Moving Women Forward
On the 50th Anniversary of Title VII of the Civil Rights Act
A Three-Part Series

Part One: Sexual Harassment
Still Exacting a Hefty Toll

Jamieka,
shipyard worker
and ERA client
Acknowledgements

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Moving Women Forward: Executive Summary

"All I want is to be human, and American, and have all the same rights, and I will shut up."

Martha Griffiths, former member of the U.S. House of Representatives from Michigan and a chief proponent of adding sex as a protected class to Title VII of the Civil Rights Act of 1964.

When Martha Griffiths, a member of the House of Representatives, fiercely advocated for a last-minute amendment to Title VII of the Civil Rights Act of 1964 to include a prohibition of workplace discrimination based on sex, the world was a different place. Women were excluded outright from many workplaces. Employers could lawfully pay women less for the same work and fire them once their pregnancies became obvious. Sexual harassment was blatant. Marriage and weight gain and getting older were grounds for termination in some industries, for women anyway.

The amendment adding “sex” as a protected category to Title VII, just two days before Congress voted on the bill, was a tremendous opportunity for the women’s movement. Fifty years after passage of the Civil Rights Act of 1964, we ask:

Has Title VII of the Civil Rights Act of 1964 Improved Women’s Economic Opportunity and Security?

Equal Rights Advocates takes a hard look at that question in this Report. Founded in 1974, ERA grew up with the Civil Rights Act of 1964. Over our 40-year history, ERA has relied on Title VII to pursue groundbreaking cases to end sex discrimination in the workplace. Our early equal protection pregnancy discrimination cases before the U.S. Supreme Court, like Geduldig v. Aiello (1974), buoyed passage of an amendment to Title VII to confirm the law’s prohibition against pregnancy discrimination as a form of sex discrimination (the Pregnancy Discrimination Act of 1978). ERA also led cases to combat workplace sexual harassment (Miller v. Bank of America), the exclusion of women from male-dominated fields like firefighting (Davis v. San Francisco), and pay and promotion discrimination (Dukes v. Wal-Mart Stores). ERA has fielded calls from tens of thousands of women across the country with concerns about discrimination and harassment at work. The stories of our many clients, recent data from the Equal Employment Opportunity Commission, and input from the nation’s top gender equity experts, all informed this Report.

The answer to whether Title VII has improved women’s economic opportunities and security depends on which women are the subject of the question. This Report focuses on low-wage women workers and women of color. Troubling statistics drive this focus. Women are nearly two-thirds of minimum wage workers in this country. They are twice as likely as men to be employed in occupations that pay poverty wages. African-American women and Latinas are even more likely than women as a whole to be employed in lower-paying service occupations and significantly more likely to be among the working poor. Women with children remain concentrated in low-wage jobs and are paid substantially less than fathers or men and women who are not parents.

This Report is a three-part series that examines: sexual harassment and violence, discrimination against pregnant workers and working mothers, and the gender wage gap.

The first obstacle examined in this report – sexual harassment and violence in the workplace – has been largely ignored as an economic issue despite its devastating impact on a large number of working women. Sexual harassment compromises the economic security of women workers because women who are harassed are often denied or deferred from promotions, fired, or forced to leave their jobs, regardless of whether they file
THREE PERSISTENT BARRIERS TO EQUAL OPPORTUNITY FOR WOMEN:

sexual harassment and violence
discrimination against pregnant workers and working mothers
the gender wage gap

a complaint. And millions of women workers who rely on customer tips to support themselves and their families (particularly in states where the tipped minimum wage is just $2.13 per hour) too often face the impossible choice of enduring sexual harassment or losing income critical to their survival.

The second part of this Report examines discrimination and lack of accommodation for pregnant workers and caregivers. It is a problem that is only getting worse. The number of pregnant women who are fired or laid off has actually grown over the past two decades and is especially high for African-American women and Latinas. Pregnant women and new mothers working in low-wage jobs are heavily burdened by discrimination. Low-wage workers are filing a disproportionate number of pregnancy discrimination charges, and the discrimination these women face has long-term negative effects on their earning capacity and economic stability.

The third installment of this Report addresses the gender wage gap – a glaring and measurable example of persistent sex discrimination in the American workforce. The wage gap between male and female workers has remained stagnant for over a decade and closed by only about 14 cents in the last five decades. Women working full-time earn on average 77 cents for every dollar paid to male workers, and women of color fare even worse. Despite laws prohibiting discrimination, most women and men work in different fields that are highly segregated by gender, and “women’s work” continues to be worth less than work done mostly by men.

Why Are We Lagging in 2014?

Title VII was not designed to address many of the barriers to economic security for women that still exist today, such as a lack of paid leave and poor access to affordable, quality child care. Moreover, while we have enjoyed some tremendous victories in the courts, fundamental obstacles also remain to even accessing the protections of Title VII for far too many workers, leading to widespread under-enforcement in low-wage industries and occupations. Few women know their rights or can access a qualified lawyer to represent them when they need legal help. Many are fearful of retaliation or are too financially vulnerable to challenge discrimination at all. Others have been stopped by attacks on workers’ ability to challenge discriminatory practices collectively through class actions.
These gaps and obstacles pose serious threats to the economic security of women in this country. And while we are heartened by the efforts of partners nationwide to enforce Title VII, including for women of color and low-wage women workers, we cannot wait another 50 years for workplace equality. A recent poll shows that more than 70 percent of Americans believe that women’s contributions to our national economy are essential. A significant 90 percent of American voters favor policies that would help women get equal pay for equal work and raise wages for women and families. This polling data reflects the consensus documented in a number of reports released over the past year: Americans want women to be treated fairly in the workplace and will support policies to even the playing field for working women and their families.

How Will We Seize on Today’s Moment of Opportunity for the Women’s Movement?

Fifty years after Title VII’s historic passage, the time has come once again to revolutionize the judicial system to better protect women workers. This Report’s three sections detail specific recommendations for policy makers, administrative agencies, advocates, and employers to get this process started. These recommendations include suggestions for improving the enforcement of Title VII and to correct flagrant misinterpretation of the law’s provisions. We also make recommendations on how to fill Title VII’s gaps through a series of policy initiatives that take a holistic approach to improving the economic security of women in this country today.

This bold and comprehensive approach to boost and equalize economic opportunity and security for women is gaining traction. In 2013, U.S. House of Representatives Minority Leader Nancy Pelosi (D-CA) and U.S. Representative Rosa DeLauro (D-CT) unveiled a policy platform called When Women Succeed, America Succeeds: An Economic Agenda for Women and Families. The agenda outlines a broad set of federal policy initiatives to advance the economic security of working families by promoting fair pay, family-friendly workplaces, and universal child care. The momentum for similar agendas is growing strong at the state level too. Minnesota, for example, recently passed the Women’s Economic Security Act, which strengthens fair pay laws and expands protections for pregnant workers. Equal Rights Advocates has joined a chorus of partners calling for a sweeping women’s economic agenda in California that will lead the nation in its inclusion of initiatives to meet the basic needs of impoverished women and families.

The work of our movement is not done. Let us draw inspiration from Title VII’s 50th Anniversary and push ahead now to reach its intended goal – to create and protect workplaces in which all workers have a chance to contribute, participate, and flourish, no matter their sex.

Onward,

Noreen Farrell
Executive Director
Equal Rights Advocates
October 9, 2014
ERA represents women working for a large military contractor who have brought a Title VII class action to challenge sexual harassment and other forms of discrimination against them and other women workers. Why should they have to tolerate this kind of mistreatment simply because they work in a blue-collar male-dominated field?
Moving Women Forward: Part One

Fifty years after the passage of Title VII of the Civil Rights Act of 1964 and over 20 years since the Clarence Thomas Supreme Court confirmation hearing where law professor Anita Hill’s explosive testimony about sexual harassment by the nominee brought the issue into the public limelight, sexual harassment remains rampant in the workplace.

The 1991 Tailhook scandal, in which more than 100 military officers were accused of sexually assaulting at least 83 women and 7 men over a several-day event, was just one of many that exposed the seriousness of the problem. In 2013, over 20 women came forward with allegations that former Congressman and San Diego Mayor Bob Filner subjected them to unwelcome sexual advances, including inappropriate comments, kissing, and groping. Scandal also rocked professional football earlier this year, when a Miami Dolphins player resigned after accusing his teammate of sexual taunting and racial slurs.

Recent reports from Human Rights Watch and the Southern Poverty Law Center, as well as “Rape in the Fields,” a 2013 documentary from Frontline and Univision, recount the stories of sexual harassment and assault endured by immigrant women who pick and process the food we eat. Victims are reluctant to come forward because their harassers control their jobs and whether they can feed their children and keep roofs over their heads.

Kirby Dick’s recent award-winning documentary, The Invisible War, exposes an epidemic of sexual harassment and sexual assault against our nation’s military women that goes well beyond Tailhook and has persisted for decades. In 2012, over 26,000 military personnel were sexually assaulted, but only a fraction of these assaults were reported. Anticipation of career reprisals deters victims from coming forward, as more than 62 percent of military women who reported sexual assault experienced some form of retaliation.

Unfortunately, these high profile stories reflect what is happening on the ground elsewhere. For the past several years, workplace sexual harassment complaints have represented the majority of calls to ERA’s toll-free, national advice and counseling hotline. Workers across a range of industries, from technology to building maintenance to food service and preparation, have relayed countless stories of sexual harassment on the job. Fear of reprisal and other factors often prevent women from speaking out at work or complaining publicly about the harassment.

This fear is realized all too frequently, as many callers report experiencing retaliation after reporting harassment to their employers. A recent national survey tells a similar story: 32 percent of women reported experiencing sexual harassment in the workplace, and 70 percent of those women never reported it, citing fear of retaliation as the reason for staying silent.

Whether reported or hidden, we have known for decades that sexual harassment in the workplace has dire emotional and physical consequences for women. The financial impacts are severe. Sexual harassment undermines the long-term earning capacity of women workers and contributes to the gender wage gap. It can undermine job performance and professional credibility. Those who keep their jobs may be obstructed by harassing supervisors or may decline certain opportunities for professional advancement in order to avoid the harassment. Workers subjected to sexual harassment are often fired or forced to leave their jobs, regardless of whether they file a complaint. Additionally, millions of women workers who rely on customer tips to support themselves and their families (particularly in states where they make the federal tipped minimum wage of just $2.13 per hour) are given the impossible choice of enduring sexual harassment or losing wages critical to their survival.

The continued prevalence of sexual harassment and retaliation that silences victims has a profound economic toll on women workers. On the 50th anniversary of Title VII, we must consider the following questions:

◆ What has Title VII done to protect women from sexual harassment?
◆ What challenges do women subjected to workplace harassment face in accessing protections and exercising rights under Title VII?
◆ What can be done, both within and beyond Title VII, to overcome these challenges?
Title VII’s Bright Spots: Progress in Addressing Harassment Based on Sex

The interpretation of Title VII to prohibit sexual harassment has come a long way since passage of the Civil Rights Act of 1964. The term “sexual harassment” does not appear in the statute; nor is it referenced in Title VII’s legislative history given the last-minute inclusion of sex as a protected class shortly before the Act’s passage.37 Worse yet, early federal court interpretations of Title VII determined that the prohibition on sex discrimination did not include sexual harassment.38 But by the late 1970s, the term “sexual harassment” came into use as a phrase, and by 1980 the Equal Employment Opportunity Commission (EEOC) published its first guidelines on workplace sexual harassment.39 In 1986, the Supreme Court’s decision in Meritor Savings Bank, FSB v. Vinson recognized that sexual harassment is a form of sex discrimination prohibited by Title VII, even if it does not involve employment actions like firing, failing to hire, or denying promotion to someone based on sex.40

Over time, courts came to recognize that sexual harassment can manifest in different ways – from daily inappropriate comments to a single incident of sexual assault – and that all these forms can and do deprive women of equal employment opportunity. In the 1993 case of Harris v. Forklift Systems, Inc., the Supreme Court confirmed the importance of examining all the circumstances in a given situation to determine whether unlawful harassment was present, specifically directing courts to look at the frequency of the alleged misconduct as well as its severity.41 It also acknowledged that even when harassment does not have a measurable impact on an employee’s psychological health, it frequently can and does undermine job performance and maintenance as well as career advancement.42

Courts continued to make progress in their interpretation and application of Title VII to address sexual harassment in its many forms, including same-sex harassment. Building upon earlier cases that held that Title VII outlawed sex stereotypes to influence employment decisions,43 the Supreme Court in Oncale v. Sundowner Offshore Services (1998), recognized that harassment “based on sex” did not have to be motivated by sexual or romantic desire to be unlawful.44 Oncale established the important principle that Title VII also protects individuals who experience harassment based on their nonconformity to gender stereotypes, or in other words, the perception that they are not acting how men or women “should.”45 While Title VII still has not been amended to include “sexual orientation” or “gender identity” as protected categories, the line of cases following Oncale spurred introduction of the Employment Non-Discrimination Act (ENDA), pending federal legislation which would outlaw workplace discrimination on the basis of sexual orientation or gender identity.

Despite the evolution of case law addressing sexual harassment in the workplace as a form of unlawful discrimination under Title VII, troubling obstacles remain for many groups of women. Some of these obstacles have been exacerbated by recent developments in the law that will have a particularly adverse impact on low-wage workers, especially immigrant women.

Why is Title VII falling short for these women?

Title VII Blind Spots: How Does the Law Fall Short for Women Sexually Harassed at Work?

Sexual harassment victims still face tremendous hurdles in accessing and exercising their civil rights in the workplace. Employers who establish bare-bones company policies or who operate in traditionally male-dominated, blue-collar industries are getting a free pass when it comes to sexual harassment. Some courts refuse to merit harassment claims based on race and sex. Equally troubling, especially for low-wage immigrant women workers, is the double blow dealt by two recent Supreme Court decisions that increase the odds that sexual harassment by certain supervisors and retaliation against those who complain will occur without recourse.

Employers Are Let Off the Hook with “File Cabinet Compliance.”

In its earlier Title VII harassment cases, the Supreme Court decided that employers could defend themselves from claims of workplace harassment by showing that they did what they could to prevent the harassment and had procedures in place for employees to complain about harassment.47 While the Court may have intended to motivate employers to take meaningful steps to prevent sexual harassment, subsequent cases have incentivized the opposite outcome.48
Federal courts in nearly every circuit around the country have determined that as long as an employer has a sexual harassment policy and a grievance procedure, it has met its obligation to prevent harassment (regardless of whether the policy and procedure have been effective at that or any other workplace). Straining to avoid an intrusion on how employers structure their workplaces, courts are ignoring the discrimination that can fester in these workplace structures.

**WHAT’S THE FIX?**

**Go Beyond Mere Policies.**
- Rather than being rewarded for “file cabinet compliance,” employers should be encouraged to take steps to address the actual causes of such harassment by, for example, keeping records of harassment complaints, implementing post-complaint procedures, periodically assessing and revising anti-harassment policies and procedures, and evaluating supervisors’ compliance with the policies and procedures.

**Treat Sexual Harassment as Workplace Violence.**
- Too often, when a worker reports that she has been sexually assaulted on the job, a manager hesitates or declines to involve law enforcement. The manager may ask the worker for “proof,” or whether she is “sure” about what happened. Sexual assaults are violent crimes; employers should treat them as such and contact law enforcement immediately.

Tougher Standards of Proof Are Required in Blue-Collar Jobs.

ERA client Janet, a specialist shipfitter, has worked at a shipyard for the past 30 years. Male coworkers regularly use sexual and sexist language like “bitch” and “whore” in the workplace, tell graphic “jokes” about their sexual conquests with women, and make comments about women not belonging in the shipyard. Female workers are discouraged from speaking out about this hostile conduct because their discrimination and harassment complaints are often ignored or dismissed and the men who perpetrate it largely go unpunished.

Women like Janet who work in blue-collar jobs traditionally held by men are more likely to endure egregious harassment. In a troubling trend, some courts have allowed “workplace culture” to act as a defense to sexual harassment, undermining the rights of workers in blue-collar fields by determining that crude and offensive sexist behavior is simply “part and parcel” of those jobs. Patricia Gross, a female truck driver for a construction company, worked under a supervisor who repeatedly referred to her as “dumb,” a “cunt,” and other demeaning terms. He told her that she was only hired to meet federal requirements against gender discrimination and openly expressed his dislike for women who were outside the 19-to-25 age range and weighed more than 115 pounds. The supervisor also threatened to retaliate against her because he heard that she was contemplating filing an EEOC charge. A federal appeals court found that Patricia’s work environment should be evaluated in light of its blue-collar nature “where crude language is commonly used by male and female employees.” The court then contrasted the setting of Patricia’s job with that of a prep school faculty meeting or the floor of Congress to conclude that different speech is permissible in different types of workplaces. Unfortunately, many courts have followed suit, giving credence to this so-called “workplace class culture defense” against sexual harassment allegations in blue-collar settings. This sort of deferential view to “workplace culture” – the attitude of “that’s just the way it is” – has weakened the force of Title VII to compel change in the workplace and address gender-based occupational segregation.

Who Got it Right?
The Sixth Circuit Court of Appeals got it right in Williams v. Gen. Motors Corp (1999): “We do not believe that a woman who chooses to work in the male-dominated trades relinquishes her right to be free from sexual harassment; indeed, we find this reasoning to be illogical, because it means that the more hostile the environment, and the more prevalent the sexism, the more difficult it is for a Title VII plaintiff to prove that sex-based conduct is sufficiently severe or pervasive to constitute a hostile work environment. Surely women working in the trades do not deserve less protection from the law than women working in a courthouse.”
Harassment Claims Brought by Women of Color Get Short-Changed.

A week after ERA client Alma* started a new job at a small restaurant in Northern California, her boss began to make offensive and demeaning comments about Latinas. He regularly referred to Latinas, including Alma, as “whores” and “sluts” and “thieves” who are so stupid that they are only good for one thing – having sex. When this harassment became too much to bear, Alma developed anxiety and depression and was forced to leave her job.

Alma’s boss harassed her not only because she was a woman, and not only because she was Latina, but because she was a Latina woman.

Like Alma, women of color often confront harassment in the workplace that is filtered through the lens of their race and sex. Women of color are also particularly vulnerable to sexual harassment, and they have less access to the legal system through which they can seek redress.61

Many women of color experience workplace harassment because of their race and because of their sex; both elements are equally at play. For example, slurs like “ni**er bitch” refer to black women specifically, and would not be used against black men or white women – they convey both a racialized form of sexual harassment and a gendered form of racial harassment, which cannot be broken down into separate parts.64 Even though Title VII prohibits discrimination based on race and sex, courts interpreting and applying the law in harassment cases brought by women of color often fail to acknowledge or allow plaintiffs to show how race and sex-based harassment overlap, forcing these workers to compartmentalize their experiences or fold one type of harassment into another in order to assert or support their claims of discrimination.65

Women of color suffer from racialized sexual harassment. Many courts deciding cases under Title VII aren’t getting it.

However, even when women of color reach the courthouse steps, judges have often mistreated their Title VII harassment claims.62 The case of Phyllis Clay illustrates this point. When Clay, an African American woman working as a security officer, alleged that her white coworkers physically assaulted her because of her race and subjected her to verbal abuse, repeatedly calling her names like “ni**er bitch,” making derogatory references to her sexual orientation, and using demeaning stereotypes about black people “liv[ing] off welfare because they are lazy,” a federal court refused to acknowledge that her harassment claim was based on her race as well as her sex.63

WHAT’S THE FIX?

Women of color alleging harassment claims under Title VII should not have to parse out the evidence supporting their claims into “race” and “sex” categories and then choose one as the primary or only focus of their case.

The Bar to Hold Employers Liable for Supervisor Harassment Is Too High.

ERA client Maria Bojorquez worked as a janitor for a national building and maintenance services company when she was sexually harassed and assaulted by the foreman of the building. He trained Maria, assigned her to a work station, and checked her work each night. She primarily worked alone, and the foreman had unrestricted access to all areas of the building, including the offices.

*Real name not used.
Maria was assigned to clean. Not long after she started working, the foreman began making embarrassing sexually explicit comments to her, demanding sexual favors, touching her breasts and buttocks against her will, and exposing himself to her. He repeatedly warned her that if she told anyone, no one would believe her because he was “the boss” and she was just a “temporary” worker.

Maria is like many low-wage workers, and immigrant workers in particular, who often endure harassment from their immediate supervisors who direct their daily activities, set their schedules, and tell them what to do and when to do it.

While Maria’s case resulted in a jury verdict against her employer, it might have ended differently if decided under the standards governing liability for supervisor harassment. A fix is needed.

ERA client Maria Bojorquez, while working as a janitor cleaning offices at night, was sexually harassed and assaulted by her immediate supervisor. Maria was then subjected to retaliation by her employer. Maria prevailed on both counts at trial and was vindicated with a jury verdict of over $812,000. However, the outcome of Maria’s sexual harassment claim may have been different if adjudicated under today’s Title VII test governing liability for supervisor harassment. A fix is needed.

Sexual harassment by supervisors in the workplace, a recent Supreme Court decision, Vance v. Ball State University (2013), has wreaked havoc on a critical piece of that equation: the definition of a supervisor. Rejecting well-established supervisor definitions embraced by the EEOC and some lower courts, the Vance Court reclassified direct supervisors like Maria’s as co-workers, defining “supervisors” as only those with the actual authority to hire and fire subordinates.

This artificial, unworkable distinction ignores the realities of today’s workplace and is especially harmful for low-wage workers, especially immigrants, many of whom have little or no contact with, and do not receive work assignments or supervision from, the high-level supervisors empowered to hire and fire them. In a description of the chain of command in agricultural jobs applicable to many other industries with large low-wage, immigrant workforces, Regional Attorney for the EEOC San Francisco District Office William R. Tamayo explains this dynamic:

"The owners of the major farms tend to be white, English speaking longtime family members who turn over operations of the farm to “Jose,” a long time employee who is bilingual and who is expected to maintain the operations and keep labor protections to a minimum – you know, “out of sight, out of mind.”"

Workers naturally view Jose as the only “supervisor” they know. Because they are geographically isolated, have limited options, and live in poverty, workers “are dependent on Jose to navigate the English-speaking world for them. If Jose is a predator and/or his supervisors below him are predators, it is the ideal situation for sexual harassment to occur – unfettered, unpunished, and unstopped.”

Unfortunately, the industries where Vance will have the most harmful impact are the same industries where sexual harassment is most rampant – service industries with large populations of low-wage workers, like building maintenance and immigrant workers, like restaurants. It is in these industries where the typical chain of command frequently facilitates unbridled supervisor sexual harassment of vulnerable subordinates. It is common in these industries for employers to give bilingual middlemen supervisory authority that may fall short of the ability to hire and fire but that allows them to use their relative authority to prey on isolated,
economically desperate female workers who cannot speak English and have no relationship with or understanding of upper management.77 These harassers choose low-wage immigrant women workers precisely because they lack power relative to other workers and because they perceive the women as passive and unable to complain.78 These middlemen are not discouraged from engaging in sexual harassment because certain formal powers have not been delegated to them; rather they are emboldened by the authority with which they have been vested.

By ignoring these workplace realities, Vance both diminishes employers’ incentive to train the direct managers who control their subordinates’ daily activities79 and makes it harder for women who suffer the consequences of this lack of training to bring a legal claim. As a result, 50 years after the passage of Title VII, the Supreme Court has undermined Title VII’s objectives of preventing and remediying harassment, especially for low-wage and immigrant women workers.

WHAT’S THE FIX?

• Pass the Fair Employment Protection Act, pending federal legislation that would amend Title VII to clarify that employers may be held vicariously liable for harassment and other forms of discrimination committed by individuals authorized to perform tangible employment actions like hiring, firing, and promoting, as well as directing an employee’s day-to-day activities.80

• Urge the EEOC’s strict adherence to its Strategic Enforcement Plan FY 2013-2016, which prioritizes enforcement actions on behalf of vulnerable workers, including immigrant workers.81

Silence in the Face of Retaliation and Poverty Wages.

ERA hotline caller Luisa* is an undocumented Mexican immigrant who worked as a line cook for a large fast food restaurant chain. She was terrorized each day by a kitchen supervisor who asked her out, made sexual comments, stalked her during off-work hours, touched her breasts, and made efforts to kiss her. He told Luisa that she “owed” him for weekend shifts and if she didn’t do what he wanted, he would have her fired and reported to immigration authorities. A senior manager laughed at her complaints and requests for transfer, asking “Who do you think you are? I know you are undocumented. How are you going to ask for a transfer?” After Luisa complained, the kitchen supervisor threatened her brother’s job, cut her hours, and changed her shift so he could work alone with her.

Fears of reprisal and other factors prevent many women from speaking out at work or complaining publicly about sexual harassment.82 All too often, these fears are realized for the significant portion of sexual harassment victims who find themselves worse off after complaining.83 Not surprisingly, nearly every sexual harassment case the EEOC has filed in court contains a related retaliation claim. This reality rings particularly true for low-wage immigrant women workers.85 As EEOC Regional Counsel Tamayo has explained, power disparities often facilitate the infliction of the most egregious and devastating acts of retaliation on this demographic of women:

Retaliation is an indispensable weapon in an harasser’s arsenal. Perhaps of all settings, the workplace exhibits the greatest imbalance of power especially for non-English speaking women, immigrants, those who work in the fields, and those who are geographically, socially and linguistically isolated. After all, the harasser supervisor can control whether the victim has a job, can feed her children, has a roof over her head and whether the members of her family can stay alive.86

Unfortunately, the Supreme Court’s recent decision in University of Texas Southwestern Medical Center v. Nassar (2013)87 will diminish Title VII’s anti-retaliation protections and further discourage low-wage and immigrant women who have been victims of workplace harassment from reporting such unlawful conduct to their employers. In Nassar, the Court held that a plaintiff who has been discriminated and retaliated against must meet a more difficult standard for proving retaliation than for proving the discrimination itself. After Nassar, it is not enough to show that an employee’s complaint about harassment was one “motivating factor” for the employer’s retaliation; instead, an employee must show that the retaliation would not have happened had she not complained.88 Some employers may attempt to push this standard even further, arguing that an employee must prove that the retaliation happened only because she complained.

*Real name not used.
Though a Title VII Nassar fix may assist victims of sexual harassment who face retaliation when they complain, retaliation is not the only factor coercing workers into silence. Economic realities also play a major role. Today, workers making minimum wage and slightly above have less buying power than their peers from several generations ago.\(^89\) One study finds that a family of four requires close to $90,000 a year to get by in the nation’s capital – the equivalent of six minimum wage jobs.\(^90\) This reality has a disproportionate impact on women and women-headed households, since women in the workforce tend to hold the lowest-paying jobs. Nearly two-thirds of minimum wage earners are women.\(^91\)

**WHAT’S THE FIX?**

A legislative fix to the Nassar decision, clarifying that the same standard applies to establishing employer liability for discrimination as to establishing employer liability for retaliation under Title VII, is critical to protect low-wage women workers from retaliation. Congress must also enact comprehensive immigration reform to address the well-founded fears of many undocumented immigrant workers that complaining about or opposing discrimination will lead to their deportation.

The picture is even bleaker for tipped minimum wage workers. Poverty-level wages in the restaurant industry force women to rely on tips and fuel sexual harassment in the workplace.\(^92\) In many states, the tipped minimum wage has been stuck at just $2.13 per hour for more than 20 years.\(^93\) Refusing to tolerate customer sexual harassment can jeopardize a woman’s ability to earn the tips that support her and her family.\(^94\)

**WE ARE GETTING THERE**

Momentum is on the rise for this fix across the country in restaurants and other industries. Equal Rights Advocates has joined forces with Restaurant Opportunities Centers United and other partners, calling for the end of a tipped minimum wage and advocating for a fair minimum wage for workers in the restaurant industry and beyond.\(^95\) President Obama has called on Congress to raise the federal minimum wage.\(^96\) and Democratic legislators have introduced a bill to increase it from $7.25 to $10.10 per hour in three steps and tie future rates to inflation.\(^97\) Thirty-eight states recently introduced legislation related to minimum wage issues.\(^98\) Ten states and Washington, D.C. enacted bills that will raise the minimum wage in those states this year,\(^99\) while voters in New Jersey approved a Constitutional amendment to raise the minimum wage in 2014 and tie future increases to the cost of living. Workers are pushing for even more drastic change, demanding that employers pay a “living wage” above and beyond the proposed minor hike to the federal minimum wage. Recently, thousands of non-unionized fast food restaurant workers from across the country who earn the minimum wage or just above it walked out of their jobs to demand a living wage of $15 an hour.\(^101\) Seattle made history by becoming the first big city to approve a $15 minimum wage, the highest rate in the country.\(^102\)

**WHAT’S THE FIX?**

Advocates and policy makers should promote legislation that raises the minimum wage, including the tipped minimum wage of $2.13 per hour, to a living wage. Higher wages will ensure that low-wage women workers can better support themselves and their families, provide greater purchasing power so workers are not living paycheck to paycheck, and permit greater mobility to leave abusive work environments where sexual harassment is rampant.
Conclusion

Perhaps it is no coincidence that Professor Anita Hill chose this year to release *Truth to Power*, a documentary about her decision to testify about the sexual harassment she endured while working with Clarence Thomas at the U.S. Department of Education and the EEOC. In the 50 years since Title VII was enacted, and especially since Professor Hill testified about her experience before the U.S. Senate 22 years ago, many courageous women have come forward to speak truth to power and have sought to hold their employers accountable for workplace harassment. Yet, in spite of this progress, there are women who work in restaurants, in the military, on farms, in processing plants, and in other people's homes and offices who are far less privileged than Professor Hill was and for whom sexual harassment is quite simply a term of employment. For these women significant obstacles remain in accessing, exercising, and vindicating their workplace civil rights.

But these obstacles are not insurmountable. As discussed above and in the Recommendations section ahead, there are specific steps we can take and strategies we can deploy, both within and outside the bounds of the legal system and Title VII itself, to restore and expand protections against sexual harassment and retaliation and better ensure women workers access to justice.

THE ADVOCATE FIX:
Addressing Common Roadblocks for Low Wage, Immigrant Workers

Increase Cultural Competency.

To better meet the needs of today's increasingly diverse and multilingual workforce, attorneys who represent employees should increase their representation of low-wage and immigrant women workers in sexual harassment and retaliation cases and commit to developing the cultural and linguistic competencies necessary for such representation.

Enact Immigration Reform.

Undocumented women who fear immigration consequences are often scared to assert their rights. Attorneys should familiarize themselves with the crimes that allow a victim to qualify for a U visa or T visa, which can give a victim an opportunity to obtain legal status while assisting in the investigation of the perpetrator. Additionally, advocates should support comprehensive immigration reform.

Develop Holistic Services.

Non-legal advocates, community-based organizations, rape crisis counselors, and other service providers are essential to combating sexual harassment and violence because of their ability to connect survivors with the non-legal support and assistance they need to be able to assert their rights and make it through the legal process in one piece. It is critical that lawyers representing workers who have been subjected to workplace sexual harassment and assault reach out to and form collaborative working relationships with these service providers to ensure the best possible care and representation for clients.
Seizing the Moment:  
Summary of Part One Recommendations

To address persistent sexual harassment in the workplace, a broad set of measures and actions are needed to move women forward on this 50th Anniversary of the Civil Rights Act of 1964. These suggested actions will correct misinterpretations of Title VII, improve enforcement of this law and others designed to advance women at work, and fill policy gaps that leave too many without the help and protection they need to enjoy economic security and equal opportunity.

1. Policymakers should enact broad women’s economic security policy agendas at the federal and state level, like the federal When Women Succeed, America Succeeds Agenda introduced by House Democrats and the recently-passed Minnesota Women’s Economic Security Act. The agendas should take a comprehensive approach with initiatives to meet the basic needs of women in poverty, raise income, open pathways to quality jobs, improve workplace fairness, and improve access to high quality and affordable child care.

2. Policymakers should pass the Fair Employment Protection Act. This law would correct a Supreme Court misinterpretation of Title VII by clarifying that employers may be held liable for harassment by individuals who control the day-to-day activities of workers, regardless of whether these individuals are formally authorized to hire and fire.

3. Policymakers should pass legislation to improve enforcement of Title VII retaliation claims. Legislation is needed to reverse a recent Supreme Court decision making it harder for workers to prove Title VII retaliation claims.

4. Policymakers should pass the Equal Employment Opportunity Restoration Act or similar legislation to eliminate some of the obstacles to class certification erected by the Supreme Court in Wal-Mart v. Dukes and ensure an avenue for workers to address collectively systematic forms of discrimination.

5. Policymakers should raise the minimum wage and abolish the tipped minimum wage, which is as low as $2.13 per hour in some states. Workers should not be forced to tolerate sexual harassment in order to earn tips to supplement poverty wages.

6. Policymakers should support comprehensive immigration reform so that immigrant women workers do not fear retaliation for complaining about sexual harassment.

7. The Equal Employment Opportunities Commission should proceed with full implementation of the EEOC Strategic Enforcement Plan FY 2013-2016, which focuses on eliminating discriminatory hiring practices, combating discrimination against immigrant workers, fighting gender-based pay discrimination, and deterring workplace harassment.
8. **Worker advocates should encourage greater cultural and linguistic competency among attorneys and non-attorney advocates** to better serve and represent low-wage and immigrant women workers.

9. **Worker advocates should consider immigration remedies for undocumented clients.**
   Undocumented women who fear immigration consequences are often afraid to assert their rights. Attorneys should familiarize themselves with the qualifying crimes that allow a victim to qualify for a U visa or T visa, which can enable a victim to obtain legal status while assisting in the investigation of the perpetrator.

10. **Worker advocates should increase collaboration with non-legal advocates, community-based organizations, rape crisis counselors, and other service providers.**
    Working with these providers is essential to ensuring that clients have the support and assistance they need as they assert their rights and navigate the often stressful and demanding legal process.

11. **Employers should enforce both the letter and the spirit of laws ensuring equal opportunity, fair treatment, and non-discrimination in the workplace and adopt best practices for gender equity in employment.** To effectively reduce the incidence of harassment in the workplace, employers must go beyond mere compliance practices. They should track harassment complaints, implement a system of post-complaint follow-up, and obtain outside evaluations of their anti-harassment policies and procedures.

12. **Employers should treat workplace sexual assault as workplace violence** and contact law enforcement immediately when such violence takes place.

13. **Employers should support workers’ rights to organize and act together** so they can support promote fair workplaces.
Endnotes

1 The original draft of Title VII of the Civil Rights Act of 1964 would have prohibited workplace discrimination on the basis "race, color, religion, or national origin." See, e.g., Louis Menand, The Sex Amendment, THE NEW YORKER (July 21, 2014), http://www.newyorker.com/magazine/2014/07/21/sex-amendment. Two days before the bill went to vote in the House of Representatives, the amendment to add sex was introduced by Representative Howard W. Smith, a Democrat from Virginia who was vocally opposed to civil rights for African-Americans. See Robert C. Bird, More than a Congressional Joke: A Fresh Look at the Legislative History of Sex Discrimination in the 1964 Civil Rights Act, 3 WM. & MARY J. WOMEN & L. 137, 150 (1997) (citing 100 Cong. Rec. 2577). While there are several theories about why Smith introduced the sex amendment, it is undisputed that Representative Martha Griffiths’ passionate defense of it contributed to its passage in the House. Id. at 139-40, 155-56; see also United States House of Representatives History, Art & Archives, Griffiths, Martha Wright, http://history.house.gov/People/Listing/G/GRIFTHTHS-Martha-Wright-%28G000471%29/ (last visited July 31, 2014).


4 600 F.2d 211 (9th Cir. 1979).

5 890 F.2d 1438 (9th Cir. 1989) (affirming consent decree).

6 603 F.3d 571 (9th Cir. 2010), rev’d, 131 S. Ct. 2541 (2011).


9 See U.S. Dep’t of Labor, Bureau of Labor Statistics, supra note 7, at Table 1 (Black and Latina women are more than twice as likely as white women to be living in poverty and more than twice as likely as white men to work in jobs that pay at or below the minimum wage).


14 Latina pregnant women/new mothers, for example, were fired or laid off at nearly double the rate of their white counterparts, and African Americans at nearly one and a half times the rate of their white female counterparts. Id. at 11, 7 (data from 2006-2008).

15 Pregnant women or new mothers without a high school degree—those likely to work in lower-wage jobs—are three times more likely than more educated women workers to be fired upon the birth of their first child. Ann O’Leary, How Family Leave Laws Left Out Low-Income Workers, 28 BERKELEY J. EMP. & LAB. L. 1, 7 (2007).


21 H.F. 2536, 88th Leg. (Minn. 2013-14).

22 The Tailhook sex abuse scandal involved a series of incidents where 100 military officers were alleged to have sexually assaulted at least 83 women and 7 men, or otherwise engaged in “improper and indecent” conduct at the Las Vegas Hilton during the Tailhook Association Symposium in 1991. After investigation by the Department of the Navy and the Department of Defense, a number of officers were formally disciplined or refused advancement in rank. See, The Tailhook Scandal ‘91 (PBS television broadcast), http://www.pbs.org/wgbh/pages/frontline/shows/navy/tailhook/ (last visited Apr. 14, 2014).


27 See INVISIBLE WAR (Amy Ziering 2012).


29 Julie Watson, Retaliation Prevalent in Military, Rape Victim Says 14 Years After Assault, HUFFINGTON POST (May 31, 2013), http://www.huffingtonpost.com/2013/05/31/stacey-thompson-military-rape_n_3365107.html

30 For each year between 2010 and 2013, sexual harassment complaints represented between one-quarter and one-third of calls fielded on ERA’s advice and counseling hotline, the most of any category. Nearly 50 percent of sexual harassment callers in each of these years reported they also had experienced retaliation. Equal Rights Advocates, A&C Statistical Reports, 2010-2013.

31 id.

32 In a 2013 HuffPost/YouGov poll, 13 percent of respondents reported having been sexually harassed by a boss or supervisor and 19 percent reported harassment by a co-worker. See Jillian Berman & Emily Swanson, Workplace Sexual Harassment Poll Finds Large Share of Workers Suffer, Don’t Report, HUFFINGTON POST (Aug. 27, 2013, 1:13 AM), http://www.huffingtonpost.com/2013/08/27/workplace-sexual-harassment-poll_n_3823671.html.

33 Harris v. Forklift Sys., 510 U.S. 17, 19, 22 (1993) (stating that “[a] discriminatorily abusive work environment, even one that does not seriously affect employees’ psychological well-being, can and often will detract from employees’ job performance, discourage employees from remaining on the job, or keep them from advancing in their careers.”).

34 See Whitehead, supra note 11, at 780.

35 Whitehead, supra note 11, at 779; Hadfield, supra note 11, at 1174.

36 Because they comprise two-thirds of tipped restaurant workers, women disproportionately bear the economic burden of this wage stagnation. See Rest. Opportunities Ctrs. United, supra note 12; see also Rosenfield, supra note 12; Smalek, supra note 12; Living Off Tips, supra note 12.


48 The creation of this “avoidable consequences” defense to damages and liability for employers in the Faragher/Ellerth rulings (and the lower
51 See Lawton, supra note 48.

46 On November 7, 2013, for the first time in history, the U.S. Senate voted to approve the Employment Non-Discrimination Act (ENDA), federal
50 This trend can be explained, at least in part, by federal courts frequently construing anti-harassment and other civil rights laws as merely banning
52 Dowdy v. North Carolina, 305 F.3d 1061, 1064, 1066-67 (9th Cir. 2002) (reversing grant of summary judgment in favor of employer where
54 Lawton, supra note 48, at 217-223, nn. 100-04.

45 See, e.g., Nichols v. Azteca Rest. Enters., 256 F.3d 864, 869-70 (9th Cir. 2001) (reversing grant of summary judgment in favor of employer

58 Turner, supra note 37, at 580-84.


42 Id. at 22.

41 Harris v. Forklift Systems, Inc., 510 U.S. 17, 19, 23 (1993) (acknowledging that sexual harassment can take a variety of forms, from daily
49 See, e.g., Lawton, supra note 48, at 217-223, nn. 100-04.

40 Mentor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). In Mentor, a bank employee alleged that she was forced to have sex with her direct
53 Under Title VII “would be a potential lawsuit every time any employee made amorous or sexually oriented advances toward another," a result
55 Dowdy v. North Carolina, 23 F. App’x 121, 123-24 (4th Cir. 2001) (affirming
59 Harris v. Forklift Systems, Inc., 510 U.S. 17, 19, 23 (1993) (acknowledging that sexual harassment can take a variety of forms, from daily

63 Clay v. BPS Guard Services, No. 92 C 2127, 1993 U.S. Dist. LEXIS 8399, at *4, 9 (N.D. Ill. June 18, 1993); see also Abrams, supra note 62.

59 See infra Chapter Three.

65 See, e.g., McNeil v. Kennecott Holdings, 381 F. App’x 791, 795 (10th Cir. 2010) (determining that there was no hostile work environment harassment because Kennecott’s mining operation was the sort of “blue collar environment where crude language is commonly used”); Shepherd v. Slater Steel Corp., 168 F.3d 998, 1008 (7th Cir. 1999) (noting that an appropriate sensitivity to social context will enable courts and juries to distinguish between “simple teasing” and “‘roughhousing’”); Johnson v. Hondo, Inc., 125 F.3d 408, 412 (7th Cir. 1997) (opining that lewd behavior and language are “commonplace” in certain circles, and more often than not, are simply expressions of “animosity” or “juvenile provocation”);

60 Williams v. Gen. Motors Corp., 187 F.3d 553, 564 (6th Cir. 1999) (holding that proving a long-standing or traditional hostility toward women in the workplace will not excuse hostile work environment sexual harassment); see also Reeves v. C.H. Robinson Worldwide, Inc., 594 F.3d 798, 810 (11th Cir. 2010) (finding ample evidence of gender-specific harassment and explaining that Title VII does not allow “boorish employers a free pass to discriminate against their employees specifically on account of gender (just because they have tolerated pervasive but indiscriminate profanity as well”); O’Rourke v. City of Providence, 235 F.3d 713, 735 (1st Cir. 2001) (rejecting the notion that a woman who chooses to work in male-dominated trades relinquishes her right to work in an environment free from sexual harassment); Conner v. Schrader-Bridgeport Int’l., Inc., 227 F.3d 179, 194 (4th Cir. 2000) (dismissing the idea that a prevailing workplace culture can excuse discriminatory actions); Jackson v. Quenx Corp., 191 F.3d 647, 662 (8th Cir. 1999) (reversing district court decision that condensed continuing racial slurs and graffiti on the grounds that they occurred in a blue-collar environment).


63 See Clay v. BPS Guard Services, No. 92 C 2127, 1993 U.S. Dist. LEXIS 8399, at **4, 9 (N.D. Ill. June 18, 1993); see also Abrams, supra note 62, at 2498-2502, for thoughtful analysis of the court’s treatment of the intersectional nature of claims in Clay.

64 See Abrams, supra note 62, at 2498-2502 (discussing the effects of this forced compartmentalization and analyzing discrimination cases involving intersectional claims of race and sex harassment).

65 See, e.g., Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415-1416 (stating that black female plaintiffs in race harassment and sex harassment claims should be able to “aggregate evidence of racial hostility with evidence of sexual hostility”); Stingley v. Ariz., 796 F. Supp. 424, 428 (D. Ariz. 1992) (same); see also Jeffries v. Harris Cnty. Cnty. Action Ass’n, 615 F.2d 1025, 1032 (5th Cir. 1980) (non-harassment discrimination case concluding that “discrimination against black females [could] exist even in the absence of discrimination against black men or white women”); Lam v. University of Haw., 40 F.3d 1551, 1562 (9th Cir. 1994) (where two bases for discrimination exist, they cannot be neatly reduced to distinct components”); Olmstead v. L.C., 527 U.S. 581, 598 n.10 (1999) (citing Jeffries with approval); cf. Lewis v. Bloomburg Mills, Inc., 773 F.2d 561, 564-66 (4th Cir. 1985) (upholding district court’s refusal to redefine a certified class of African-American women to include African-American men when the evidence demonstrated that the employer discriminated against African-American women to a greater degree than it discriminated against African-American men, and recognizing the class of African-American women as “special victims” of a more general racial animus).

66 See Faragher, 524 U.S. 775; Ellerth, 524 U.S. 742.

67 Vance v. Ball State University, 133 S. Ct. 2434 (2013).

68 In 1999, the year after Faragher and Ellerth were decided, the EEOC published an Enforcement Guidance based on those decisions, noting that in those cases the Supreme Court reasoned that “vicarious [or automatic] liability for supervisor harassment is appropriate because supervisors are aided in such misconduct by the authority that the employers delegated to them.” See U.S. Equal Emp’t Opportunity Comm’n, Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors (June 18, 1999), http://www.eeoc.gov/policy/docs/harassment.html. Based on this reasoning, the EEOC concluded that the “authority must be of a sufficient magnitude so as to assist the harasser explicitly or implicitly in carrying out the harassment” and “[t]he determination as to whether a harasser had such authority is based on his or her job function rather than job title (e.g., ‘team leader’) and must be based on the specific facts,” id. (emphasis added). Accordingly, the Commission determined that an individual qualifies as an employee’s “supervisor” if “the individual has authority to undertake or recommend tangible employment actions.”
decisions affecting the employee; or the individual has authority to direct the employee’s daily work activities.” Id. The EEOC also acknowledged that an individual may qualify as a “supervisor” even when that employee does not have actual authority over the victimized employee, if the victimized employee reasonably believed that the harasser had this power, such as when the chain of command is unclear or when an employee is delegated broad powers that could significantly influence employment decisions regarding other employees. Id.

See, e.g., Mack v. Otis Elevator Co., 326 F. 3d 116, 126-127 (2d Cir. 2003); see also Dawson v. Entek Int’l, 630 F. 3d 928, 940 (9th Cir. 2011).

Vance, 133 S. Ct. at 2443.

Tamayo, supra note 26, at 3.

Id.


In recent years, the EEOC has brought many enforcement actions on behalf of sexual harassment victims in the janitorial industry, most notably a class action lawsuit against ABM Industries Incorporated, the same national building services contractor that employed Maria. In that lawsuit, the EEOC represented a class of mostly monolingual Latina janitors in the Central Valley of California who had been sexually harassed by their supervisors and co-workers; one of them was raped on the job. ABM agreed to pay $5.8 million to settle the case. See E.E.O.C. v. ABM Indus. Inc., 261 F.R.D. 503 (E.D. Cal. 2009); see also EEOC v. Allstar Fitness, LLC, CV-10-1062, 2011 WL 97420 (W.D. Wash. Jan. 10, 2011) (case settled for $150,000 where Latina janitor and mother of three alleged she was forced to have sex with her supervisor at the Seattle-based health club where they worked and was threatened with termination if she refused to have sex or reported the activity to management; when she finally said that she would not have sex with him, he fired her).

Recent EEOC data reflects that almost 37 percent of EEOC sexual harassment charges filed by women came from the restaurant industry, even though less than 7 percent of women work in that industry. See Rest. Opportunities Ctrs. United, supra note 12, at 7. A review of the last four years of EEOC sexual harassment settlements and verdicts in the restaurant industry found over 25 major cases resulting in $15.4 million in settlements and damages awarded to over 219 women workers. Id. at 29. Eleven of these cases involved hostile work environment sexual harassment, and 50 percent of the cases involved some form of sexual assault. Id. Eighty-eight percent of the cases involved abuse and harassment by management. Id.

Tamayo, supra note 26, at 3; see also sources cited at supra note 12.

Tamayo, supra note 26, at 1, 3.

Id.

As Justice Ginsburg notes in her powerful dissent in Vance, “[w]hen employers know that they will be answerable for the injuries a harassing jobsite boss inflicts, their incentive to provide preventative instruction is heightened.” 133 S. Ct. at 2461 (Ginsburg, J., dissenting).


Indeed, 70 percent of poll respondents who reported being sexually harassed never reported it. Berman and Swanson, supra note 32; see also A&C Statistical Reports, supra note 30.

See, e.g., Louise F. Fitzgerald et al., Why Didn’t She Just Report Him: The Psychological and Legal Implications of Women’s Responses to Sexual Harassment, 51 J. SOC. ISSUES 117, 123-24 (1995); Jane Adams-Roy & Julian Barling, Predicting the Decision to Confront or Report Sexual Harassment, 19 J. ORG. BEHAV. 329, 334 (1998) (describing a study finding that women who reported sexual harassment through formal organizational channels experienced more negative outcomes than those who did nothing); Theresa M. Beiner, Using Evidence of Women’s Stories in Sexual Harassment Cases, 24 U. ARK. LITTLE ROCK L. REV. 117, 124-25 (2001) (“[M]any plaintiffs’ lawyers would tell you that once an employee complains about discrimination on the job, he or she can usually consider that employment relationship over.”); Anne Lawton, Between Scylla and Charybdis: The Perils of Reporting Sexual Harassment, 9 U. PA. J. LAB. & EMP. L. 603, 605 (2007) (“Reporting Professor White [to university officials] stopped the [sexual] harassment, but also generated a pattern of conduct, some of which was clearly retaliatory in nature, which made my life as a tenure-track faculty member substantially more difficult than it had been prior to reporting.”).

Tamayo, supra note 26, at 7.

William R. Tamayo, Retaliation in Harassment Cases and Threats to Deter Reporting 12-17 (June 2013), http://www.americanbar.org/content/dam/aba/events/labor_law/arn/2013/06tamayo.authcheckdam.pdf

Id. at 2 (emphasis in original).

University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013).

Id. at 2533.

90  Id.


92  Id.

93  See, e.g., Rest. Opportunities Ctrs. United, supra note 12; Living Off Tips, supra note 12.

94  See Living Off Tips, supra note 12.

95  Id.


99  Id.


Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational opportunities for women and girls. Since 1974, ERA has offered free advice and counseling through a toll-free hotline and engaged in education, policy, and litigation efforts to ensure fairness for its clients and their families.