

CHALLENGES IN BRINGING GENDER EQUITY INTO THE WORKPLACE: ADDRESSING COMMON CONCERNS WOMEN HAVE WHEN DECIDING TO HOLD EMPLOYERS ACCOUNTABLE FOR GENDER DISCRIMINATION

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The United States has made significant advances in promoting women in the workplace over the past century. Women now account for approximately 47% of the workforce.¹ However, this number is deceiving. A woman still earns .81 cents for every dollar a man earns² (less when you take into consideration race/national origin). Women also tend to hold lower-paying positions focused on caregiving or domestic labor, which leads to a disproportionate amount of discrimination based on gender³ and sexual harassment compared to their male counterparts.⁴ While there are many ways in which individuals and society can address the lack of equity between men and women in the workplace, one of the more concrete avenues is to bring individual claims against employers for discrimination based on gender and sexual harassment.⁵ There are other ways to achieve equity, but being an employment discrimination litigator, I am biased in my preferred method of fighting the patriarchy.

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¹ *Women in the Workforce-United States: Quick Take*, CATALYST (Oct. 14, 2020), <https://www.catalyst.org/research/women-in-the-workforce-united-states/>.

² *The State of the Gender Pay Gap in 2021*, Payscale (Mar. 24, 2021), <https://www.payscale.com/data/gender-pay-gap>.

³ Marie Froehlicher et.al, *Gender equality in the workplace: going beyond women on the board*, S&P GLOBAL (Feb. 5, 2021), <https://www.spglobal.com/esg/csa/yearbook/articles/gender-equality-workplace-going-beyond-women-on-the-board>.

⁴ *Women in the American Workforce*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Oct. 20, 2019), <https://www.eeoc.gov/special-report/women-american-workforce>.

⁵ Noreen Farrell, *The Biden Administration's First 100 Days: A Call To Support Women Workers of Colors & Civil Rights for Students*, EQUAL RIGHTS ADVOCATE (Jan. 21, 2021), <https://www.equalrights.org/viewpoints/biden-administration-first-100-days/>.

Within this article, I will briefly⁶ describe federal laws which can be used to promote gender equity. Because the laws are useless unless utilized and it can be intimidating and overwhelming to bring a case against a current or former employer, I will spend the majority of this article in an attempt to provide reassurances for women who are considering making a complaint of gender discrimination or filing a case.

Women will be able to use the laws that protect them effectively to promote gender equity if and when they feel comfortable with the legal process. Addressing common concerns women have when deciding if they want to bring a case will hopefully allow them to feel confident and protected, instead of feeling vulnerable and ostracized, which they likely already feel from being the victim of discrimination.

CURRENT ANTI-DISCRIMINATION AND EMPLOYEES' PROTECTION LAWS WHICH CAN BE USED TO ADVANCE GENDER EQUITY

There are several laws in place to protect gender equality within the workplace. Title VII of the Civil Rights Act ("Title VII"), 42 U.S.C. § 2000, *et seq.* Title VII is the federal law that provides that employers are not allowed to discriminate against individuals in the terms and conditions of their employment based on multiple protected categories, including sex and gender.⁷ Under Title VII, to succeed in a gender discrimination claim, the employee must prove, among other things, she has suffered an adverse action (termination of employment or demotion) because of gender.⁸

Sexual harassment claims under Title VII are treated differently.⁹ There are two types of claims which the courts have recognized: quid pro quo harassment and a hostile work environment.¹⁰ Both of these frameworks vary from standard gender discrimination in that the employee does not necessarily have to show an adverse employment action.¹¹ Quid pro quo harassment is, as the name implies, when an employer requests some form of sexual favor

⁶ The laws referenced are not complete and should not be used to assess the viability of potential claims, they are for contextual purposes only. If you believe you have a case, you should consult with an employment attorney in your area.

⁷ *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020).

⁸ *Bostock*, 140 S. Ct. at 1737.

⁹ *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).

¹⁰ *Meritor*, 477 U.S. at 67.

¹¹ *Id.*

for some form of professional advancement or to avoid some form of adverse action.¹² The plaintiff does not have to prove she was actually subjected to an adverse action, as she would in a standard gender discrimination claim, but only that a proposition was made.¹³ The Court in *Meritor* recognized,

Such sexual misconduct constitutes prohibited ‘sexual harassment,’ whether or not it is directly linked to the grant or denial of an economic quid pro quo, where ‘such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.’¹⁴

Under the second type of sexual harassment recognized by Title VII, hostile work environment, the employee must prove that because of her gender, she was subjected to sexual harassment which was either “severe or pervasive” enough to negatively affect the terms of her employment.¹⁵ Essentially, if a plaintiff can show the harassment itself is so bad, even though there is no demotion or termination, the very function of her role has been changed because she is having to suffer through the harassment, then she will succeed on a hostile work environment claim.¹⁶ The “severe or pervasive” standard can be difficult to meet and is ultimately up to a jury to decide.¹⁷ However, most states, and some cities, have enacted laws that lower the burden of proof.¹⁸ For example, the New York City Human Rights Law, NYC Administrative Law §8-107 *et seq.*, has a much lower standard to prove discrimination.¹⁹ Under the New York City law, a woman only has to show she was treated “less well” because she was a woman.²⁰ Women should know the various laws in their area, including any required training employers are supposed to provide relating to the law and the

¹² *Id.* at 58.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 109 (2d Cir. 2013).

¹⁹ *Mihalik*, 715 F.3d at 109.

²⁰ *Id.*

process their employer has created for anyone to complain of discrimination.²¹

Another Federal law that promotes gender equality is the Equal Pay Act, 29 U.S.C., Chapter 8 § 206(d), *et seq.*²² At its essence, this law requires women and men to receive equal pay for equal work.²³ Now, like so many laws, there are exceptions where the analysis tends to be very fact specific.²⁴ Generally, if a woman does the same job and has the same experience, she must be paid the same as her male counterpart.²⁵ There are also laws that, while gender-neutral on their face, can be utilized as tools to promote gender equity, like the Family and Medical Leave Act, (“FMLA”)²⁶. The FMLA grants certain employees twelve weeks of unpaid leave to care for a family member or oneself for medical issues, including the birth and care for a child.²⁷ Pregnancy discrimination is covered under an amendment to Title VII, but the statute does not provide for any leave related to childbirth.²⁸ Under the FMLA, a woman who gives birth is also entitled to return to her position (or one substantially similar) and not be discriminated against because she took leave.²⁹ Prior to the FMLA, women had no guarantee they would be able to return to work after giving birth, which made decisions to have children more stressful.³⁰ Often, it forced a woman to decide between motherhood and her career, resulting in fewer women in the workforce.³¹

The above-mentioned anti-discrimination laws also protect women from retaliation if they complain about discrimination in the workplace; a primary reason many women are fearful of coming forward. If a woman complains about gender-based discrimination, her employer is not allowed to retaliate against her for that complaint.³² This means they cannot take a materially adverse actions against her,

²¹ *Id.*

²² *U.S. Equal Employment Opportunity Commission, The Equal Pay Act of 1963, EEOC*, <https://www.eeoc.gov/statutes/equal-pay-act-1963> (last visited Mar. 20, 2021).

²³ *Id.*

²⁴ 29 U.S.C. § 2601, *et seq.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Qualifying Reasons for Leave under the Family and Medical Leave Act*, U.S. DEPARTMENT OF LABOR (July 2015), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28f.pdf>.

²⁸ Pregnancy Discrimination Act of 1978 (amended Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*).

²⁹ 29 U.S.C. § 2601, *et seq.*

³⁰ *Id.*

³¹ *Id.*

³² Retaliation, *supra* note 6.

such as ignore her in the office, make it more difficult for her to perform her duties, demote her, take away responsibilities, or terminate her employment.³³

Practically, if a woman feels she is being discriminated against and complains, any adverse action done in retaliation to her complaints is going to be a legal claim separate from the underlying claim of discrimination.³⁴ Effectually, she will have two claims against her employer: one for the initial discrimination and a second claim for the retaliation.³⁵ A woman can lose the claim for discrimination, meaning the jury decides that she was not treated differently because of her gender, but if she made a good faith complaint about the discrimination, the jury could separately determine that the employer did retaliate against her, and she can win that claim.³⁶ Retaliation claims can be easier to prove, because the plaintiff does not have to show a materially adverse action.³⁷ They only needs to prove the retaliatory act “well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’”³⁸

WOMEN CAN PROMOTE GENDER EQUITY BY ENFORCING THEIR RIGHT TO BE FREE FROM GENDER DISCRIMINATION IN THE WORKPLACE

Women have always had to fight to be equal in the workplace, often securing a position only to then be held back by gender stereotypes and discriminatory practices.³⁹ When a woman is discriminated against, it can affect her entire career, preventing her from future promotions, which results in her not having the requisite experience for a higher title.⁴⁰ Women, who are paid less by one employer, often find it difficult to justify being compensated appropriately by another employer, because her salary is based on what she earned previously.⁴¹ Because of this trend, women need

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Burlington N. & Santa Fe Ry. v White*, 548 U.S. 53, 56 (2006).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Salary History Questions During Hiring Process are Illegal in NYC*, NEW YORK CITY HUMAN RIGHTS, www1.nyc.gov/site/cchr/media/salary-history.page# (last visited Mar. 20, 2021).

concrete ways to address the negative domino effect which occurs throughout their careers.⁴²

Lawsuits that are brought against employers for gender discrimination can be an incredibly important part of promoting overall equity, because they provide a much-needed concrete avenue to address the problems discrimination causes.⁴³ By bringing lawsuits, women are able to hold companies and individuals accountable for their discriminatory actions, often publicly and where it hurts, their bank accounts.⁴⁴ The laws exist to address the discrimination and promote equality, and the only way companies will abide by those laws is if there are real, legal consequences for their violations.⁴⁵

Women who bring gender discrimination cases also promote general gender equity because they encourage other women to speak up.⁴⁶ Often there is a discriminatory culture within the company, rather than a single bad actor. When women bring these claims, it encourages others to do the same because they know they are not alone fighting against a sexist culture. Even if deep-seated fundamental prejudice subsides at a slower pace within the minds of employers, they will pay attention if they know those who they discriminate against will assert their legal rights and do whatever is necessary to enforce the same. Employers use fears against women bringing these cases to their benefit; to paraphrase Elie Wiesel, not speaking up only helps the oppressor.⁴⁷

To this end, below are several questions that I hear as an employment attorney representing women who have been discriminated against. Women often have the same concerns, and while they are absolutely valid, they are often easily addressed. Hopefully, the concerns and comments listed below will encourage women to complain and potentially bring discrimination claims. It can also serve to help new attorneys respond to and support their clients who are suffering not only from being discriminated against, but from taking the often intimidating step of holding their workplace accountable. Most women do not anticipate they will be put in this

⁴² *Id.*

⁴³ NYC Administrative Law §8-107 *et seq.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Wilhelm Odelberg, *Elie Wiesel's - Acceptance Speech*, THE NOBEL PRIZES (1986), <https://www.nobelprize.org/prizes/peace/1986/wiesel/26054-elie-wiesel-acceptance-speech-1986/>.

position, and when they ultimately are, they need a strong support system and attorneys who recognize the difficulty in being a plaintiff in these types of cases. Because of the personal nature of discrimination claims, attorneys need to be more sensitive to their client's emotions and vulnerability, as opposed to other areas of law, such as tax or corporate law, which do not come with such a heavy emotional burden on the parties involved.

COMMON CONCERNS #1: I WILL NOT BE BELIEVED BECAUSE I DO NOT HAVE ANY EVIDENCE

This is one of the most common concerns employment attorneys hear, but it often comes from a lack of understanding of the law. Very rarely do sexual harassers or discriminators do it in front of others or when they know they are being recorded. At the most basic level, women should not worry about what evidence they do or do not have because attorneys who regularly handle sexual harassment or discrimination cases are prepared for the he said/she said nature of the cases.

In gender discrimination cases, practitioners and courts recognize the metaphorical smoking gun rarely exists and this evidentiary hurdle has been worked this into the law itself. For a woman to prove she was discriminated against because of her gender, she must produce enough evidence that leads to an *inference* of discrimination her employer took an adverse action against her because she is a woman.⁴⁸ For example, if ten men are late every single day and are never reprimanded, yet the lone woman is late once and is written up or even punished, it can be *inferred* from all of the circumstances it was because of her gender. That is the only difference.

In sexual harassment cases, it is slightly different because the "adverse action" is the actual harassment that is creating a hostile work environment. Again, the harasser will generally deny the harassment and there will not be written or recorded evidence. But one thing women generally don't realize is that their statements and their testimony are actually evidence. A jury will ultimately have to listen to her and the harasser and determine who is telling the truth. This can be very scary, but I feel comfortable saying there has been a shift towards women being believed and that shift will only continue the

⁴⁸*Texas Dept. of Community Affairs v Burdine*, 450 U.S. 248, 254 (1981).

more women speak up. Practically speaking, because so many cases settle before trial, the woman's testimony alone can prevent the case being thrown out, on a motion to dismiss or summary judgment, forcing the employer to decide if it is worth the risk of having the harasser not be believed at trial. This is a consideration for both sides and will often be a main consideration in settling a case, which can be viewed as a benefit for the woman who was harassed.

Another thing to consider here too, is discrimination and sexual harassment claims often are accompanied by retaliation claims, meaning the woman is also claiming when she complained about discrimination or sexual harassment she was subsequently retaliated against. Even if in the worst-case scenario, a federal jury does not believe the sexual harassment was "severe or pervasive" (the federal standard), they may be more willing to accept that, for example, multiple shifts being cut from the employee's schedule after she complained was retaliatory and she can recover on that claim.

COMMON CONCERNS #2: IT WILL BECOME PUBLIC AND I WILL BE JUDGED OR BLACKLISTED FROM FUTURE EMPLOYMENT

This concern ultimately comes down to the woman's level of comfort. There are several stages of litigation and different courts in which claims can be filed. If you are adamant about keeping your claims private, you can file with governmental agencies. States or cities may have government agencies to address discrimination, but every state has access to an Equal Employment Opportunity Commission (EEOC) offices, which enforce the federal law, Title VII.⁴⁹ Filing with the EEOC is largely confidential.⁵⁰ There is always the risk that the employer will publicly discuss the allegations, but practically, they are usually the ones who care the most about privacy to prevent negative publicity. Media outlets do not have access to filings at the EEOC and future employers cannot search to see if you have filed a case there.⁵¹ There are many benefits to filing with the EEOC;

⁴⁹ EEOC Field Offices, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/field-office> (last visited Mar. 20, 2021).

⁵⁰ Confidentiality, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/confidentiality#:~:text=EEOC%20employees%20are%20subject%20to,days%20of%20the%20filing%20date> (last visited Mar. 20, 2021).

⁵¹ Retaliation, *supra* note 6.

generally, they will do an investigation into the claims and they may offer a mediation process to resolve the issues prior to filing in court.

Filing with the EEOC is a required first step to bring claims in federal court, but someone can go straight to state court if they determine with their attorney that it is best course of action. In state or federal court, once a case is filed, it is public and can be searched by media and future employers. However, unless the case is particularly salacious or deals with a unique area of law, the media will generally not be interested. Unfortunately, there are many cases alleging discrimination and they are all relatively similar, so the media does not find them newsworthy. Frankly, it does sometimes happen that a particular case will be publicized, but the vast majority of cases that are filed remain unnoticed. Also, realistically, employers are not going to search the federal or state court filing database, assuming their state court's system has electronic filing, to see if somewhere at some time their potential employee sued a former employer.⁵² For both the media and potential employers, there is no guarantee that the lawsuit will not become known, but in my experience, it really is not something that clients have had to deal with or have been negatively affected by if it did become public. Also, retaliation provisions protect the employee against retaliation for complaining from current and future employers. No one ever really knows why they did not get a particular job, but if a woman believes it is because of a gender discrimination case in which she was involved, there may be a separate claim against the potential employer.

Depending on your attorney, as each has a different style and evaluates cases differently, you may not even need to file at an agency or court. Many cases are settled before any filing, but this is a strategic determination that needs to be made on your counsel's advice.

⁵² *Id.*

COMMON CONCERNS #3: I WILL BE RETALIATED AGAINST FOR COMPLAINING OF DISCRIMINATION BY MY CURRENT EMPLOYER OR THE PERSON WHO IS HARASSING ME

The blunt and cynical answer is any retaliation will only add to your case; as previously discussed, there is an entirely separate claim for retaliation. Of course, this is not satisfying in terms of you being a real person who is going to have to face and live with the retaliation. This is a personal decision based on what you are comfortable with and what your financial situation is. Sometimes the potential of having your employment terminated, because you complained is not something that you can risk. With that being said, the law specifically prohibits retaliation since women should feel confident in asserting their rights. Practically, by the time someone is feeling discriminated against, the employment relationship has been damaged to the point where retaliation does not necessarily feel worse than the discrimination did. When talking with a client, I always explain the risks and the law, but often, I tell the client she should still bring a complaint. Sitting in silence, while being punished for being a woman, is never going to end well. If the employer is discriminating against you now, they will likely continue to do so. You will have to deal with the emotional stress and the added obstacles in your career caused by this discrimination. The harm is done, so you may as well assert yourself, your rights, and try to correct the situation.

COMMON CONCERNS #4: I DO NOT WANT TO RELIVE THE EXPERIENCE AND WANT TO JUST PUT IT BEHIND ME BECAUSE IT IS PAINFUL

This is the concern on this list that I take most seriously as an attorney, because there is little I can control on this end. You will have to repeat your story, over and over, to people that probably do not believe you, or at least want you to be lying. This is a personal issue you really need to address on your own. There are three things that I tell women with this concern. First, they should seek therapy. Not only is the discrimination a traumatic experience and a therapist can help people process what they are feeling, but also it helps their case, as well. Its win-win. Second, retelling your story is hard, but the more you do it, the more comfortable you become with the facts and the more confident you become in your position. I am not a therapist, but I

recognize retelling is part of the process to move forward. Third, the more you have talked about it, the more a jury will be able to relate to you when you are on the stand and stating what happened with confidence. With all of this being said, it is a personal decision. Many women feel better filing a lawsuit even if the case never goes to trial because there are many pre-trial points in litigation where she will have had the opportunity to tell her story and assert herself, not just to the company or a one-sided human resources representative. They are able to confront those who hurt them and hold them accountable. Ultimately, I think bringing a case is best for the individual, but it really is up to her. Trust your gut. Trust your attorney. If you are confident in your attorney, then you will feel protected.

COMMON CONCERNS #5: MY HARASSER IS TOO POWERFUL

The response to this common concern goes back to the earlier discussion of why lawsuits are important in the fight for equality. There is research that explore the reasons people sexually harass, and we can never know what is in someone's mind. Generally, people, who sexually harass others, tend to be upholding gender stereotypes and exploiting a power dynamic that hinges on those stereotypes. Because of this dynamic, those who sexually harass you, your co-workers or your supervisors, rely on you feeling intimidated. One way to stop or at least discourage that reliance is to take control of the situation and assert yourself by invoking your legal rights. Even if you ultimately do not prevail at trial or the case settles, your harasser will have to respond to the allegations and be involved in the court process. Something people generally do not want to do. While it is hard and can be scary, it is important to stop predators from sexually harassing women and potentially escalating to sexual assault. Simply put, bringing legal action holds people accountable for their actions. It should also be noted, an attorney who is invested in fighting discrimination will not be deterred by the financial backing or societal power of a potential defendant. I know many attorneys who thrive on fighting against those who believe they are untouchable.

COMMON CONCERNS #6: I HAVE NON-RELATED PERFORMANCE ISSUES WHICH MY EMPLOYER WILL SAY IS THE REASON I WAS TERMINATED OR DEMOTED, NOT BECAUSE I COMPLAINED OF DISCRIMINATION

No case is perfect and no employer will admit they are retaliating. Most employees have some performance issues at some point in their careers and these will certainly be brought up as a defense to the adverse action. The focus of discrimination claims is that you were treated differently than a man with the same or similar employment issues. For example, I have seen cases where all the employees consistently screamed at each other, yet the female employee was the only one who was told she needed to be respectful and careful about when she chose to speak. This is discriminatory. The company was treating her differently than they treated the men within the company. A company will always say that there was a non-discriminatory reason for the adverse employment action. Always. They have to, otherwise, they have no defense. Attorneys expect to show the company's reason of poor performance is pretextual, even if there are real performance issues. The important thing is to be completely upfront with your attorney so there are no surprises.

To this point, I always spend time advising my clients that the company will focus on anything they did wrong and say that they were the worst employee that ever worked for the company. I know and my client knows that this isn't true, but it can be very hard for a client to hear. I do this to prepare my client because it is always incredibly difficult to hear your employer speak so poorly (and often inaccurately) about you and I can tell it takes an emotional toll on my clients. I attempt to reassure them that it happens in every case and that we (attorneys) expect it and are prepared to actively dispute it.

COMMON CONCERNS #7: I AM UNDOCUMENTED.

Regarding issues with immigration status, you should always speak to an immigration attorney. However, as a general matter, most anti-discrimination laws protect you if you are undocumented. If a company hires you knowing you are undocumented, they do not get to take advantage of your immigration status and discriminate against you because they think the law does not protect you (or that you will not want to bring a claim because of your immigration status⁵³).

COMMON CONCERNS #8: IT WILL TAKE TOO MUCH TIME TO BE A PLAINTIFF

This is a very real concern. It does take a lot of work to be a plaintiff in a case. Bringing a case to trial can take years. One thing I remind clients who are worried about it being too much work is they are completely in charge of settling the case. A client has full authority to settle. While an attorney should be advising the client of the pros and cons of settlement, it is always the client's decision. If the case is well into litigation and the client gets overwhelmed, ultimately, the client decides if they want to settle or to continue the case. In other words, if you want to settle for a very small amount, because you simply want the case to be over, it is up to you. This should alleviate some of the fear of prolonged litigation, because the client really does control how long they are willing to engage. There may be consequences because of the fee arrangement between the attorney and the client, but those should be clearly expressed before any retainer agreement is signed. A client should not go into a case unless they are serious and willing to do the work, but they are not trapped.

⁵³ EOC Informal Discussion Letter, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-33> (last visited Mar. 20, 2021).

**COMMON CONCERNS #9: SETTLEMENT AGREEMENTS COME WITH
CONFIDENTIALITY AGREEMENTS THAT PREVENT ANY REAL CHANGE; I WILL BE
PAID BUT THE DISCRIMINATION WILL CONTINUE WITH OTHER WOMEN**

The short response to this is that yes, this is a serious issue that has yet to be resolved. However, money does have a way of talking. Not all harassers have the financial resources like Harvey Weinstein⁵⁴, and simply pay off everyone they harass or sexually assault. While often in individual cases a plaintiff can feel disheartened because the harasser ends up receiving no real consequence and the company pays the settlement amount, if the harasser continues, eventually the company may rethink whether that person is worth the cost. This is, of course, not satisfying for the subject of the discrimination. There is also always the option of not settling. If the case goes to trial, then you will not be bound by a confidentiality agreement. While some states have attempted to reconcile the benefits of settlement with the policy problems that come along with confidentiality clauses, I am unaware of any that have adequately addressed the competing issues.

Despite this crossroads between the public interest in having open discourse about sexual harassment, discrimination and the company's interest in settling to keep everything confidential, all is not lost. I truly believe that the more women, who feel confident and encouraged to come forward, the more companies are going to really look at the way women are treated within the workforce. It may be idealistic (I'm not completely jaded, yet), but we can already see societal shifts in how women, who have been sexually assaulted or harassed, are being listened to. With more women asserting their rights, I think those shifts will continue. Companies may even start to see discrimination as a real problem they want to solve, but if they do not, they will see it more and more as hurting the company bottom line.

⁵⁴ See generally Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

**COMMON CONCERNS #10: MY CO-WORKERS WHO CAN SUPPORT MY
ALLEGATIONS ARE NOT WILLING TO COME FORWARD OUT OF FEAR OF
RETALIATION**

While the law specifically protects people who complain about sexual harassment from retaliation, it also covers those who complain about other people being discriminated against. If a co-worker comes forward and supports a woman's discrimination claim, the employer cannot punish them for doing so. However, as with all of these laws, they exist because people discriminate. It is a very real fear that a person's employer will retaliate if they support another employee's complaint of discrimination.

Bringing a lawsuit in this situation can actually be very helpful. Giving co-workers an opportunity to support a discrimination claim allows them to be deposed during the course of litigation. Without litigation, witnesses would have to come forward to a supervisor, human resources, or even in-house counsel, which can be very intimidating. On the other hand, it is understandable a person would not want to get involved. Therefore, if asked, the co-worker would say whatever was needed to avoid the situation, or not come forward at all. However, if a person is being deposed under oath, they may feel more comfortable since they must answer the questions and they do not have to speak directly to their own supervisor. They should also feel they must tell the full truth because they are under the penalty of perjury. This can result in a type of cover for the co-worker. They would not have actively tried to get involved, but now that they are being deposed, they will be honest. There is no guarantee a person will be truthful under oath, but someone will likely feel more compelled to speak up when they are under oath and not being interrogated by the person who can fire them. Additionally, in a deposition there is written record of exactly what they said and when they said it. If they are retaliated against, they may have a strong case that retaliation occurred, because they supported the discrimination claim of another, and not for some later determined pretextual reason created by the disgruntled employer.

Alleging discrimination can be intimidating and scary, but hopefully these responses to common concerns will help empower women to stand up for themselves and each other. Ultimately, litigation can promote gender equity. The more that women hold those who discriminate accountable, the less we will have to.

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