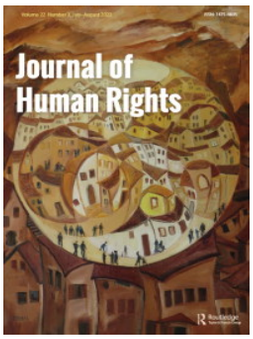

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Digital feminism: In the aftermath of #MeToo, what's next for workplace equity for women?

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ABSTRACT

This article seeks to analyze the aftereffects of the #MeToo movement to measure the efficacy of digital feminism. Perhaps the most recognizable outcome of the #MeToo movement is forcing a once-taboo subject of workplace sexual harassment into the limelight. The digital phenomenon prompted federal and state courts across the United States to navigate a seemingly new terrain of contributing to broader institutional change in reducing sexism. Yet, four years after the two-word hashtag ricocheted through social media, one pressing question remains: Did the benefits of the #MeToo movement produce changes for female workers in the United States most vulnerable to facing gender-based violence or harassment in the workplace? The study first identifies the factors that often put women at greater risk of sexual harassment in the workplace and determines women in authority and low-wage workers as victims who may be more frequent targets. The article explores the question of gender violence and a lack of access to economic rights as being two sides of the same coin. The research then surveys how governments—in the post-#MeToo era—have attempted to improve gender equality through legal obligations, and whether their attempts were effective in targeting the correct groups.

Introduction

> It typically took three to four women testifying that they had been violated by the same man in the same way to even begin to make a dent in his denial. That made a woman, for credibility purposes, one quarter of a person. (MacKinnon, 2019)

There is no denying the issue of violence against women was given a new, visible platform sparked by the attention generated by the #MeToo movement. In the fall of 2017, the Internet became a tool for democratizing feminist activism when the two-word hashtag ricocheted through social media. The viral hashtag spiked a heightened consciousness of gender issues on the global scale—crossing racial and ethnic boundaries—to expose a culture that normalizes sexual harassment and gender discrimination in the workplace. The movement rapidly became a worldwide phenomenon such that, within one year, #MeToo was searched on the Internet in 195 countries—in other words, the search was performed in every country on Earth (Duramy, 2020).

Perhaps it was the Internet and the hashtag landscape that brought the often-private dialogue of sexual violence into the public sphere (Mendes et al., 2019). The immediate results triggered by the online crusade were visibly played out on both the national and international stage, with the toppling and resignations of high-profile men in the entertainment, media, and business industries in countries that resonated the most with the movement (Duramy, 2020). Yet, not as

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widely covered by the news media is one pressing question: Did the benefits of #MeToo produce changes for female workers in the United States most vulnerable to facing gender-based violence or harassment in the workplace? Certainly, some women are at a greater risk than others in experiencing workplace sexual misconduct. If #MeToo aims to change the culture and legal landscape surrounding sexual harassment, it is essential that, aside from increasing awareness on the issue of sexual harassment, updated laws and regulations take a victim-centered approach—*especially* by identifying the groups at greater risk and establishing concrete regulations for their protection.

Identifying the women at greater risk of workplace sexual harassment

For decades, scholars have provided grounded theories to explain the phenomenon of workplace sexual harassment that help identify the core groups of women facing disproportionate risk. Researchers in gender studies present three major arguments—male dominance, gender-role spillover, and sex-ratio theories to identify the nature and causes of the act (Lopez et al., 2009). Scholars stressed that men often use sexual harassment to maintain or retain power in the workplace. The *male dominance theory* suggests that, when a man has sexual relations with a female employee, the woman is no longer seen as a colleague but is reduced to a sexual object, which then reinforces the male's power and privilege (Lopez et al., 2009). The *gender-role spillover theory* suggests that men sexually harass their female colleagues because they are accustomed to seeing women in a subordinate role in the domestic and social spheres. The *sex-ratio theory* argues that the ratio of men to women in the workplace—heavily skewed in either direction—can produce a greater risk of sexual harassment (Lopez et al., 2009). Scholars, therefore, have advanced two distinct positions in classifying the groups of women subject to greater harassment: women in low-wage occupations due to a lack of authority; and women in positions of authority, because they have infringed on male power and occupy a position in which they are highly visible (Gruber, 1998).

To further study the impact of #MeToo, it is imperative to see if legislative changes as a result of the digital phenomenon have been effective in focusing on the situation of the appropriate vulnerable groups; and if—at all—the two groups benefited from the progress taking place. Specifically, this study aims to answer the questions: Was the Internet and digital feminism successful in reducing sex discrimination in the workplace? In the post-#MeToo era, were the adopted policies in the workplace, federal laws, and state laws effective in focusing on the situation of the groups at greater risk?

Objective of the study

In order for #MeToo not to go down as a fledgling women's rights campaign, a clear analysis of the after-effects of the movement is necessary to measure the efficacy of hashtag feminism; and whether this form of activism—in strongly resisting separating the offline with the online—can produce positive results for the groups disproportionately at risk. This research will survey how governments in the post-#MeToo era have attempted to improve gender equality through legal obligations to ensure that workplaces are free from sexual harassment and discrimination, and whether their attempts were effective in targeting the correct groups. It is important to note that human rights mechanisms often classify sexual harassment in the workplace as a form of gender-based violence, as it disproportionately impacts female workers (Human Rights Watch, 2021). Furthermore, US legal standards explicitly define sexual harassment in the workplace as a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 (*Meritor Savings Bank v. Vinson,* 1986). When analyzing the impact of digital feminism on sexual harassment in the workplace, theoretical studies of gender-based violence and sex discrimination will be included in this research to thoroughly capture the impact of the social movement.

Theoretical framework and methodology

This article uses three primary bodies of scholarship to frame an understanding of #MeToo as a medium of reducing sex discrimination in the workplace and tracking the impact of the movement: (1) literature identifying the factors that put women at risk of experiencing sexual harassment in the workplace; (2) literature on hashtag feminism and the power of digital activism to address sexual harassment; and (3) an analysis of changes to workplace sexual harassment in the aftermath of #MeToo by tracking revisions to federal laws, state laws, and updated company regulations.

Methodologically, the article draws both on statistical studies as well as qualitative research with grounded theories on sexual harassment in the workplace. I take an in-depth look at revisions to federal laws and two bodies of state laws as a result of the digital movement. I then analyze whether these changes targeted the correct groups, and determine whether or not the hashtag-feminist movement did, indeed, reduce sexual discrimination in the workplace—positively impacting the progress of workplace equity.

Hypothesis

Perhaps the most recognizable outcome of the #MeToo movement is forcing a once-taboo subject of workplace sexual harassment into the limelight. The digital phenomenon prompted federal and state courts across the United States to navigate a seemingly new terrain of contributing to broader institutional change in reducing sexism. In this post-#MeToo era, as we track and analyze the benefits resulting from the movement so far, this article argues that it is apparent the viral hashtag was successful in producing positive impact against sexual harassment in two ways: by increasing awareness and visibility on the issue of sexual harassment and by adopting gender-equality policies through legal protection. However, although California and New York have led the way in employment legislation aimed at protecting groups most vulnerable to sexual harassment, #MeToo fell short in effectively targeting the two main groups on the federal level. In order for the United States to tackle the issue of workplace sexual harassment head on, Congress needs to take note from the two states leading the way in strengthening workplace protections for women, and should implement a nationwide strategy to formally criminalize workplace sexual harassment.

The two vulnerable groups of sexual harassment in the workplace and their lack of access to economic rights

Background and definition of sexual harassment in the United States

In order to grasp an understanding of the theories behind sexual harassment, a definition of the phenomenon is essential to comprehend the mechanisms at play that link harassment to specific gender conformity—and also nonconformity. *Sexual harassment* was a term that was not coined until the 1970s (McLaughlin, Uggen, & Blackstone, 2012). And although the legal definition of sexual harassment varies from country to country, the US Equal Employment Opportunity Commission (EEOC) defined sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" that "affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment" (US Equal Employment Opportunity Commission [EEOC], 1980).

In the United States, anywhere from 25% to 85% of women report having experienced sexual harassment in the workplace (EEOC, 2016). The statistic from EEOC's study found that the strikingly wide gap in the range of percentages comes from differences in sampling and how

researchers defined the term *sexual harassment*. But it is important to note that, even with its most conservative estimate, one in four women report experiencing workplace sexual harassment (Golshan, 2017). Scholars have identified the groups of women who primarily make up this statistic—and although the two main vulnerable groups offer contrasting theories of power, it is important to ask: Is there a root cause, shared by both groups, that ultimately increases the risk of experiencing sexual harassment at the workplace? And is it an *economic* one?

Power threat: Women in positions of authority

> Because I was the only girl there. There were no other girls. (McLaughlin et al., 2012)

An element notably absent from the narratives shared in #MeToo is the lack of access to economic rights for female employees who experience sexual harassment. Economic rights are fundamental human rights. But for most women, one's relationship with money is understood and acknowledged under a patriarchal structure—whether you are in a position of authority or are a low-wage worker. It is pivotal to examine the relationship between gender violence and economic rights violations of women, if the two oppressions are inextricably linked in cases of sexual harassment in the workplace, and whether these forms of structural discrimination—in its intersections—are addressed when forming solutions to combat the issue. For instance, a deeper look into the phenomenon of workplace sexual harassment reveals that heightened visibility—a result of women's economic oppression—is an underlying cause that is linked to greater likelihood of sexual harassment for both vulnerable groups.

Although, at a first glance, women in positions of authority may not be strikingly obvious as constituting a group that lacks access to economic rights, a closer look indicates that female supervisors, who hold authority over some men, face an unjust system solely due to a lack in numbers. Scholarship on workplace sexual harassment reveals there is, in fact, a correlation between gendered violence and the gender gap in the workplace—and the pattern is cyclical. First, as women are climbing the corporate ladder, they are directly being targeted for sexual harassment due to higher visibility (McLaughlin et al., 2012, p. 627), as women are underrepresented in positions of authority. Concurrently, the economic cost and consequences of a sexual harassment experience keep the number of women in supervisory roles low. Moreover, women in positions of authority suffer more professional and social retaliation than their male counterparts after a harassment experience (Folke et al., 2020). According to a report published in the *Columbia Law Review*, women are 6.5 times more likely to change jobs, even if it means leaving a position with lucrative pay and opportunities for career advancement (Lobel, 2020). As a result, the number of women in leadership positions continues to be low (Folke et al., 2020). Forming solutions to battle this form of gender violence require framing the legal avenues for redress around the vulnerabilities of the victims; hence, the lack of access to economic rights needs to be addressed as a risk factor that drives workplace sexual harassment.

Scholars have also suggested that women in authority are frequent targets of workplace sexual harassment as men use the act of harassment as an "equalizer" against women in power (McLaughlin et al., 2012, p. 625). Due to the potential threat they bring to occupational identities, women in authority are seen as threatening male dominance—or the "hegemonic masculinity" theory that legitimizes and justifies men in authoritative positions of society. They are likely to face greater risk of harassment as men use the act as a way to police the appropriate conduct of "doing gender" (McLaughlin et al., 2012, p. 626): Thus, "men's harassment of women has more to do with keeping women 'in their place' and marking their own turf than with sexual attraction or arousal" (McLaughlin et al., 2012, p. 635). When women in authority threaten the traditional gender hierarchy and intrude on male territory, scholars argue that men resort to applying "masculine overcompensation"—or a reaction of enacting an extreme form of masculinity—in this case, sexual harassment, to put women in a position of complying with a more traditional

gender role (McLaughlin et al., 2012, p. 627). In a study published in the *American Sociological Review*, researchers found that highly educated, single females employed in large establishments are most likely to be subject to harassment (McLaughlin et al., 2012). As we identify the factors that often place women at greater risk of sexual harassment, it is essential to note the lack of access to economic rights—in this respect, a lack of representation of women in authority positions—as a pattern of avoidable failure that could prevent harassment at work.

Low-wage workers

> Women in tipped occupations generally … are more likely to experience harassment, indicating a troubling devaluation of women based upon their wages and socio-economic status. (Ditkowsky, 2019)

On the other side of the economic spectrum, low-wage workers are also frequent targets of sexual harassment in the workplace. Based on the sex-ratio theory, scholars argue that gender becomes more "visible" when women are working in a heavily female occupational setting—such as secretarial work or waitressing—because femininity and gender norms become highlighted (Lopez et al., 2009, pp. 5–6). For low-income women, legal avenues to address remedies after a sexual harassment experience are not as widely available due to their status barriers, terms of employment, and contractual barriers—including nondisclosure agreements and mandatory arbitration clauses (Ditkowsky, 2019). Although these types of contracts may be common for all employees, enforcing mandatory, binding arbitration agreements on low-wage workers is particularly unjust due to the group's limited bargaining power and lack of knowledge of their legal rights (Ditkowsky, 2019). Arbitration is an out-of-court resolution to resolve disputes, in which a private entity rather than a judge makes a decision about the dispute (Ditkowsky, 2019). With more than 55% of workers subjected to mandatory, binding arbitration clauses, it is important to emphasize this specific barrier to justice for low-wage workers—given that, in a sense, low-income employees are waiving their right to access the courts in order to be employed (Ditkowsky, 2019, p. 77). Furthermore, due to their socio-economic status, low-income women may wield more power as a collective; however, signing an individual arbitration agreement prevents any one from bringing any sort of class action (Ditkowsky, 2019, p. 78).

The needs of low-income women are strikingly different from the general population, and they face a persistent disadvantage as laws and policies rarely benefit them. First, although there may be existing protections for employees against harassment, low-income workers may not be aware of their rights. They are also not able to afford an attorney of the same caliber as their employer and may be more compelled to sign a nondisclosure agreement instead (Ditkowsky, 2019). In these cases, employers may take advantage of a low-income employee's immediate needs by inserting more money in exchange for her silence (Ditkowsky, 2019, p. 97). These types of settlements are not solutions addressing workplace harassment but, rather, a mechanism to shield guilt of employers, as confidentiality will prevent damage to their reputations. Furthermore, in many cases low-wage workers are classified as independent contractors and are not even protected against harassment under Title VII of the Civil Rights Act of 1964; worse, they may have been misclassified as independent contractors and are not being afforded the protections (Ditkowsky, 2019, p. 117). In addition, federal antidiscrimination laws do not include employers with 15 or fewer employees, which excludes many domestic workers who are vulnerable to harassment (Ditkowsky, 2019, p. 125). In order to substantially contribute to changing systemic power imbalances that drive sexual harassment, a connection must be made between sexual harassment and a lack of access to economic and legal rights for women most vulnerable; solutions must address gender violence and economic oppression of women as if they are two sides of the same coin.

The power of the #hashtag: Lifting the taboo of sexual harassment discourse

The Internet and the global public platform of discussing gendered violence

Of course, it is inarguable that the hashtag #MeToo brought a new level of visibility and awareness to the issue of sexual harassment in the workplace by shattering the cultural taboos of speaking about it publicly. Unlike previous feminist movements, the #MeToo campaign—as well as other viral feminist hashtag campaigns—was not held together by a handful of national organizations and charismatic leaders but by the invisible bond of the Internet. The narrative shared on this form of communication technology allowed feminist ideologies to be personal rather than solely political, which critics say makes for a "cultural space" that is more inclusive than the feminist movements that came before (Shenin et al., 2016).

The global response to the hashtag exposed a disturbing reality: Sexual abuse of power was indeed universal. But more importantly, there was a near-global cultural acceptance in which rape and sexual violence against women were normalized and excused. As the movement called attention to this constant societal perpetuation of *rape culture*, the widespread visibility of the accounts on the Internet served as a source of education that affected how individuals conceptualized their past experiences as victims and shed light on why sexual violence often goes unreported (Palmer et al., 2021). In *#MeToo for Whom? Sexual Assault Disclosures Before and After #MeToo*, scholars (Palmer et al., 2021) argued that a common reason victims of sexual violence do not disclose unwanted sexual activity is the victim viewing the assault as not being serious enough to report (Palmer et al., 2021, p 70); however, #MeToo raised awareness about different types of sexual assaults, which prompted many social media users to share—often for the first time—their stories of abuse in a public way (Palmer et al., 2021).

International reaction to #MeToo

Although the immediate impact of the movement was indisputably felt globally—documented by Twitter trends and Google searches—the international direct response to the feminist campaign has varied greatly by country. In *#MeToo and the Pursuit of Women's International Human Rights*, Bendetta Feadi Duramy (2020) analyzed an international perspective of the online crusade and found that its most significant impact has been played out mostly in the United States so far. However, people in countries including the United Kingdom, India, and Sweden also resonated strongly with the movement, as governments considered proposals to improve laws relating to sexual harassment in the workplace (Duramy, 2020, pp. 223–227). But scholars also surveyed respondents in countries that experienced a more conflicted reaction to the viral movement—including Japan, France, and Italy—and attributed the overall timid responses to the deeply rooted societal bias against women embedded in their respective cultures. For example, researchers have linked Italian respondents' ambivalence toward sexual harassment and gender inequality as a direct effect of the so-called *beauty trade-off*—a societal misconception in Italian culture that normalizes the sexual–economic exchange between attractive women and men in positions of power (Duramy, 2020, p. 233). It is also important to acknowledge the resounding critique of #MeToo being categorized as primarily a US privileged women's movement, despite the reality that women of lower socioeconomic status disproportionately face sexual harassment (Duramy, 2020, p. 245).

Some scholars have also noted the absence of a human rights-based legal framework in #MeToo, questioning whether, and to what extent, the movement could yield change for *all* women (Duramy, 2020, p. 246). Reframing the movement with an international human rights approach and perceiving sexual harassment and sexual abuse as violence against women (UN Committee on the Elimination of Discrimination Against Women [CEDAW], 1992)[1] and gender inequality[2] will require individual states to adopt effective measures to realize these rights.

However, scholars argue that the current framework does not capture the voices of people who have been marginalized and, rather, depicts the issue as an educated, affluent, American women issue (Duramy, 2020, p. 246). Data collected at the World Health Organization (WHO) has shown that gender-based violence is the most pervasive human rights violation, affecting one in three women globally during their lifetime (WHO, 2021). Interpreting #MeToo through an international human rights legal lens will ensure that states are held accountable, ensuring responsibility to provide redress for victims of gender-based violence (Duramy, 2020, 253).

#MeToo in the United States: Change in attitudes and reports of sexual harassment in the workplace

Nonetheless, in the United States, the digital campaign that hinged on survivors' stories was largely successful in calling for action—or a reaction to a system that has clearly long failed survivors of sexual harassment. The hashtag landscape has been credited with allowing social media users to begin to understand their own history of sexual violence as part of a structural social problem rather than an individual experience with "bad men" (Mendes et al., 2018). Unsurprisingly, the viral movement led to a significant uptick in the number of reported cases of sexual harassment in organizations, with women feeling more empowered to speak up. The EEOC noted that sexual harassment reports increased by about 13.6% in from 2017 to 2018 (EEOC, 2020). The agency also reported finding "reasonable cause" to believe discrimination occurred in 20% of the charges in 2018 from the year prior (Sweeny, 2020, pp. 42–43). As a result, the EEOC recovered $70 million for victims of sexual harassment, a drastic increase from $47.5 million in 2017 (Sweeny, 2020, p. 43).

In addition, quantitative analyses of data collected from academic studies provide insight on how the heightened awareness of sexual harassment spurred by #MeToo led to changes in incidence of workplace sexual harassment. In a study published in the *Harvard Business Review*, researchers conducted two surveys before the viral movement took off in 2016 and a second survey two years later, in the fall of 2018, asking participants about the pervasiveness of sexual harassment in their workplaces (Johnson et al., 2019, pp. 5–8). The study found that fewer women reported being sexually coerced: In 2016, 25% of women reported sexual coercion; in 2018, that number declined to 16%. The most egregious forms of sexual harassment and unwanted sexual attention also declined following #MeToo, from 66% of women in 2016 to 25% of women in 2018. The study also revealed an increase in the report of gender harassment, from 76% of women in 2016 to 92% in 2018 (Johnson et al., 2019, pp. 5–8).

The statistical findings indicate that #MeToo did, indeed, disrupt the social stigma and the fear of coming forward, as women felt increased support and less self-blame to report harassment instances. As Johnson et al. (2019, p. 3) noted, "sharing one's story, while knowing that others had experienced the same things, helped the interviewees to feel less ashamed and created increased support and empowerment among women." The new level of visibility and heightened awareness of sexual harassment in the workplace may have also led to men changing their attitudes on the issue, as lower levels of sexual coercion and unwanted sexual attention were reported in 2018 (Johnson et al., 2019, p. 11). In a separate survey also published in the *Harvard Business Journal*, researchers gathered data on expectations of female and male employees in the post-#MeToo era (Atwater et al., 2019). The study revealed that 77% of men said they are more careful about conducting potentially inappropriate behavior, and 74% of women said they are more willing to speak out against sexual harassment (Atwater et al., 2019, pp. 4–6).

#MeToo and its impact in changing court decisions

Further establishing its influence in the discourse of sexual harassment, the #MeToo movement's ability to redirect the narrative as a systemic problem seemingly impacted a decision of a sexual harassment case that took place just months after the viral episode. In July 2018, the Third Circuit Court of Appeals reviewed the case of Plaintiff Sheri Minarsky. The lawsuit involved Minarsky—a part-time secretary to the director of Susquehanna Country's Department of Veterans Affairs, Thomas Yadlosky—who almost immediately after gaining employment experienced unwanted sexual advances by her supervisor (*Minarsky v. Susquehanna Cty.*, 2018). Minarsky says she endured the harassment for four years, but with a young daughter suffering from cancer, she refused to report any incidents because she feared it would consequently lead to her firing (Riley, 2019). When Minarsky ultimately filed a lawsuit, the lower court dismissed the case, citing that the *Faragher-Ellerth* defense applied—an affirmative defense employers may use to not be held liable if the company has taken reasonable care in correcting any sexual harassing behavior and the victim *unreasonably* failed to report the incident (Riley, 2019). The district court granted summary judgment in favor of the employer on all counts, stating that Minarky's silence was unreasonable:

> [T]he County's reasonable policies and responses … are set in stark contrast to the plaintiff's refusal or unwillingness to avail herself of the County's anti-harassment policy to bring Yadlosky's conduct to the attention of County officials. (*Minarsky v. Susquehanna Cty.*, 2018)

However, by the time the case reached the Third Circuit Court of Appeals, the viral force of #MeToo changed the trajectory of the decision. As respondents on the Internet advocated for a more survivor-centric solution to sexual harassment, the Court recognized the limitations of the sexual harassment laws while acknowledging the cultural shift in the language surrounding the gendered issue (Nenoff, 2020, p. 1349):

> This appeal comes to us in the midst of national news regarding a veritable firestorm of allegations of rampant sexual misconduct that has been closeted for years, not reported by the victims … a jury could conclude that the employee's non-reporting was understandable perhaps even reasonable. (*Minarsky v. Susquehanna Cty.*, 2018)

It is important to note that the Court's reference to #MeToo emphasized that the campaign provided an understanding of the pernicious impact of sexual harassment in the workplace—specifically, the hesitancy of victims to report a harassment incident and the lack of remedies in place to counter the problem. As we track the revisions to state laws pertaining to sexual harassment, it is important to ask: Did the changes focus on the most vulnerable groups?

Are post-#MeToo laws focusing on the correct groups?

In the post-#MeToo era, carefully examining if the new adopted policies benefited the groups most at risk is essential to determine if the campaign was successful. It is essential to note that how the federal law treats cases of sexual harassment may be starkly different than how states handle the issue; and more, how individual states approach the offense can also differ from one another (Nenoff, 2020, p. 1339). For purposes of this article, the findings will center on legal changes at the federal level as well as changes in California and New York, where the most sweeping legal effects took place, in order to track how regions at the epicenter of #MeToo have reacted to the mounting public pressure for change.

In order for states to successfully crack down on the epidemic of workplace sexual harassment, legal solutions need to be focused on the two most vulnerable groups. For women in positions of authority, new laws must tackle the men-to-women ratio in the workplace—particularly in positions of leadership, as heightened visibility is an underlying cause linked to a greater likelihood of sexual harassment for this particular group (Lopez et al., 2009). Additionally, measures must be

in place to protect a female employee from suffering professional and social retaliation after a harassment incident. For low-wage workers, the practice of mandatory, binding arbitration clauses and confidentiality clauses must be restricted or prohibited, as they are often used to conceal abuse by high-level executives and to silence victims (Ditkowsky, 2019). This vulnerable group faces persistent disadvantages due to their lack of bargaining power and knowledge of their legal rights. Therefore, laws should address the group's vulnerabilities by enacting mandatory training sessions informing employees of their rights.

Finally, based on this research I argue that legislation should be passed at the federal level in order to not only avoid ambiguity and confusion in criminalizing workplace sexual harassment but also ensure that protections are in place for *all* victims. The illegality of sexual harassment at the state level varies by state; and because not all state and local governments across the country have shown the same level of efforts to improve laws related to sexual harassment (Nenoff, 2020, p. 1329), the wide disparity between individual states could leave certain populations without access to effective legal measures. For instance, Mississippi does not have any state sexual harassment laws, and bills proposed to address sexual harassment since 2018 have died in committee (Nenoff, 2020, p. 1352). Even if plaintiffs in California and New York have gained additional statutory tools for redress in the post-#MeToo era, if nothing is passed on the federal level, how can victims outside of those states gain the protections they need?

Tracking changes in federal laws

The federal government generally criminalizes the most heinous forms of sexual harassment (Nenoff, 2020, p. 1330). But as #MeToo revealed, with many cases of workplace sexual harassment not reaching the level of criminality, laws at the federal level are considered "outdated, ineffective, or do not punish all types of sexual misconduct, and #MeToo wants to change that" (Nenoff, 2020, p. 1330). At the federal level, sexual harassment is classified as a form of sex discrimination under Title VII of the Civil Rights Act of 1964. The claims are generally broken down into two categories: hostile work environments and *quid pro quo* (Code of Federal Regulations, 2021).

Since #MeToo took the world by storm, Congress has proposed several bills to counter sexual harassment in the workplace; however, it is difficult to discern when or if the proposed legislation will ever pass. In June 2018, a group of lawmakers including then-Democratic Senator Kamala Harris and Republican Senator Lisa Murkowski introduced the Ending the Monopoly of Power Over Workplace Harassment through Education and Reporting or the "EMPOWER" Act (2021–2022), legislation that aims to prohibit the use of nondisclosure agreements in employment contracts and to require public companies to report the number of settlements pertaining to workplace harassment (National Partnership for Women and Families, 2019). Senator Murkowski's website describe the EMPOWER Act as "proposed legislation designed for the #MeToo era" (United States Senator for Alaska Lisa Murkowski 2018), as the bill will establish a confidential tip line to report workplace harassment in order to cater to victims who fear retaliation (Lobel, 2020). Aligned with the EMPOWER Act (2021–2022) is the Ending Secrecy About Workplace Sexual Harassment Act (2017), which requires "reporting by employers of the number of settlements with employees regarding claims of discrimination on the basis of sex, including verbal and physical sexual harassment" to the EEOC (Ending Secrecy About Workplace Sexual Harassment Act, 2017). It is important to note that the proposed legislation was a result from the firestorm of media attention garnered by #MeToo, as lawmakers recognized the pervasiveness of workplace sexual harassment in every industry and at every level of employment (Nenoff, 2020, p. 1345). Although the proposed bills acknowledged the hesitancy and reluctance of victims filing a harassment report and the power held by large companies to silence victims through nondisclosure agreements (NDAs), they fell short in targeting the main groups vulnerable to experiencing

workplace sexual abuse. For women in positions of authority, heightened visibility needs to be addressed as a risk factor that drives workplace sexual harassment. And low-wage workers are often classified as independent contractors and are not even protected against harassment under Title VII of the Civil Rights Act of 1964 (Ditkowsky, 2019, p. 117). Although the EMPOWER Act (2021–2022) bans employers from requiring the use of NDAs, voluntary agreements as part of a legal settlement were not banned (Nenoff, 2020, p. 1345). Due to a lack of bargaining power and legal protections, employers may continue to take advantage of a low-income employee's immediate needs by inserting more money in exchange for her silence (Ditkowsky, 2019, p. 97).

As a response to the cultural reckoning of #MeToo, Congress also attempted to address the issue of binding arbitration agreements in sexual harassment claims. In December 2017, two months after the viral #MeToo hashtag appeared, former Fox News Anchor Gretchen Carlson—whom many journalists and scholars credited with helping pioneer the #MeToo movement through her historic 2016 sexual harassment complaint against the chairman of Fox News, Roger Ailes (Hanlon, 2021)—joined a bipartisan group of lawmakers in introducing the Ending Forced Arbitration of Sexual Harassment Act of 2017 (Guynn, 2017). The Act states that for employers and employees filing a claim under Title VII, "no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a sex discrimination dispute" (Ending Forced Arbitration of Sexual Harassment Act, 2017).

Some scholars have pointed out the limitations of this bill, emphasizing that the Act appears to exclude only sexual harassment claims from arbitration, instead of excluding all employment claims—such as other types of harassment, discrimination, and assault (Ditkowsky, 2019, p. 91). Due to a lack of specificity, as currently phrased the bill does not provide enough protection for victims filing a report (Ditkowsky, 2019, p. 91). For workers subjected to mandatory, binding arbitration clauses, revisions to the laws must address a victim's right to a trial by jury as well as a fair binding decision (Ditkowsky, 2019, p. 92). Given that the Act does not offer a survivor-centric solution to the issue of workplace sexual harassment, the legislation fell short of addressing the vulnerability of the groups most at risk. Finally, all of the proposed federal bills have not been passed, and efforts to move the bills forward have stalled (Campbell, 2018). In order for the United States to successfully tackle the issue of workplace sexual harassment, Congress needs to take note from the two states leading the way in strengthening workplace protections for women.

Post-#MeToo: California laws

Possibly due to the fact that the high-profile cases that launched #MeToo were centered in California, the state has responded swiftly with a slate of new legislation. The sweeping changes include prohibiting secret settlements or the use of NDAs, requiring sexual harassment training for employers with five or more employees, and allowing a "single incident of harassing conduct" to sustain a claim if the harassment incident negatively impacted the employee's ability to do his or her job (Sweeny, 2020, p. 42). Examining the new California laws that are already in effect, it is important to discern whether the revisions have significantly improved workplace protections in California by determining whether they targeted the groups most at risk.

In January 2019, the state signed National Partnership for Women and Families (2019), which banned the use of NDA provisions in agreements allowing employees not to feel confined when exposing factual information that pertains to cases of sexual harassment (Nenoff, 2020, p. 1351). The law also aims to protect victims by preserving anonymity for those reporting harassment instances (Nenoff, 2020, p. 1351). In September 2018, California enacted Senate Bill 1343, which lowered "the threshold for the state's sexual harassment training requirements for employers" (S.B. 1343, 2018). Under the new law, training sessions—which are required to be provided to all supervisory and nonsupervisory employees, including temporary and seasonal employees—must include information on all federal and state statutory provisions related to sexual harassment as

well as the legal remedies in place that are available to victims (S.B. 1343, 2018). In addition, in September 2018, the California Legislature passed SB 1300 in which Section 12923 to the California Government Code specifically discourages judges from disposing summary judgment on harassment cases; the bill also rejects the prior "severe and pervasive" legal standard by allowing a single incident of harassing conduct to suffice" (California Special Districts, 2019).

California bills and women in authority

In a myriad of new laws implemented in California in the wake of #MeToo, there have been significant moves toward gender parity as a result of the campaign. This change is particularly crucial for women in positions of authority, as it is imperative that new legislation combat the lack of access to economic rights for female employees. A lack of representation of women in leadership positions is a primary cause driving sexual harassment instances, as victims occupy positions in which they are highly visible (Gruber, 1998, pp. 301–303). New laws combating workplace sexual harassment must tackle the very structure and numeric disadvantage that are placing women at greater risk. In October 2018, the state enacted Senate Bill 826, which required all publicly held corporations headquartered in California to have at least one woman serving on the board of directors (S.B. 826, 2018b). Under the new law, all publicly traded corporations with fewer than five members must have at least one woman on their corporate boards; if the corporation has five directors, there must be at least two female directors on the board; if a corporation has six or more directors, then it must have a minimum of three women on the board by the end of 2021(S.B. 826, 2018c). The new law enforces a stiff penalty for companies that do not comply: a fine of $100,000 for the first violation, and a $300,000 fine for any subsequent violation (S.B. 826, 2018d).

It is important to note that although the new legislation does not pertain to sexual harassment prevention, it is a bill that will greatly impact harassment cases. For one, #MeToo is aimed at tackling the corporate structure and system that has placed women in vulnerable positions of experiencing sexual harassment, and improving opportunities for women will be beneficial in establishing long-term, systemic change (Nenoff, 2020, p. 1350). Literature on workplace sexual harassment also notes that women will not be promoted to a higher-ranking management position unless a sizable proportion of women is already in place (McLaughlin et al., 2012, p. 627). With the new legislation stating it could take 40 to 50 years to achieve gender parity on company boards without the measure (S.B. 826, 2018a), the passage of the state law is envisioned as a catalyst for timely results in gender parity in corporate board seats in California. The social isolation that has often rendered women in positions of authority vulnerable to harassment will begin to decrease, which could lead to a decline in the number of sexual harassment cases reported.

California bills and low-wage workers

For low-wage workers, it is crucial that new legislation for redress emphasize the group's limited bargaining power and highlight that the group may not be aware of their legal rights (Ditkowsky, 2019, p. 96). The new California bills requiring mandatory sexual harassment training sessions for not only full-time employees but also temporary and seasonal employees will be highly beneficial to low-income workers, as they are supplied with more information regarding their legal rights. In addition, in the fall of 2019, Governor Gavin Newsom signed A.B. 51 (2019) into law, making California the first state to ban predispute mandatory arbitration of employment claims (Chambord, 2020). Because mandatory arbitration clauses primarily impact low-wage workplaces (Colvin, 2018, Riley 2019), revisions to arbitration laws will be analyzed from the standpoint of benefiting low-income women. Essentially, A.B. 51 (2019) bans most mandatory arbitration agreements arising under the California Fair Employment and Housing Act and the California Labor Code, and is more specific and strict than the language used in the federal proposals, as the ban

is not limited to solely sexual harassment claims but *all* harassment claims as well as discrimination and wage claims (Society for Human Resource Management [SHRM], 2020). Given that concrete changes need to establish a connection between sexual harassment and a lack access to economic and legal rights for women most vulnerable, solutions providing a wider range of bans are essential to cover the many structural layers that keep women oppressed. Broadening the range of the ban to cover *all* harassment as well as discrimination will lead to identifying more sexual harassment incidents and even help prevent them from occurring in the first place.

Furthermore, A.B. 51 (2019) also has measures in place to prevent an employer from seeking retaliation and includes the possibility of criminal penalties for employers who violate the law (A.B. 51, 2019). For low-income women, fear of "being retaliated against and losing their much-needed paychecks if they bring complaints" is a primary cause for not reporting instances of sexual harassment (Semuel, 2017). Although clearly, this new legislation—with its wider scope in prohibiting mandatory arbitration agreements in California and enforcing stricter penalties—will positively serve to benefit more victims, a district in the Eastern District of California issued a temporary restraining order barring the enforcement (*Chamber of Com. of the U.S. v. Becerra,* 2019), as critics challenged the validity of the law under existing federal law grounds. A coalition of business organizations filed several lawsuits arguing that the new law is preempted by the Federal Arbitration Act of 1926—and with its ongoing litigation process, it is unclear whether the state statute will survive the legal attacks (Chambord, 2020). It is important to note that, even when states pass stronger legislation that is more expansive in their reach than federal regulations, states alone do not have the power to alter the employment litigation landscape when federal laws remain outdated and unchanged. Therefore, it is imperative that Congress implement a nationwide strategy to formally criminalize workplace sexual harassment that will effectively reduce sexual harassment in the workplace.

California laws and all women

Legislative changes in California that will benefit *all* women, including both vulnerable groups, include banning the use of NDAs and allowing employees to keep their identity private in settlement agreements, as employers are establishing practices to improve the protections of sexual harassment victims. Furthermore, the major provisions codified in the California bills strengthen the legal rights of sexual harassment victims, as plaintiffs no longer need to prove a pattern of "severe or pervasive" behavior—with one incident of any form of sexual harassment constituting sufficient grounds for legal action. Although softening the federal "severe or pervasive" standard in sexual harassment cases will prove to be beneficial for victims who live in the state of California, it is crucial for Congress to mirror the state statute and recognize the limitations in adhering to an outdated regulation in order to provide legal protections for all women across the country.

Post-#MeToo: New York laws

In the wake of #MeToo, New York has also reacted with a string of legislative responses to combat sexual harassment in the workplace. In 2018, the state passed an amendment prohibiting confidentiality and nondisclosure clauses in sexual harassment settlements, unless the plaintiff prefers such provision (S.B. S7507C, 2018). Under the new law, employers are prohibited from using settlement agreements to prevent individuals from disclosing facts on sexual harassment claims (S.B. S7507C, 2018). In addition, as of October 2018, under the New York Labor Law, section 201-g, the state requires all employers to provide interactive sexual harassment prevention training to employees (NY Lab L § 201-G, 2019). Employers are required to share information on state and federal laws addressing sexual harassment and all available remedies in place during the

training sessions; moreover, written policies must include a "standard complaint form" for use by employees (NY Lab L § 201-G, 2019). Additionally, victims of sexual harassment in New York no longer need to meet the burden of proving harassment to be "severe and pervasive" in order for a case to be legally actionable (New York State, 2020). Moreover, new legislation in 2019 extended the statute of limitations for employment sexual harassment claims from one year to three years (New York State, 2020).

New York laws and women in authority

Similar to the new laws implemented in California, new laws in New York combatting sexual harassment attempt to provide a survivor-centric model that successfully serves the groups most at risk. For women in positions of authority, new laws must combat the lack of access to economic rights for female employees, specifically encouraging companies to tackle the men-to-women ratio in the workplace. Although not as strict as the Senate Bill 826 (2018a) passed in California, New York enacted the "Women on Corporate Boards Study" in December 2019 (S.B. S4278, 2020) in an attempt to enhance diversity on corporate boards. The law requires New York, with the Department of Taxation and Finance, to conduct a study on the number of women serving on boards of directors of both domestic and foreign corporations authorized to do business in the state (S.B. S4278, 2020). The law requires companies to report the number of directors on their boards and specify how many of those directors are women (S.B. S4278, 2020). The Department of State will then publish a report detailing the number of female directors, the total number of directors that constitute the board of each corporation, and an analysis of the change in number of women directors from previous years (Cartafalsa & Schild, 2020). The findings will be published on February 1, 2022—with a new report required every four years thereafter (Cartafalsa & Schild, 2020). As *heightened visibility*—a result of women's economic oppression—is an underlying cause that is linked to greater likelihood of sexual harassment for this vulnerable group, legislative efforts requiring companies to report on female representations on boards will help improve gender diversity in the workplace, and in return, could lead to a decline in incidence of sexual harassment cases.

New York laws and low-wage workers

On the other side of the spectrum, low-wage workers have also benefited from the string of legislation passed in the wake of #MeToo. In April 2018, the New York Law section 296-D extended employer liability for sexual harassment claims to cover nonemployees who provide services under a contract—including contractors, consultants, and vendors (NY Lab L § 296-D, 2019). Furthermore, effective July 2018, under section 7515 of the New York Civil Practice Law and Rules, employers with more than four employees are banned from mandating arbitration to resolve sexual harassment claims (NY CPLR § 7515, 7515, 2019). Both the prohibition on mandatory arbitration provisions for sexual harassment claims and the extended employer liability for sexual harassment claims to cover nonemployees can have a positive impact on workplace sexual harassment, especially for this vulnerable group, given their limited bargaining power.

Although the language in the New York bills successfully addresses the needs of the immediate groups most at risk, there are limitations in place as federal law preempts state law. For instance, the new state law amending the New York Civil Practice Law and Rules (CPLR) banning the confidential arbitration mandate states that the prohibition will be exempt in cases "where inconsistent with federal law"(NY CPLR § 7515, 7515, 2019)—making it uncertain whether the new bill will withstand the federal preemption by the Federal Arbitration Act. By January 2021, a number of cases were filed by companies including Fox News Network and LVMH Moet Hennessy Louis Vuitton, contesting lawsuits from workers seeking discrimination claims enacted by New York's new arbitration law (Casuga, 2021). As a result, at least two federal judges have ruled that the

Federal Arbitration Act preempts the New York state law (Casuga, 2021). Clearly, state statutes alone cannot change the employment litigation landscape, as they face limitations when challenged under the grounds of federal laws. Even if states like New York and California gain significant legal grounds in addressing workplace sexual harassment, protections cannot be strengthened for victims if federal laws remain outdated—or, worse, clash with the state's legislative efforts. It is essential that Congress pass legislation at the federal level that successfully meet the needs of victims most at risk.

New York laws and all women

Additionally, new state legislation that will benefit *all* victims of sexual harassment is banning NDAs, extending the statute of limitations for employment sexual harassment claims, and eliminating the restriction that the harassment case be "severe and pervasive" in order to be legally actionable—as these measures will establish more legal avenues for redress while protecting employees from professional and social retaliation after a harassment incident. Although New York and California, along with a handful of other states, have enacted new laws to eliminate the "severe and pervasive" standard for hostile work environment claims, under Title VII of the Civil Rights Act of 1964, a plaintiff must still prove that the actionable conduct was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (EEOC, 1990). This means that victims of sexual harassment who do not live in states that have softened the federal standard must still adhere to the outdated Title VII sexual harassment regulations concerning private employers. As existing legislation at the federal level is insufficient in protecting victims of sexual harassment, Congress must take note from states like New York and California in implementing a nationwide strategy that is better equipped to respond to the demands of #MeToo.

Conclusion

Ultimately, the impact of #MeToo is undeniable—but the magnitude of its impact remains to be determined. Through the use of the Internet, the digital campaign was successful in launching the subject of sexual harassment into the national—and international—consciousness by not only highlighting the prevalence of the phenomenon but also offering a platform for public discourse exposing the layered aspects of gendered violence. The hashtag landscape was able to produce social change at workplaces in the United States, as it positively impacted the progress of workplace equity by increasing awareness and visibility on the issue of sexual harassment and prompting major changes to the employment litigation landscape.

In lifting the veil of silence surrounding the taboo subject of workplace sexual harassment, #MeToo—although limited in some respects—has led to a push for legal reforms, prompting federal as well as state courts across the country to expand workplace protections for sexual harassment victims through legislative action. In response to the cultural reckoning, a series of bills were introduced in California and New York to establish more legal grounds for redress for all victims, but particularly for groups that face disproportionate risk: women in positions of authority and low-income women. As theory and research on workplace sexual harassment have identified a lack of access to economic and legal rights a risk factor for driving such harassment for the two vulnerable groups, both states were successful in putting forth strategies to address patterns underlying workplace sexual harassment.

However, at the federal level, Congress has fallen short in adopting legal solutions for the groups most as risk, as the proposed bills did not offer a survivor-centric resolution to the issue. As federal law preempts state statutes, changes to state legislation alone cannot alter the employment litigation landscape if laws at the federal level remain outdated and unchanged. Therefore,

it is imperative that Congress take note from the two states leading the way in strengthening protections for victims and implement a nationwide strategy to formally criminalize workplace sexual harassment. Moreover, legal changes at the federal level must recognize that gender violence and economic vulnerability are human rights issues that are inextricably linked in order to successfully grasp the broader context of workplace sexual harassment. In conclusion, although the full extent of the structural change and legal impact of the movement has yet to be determined, one thing is clear: #MeToo has evolved into a force to be reckoned with and is ultimately shifting the discourse beneath the law of workplace sexual harassment.

Notes

1. Under international human rights framework, obligations exist through a number of treaty monitoring bodies. Although nonbinding, most prominently, *violence against women* has been interpreted as a form of gender-based discrimination under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
2. The Human Rights Committee (1989) adopted its General Comment 18 in 1989 describing nondiscrimination as "any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

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References

A.B. 51, 2019 Leg., 2019-2020 Reg. Sess (Cal. 2019).

About: History & Vision. ME TOO. https://metoomvmt.org/get-to-know-us/vision-theory-of-change/.

Atwater, L. E., Tringale, A. M., Sturm, R. E., Taylor, S. N., & Braddy, P. W. (2019). Look ahead: How what we know about sexual harassment now informs us of the future. *Organizational Dynamics*, *48*, 4–6. https://www.sciencedirect.com/sdfe/pdf/download/eid/1-s2.0-S0090261618301529/first-page-pdf.

C.F.R.§ 1604.11(a) (2021).

California Special Districts. (2019). *What every California public entity needs to know about new Laws*. California Special Districts. https://www.sdrma.org/wp-content/uploads/2020/07/2019-CA-Special-District-Sept-Oct.pdf.

Campbell, A. F. (2018, July 18). A new house bill would bar companies from using nondisclosure agreements to hide harassment. *Vox*. https://www.vox.com/2018/7/18/17586532/sexual-harassment-bill-ban-nondisclosure-agreements-ndas-congress-metoo.

Cartafalsa, J. B., & Schild, J. R. (2020, January 10). New York enacts 'women on corporate boards study.' *Ogletree Deakins*. https://ogletree.com/insights/new-york-enacts-women-on-corporate-boards-study/.

Casuga, J. A. B. (2021, January 11). New York's #MeToo arbitration law faces appeals court battles. *Bloomberg Law*. https://news.bloomberglaw.com/daily-labor-report/new-yorks-metoo-arbitration-law-faces-appeals-court-battles.

Chamber of Com. of the U.S. v Becerra. No. 19-cv-02456 (E.D. Cal. 2019). https://www.californiaemploymentlawreport.com/wp-content/uploads/sites/747/2019/12/AB-51-TRO.pdf.

Chambord, V. B. H. (2020, July 13). Court enjoins California's ban on mandatory arbitration of statutory employment claims: 10 questions and answers for employers. *Ogletree Deakins*. https://ogletree.com/international-employment-update/articles/july-2020/united-states/2020-07-13/court-enjoins-californias-ban-on-mandatory-arbitration-of-statutory-employment-claims-10-questions-and-answers-for-employers/.

Colvin, A. J. S. (2018, April 6). The growing use of mandatory arbitration. *Economic Policy Institute*. https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/.

Ditkowsky, M. (2019). #UsToo: The disparate impact of and ineffective response to sexual harassment of low-wage workers. *UCLA Women's Law Journal*, *26*(2), 69–125. https://doi.org/10.5070/L3262045668

Duramy, B. F. (2020). #MeToo and the pursuit of women's international human rights. *University of San Francisco Law Review*, *54*(2), 215–245. https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1870&context=pubs.

Ending Forced Arbitration of Sexual Harassment Act, S. 2203, 115th Cong (2017).

Ending Secrecy About Workplace Sexual Harassment Act, H.R. 4729, 115th Cong (2017).

Ending the Monopoly of Power Over Workplace Harassment through Education and Reporting Act (EMPOWER), H.R. 5842, 117th Cong (2021–2022).

Folke, O., Rickne, J., Tanaka, S., & Tateishi, Y. (2020). Sexual harassment of women leaders. *Daedalus*, *149*(1), 180–197. https://www.jstor.org/stable/10.2307/48563040.

Golshan, T. (2017, October). Study finds 75 percent of workplace harassment victims experienced retaliation when they spoke up. *Vox*. https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts.

Gruber, J. E. (1998). The impact of male work environments and organizational policies on women's experiences of sexual harassment. *Gender & Society*, *12*(3), 301–320. https://doi.org/10.1177/089124329801200304

Guynn, J. (2017, December 6). 'Enough is enough': Gretchen Carlson says bill ending arbitration would break silence in sexual harassment cases. *USA Today*. https://www.usatoday.com/story/money/2017/12/06/bipartisan-bill-would-eliminate-forced-arbitration-break-silence-sexual-harassment-cases/925226001/.

Hanlon, G. (2021, July 01). Former fox news sex harassment whistleblower Gretchen Carlson on Cosby release: 'We will continue this fight.' *People*. https://people.com/crime/gretchen-carlson-reacts-bill-cosby-release-metoo-movement/.

Human Rights Watch. (2021). *Gender-based violence in the workplace*. Human Rights Watch. https://www.hrw.org/tag/gender-based-violence-workplace#.

Johnson, S. K., Keplinger, K., Kirk, J. F., & Barnes, L. (2019). Women at work: Changes in sexual harassment between September 2016 and September 2018. *PLoS One*, *14*(7), 2–8. https://doi.org/10.1371/journal.pone.0218313

Lobel, O. (2020). Knowledge pays: Reversing information flows and the future of pay equity. *Columbia Law Review*, *129*(3), 564–595. https://www.columbialawreview.org/content/knowledge-pays-reversing-information-flows-and-the-future-of-pay-equity/.

Lopez, S. H., Hodson, R., & Roscigno, V. J. (2009). Power, status, and abuse at work: General and sexual harassment compared. *The Sociological Quarterly*, *50*(1), 3–27. http://www.jstor.org/stable/40220119. https://doi.org/10.1111/j.1533-8525.2008.01131.x

MacKinnon, C. A. (2019, March 24). Where #MeToo came from and where it's going. *The Atlantic*. https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo- has-changed/585313/

Mclaughlin, H., Uggen, C., & Blackstone, A. (2012). Sexual harassment, workplace authority, and the paradox of power. *American Sociological Review*, *77*(4), 625–647. https://doi.org/10.1177/0003122412451728

Mclaughlin, H., Uggen, C., & Blackstone, A. (2017). The economic and career effects of sexual harassment on working women. *Gender & Society*, *31*(3), 333–358. http://www.jstor.org/stable/44280313. https://doi.org/10.1177/0891243217704631

Mendes, K., Ringrose, J., & Keller, J. (2018). #MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism. *European Journal of Women's Studies*, *25*(2), 238–241. https://doi.org/10.1177/1350506818765318

Mendes, K., Ringrose, J., & Keller, J. (2019). Hashtag feminism sharing stories with #BeenRapedNeverReported. In *Digital feminist activism: Girls and women fight back against rape culture* (pp. 127–130). Oxford University Press. https://doi.org/10.1093/oso/9780190697846.003.0006

Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986).

Minarsky v. Susquehanna Cty., 895 F.3d 303-313 (3d Cir. 2018).

National Partnership for Women and Families. (2019). *The Empower Act: Legislation to combat workplace harassment*. National Partnership for Women and Families. https://www.nationalpartnership.org/our-work/resources/economic-justice/sexual-harassment/the-empower-act.pdf.

Nenoff, A. (2020). #MeToo: A look at the influence and limits of 'hashtag activism' to effectuate legal change. *University of Illinois Law Review*, *4*(4), 1330–1350.

New York State. (2020). New Workplace Discrimination and Harassment Protections. https://dhr.ny.gov/workplaceharassment.

NY CPLR § 7515 (2019).

NY Lab L § 201-G (2019).

NY Lab L § 296-D (2019).

Palmer, J. E., Fissel, E. R., Hoxmeier, J., & Williams, E. (2021). MeToo for whom? Sexual assault disclosers before and after #MeToo. *American Journal of Criminal Justice*, *46*(1), 68–106. https://doi.org/10.1007/s12103-020-09588-4

Patrick, R. S. (2019, February 26). #MeToo and Minarsky: The evolution of the Faragher-Ellerth Affirmative Defense. *Kentucky Law Journal*. https://www.kentuckylawjournal.org/blog/index.php/2019/02/26/metoo-and-minarsky-the-evolution-of-the-faragher-ellerth-affirmative-defense.

Riley, S. P. #MeToo and Minarsky: The Evolution of the Faragher-Ellerth Affirmative Defense. *Kentucky Law Journal* (February 26, 2019). https://www.kentuckylawjournal.org/blog/index.php/2019/02/26/metoo-and-minarsky-the-evolution-of-the-faragher-ellerth-affirmative-defense.

S.B. 1343 § 2(a), 2017-2018 Reg. Sess. (Cal. 2018).

S.B. 820 § 1(a), 2017-2018 Reg. Sess (Cal. 2018).

S.B. 826 § 1(a), 2017-2018 Reg. Sess. (Cal. 2018a).

S.B. 826 § 1(c), 2017-2018 Reg. Sess. (Cal. 2018b).

S.B. 826 § 2(b), 2017-2018 Reg. Sess. (Cal. 2018c).

S.B. 826 § 2(e)(1)(B)-(C), Reg. Sess. (Cal. 2018d).

S.B. S4278, 2019-2020 Legislative Sess. (NY. 2020). https://www.nysenate.gov/legislation/bills/2019/s4278

S.B. S7507C, 2017-2018 Legislative Sess (NY, 2018). https://www.nysenate.gov/legislation/bills/2017/s7507.

Semuel, A. (2017, December 27). Low-wage workers aren't getting justice for sexual harassment. *The Atlantic*. https://www.theatlantic.com/business/archive/2017/12/low-wage-workers-sexual-harassment/549158/.

Shenin, D., Thompson, K., McDonald, S. N., & Clement, S. (2016, January 27). Betty Friedan to Beyonce: Today's generation embraces feminism on its own terms. *The Washington Post*. https://www.washingtonpost.com/national/feminism/betty-friedan-to-beyonce-todays-generation-embraces-feminism-on-its-own-terms/2016/01/27/ab480e74-8e19-11e5-ae1f-af46b7df8483_story.html?utm_term=.89a0600870e4.

Society for Human Resource Management (SHRM) (2020). *What are the California rules regarding mandatory arbitration agreements, and how do they differ from federal law?* SHRM. https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/californiamanadatoryarbitration.aspx.

Sweeny, J. (2020). The #MeToo movement in comparative perspective. *American University Journal of Gender, Social Policy, & Law*, *29*(33), 42–43.

U.S. Equal Employment Opportunity Commission (EEOC) (1980). Guidelines on discrimination because of sex. *Federal Register*, (45), 14616–14611.

U.S. Equal Employment Opportunity Commission (EEOC) (1990). *Policy guidance on current issues of sexual harassment*. U.S. Employment Opportunity Commission. https://www.eeoc.gov/laws/guidance/policy-guidance-current-issues-sexual-harassment.

U.S. Equal Employment Opportunity Commission (EEOC) (2016, June). Select task force on the study of harassment in the workplace. https://www.eeoc.gov/select-task-force-study-harassment-workplace.

U.S. Equal Employment Opportunity Commission (EEOC) (2020). *Charges alleging sex-based harassment (charges filed with EEOC) FY 2010- FY 2020.* U.S. Equal Employment Opportunity Commission. https://www.eeoc.gov/statistics/charges-alleging-sex-based-harassment-charges-filed-eeoc-fy-2010-fy-2020.

UN Committee on the Elimination of Discrimination Against Women (CEDAW) (1992). *CEDAW General Recommendation No. 19: Violence against women*. https://www.refworld.org/docid/52d920c54.html.

UN Human Rights Committee (HRC) (1989). *CCPR General comment no. 18, Non-discrimination*. https://www.refworld.org/docid/453883fa8.html

United States Senator for Alaska Lisa Murkowski. (2018). *Bustle: What is the EMPOWER Act? This workplace harassment bill could make NDAs a thing of the past*. United States Senator for Alaska Lisa Murkowski. https://www.murkowski.senate.gov/press/article/bustle-what-is-the-empower-act-this-workplace-harassment-bill-could-make-ndas-a-thing-of-the-past.

World Health Organization (WHO). (2021). *Violence against women*. World Health Organization. https://www.who.int/news-room/fact-sheets/detail/violence-against-women.