

Memorandum

To: House General, Housing and Military Affairs Committee
From: Vermont Chapter of the National Association of Social Workers
Vermont Network Against Domestic and Sexual Violence
Vermont Human Rights Commission
National Women's Law Center
Date: February 10, 2022
Re: Proposed Amendment to H. 329 - Harassment and Discrimination

The above-named organizations have joined together to propose amendments to H.329. As a follow up to the testimony presented by our organizations, we are proposing the following amendments:

Sec. 1. 21 V.S.A. § 495 UNLAWFUL EMPLOYMENT PRACTICE (page 4)

(j)(2)-(B) harassment and discrimination need not be severe ~~and~~ or pervasive to constitute a violation of this section.

~~(3) Behavior that a reasonable employee with the same protected characteristics would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment or discrimination pursuant to this section.~~

Sec. 2. 21 V.S.A. § 495d. DEFINITIONS (pages 4-5)

(13)(A) "Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other ~~verbal or physical conduct~~ **verbal, written, visual, or physical conduct** of a sexual nature when:

(13)(A)(C)(iii) the conduct has the purpose or effect of **substantially** interfering with an individual's work ~~performance~~ or creating an intimidating, hostile, or offensive work environment.

(13) (B)(i) Sexual harassment need not be severe ~~and~~ or pervasive in order to be unlawful pursuant to this subchapter.

(16) "Harassment" is a form of discrimination and means unwelcome conduct based on an employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that **substantially** interferes with the employee's work ~~performance~~ or creates a work environment that is intimidating, hostile, or offensive. **In determining whether conduct constitutes harassment as defined in this chapter, the following rules shall apply:**

(A) A determination shall be made on the basis of the record as a whole, according to the totality of the circumstances and a single incident may constitute harassment.

(B) Incidents that may be harassment shall be considered in the aggregate, with the conduct of varying types, including expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation, viewed in

totality, rather than in isolation, and conduct based on multiple protected characteristics, including sex and race, viewed in totality, rather than in isolation.

(C) Conduct may be workplace harassment, regardless of whether

(i) the complaining party is the individual being harassed

(ii) the complaining party acquiesced or otherwise submitted to, or participated in, the conduct,

(iii) the conduct is also experienced by others outside of the protected class involved

(iv) the complaining party was able to continue carrying out duties and responsibilities of the party's job, despite the conduct,

(v) the conduct caused a tangible or psychological injury, or

(vi) the conduct occurred outside of the workplace.

Sec. 4. 9 V.S.A. § 4501. DEFINITIONS (pages 6-7)

(12) "Harass" means to engage in unwelcome conduct based on a person's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that substantially detracts from, undermines, or interferes with the person's terms, conditions, privileges, or protections in the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection with the sale or rental of a dwelling or other real estate. Notwithstanding any judicial precedent to the contrary, such conduct need not be severe and or pervasive to be unlawful pursuant to the provisions of this chapter. In determining whether conduct constitutes harassment as defined in this chapter, the following rules shall apply:

(A) A determination shall be made on the basis of the record as a whole, according to the totality of the circumstances and a single incident may constitute harassment.

(B) Incidents that may be harassment shall be considered in the aggregate, with the conduct of varying types, including expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation, viewed in totality, rather than in isolation, and conduct based on multiple protected characteristics, including sex and race, viewed in totality, rather than in isolation.

© Conduct may be harassment, regardless of whether

(i) the complaining party is the individual being harassed

(ii) the complaining party acquiesced or otherwise submitted to, or participated in, the conduct,

(iii) the conduct is also experienced by others outside of the protected class involved

(iv) the complaining party was able to continue carrying out duties and responsibilities of the party's job, despite the conduct,

(v) the conduct caused a tangible or psychological injury, or

(vi) the conduct occurred outside of the place of public accommodations or dwelling.

Sec. 5. 16 V.S.A. § 11 CLASSIFICATIONS AND DEFINITIONS (pages 7-8)

(26)(A) "Harassment" means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by a

student's or a student's family member's actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability that has the purpose or effect of objectively ~~and substantially~~ undermining and detracting from or interfering with a student's **education** ~~educational performance~~ or access to school resources or creating an objectively intimidating, hostile, or offensive environment.

(a)(26)(C) Notwithstanding any judicial precedent to the contrary, the conduct described in this subdivision (a)(26) need not be severe ~~and~~ or pervasive to constitute harassment. **In determining whether conduct constitutes harassment as defined in this chapter, the following rules shall apply:**

(A) A determination shall be made on the basis of the record as a whole, according to the totality of the circumstances and a single incident may constitute harassment.

(B) Incidents that may be harassment shall be considered in the aggregate, with the conduct of varying types, including expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation, viewed in totality, rather than in isolation, and conduct based on multiple protected characteristics, including sex and race, viewed in totality, rather than in isolation.

(C) Conduct may be harassment, regardless of whether
(i) the complaining party is the individual being harassed
(ii) the complaining party acquiesced or otherwise submitted to, or participated in, the conduct,
(iii) the conduct is also experienced by others outside of the protected class involved
(iv) the complaining party was able to continue carrying out duties and responsibilities of the party's job, despite the conduct,
(v) the conduct caused a tangible or psychological injury, or
(vi) the conduct occurred outside of the school.