOYEES IN WRITING. SUCH MODEL SEXUAL HARASSMENT
43 PREVENTION POLICY SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITES
44 OF BOTH THE DEPARTMENT AND THE DIVISION OF HUMAN RIGHTS.

45 2. THE DEPARTMENT SHALL CONSULT WITH THE DIVISION OF HUMAN RIGHTS AND
46 PRODUCE A MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM TO PREVENT
47 SEXUAL HARASSMENT IN THE WORKPLACE.

48 A. SUCH MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM SHALL BE
49 INTERACTIVE AND INCLUDE: (I) AN EXPLANATION OF SEXUAL HARASSMENT
50 CONSISTENT WITH GUIDANCE ISSUED BY THE DEPARTMENT IN CONSULTATION WITH
51 THE DIVISION OF HUMAN RIGHTS; (II) EXAMPLES OF CONDUCT THAT WOULD
52 CONSTITUTE UNLAWFUL SEXUAL HARASSMENT; (III) INFORMATION CONCERNING THE
53 FEDERAL AND STATE STATUTORY PROVISIONS CONCERNING SEXUAL HARASSMENT AND
54 REMEDIES AVAILABLE TO VICTIMS OF SEXUAL HARASSMENT; AND (IV) INFORMATION

STATEWIDE PANIC BUTTON LEGISLATION

City of Chicago Panic Button Ordinance

S U B S T I T U T E
O R D I N A N C E

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4-6-180 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

4-6-180 Hotel.

(a) *Definitions.* As used in this section:

“Anti-sexual harassment policy” means the written policy required under subsection (e)(2) of this section.

“Employee(s)” means any natural person who works full time or part time at a hotel for or under the direction of the licensee or any subcontractor of the licensee for wages or salary or remuneration of any type under a contract or subcontract of employment, whether express or implied.

“Guest” means any invitee to a hotel, including registered guests, persons occupying guest rooms with registered guests, visitors invited to guest rooms by a registered guest or other occupant of a guest room, persons patronizing food or beverage facilities provided by the hotel, or any other person whose presence at the hotel is permitted by the licensee. The term “guest” does not include employees.

“Guest room” means any room made available by a hotel for overnight occupancy by guests.

(Omitted text is unaffected by this ordinance)

“Panic button” or “notification device” means a portable emergency contact device that is designed so that an employee can quickly and easily activate such button or device to effectively summon to the employee’s location prompt assistance by a hotel security officer, manager or other appropriate hotel staff member designated by the licensee.

“Restroom” means any room equipped with toilets.

“Sexual harassment” means any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature.

(Omitted text is unaffected by this ordinance)

(d) *Departmental duties.*

(Omitted text is unaffected by this ordinance)

(3) Investigations to enforce the provisions of subsection (e) of this section may be conducted, as appropriate, by the Department of Business Affairs and Consumer Protection or Chicago Commission on Human Relations (“CCHR”). Investigations to enforce subsection (f)(3) of this section shall be conducted by CCHR.

(c) Legal duties. Each license engaged in the business of hotel shall a duty to:

(1) equip employees who are assigned to work in a guest room or restroom, under circumstances where no other employee is present in such room, with a panic button or notification device. The employee may use the panic button or notification device to summon help if the employee reasonably believes that an ongoing crime, sexual harassment, sexual assault or other emergency is occurring in the employee’s presence. Panic buttons and notification devices shall be provided by the licensee at no cost to the employee;

(2) develop, maintain and comply with a written anti-sexual harassment policy to protect employees against sexual assault and sexual harassment by guests. Such policy shall: (a) encourage employees (“complaining employee”) to immediately report to the licensee instances of alleged sexual assault and sexual harassment by guests (“offending guest”); (b) describe the procedures that the complaining employee and licensee shall follow in such cases; (c) instruct the complaining employee to cease work and to leave the immediate area where danger is perceived until hotel security personnel or members of the Police Department arrive to provide assistance; (d) offer temporary work assignments to the complaining employee during the duration of the offending guest’s stay at the hotel, which may include assigning the employee to work on a different floor or at a different station or work area away from the offending guest; (e) provide the complaining employee with necessary paid time off to: (i) sign a complaint with the Police Department against the offending guest, and (ii) testify as a witness at any legal proceeding that may ensue as a result of such complaint, if the complaining employee is still in the licensee’s employ at the time such legal proceeding occurs; (f) inform the employee that the Illinois Human Rights Act, Chicago Human Rights Ordinance and Title VII of the Civil Rights Act of 1964 provide additional protections against sexual harassment in the workplace; and (g) inform the employee that subsection (f)(3) of this section makes it illegal for an employer to retaliate against any employee who reasonably uses a panic button or notification device, or in good faith avails himself or herself of the requirements set forth in subsection (e)(2)(c); (e)(2)(d); (e)(2)(e) of this subsection, or discloses, reports or testifies about any violation of this section or rules promulgated thereunder. Nothing in this subsection (e)(2) shall be construed to relieve the licensee from compliance with Section

4-4-306; and

(3) provide all employees with a current copy in English, Spanish and Polish of the hotel's anti-sexual harassment policy, and post such policy in English, Spanish and Polish in conspicuous places in areas of the hotel, such as supply rooms or employee lunch rooms, where employees can reasonably be expected to see it.

(e)(f) *Prohibited acts.* It shall be unlawful for any licensee engaged in the business of hotel to:

(Omitted text is unaffected by this ordinance)

(3) retaliate against any employee for: (i) reasonably using a panic button or notification device, or (ii) availing himself or herself of the requirements set forth in subsection (e)(2)(c), (e)(2)(d) or (e)(2)(e) of this section, or (iii) disclosing, reporting, or testifying about any violation of this section or any rule promulgated thereunder. Any complaint alleging a violation of this subsection (f)(3) shall be filed by the aggrieved party with the Chicago Commission on Human Relations ("CCHR") no later than 180 days after the occurrence of the alleged violation and in accordance with rules duly promulgated by the Commissioner of CCHR. Two or more adjudged violations of this subsection (f)(3) within any 12-month period may result in license suspension or revocation in accordance with Section 4-4-280. Provided, however, that: (A) the subject matter of any such disciplinary hearing or proceeding under Section 4-4-280 shall be limited to the issue of whether the required number of adjudged violations of this subsection (f)(3) occurred within any 12-month period; (B) the licensee shall not be permitted at such disciplinary hearing or proceeding to challenge the adjudged violations themselves, nor any underlying facts asserted or determined therein; and (C) no fines shall be imposed on the licensee as a result of such disciplinary hearing or proceeding under Section 4-4-280.

(f)(g) *Penalty – License revocation – One year wait for new license – Exceptions.*

(1) In Except as otherwise provided in subsection (f)(3)(C) of this section, and in addition to any other penalty provided by law, any person who violates any requirement of this section or any rule or regulation promulgated thereunder shall be subject to a fine of not less than \$250.00 nor more than \$500.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(Omitted text is unaffected by this ordinance)

SECTION 2. Section 2-160-090 of the Municipal Code of Chicago is hereby amended by deleting the language stricken through and by inserting the language underscored, as follows:

2-160-090 Violation – Investigation by commission on human relations – Prosecution.

The Chicago ~~commission on human relations~~ Commission on Human Relations shall receive and investigate complaints of violations of this chapter, except where such duty is modified by intergovernmental agreement, ~~and complaints of violations of subsection (f)(3) of Section 4-6-180~~, and shall prepare and provide necessary forms for such complaints. No person shall refuse or fail to comply with any subpoena, order or decision issued in the course of or as a result of an investigation.

SECTION 3. Section 2-160-100 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

2-160-100 Retaliation prohibited.

No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this chapter or under subsection (f)(3) of Section 4-6-180.

SECTION 4. Following its passage and publication, that portion of this Ordinance that creates subsection (e)(1) of Section 4-6-180 shall take full force and effect on July 1, 2018. The remainder of this Ordinance shall take full force and effect 60 days after its passage and publication.