



**S. 103 – Employment Discrimination**  
**Kara Casey, Director of Economic Empowerment**  
**House General and Housing Committee – April 20, 2023**

Thank you for taking up S. 103, act relating to amending the prohibitions against discrimination. As you may recall from the Vermont Network’s testimony last year on a similar bill, H.329, we are supportive of the efforts to address discrimination and harassment. In particular, we are supportive of reforms which improve our system responses to harassment and discrimination earlier – before victims experience long-range impacts.

Harassment and discrimination based on an individual’s protected characteristics can have long term and detrimental impacts. In particular, the Vermont Network wishes to highlight the importance of this bill in addressing sex and gender-based harassment. Sexual harassment is a form of sexual violence. This harassment can take many different forms including unwelcome sexual advances, requests for sexual favors and sexually explicit and offensive conduct. These behaviors create hostile and abusive environments. Like all forms of sexual violence, often the people who perpetrate these acts are both known to their victims and also in a position of formal or informal power. This can make bringing forth complaints and/or claims of sexual harassment exceedingly difficult.

**Severe and Pervasive Standard**

Last year, the Vermont Network testified in support of efforts to address the severe and pervasive standard in Vermont law – employment, housing, and public accommodations, including educational settings. We were pleased to see the harassment standard amended for housing last year. This year, we continue to advocate for an amendment to the standard in employment and all public accommodations.

The severe and pervasive standard, which originates from case law, creates an exceptionally high barrier for individuals to bring forth meritorious claims of sexual or gender-based harassment. Victims and survivors who have experienced long-range discrimination or singular severe instances of harassment have been prevented from bringing forth claims, due to this standard. As with many forms of sexual violence, individuals occupying more than one marginalized identity (such as race or gender identity) are impacted by issues of harassment in much more complex ways. Under the severe and pervasive standard, individuals with intersecting identities must prove that they were subjected to severe or pervasive harassment on each separate basis. The totality of all harassing behavior and its impact cannot be adequately addressed with the current standard.

***Educational settings as public accommodations***

Because educational settings are places of public accommodation, there is no compelling reason as to why S.103 should not apply to schools as well. If we are to change the severe and pervasive standard for



employment while carving out educational settings school employees subject to harassment and discrimination will be treated differently than students. Just to underscore- schools will become safer for their employees than students. Many sites of public accommodations, including in healthcare, prisons and schools, have statutory and institutional policies regarding harassment and discrimination. It is not necessary, nor congruent with the aims of this bill, to carve out any one particular site of public accommodation from the language of the bill. Carving out a site of public accommodation, such as schools, from this bill will diminish the impact of this legislation. The effect of such a proposal could be to foreclose students' right to pursue a claim for harassment under the Public Accommodations Act.

The voices of students who have experienced homophobic, gender-based or race-based harassment at their schools should be heard. Students need and deserve the ability to not only navigate school-based processes for addressing discrimination and harassment, but the ability to address circumstances where they have experienced continued discrimination through that process.

Bringing forth a claim of discrimination or harassment is not only an exceptionally difficult process but is also often an expensive and traumatic one. In the case of educational settings, the potential victims of harassment and discrimination are minors who are not in positions of power and do not have ready access to attorneys. Students who experience multiple sources of marginalization due to protected characteristics are most vulnerable and in need of protection.

Making it harder for students to report sexual harassment will only serve to discourage students who have been victimized from coming forward. It will serve to further the trauma experienced by victims and will result in less reporting and more gender-based discrimination and harassment in educational settings.

### **Settlement Conditions**

We support the language in Section 1, subsection (i) prohibiting the so-called "don't darken my door" provisions of discrimination settlements. These provisions can serve to restrict an employee's future employment options as a condition of a settlement agreement. They can be especially damaging when utilized by large employers, in rural communities, or in niche sectors or industries, and can essentially handicap an individual's future employment prospects by virtue of being a victim of harassment or discrimination. There are employees who might seek to stay with their employer but want the discriminatory behavior to stop and might seek a claim in an effort to effect institutional policy changes regarding harassment or discrimination.



## **Pay Discrimination**

The Vermont Network is also supportive of the language in Section 1, subsection (iv) expanding our equal pay provisions in law. The proposed language to prohibit wage differentials based on “sex, race, national origin, or physical or mental condition” are essential and overdue. The language allowing businesses to demonstrate that they have enacted differentials when the circumstances are job-related with respect to the position in question, and based upon a legitimate business consideration, provides sufficient ability for businesses to pursue their interests while maintaining a needed commitment to equal compensation.