

Testimony of Dana Sussman
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Good morning Senators and Assembly Members. Thank you for convening today's joint hearing on the critical issue of combating sexual harassment in the workplace. I am Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy at the New York City Commission on Human Rights. I am pleased to be back before you after the first hearing on this topic in February. I want to thank you and the tireless advocates in the room today who have brought us together to continue this vital and overdue conversation.

In February, my testimony focused primarily on the ways in which the State Human Rights Law could be amended to align itself more closely with the New York City Human Rights Law, giving the state law more teeth to hold harassers and those that enable them accountable and to afford more victims the legal protections they need to pursue justice. My testimony identified four areas to strengthen the law: 1) correcting the decades of case law establishing the unnecessarily high "severe or pervasive" standard as the New York State legal standard for sexual harassment; 2) explicitly rejecting the *Faragher- Ellerth* affirmative defense; 3) making it possible for managers and supervisors, even if they do not have an ownership interest in the employer, to be held personally liable for sexual harassment; and 4) ensuring that punitive damages are available with respect to State Human Rights Law claims, as they are under other civil rights laws.

Today, I am here to briefly discuss the work of the Commission's Gender-Based Harassment Unit, and several recent developments in the Commission's efforts to combat sexual harassment in the workplace.

Gender-Based Harassment Unit

The Gender-Based Harassment Unit, which launched in January of this year, has a budget of \$300,000. It has personnel lines for four dedicated staff members: a supervisor, two attorneys, and one non-attorney investigator. As soon as an individual with a workplace sexual harassment claim contacts the Commission through our general intake line or our webform, the Unit's supervisor is alerted, and will make a quick assessment as to whether there should be any immediate action taken. While most individuals who report workplace sexual harassment cases to the Commission come to us after they have left their place of employment, there are certain situations in which the Unit may be able to intervene early and quickly to deescalate a situation or to prevent retaliation. In some circumstances, the Unit has been able to intervene immediately to ensure that evidence is preserved, such as surveillance video footage or documentary evidence, or to obtain an immediate transfer of a victim of harassment to ensure the victim is not interacting with the alleged harasser.

Not all circumstances warrant immediate intervention. For most cases, attorneys in the Unit will meet with the complainant within several weeks after the initial call or email, unless there is an urgent need to bring them in earlier, such as, for example, if a statute of limitations is about to run. The Unit's attorneys primarily focus on workers in low-wage industries, and while the Commission has cases of workplace sexual harassment spanning all industries in both high paying and low-wage work, the Unit has identified private security/building management and the hospitality industry, particularly the restaurant industry, as industries that represent a disproportionate amount of the Unit's cases. These industries highlight the vulnerabilities of workers who experience harassment, isolated and disconnected workplaces, and the lack of a clear or centralized management or reporting structure. The Gender-Based Harassment Unit also reports that, while most of the victims of cases at the Commission are women, they are seeing a significant number of men who are now reporting sexual harassment. The vast majority of alleged sexual harassers, although not all, are men, including in the cases in which men are the victims.

While the Unit's work is focused on investigating and prosecuting workplace sexual harassment claims, other attorneys in the agency's Law Enforcement Bureau also handle sexual harassment cases. There are simply too many for the Unit to handle alone. The Commission's case load of workplace gender discrimination cases that include a harassment claim doubled in a single year after Tarana Burke's #metoo movement relaunched in late 2017, from 56 in 2017 to 115 in 2018 (this number is slightly higher than the number I reported at the hearing in February because our figures then did not account for very late 2018 filed complaints). For the first four months of 2019, the Commission filed 42 additional complaints of workplace gender discrimination that include a harassment claim. As of April 30, 2019, the Commission is investigating 207 total cases of gender discrimination that include a harassment claim. That includes 13 matters in a pre-complaint posture, in which the Commission is seeking to resolve matters before a complaint is filed.

Recent Decision in *Automatic Meter Reading Corp. v. NYC Commission on Human Rights*

I also want to highlight a significant development since the hearing in February. In March of this year, the State Supreme Court, in *Automatic Meter Reading Corporation v. NYC Commission on Human Rights*, upheld a 2015 Commission Decision and Order in full in a workplace sexual harassment case. The Commissioner's Decision and Order was issued in late 2015, before the #metoo reawakening, which demonstrates the leadership of the Commission's long-standing recognition of the seriousness of these claims. The Commission ordered the highest ever civil penalty issued in Commission history and the highest available under the City Human Rights Law at \$250,000 for willful, wanton, or malicious conduct, in addition to \$422,000 in total damages to the Complainant, including back pay, front pay, interest, and \$200,000 in emotional distress damages. The case involved a business owner who sexually harassed a female employee over a three-year period, repeatedly engaging in unwanted touching, regularly using lewd and sexually inappropriate language to and about her, and posting a sexually explicit cartoon in the workplace identified as the complainant.

The State Supreme Court’s decision in March upholding the Commission’s order is significant in that it upheld one of the highest damages awards and the highest civil penalty in Commission history, in a sexual harassment case, reaffirming that sexual harassment causes real emotional and mental trauma and devastating economic consequences to those that experience it. It also affirmed the Commission’s finding that the complainant was constructively discharged from her employment – that the sexual harassment made the workplace so unbearable that she had no other option but to leave. The state court decision further reinforces that administrative agencies tasked with enforcing local anti-discrimination laws are entitled to deference in their decision-making and it sets a precedent for the issuance of the high damages and penalties where the evidence supports it.

Anti-Sexual Harassment Training

On April 1, the Commission launched its online, interactive, free anti-sexual harassment training. The training can be used to meet both the new City and State-mandated annual anti-sexual harassment training requirement. It is fully accessible to people with hearing and vision disabilities and mobility disabilities. It is available in Spanish with nine additional languages to come. It is optimized for smartphone use as well.

The training uses a story-based learning model, features scenarios drawn from real cases, and highlights the ways in which sexual harassment commonly intersects with other protected categories, including race, immigration status, national origin, religion, sexual orientation, gender identity, and pregnancy and lactation. It educates the user on the Commission’s encompassing definition of gender, which includes gender identity and gender expression, and of its broad and protective sexual harassment standard. It also provides tools and strategies for bystanders to disrupt patterns of sexual harassment.

The training was developed with, and incorporates, feedback from over two dozen external stakeholders, including some of the stakeholders and advocates in this room today, several government partners from our sister agencies on the State level, and several dozen internal City agency and administration partners representing interests and expertise across City government. The training includes content that fulfills both the state and City requirements for annual anti-sexual harassment training and can be used by employers both within the City and outside the City to meet the training requirement.

And as of May 23, 2019, the training has been completed over 25,000 times since we launched a month and a half ago. This does not reflect how many people have completed or viewed the training because multiple people, or entire workplaces, can view the training together, and that would only account for one training completion.

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We are grateful to be here for the second hearing on workplace sexual harassment convened by the New York State Senate and Assembly this year. To the women, men, and non-binary people

who have organized, spoken out, and demanded action, accountability, and system change, we, as government, are in your debt. Thank you.