

**Report of the Attorney General Regarding Act 183 Measures
to Address Workplace Sexual Harassment and Discrimination**

January 15, 2020

Prepared by:

The Office of the Attorney General

Civil Rights Unit

I. Introduction and Authority

Under Vermont law, workers experiencing sexual harassment or other forms of job discrimination may seek assistance from the Vermont Attorney General's Office (AGO) or the Vermont Human Rights Commission (HRC). The AGO's Civil Rights Unit (CRU) may investigate and take enforcement action where the allegations of harassment or discrimination involve the private sector or local government; the HRC may do so where the allegations concern state employment. Both the CRU and HRC also provide extensive guidance to businesses, labor organizations, and workers regarding their rights and responsibilities in the workplace. They, along with the Vermont Commission on Women (VCW) and many other community representatives, have long collaborated to combat discrimination and to support victims.

In 2018, the General Assembly passed Act 183 to provide Vermont workers with increased protection and support in dealing with sexual harassment. Among other things, Act 183 called for the AGO and HRC to make it easier for Vermonters to file complaints of harassment and discrimination. It also provided the VCW with funding to conduct public outreach and education to help more workers in understanding their rights and where to seek assistance.

In addition, Act 183 charged the AGO to consult with the HRC and VCW and report back on such efforts, as well as provide historical data regarding prior complaints and investigations.

Specifically, Section 6 of Act 183 directed the AGO to provide the General Assembly with a report that included the following:

1. A detailed summary of how existing reporting mechanisms were enhanced and any new reporting mechanisms that were implemented. (*See Section II below.*)
2. A summary of changes in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017. (*See Section III below.*)
3. The number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint. (*See Section IV below.*)

4. Suggestions for legislative action that may further enhance the reporting mechanisms or reduce the amount of employment and work-related discrimination and sexual harassment. (*See* Section V below.)

The CRU took primary responsibility for collecting the requested information, consulting with the HRC and VCW, and preparing this report. The CRU is grateful for their assistance.

II. Changes to Reporting Mechanisms

A. Statutory Requirements.

Section 4 of Act 183 states, in relevant part:

- a. On or before December 15, 2018, the AGO and the HRC shall develop and implement enhanced mechanisms for employees and members of the public to submit complaints of discrimination and sexual harassment in employment or in the course of a working relationship.
- b. The methods shall include, at a minimum, an easy-to-use portal on the AGO's or HRC's website and a telephone hotline.

B. Changes to Reporting Mechanisms.

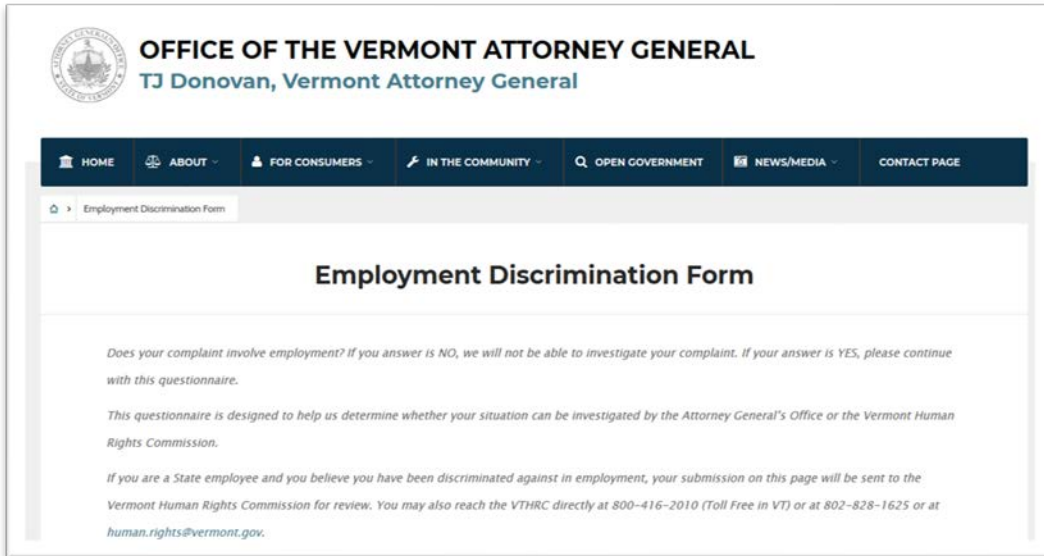
The AGO and the HRC met these legislative mandates, as described below.

C. New Online Complaint Portal.

On December 15, 2018, the CRU, in consultation with the HRC, launched an online portal intended to make it easier for workers and job applicants to submit complaints of workplace discrimination or harassment.

The complaint portal is available at: <https://ago.vermont.gov/employment-discrimination-form/>

Individuals clicking on the web link are greeted with an online complaint form that begins by notifying them that the HRC investigates claims regarding state employment and then providing them with HRC contact information:



Even so, all workers remain able to provide their contact information as well as details about the employer and the issues they have faced. If the information provided indicates that the HRC, rather than the Attorney General’s Office, has authority, the completed form is automatically transmitted to the HRC for further review and action.

As indicated in the screen shot below, the portal also asks the complainant to identify any attorney they may have hired in connection with their complaint.

This screenshot shows the input fields for the Employment Discrimination Form. The fields are: 'Your Name: *' (text input), 'Your Address: *' (three stacked text inputs), 'City' (text input), 'State/Province' (dropdown menu), 'Zip/Postal' (text input), 'Your Phone Number: *' (text input), 'Your Date of Birth: *' (text input), 'Your Email Address: *' (text input), 'Name and Phone Number of someone who will know how to reach you:' (text input), and 'Are you presently represented by an attorney? *' (radio buttons for Yes and No). A 'Next' button is located at the bottom left.

Subsequent screens, such as this one, ask the worker to check off each of the workplace issues they have encountered:

Employment Discrimination Form

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What Happened That You Wish To Complain About? (Check All That Apply) *

- I was not hired
- I was not promoted
- My hours were reduced/my shift was changed/I was transferred to another job
- I was demoted
- I was fired/laid off
- I was forced to quit my job
- I was denied a raise/I was denied benefits
- I was not paid or given benefits equal to employees doing the same job as mine
- I was harassed
- My employer failed to provide me with accommodations
- I was denied parental/family/medical leave
- I was denied crime victim leave
- I was not reinstated to my job after taking parental/family/medical/crime victim leave

Since January 2019, the first complete month the portal went online, approximately 41% (68 out of 165) of the complaints filed with the CRU have come through the online portal (as opposed to handwritten or fillable PDF complaints).

D. Additional Means of Online Reporting to the AGO.

In addition to the portal, the AGO receives online inquiries and complaints through several other mechanisms, including:

The AGO's General Public Contact Portal. Members of the public accessing the AGO's website (ago.vermont.gov) will find a link to a "Contact Page" that leads them to a form where they may seek assistance, request information, or provide feedback.



HOME ABOUT FOR CONSUMERS IN THE COMMUNITY OPEN GOVERNMENT NEWS/MEDIA CONTACT PAGE

Contact

Vermont Attorney General's Office

109 State Street,
 Montpelier, VT 05609
 Phone (802) 828-3171
 Email: ago.info@vermont.gov

Anything you submit to the Attorney General's Office may be subject to disclosure under Vermont's Public Records Act.
 If you are submitting a complaint about a potential campaign finance violation, we may forward your complaint to the alleged violator for response.
 Your complaint is not anonymous.

Name *

First Last

Email *

Phone Number *

Should the contact involve employment discrimination, it is forwarded to the CRU for review, investigation, or referral to the HRC if the matter involves employment with the State.

The CRU General Inquiry Portal. Visitors to the AGO's web page will also find a "Civil Rights" link that directs them to the CRU's general contact form. Unlike the complaint portal, this form allows visitors to describe their concern in any form they choose. It also provides other means of contacting the CRU.

Vermont Office of Attorney General

109 State Street
 Montpelier, VT 05609-1001
 Toll Free in Vermont (888) 745-9195
 Phone (802) 828-3657
 Email: ago.civilrights@vermont.gov

Please provide a brief summary of your complaint or question below. Someone from the Civil Rights Unit will contact you, generally within 1 business day.

Name

Email

Message

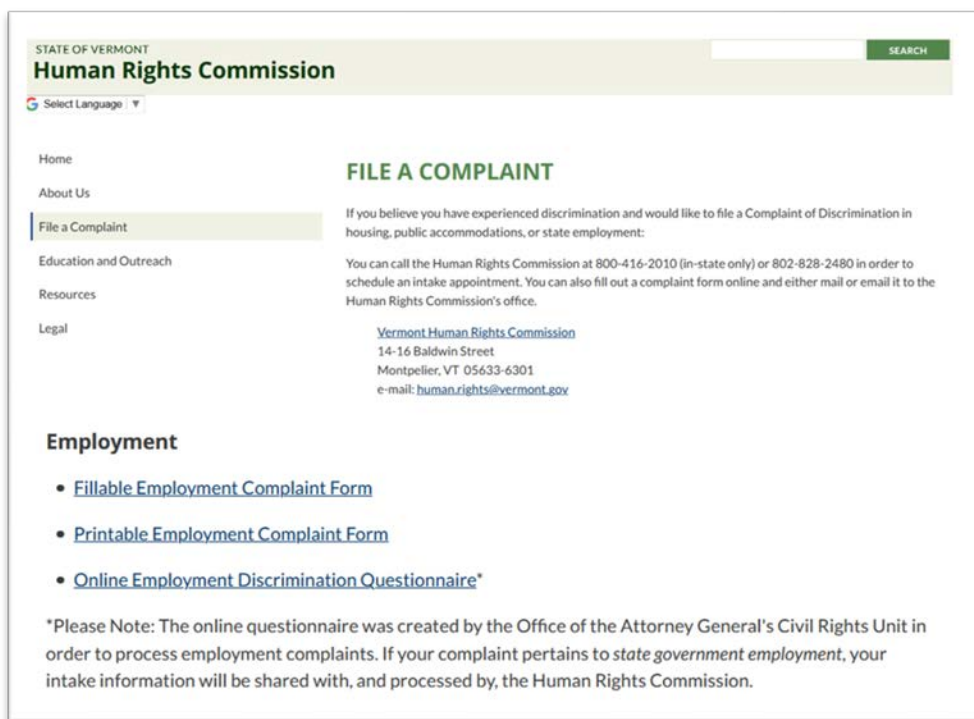
Submit

The CRU regularly reviews these contacts for follow-up calls, investigation, or referral to the HRC.

CRU E-Mail. As indicated above, persons reporting discrimination may opt instead to send a message (including attached documents, photographs, or recordings), to the CRU via its e-mail account, ago.civilrights@vermont.gov. The CRU reviews and responds to messages sent to this account daily.

E. Additional Online Means of Reporting to the HRC.

The HRC similarly offers workers multiple ways to report harassment or discrimination. Its website (hrc.vermont.gov) provides contact information as well as links to printable or online complaint forms.



On December 31, 2019, the HRC issued its Fiscal Year 2019 Annual Report, which includes additional detail about complaint intake, review, and investigation. It also provides a variety of statistics regarding the HRC's work in enforcing Vermont's employment, fair housing, and public accommodations laws. The report is available at <https://tinyurl.com/qw44m5h>.

F. Telephone Hotlines.

Both the AGO and the HRC maintain telephone hotlines for members of the public to call with inquiries, concerns, or complaints.

- Vermont Office of the Attorney General Civil Rights Unit: 1-888-745-9195 (toll free in Vermont) and 802-828-3657; and
- Vermont Human Rights Commission: 1-800-416-2010 (toll free in Vermont) and 802-828-2480.

Callers may speak with intake staff during business hours or leave voicemail messages at any time.

If the CRU or HRC receive a call for assistance outside the scope of their enforcement authority, they will refer the caller to appropriate resources, such as the Vermont Department of Labor for wage claims or the Vermont Bar Association’s Lawyer Referral Service for contract or non-employment disputes.

III. Historical CRU Data: 2016-2019

As noted above, Section 6 of Act 183 charged the AGO to provide:

a summary of changes in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017.

This Section provides the data as well as additional background information to place it in context. The table below provides an overview of the CRU’s activities as they relate to claims of employment discrimination.

	2016	2017	2018	2019
Intake Contacts	651	568	733	768
Questionnaires / Complaints Received	126	133	154	165
Investigative Files Opened	82	61	72	83
Subset of Investigative Files that Involved any Claims of Sexual Harassment	15	18	13	13
Settlements between Complainant and Employer	14	13	19	23
Subset of Settlements that Involved any Claims of Sexual Harassment	1	2	6	6
CRU Court Actions	1	1	0	0
Subset of CRU Court Actions that Involved any Claims of Sexual Harassment	0	0	0	0

Additional detail about these categories provide greater context for the data.

- **Intake Contacts:** This category reflects the total number of inquiries or requests for information the CRU receives from workers, businesses, labor organizations, or other government agencies. Such contacts may be made in person, by telephone, or in writing. The data reported also includes complaints ultimately found to lie outside the CRU’s jurisdiction and then referred elsewhere. It also includes complaints or

inquiries relating to other non-discrimination statutes the CRU enforces, such as Vermont's Drug Testing Law.

- **Questionnaires Received:** This category reflects the number of written complaints completed by individuals seeking CRU investigation or other enforcement action. These complaints may be submitted by paper, e-mail, or the online portals described above. CRU staff may also complete questionnaires on behalf of those needing assistance.
- **Investigative Files Opened:** This category reflects the number of formal administrative investigations opened after the CRU determined that the allegations would state at least one legal violation.¹
- **Sexual Harassment Investigations Opened:** This category reflects the subset of investigations that include at least one allegation of sexual harassment. It is worth noting that these cases may also include other claimed legal violations (*e.g.*, race discrimination, unlawful drug testing, etc.).
- **Settlements:** The parties to an employment dispute often attempt to settle their dispute, even as an investigation continues. Such resolutions may include not only monetary compensation, but also equitable relief, such as rehiring, promotion, training, or reassignment. The CRU offers a free mediation program in which the parties meet privately with an outside mediator to try to resolve their disputes.
- **Sexual Harassment Settlements:** This category reflects the subset of settlements that include at least one claim of sexual harassment. It does not necessarily reflect cases where the *only* allegation was sexual harassment. (Workers may complain of additional legal violations — *e.g.*, age discrimination or unlawful random drug testing — as well.).
- **CRU Court Actions:** This category reports instances where the CRU filed an Assurance of Discontinuance (AOD) with the Superior Court that memorialized the CRU's finding of a legal violation and the employer's agreement to comply with stipulated settlement terms, as well as comply with applicable laws.

Finally, it should be noted that the data reported above does not include cases where a worker elected to pursue litigation on their own. Vermont law does not require individuals to await the outcome of an investigation before filing a lawsuit in State court. Thus, for example, a worker might inform the CRU during the middle of an investigation that they have hired a lawyer and wish to proceed directly to court.

¹ The CRU provides the public a more detailed account of its investigative process through printed and online materials. *See, e.g.*, Office of the Vermont Attorney General, *Civil Rights Unit Process*, available online at <https://tinyurl.com/u2n6r7f>.

A. HRC Data.

The HRC has reported its intake, investigation, and outcomes data in online Fiscal Year Annual Reports dating back to 2012. The CRU refers to those reports, available at <https://tinyurl.com/tlsgvzv>, rather than reproduce their conclusions here.

IV. Challenges in Collecting Data Regarding Employees’ Internal Complaints of Harassment or Discrimination

Section 6 of Act 183 also charged the Attorney General with reporting:

the number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint.

Following the passage of that law, the CRU sought to improve its ability to collect such information by revising its intake forms to seek such information. For example, the CRU questionnaire now contains this revised section:

6 YOUR COMPLAINT AND THE EMPLOYER’S RESPONSE	
Did you complain about the unfair events or actions that happened to you (the ones checked in Section 5)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If so, please describe your complaint(s), state the name(s) and job title(s) of the person(s) you complained to, and state when you complained.	
<input type="text"/>	
If not, please explain your reasons:	
<input type="text"/>	

Similarly, one of the HRC’s complaint forms includes these questions:

Did you tell your employer about the discriminatory actions? If yes, when and to whom did you report these actions?
If you reported the incident(s), did your employer take preventative or corrective actions? If yes, when and what actions were taken?

In practice, however, obtaining a reliable set of data about internal complaints proved elusive. In some instances, complainants filing a discrimination questionnaire or online

complaint may decline to provide this information. In other cases, complainants may provide unclear, incomplete, or inconsistent responses. In still other cases, investigation of the complaint may reveal sharp disputes among the parties as to whether the worker had complained of discrimination to managers.

Nonetheless, the CRU's historical experience has been that victims or whistleblowers tend to offer three inter-related reasons for not making an internal complaint:

- Fear of retaliation;
- Not wanting to be labeled a “troublemaker” — especially in a small business where privacy is difficult to maintain; and
- Past failures by management to address complaints.

The HRC has also identified fear of retaliation as a primary reason that employees fail to make internal complaints. Some forms of retribution, such as dismissal or demotion, are blatant and serious. Other forms, such as reduced opportunities for training or inferior work assignments, or hours are more subtle.

V. Potential Areas for Future Legislative Action

Finally, Section 6 of Act 183 asked the Attorney General, in consultation with the HRC and VCW, to include in this report:

any suggestion for legislative action to enhance further the reporting mechanisms or to reduce the amount of employment and work-related discrimination and sexual harassment.

Before turning to such suggestions, it is worth noting other recent legislative changes or proposals. For example, during the 2019 legislative session, the Senate passed S. 83, which seeks to extend Act 183's ban on “no-rehire” clauses in sexual harassment settlements to *all* job discrimination settlements. In addition, 2019 saw the introduction of bills (1) to prohibit job discrimination on the basis of criminal history (H. 333) or housing status (H. 492) and (2) to expand reporting of equal pay data (S. 82).

Moreover, the HRC's Fiscal Year 2019 Annual Report has proposed (1) changes in the standard of proof for hostile work environment sexual harassment claims, (2) clarification on the scope of an employee's ability to consent to demands from a manager, and (3) expanded HRC authority to initiate its own investigations.²

In the section that follows, the CRU briefly describes some additional areas for legislative consideration.

A. Enhancing Discrimination Reporting Mechanisms.

As discussed more fully in Section V.B. below, the problem of sexual harassment and discrimination are fundamentally problems of workplace culture that must be addressed well before there is a legal violation. Nonetheless, it remains important for Vermonters to have

² See Vermont Human Rights Commission, ANNUAL REPORT - FISCAL YEAR 2019, 6-8 (Dec. 31, 2019), available online at <https://tinyurl.com/yflqwd4u>.

multiple, simple avenues of seeking assistance where they are victims of, or witnesses to, unlawful discrimination.

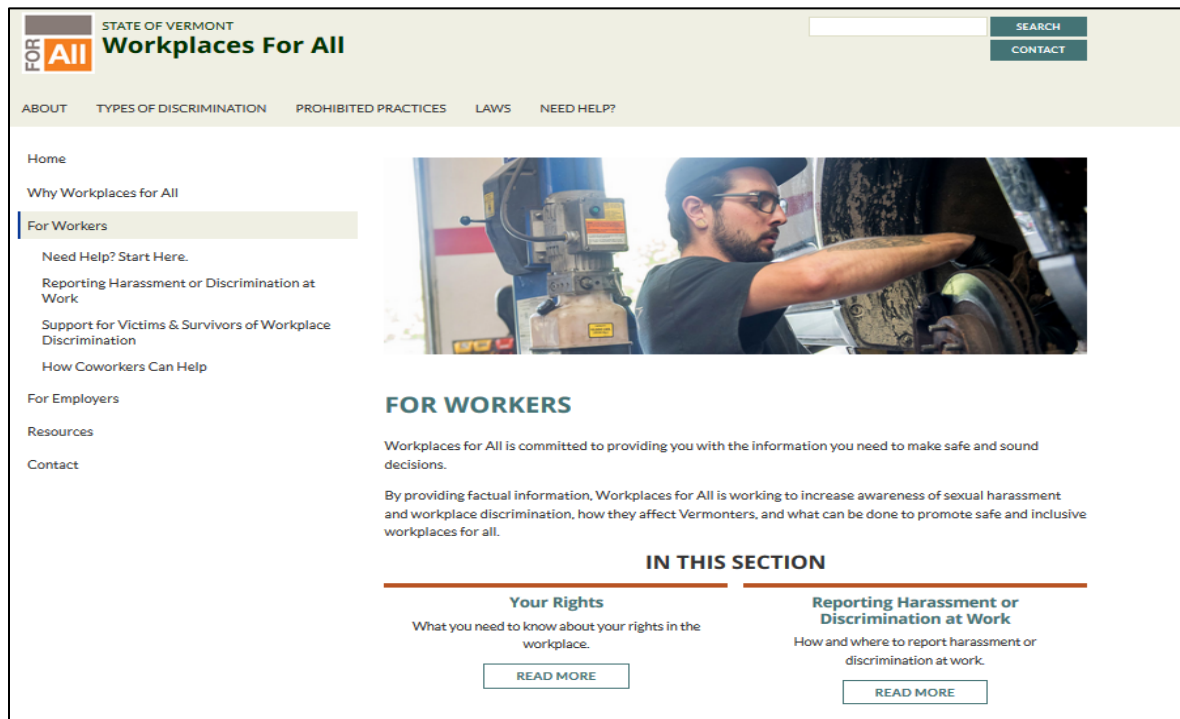
In this regard, the General Assembly may provide additional support for development of greater accessibility to the CRU, HRC, VCW, or other entities.

B. Continued Support for VCW and HRC Community Education and Outreach Efforts.

Section 5 of Act 183 provided financial support to the VCW to develop a variety of outreach programs, including online information and guidance on reporting claims of harassment or discrimination. During the 2019 session, the General Assembly also provided the HRC with additional funding for education and public outreach.

The CRU favors sustained support of these efforts. Both the VCW and HRC have exhibited a strong commitment to public education and conversation about the cultural changes needed to make lasting change in the workplace.

Most recently, the VCW has launched a web site, “Workplaces for All,” that provides a user-friendly portal to education, resources, training, and links for filing complaints with the CRU and HRC. The site’s web address is: <https://workplacesforall.vermont.gov>.



The AGO favors continued support for similar outreach efforts.

C. Smartphone Apps for Reporting Discrimination.

One additional avenue of reporting workplace discrimination may be State-developed or State-licensed smartphone applications that enable employees to report concerns directly to the CRU or HRC.

Similar applications are already emerging in the public and private sector. For example, the U.S. Department of Labor developed a smartphone app, “DOL-Timesheet,” that allows workers to track hours, meals, and break times. It also enables them to calculate their overtime entitlement and compare it to their pay stubs.³

In addition, a coalition of nonprofit organizations, in conjunction with Cornell University, developed a similar smartphone app, “Jornaler@”, that allows workers to track hours and file complaints with a nonprofit advocacy group. With the worker’s consent, the organization contacts the employer to resolve the issue.⁴

Finally, human resource professionals are turning to commercial apps that allow employees to report a broad range of workplace issues, including harassment, via smartphone. The General Assembly should examine whether, or to what extent, the State may license or independently develop similar apps to facilitate direct complaints to the CRU or the HRC. As more Vermonters favor their smartphones over their computers, app-based complaint mechanisms may help lower barriers to reporting.

D. Training to Ensure Safe, Fair, and Respectful Workplaces.

Beyond new reporting mechanisms, the General Assembly may explore different means of ensuring that employers educate their workers on the law, explicit or implicit bias, and cultivating a culture of respect.

In recent years, other jurisdictions have taken a lead role in requiring employers to provide training and, in some instances, to provide state-designed training materials. For example:

- In 2017, Maine enacted legislation requiring employers with 15 or more employees to provide sexual harassment training to their workforce within 12 months of hire. The legislation also requires additional training for managers and supervisors.⁵
- In April 2019, New York City passed an ordinance requiring sexual harassment training to include “[i]nformation concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention.” The ordinance also called for the NYC Commission on Human Rights to develop free training tools for employers.⁶
- In June 2019, Connecticut passed a law requiring employers with three or more employees to provide sexual harassment training within six months of hire, and

³ See U.S. Dept. of Labor Wage and Hour Division, *Track Your Hours: Just Tap the App*, available online at <http://tiny.cc/51hgiz>.

⁴ See Liz Robbins, *New Weapon in Day Laborers’ Fight Against Wage Theft: A Smartphone App*, New York Times (March 1, 2016), available online at <http://tiny.cc/2nigiz>.

⁵ See Me. Stat. Title 26, § 807(3), available online at <https://tinyurl.com/tebeqyf>.

⁶ NYC Commission on Human Rights, *Sexual Harassment in the Workplace*, available online at <https://tinyurl.com/yfrld9cc>.

employers with fewer than three employees to provide such training within 12 months of hire. The law also requires the Connecticut Commission on Human Rights and Opportunities to develop free, online training that meets the law's requirements.⁷

- In August 2019, New York enacted legislation calling for the state Department of Labor and Division for Human Rights to develop a model, interactive training program addressing workplace harassment. All employers must annually provide their employees either the model training or an alternative training program that meets or exceeds the model.⁸

In considering how to achieve the correct balance of mandates, incentives, and resources, the General Assembly will, no doubt, hear from all aspects of the Vermont community. The AGO is ready to engage in, and hopefully contribute to, those conversations.

Conclusion

The Office of the Attorney General is grateful for the longstanding efforts of the Human Rights Commission and the Vermont Commission on Women to combat workplace discrimination, provide support for victims, and assist Vermont employers in fostering safe, fair, and respectful workplaces. It is also grateful for the General Assembly's continued efforts to enhance and preserve the civil rights of all Vermonters. Finally, it thanks the many thoughtful, courageous Vermonters who contribute to these efforts.

⁷ See Ct. Public Act No. 19-16, available online at <https://tinyurl.com/uzkbknk>.

⁸ See N.Y. Labor Code § 201-g(2), available online at <https://tinyurl.com/wgavalm>.