

From: Lisa Senecal, Stowe, Vermont

To: Vermont House Committee on General, Housing, and Military Affairs

Re: Supplemental Testimony related to H707

Thank you for accepting this additional testimony which addresses several issues that were raised during testimony given in Committee on February 13, 2018.

ASSERTION: If women aren't under NDA's, they'll share their settlement amounts with co-workers and say, "Hey, look what I got," and "You just need to say these three things and you can get this, too."

First, this is amazingly insulting to women as an entire gender and seems to imply that women are threats inside companies and just looking for an easy payday. It also suggests that false claims are a significant issue and that women must be silenced to prevent that from happening. The truth is that a very small percentage of complaints are false, in large part because the vast majority of working women are trusted and trustworthy, valuable and responsible employees. False reports are also rare because there is nothing easy about coming forward with a sexual harassment claim and it certainly is not a positive experience in most cases for the person making the claim – even in the rare cases when there is a financial settlement. The average sexual harassment settlement payment is \$30,000. Bringing forward a complaint and seeing it through to a settlement is expensive in terms of legal fees and take a tremendous toll on the victim who is oftentimes forced to describe the offense again and again, have his or her honesty questioned (as indicated in the above statement), and likely results in the person bringing the complaint losing their job. Even in cases where claims are not able to be substantiated, that does not mean that the person bringing the complaint forward was not telling the truth. It merely means that, however and wherever the event(s) took place, it resulted in either no witnesses or no witnesses willing to come forward and no documentation of the event. These result in "he said/she said" situations, but the assumption should not be that the person accused of harassment is the person being truthful.

ASSERTION: No re-employment ("do not darken my door) clauses are appropriate because the person filing the claim has caused conflict and upheaval inside the organization.

This is victim-blaming at its worst. The conflict and upheaval inside the organization is caused by the harasser, not by the person who reports the harassment. These clauses and precisely this attitude are some of the reasons why victims of harassment remain silent. Companies should be encouraging their employees to report incidents of harassment so corrective measures can be taken whether that's education, a change in supervisory responsibilities, or if the conduct warrants, termination of the harasser. At no time should a company be giving the impression to any employee that, should they need to report sexual harassment, that they will be viewed as creating a problem inside the company and would no longer be welcome in that company's employ.

ASSERTION: There's no need to enhanced reporting capabilities within the Attorney General's office because employees who don't have their concerns addressed satisfactorily within the company can always pursue private civil litigation.

People working in hostile work environments or experiencing direct sexual harassment that is not addressed appropriately by their employer should not be faced with the sole option of spending months or years in litigation and tens of thousands of dollars in legal fees. Again, this creates a situation where a victim either needs to live with the harassment or leave their job. It is rare that someone who has faced sexual harassment has the financial resources to hire private counsel, or is equipped with the legal acumen needed to proceed pro se to either the EEOC or State court. Our current system leaves lower-wage workers with few or no options. A legal system that is only accessible to those with legal educations or the necessary disposable income is not providing equal protection or justice. It is also highly unlikely that a plaintiff will find an attorney willing to take their case on a contingency basis. Again, the average award or settlement in a sexual harassment case is \$30,000. Unless an attorney has a thriving practice and can occasionally take on cases on which they know they will lose money, it is not possible for lawyers to take these cases on. Hoping we have enough law firms earning amply money and willing to essentially do pro bono plaintiff work is not a system of justice. The expanded reporting capacity at the AG's office is critical to making substantive change and providing all those who encounter sexual harassment some measure of justice and a voice in calling for it to end.

ASSERTION: There is little value in the AG's office collecting data on settlements because most settlements don't admit fault and aggregating data on complaints isn't useful because many complaints are "unsubstantiated."

Statistics are collected and retained by law enforcement on unsubstantiated accusations, not-guilty verdicts, complaints that are withdrawn or for which the complainant decides not to testify. There is value in all of this data. An unsubstantiated and a false claim are not the same thing. Every not guilty verdict is essentially saying that the charge could not be substantiated beyond a reasonable doubt. That does not mean that every person who does not go to prison for their crime is innocent. Even the percentage of claims that are found to be unsubstantiated is valuable data. Because we know that false claims are statistically rare, if a particular person or business accrues a number of unsubstantiated claims, there is probably still something there worth investigating. Perhaps a sexual harasser is particularly good at making sure the harassment takes place where there are no witnesses. Perhaps the workplace is so hostile that witnesses fear coming forward for various reasons.

The concern raised that the AG's office might have data that could be compromised is an argument to abolish the data banks of law enforcement across the board. Under this rationale, it is dangerous and unfair for courts to keep any records. The data record would allow establish when companies became on actual notice of an issue or issues inside the company. This is critical important information when future complaints are brought and prevents companies from denying that they were aware that there was a problem in need of remediation. Real steps must finally be taken to break the conspiracy of silence. That cannot always occur from inside a company by the employees for many reasons, but it can be a vital role played by the Attorney General's office. A simple question is, if you or your daughter is applying for a job with a man who has been reported to sexually accost other job applicants, are you and society better protected if that is a secret or if at least someone in the AG's office would be on notice.