



S. 103 – Employment Discrimination
Sarah Robinson, Deputy Director
Senate Economic Development Committee - March 14th, 2023

Thank you for taking up S. 103, act relating to amending the prohibitions against discrimination.

The Vermont Network is supportive of 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 more detrimental and long-range impacts.

Harassment and discrimination based on an individual’s protected characteristics can have long range 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

The Vermont Network is supportive of efforts to address the severe and pervasive standard in Vermont law. 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 the severe and pervasive 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 severe and 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. We strongly support the provisions in S. 103 that will address this standard in housing, employment and public accommodations. It is our understanding that Senate Education is taking up additional work on the educational realm and we look forward to engaging in those conversations.



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 settlement agreement. These provisions 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.