



NCSL MEMO

NATIONAL CONFERENCE *of* STATE LEGISLATURES

Subject: 2018 Sexual Assault in the Workplace

Updated: June 2018

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State	Policy	Description
Alaska	HB 405	Workplace sexual harassment claims; prohibition on nondisclosure. (a) Except as necessary to prevent the disclosure of information that is otherwise confidential by law, neither an employer nor a contract for employment may require that an employee or applicant for employment be bound by nondisclosure of sexual harassment as a condition of employment
Arizona	HB 2020 Enacted	A confidentiality agreement that restricts the disclosure of factual information that is related to a sexual assault or sexual harassment, including factual information that is related to an allegation of or attempted sexual assault or sexual harassment, is against this state's public safety and policy and is void and unenforceable.
California	SB 820	Provides that provision in a settlement agreement that prevents disclosure of factual information relating to an action is prohibited, unless a claimant requests the inclusion of such provision, if the pleadings state a cause of action relating to specified claims of sexual assault, sexual harassment, or harassment or discrimination based on sex. Makes a provision in a settlement agreement that prevents the disclosure of factual information related to the action, void, as specified.
	SB 1343	Requires an employer who employs 5 or more employees to provide at least 2 hours of sexual harassment training to all employees, and once every 2 years after that, as specified. Requires the Department of Fair Employment and Housing to develop a 2-hour video training course on the prevention of sexual harassment in the workplace and to post it on the department's Internet Web site.
	AB 1867	Requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. Requires the

		Department of Fair Employment and Housing to seek an order requiring an employer that violates the recordkeeping requirement to comply.
Connecticut	SB 132 Failed	Requires employers having three or more employees to provide information concerning the legality of sexual harassment and remedies.
Florida	HB 1259 Failed	Relates to nondisclosure and settlement agreements; provides definitions; prohibits certain nondisclosure agreements as a condition of employment; provides that a nondisclosure agreement that prevents the disclosure of sexual harassment or sexual activity under certain conditions is void and unenforceable; prohibits retaliatory action against an employee for such disclosure; specifies a cause of action; authorizes damages.
Illinois	HB 4953 Passed both chambers	Sexual Harassment Training- Amends the Department of Professional Regulation Law of the Civil Administrative Code of; provides that the Department of Financial and Professional Regulation shall require each new applicant complete a sexual harassment training program provided by the Department and each licensee complete a sexual harassment training program provided by the Department before renewal of his or her license; contains minimum requirements for the content of the training.
	HB 5544 Passed both chambers	Creates the Council on Women and Girls; provides that the Council shall advise the Governor and the General Assembly on policy issues impacting women and girls in this state with specified goals; requires the Council to issue semi annual reports on its policy recommendations by certain dates of each year. Includes sexual harassment.
Indiana	HB 1237 Failed	Relates to certain nondisclosure agreements void; declares certain nondisclosure agreements entered into after March 31, 2018, involving sexual assault, sexual harassment, and sexual discrimination as against public policy and void.
Kansas	HB 2696 Failed	Prohibits the silencing of victims of workplace sexual abuse or harassment by non-disclosure agreements.
Maryland	SB 1010 /HB 1596 Enacted	Provides that a provision in certain employment contracts, policies, or agreements that waive certain rights or remedies to a claim of sexual harassment, discrimination, or retaliation is null and void as being against the public policy of the State; prohibits an employer from taking certain adverse actions against certain employees; provides that certain employers are liable for certain attorney's fees.
New Jersey	AB 5287	Bars provisions in employment contracts that waive rights or remedies; bars agreements that conceal details relating to discrimination claims

	SB 3581 Failed	Prohibits employment contracts that waive rights or remedies; prohibits agreements that conceal details relating to discrimination claims.
New York	AB8765	Amends the Labor Law; relates to prohibiting certain contract provisions; provides that a provision in any contract waiving any substantive or procedural right or remedy relating to a claim of discrimination, nonpayment of wages or benefits, retaliation, or harassment in employment shall be deemed unconscionable, void and unenforceable; prohibits retaliatory actions against a person who does not enter into such contract; provides for civil actions and remedies.
	SB 6382A	Amends the Labor Law; relates to contract provisions waiving certain substantive and procedural rights; prohibits contract provisions that waive certain substantive and procedural rights relating to a claim of discrimination, nonpayment of wages or benefits, harassment, or violation of public policy in employment.
	SB 6972	Expands application of unlawful discriminatory practices based on sexual harassment to entities benefitting from or utilizing the services of an independent contractor; defines sexual harassment; prohibits the confidentiality or nondisclosure of the basis of any sexual harassment action leading to a settlement; prohibits mandatory arbitration provisions in contracts relating to allegations of sexual harassment.
	AB 9797	Requires the development and implementation of written workplace sexual harassment, sexual assault, and discrimination policies by corporations; requires reporting and eligibility for tax credits based on a corporation's record of sexual harassment, sexual assault, and discrimination among and between employees of such corporation; requires the division of human rights to promulgate standards relating to eligibility for state tax credits.
	SB 7848	Enacts comprehensive sexual harassment policies for New York state; relates to prevention of sexual harassment by state contractors (Part A); prohibits mandatory arbitration clauses based upon sexual harassment (Part B); relates to individual liability for sexual harassment (Part C); prohibits entering into confidential settlements (Part D); establishes a unit to receive and investigate sexual harassment claims (Part E); enacts uniform standards for sexual harassment policies for all branches of state.
	AB 8910	Relates to establishing sexual harassment prevention training protocols within the private sector including a model management policy and training program and how to

	<p>SB 7507 Enacted</p>	<p>properly disseminate information to employers and employees.</p> <p>Amends the state finance law, in relation to requiring bids submitted to the state or any agency or department of the state to contain a certification concerning sexual harassment (Subpart A); to amend the civil practice law and rules, in relation to prohibiting mandatory arbitration clauses (Subpart B); to amend the public officers law, in relation to reimbursement of funds paid by state agencies, state entities and public entities for the payment of awards adjudicated in sexual harassment claims (Subpart C); to amend the general obligations law and the civil practice law and rules, in relation to nondisclosure agreements (Subpart D); to amend the labor law, in relation to the establishment of a model policy regarding the prevention of sexual harassment and a model training program to prevent sexual harassment in the workplace (Subpart E); and to amend the executive law, in relation to sexual harassment relating to non-employees</p>
Pennsylvania	<p>SB 999</p>	<p>A provision of an agreement, contract, settlement or similar instrument that is executed, amended, revised or otherwise entered into and is contrary to this section shall be void and unenforceable. No person may enter into, revise or amend an agreement, contract, settlement or similar instrument which includes a provision that: (1) prohibits or attempts to prohibit the disclosure of the name of any person suspected of sexual misconduct; (2) suppresses or attempts to suppress information relevant to an investigation into a claim of sexual misconduct;(3) impairs or attempts to impair the ability of any person to report a claim of sexual misconduct to an appropriate person;(4) purports or attempts to waive a substantive or procedural right or remedy of any person relating to a claim of sexual misconduct; or(5) requires or attempts to require any person to expunge information pertaining to a claim of sexual misconduct from documents maintained by the person, unless due investigation determines the claim to be false.</p>
Rhode Island	<p>HB 7024</p> <p>HB 7678 Enacted</p>	<p>Would create the "Healthy Workplace Act of 2018" and would establish a cause of action against employers and employees for workplace bullying, harassment and other abusive conduct that is tolerated by employers and which may not fall into other categories already protected such as race, color and sex or sexual orientation. This act would take effect upon passage.</p> <p>Would create an eleven (11) member special legislative commission whose purpose it would be to study unlawful sexual harassment in the workplace and who would report back to the House of Representatives no later than May 17, 2018 and whose life would expire on June 7, 2018.</p>

	<p>SB 2687</p> <p>SB 2699</p>	<p>Would void any provision of a settlement that prohibits disclosure of the factual information related to a claim of sexual harassment, retaliation for reporting sexual harassment, and stalking as against public policy. This act would take effect upon passage.</p> <p>Would extend protection to persons employed in domestic service and include retaliation as an unlawful employment practice. This act would require employers of four (4) or more employees rather than fifty (50) to comply with the sexual harassment education and workplace training requirements, conduct such a program for new employees within one month of the date of employment and for all other employees before September 1, 2018.</p>
South Carolina	<p>HB 4433</p>	<p>Enacts the Ending Forced Arbitration of Sexual Harassment Act of 2018; provides no predispute arbitration agreement is valid or enforceable if it requires arbitration of a sex discrimination dispute; provides necessary definitions; provides exceptions; provides that questions of applicability must be determined by federal law; provides questions of applicability and validity must be determined by a court instead of an arbitrator.</p>
Tennessee	<p>HB 2613/SB 2328 Enacted</p> <p>HB 2455 Failed</p> <p>SB 2015 Enacted</p>	<p>Relates to Employees; relates to Employers; prohibits public and private employers from requiring an employee or prospective employee to execute a non-disclosure agreement with respect to sexual harassment in the workplace as a condition of employment.</p> <p>Relates to higher education; prohibits a state institution of higher education or a governing body of a state institution of higher education from entering into, or requiring an opposing party to enter into, a non disclosure agreement during settlement or as a prerequisite to settlement for any act of harassment, assault, or discrimination.</p> <p>Prohibits local education agencies from entering into a nondisclosure agreement, during or as a prerequisite to settlement, for any act of sexual misconduct; prohibits employees from assisting others in obtaining employment if the employee knows that the person has engaged in sexual misconduct involving a minor or student; authorizes a local education agency to request a personnel file regarding any person seeking employment.</p>
Virginia	<p>HB 704 Failed</p>	<p>Relates to arbitration agreements; relates to unconscionable and unenforceable provisions; relates to sexual harassment and sexual assault; provides that any provision of an arbitration agreement that has the purpose or effect of concealing the details regarding a claim of sexual harassment or sexual assault is unconscionable and unenforceable.</p>

<p>Vermont</p>	<p>HB 707 Enacted</p>	<p>This bill proposes to prohibit employment agreements from preventing an employee from disclosing sexual harassment; to prohibit employment agreements from containing provisions that waive an employee's rights or remedies with respect to a claim of sexual harassment; to prohibit agreements to settle a sexual harassment claim from prohibiting the employee from working for the employer or an affiliate of the employer; to require agreements to settle a sexual harassment claim to state that the employee may report sexual harassment or cooperate with an investigation of sexual harassment; to require that the parties to an agreement to settle a sexual harassment claim provide notice of the settlement to the Attorney General; to grant the Attorney General and the Human Rights Commission authority to audit workplaces for compliance with the requirements of Vermont's laws related to sexual harassment; to prohibit persons that have contracted for services or labor with an independent contractor from engaging in sexual or other forms of harassment towards the independent contractor</p>
<p>Washington</p>	<p>SB 5996 Enacted</p> <p>SB 6068 Enacted</p> <p>HB 2759 Enacted</p>	<p>Establishes provisions relating to sexual harassment and sexual assault in the workplace; prohibits an employer from requiring an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace; provides that such signed nondisclosure agreements are against public policy and are void and unenforceable.</p> <p>In any civil judicial or administrative action relating to sexual harassment or sexual assault, a nondisclosure policy or agreement that purports to limit the ability of any person to produce evidence regarding past instances of sexual harassment or sexual assault by a party to the civil action does not affect discovery or the availability of witness testimony relating to that civil action. Any provision of a nondisclosure policy or agreement including any arbitration agreement or decision that would limit, prevent, or punish such disclosure is contrary to public policy and unenforceable.</p> <p>Establishes the State Women's Commission; requires the Director of the Commission to monitor state legislation and advocate for legislation affecting women, work with state agencies to assess programs and policies that affect women, conduct an analysis of pay inequity based on gender among individuals employed in the Office of the Governor, coordinate with the minority commissions and human rights commissions, and work as a liaison to eliminate barriers to women's economic equity.</p>

	SB 6313 Enacted	Concerns an employee's right to file a complaint or cause of action for sexual harassment or sexual assault in mandatory employment contracts and agreements.
	SB 6471 Enacted	Convenes a stakeholder work group to develop model policies and best practices for employers and employees to keep workplaces safe from sexual harassment.
Legislation Enacted Prior to 2018		
California	AB 1682 (2016)	This bill prohibits a confidentiality or secrecy provision in a settlement agreement in a civil action for an act of childhood sexual abuse or an act of sexual assault against an elder or dependent adult, as specified, and makes a confidential settlement agreement void as a matter of law and against public policy, and subjects an attorney that fails to comply with the requirements of the bill to discipline by the State Bar of California.
	AB 1978 (2016)	The bill would require every employer, effective July 1, 2018, to register annually with the Labor Commissioner in accordance with prescribed procedures. The bill would require an employer to include specific information in the registration application. The bill would prohibit the division from granting registration under specific circumstances. The bill would require the commissioner to maintain on the department's Internet Web site a public database of registered property service employers. The bill would require the division, by January 1, 2019, to establish a biennial in-person sexual violence and harassment prevention training requirement for employees and employers with the assistance of a prescribed advisory committee to be convened by the director. The bill would require employers, as of July 1, 2018, and until the division establishes that training requirement, to provide employees with a pamphlet of the Department of Fair Employment and Housing on sexual harassment.
	SB 295 (2017)	Amends the existing law which prohibits the issuance of a farm labor contractor license unless the applicant attest in writing that certain employees have received sexual harassment prevention and reporting training.
Maine	HB 1016 (2017)	Coordinates and enforces existing workplace training requirements; provides all employers shall act to ensure a workplace free of sexual harassment by implementing the following specified requirements; provides for workplace posting, employee notification, education and training, a compliance checklist and enforcement.
Oregon	HB 3279 (2017)	Adds in a new category of labor contractors required to be licensed and tested by the Bureau of Labor and Industries: property service contractors, which includes those who

		supply others for janitorial services. The measure provides training requirements for contractors and exempts particular entities. Provides BOLI with rulemaking authority and directs training on prevention of harassment, assault and discrimination in the workplace.
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