



TIME'S UP ACT

Combating Sexual Harassment
and Sexual Assault

The Largest Overhaul in Modern Connecticut History of Sexual Harassment Laws

PROBLEM: INADEQUATE NOTICE Employees simply don't know their rights, the protections that exist under the law or where to turn to if they are a victim of sexual harassment

- Under current law, employers are only required to post, on the wall, information concerning the illegality of sexual harassment and remedies available to victims of sexual harassment. This required notice is grossly inadequate, and also it is virtually impossible for CHRO to legally enforce this requirement.

SOLUTIONS: In order to ensure that employees know their rights and where to turn to if they are a victim of sexual harassment

- Amend the statute to require that notice of sexual harassment** remedies and policy be emailed to each employee at least once a year, in addition to posting at workplace. Not only will this ensure that each employee actually receives it; it will also serve as proof that the employer fulfilled its notice requirement.
- Significantly increase the fine**, up from a mere \$250, which CHRO can impose on an employer that fails to provide the statutorily required notice.

PROBLEM: INADEQUATE TRAINING The requirements for training of employees regarding the illegality of sexual harassment are grossly inadequate

- First, under current law, only employers with 50 or more employees are required to provide training.
- Second, even then, training is only required for supervisory employees. Finally, there is no required content for the training.

SOLUTIONS:

- Require sexual harassment training at all employers with 3 or more employees** (instead of the current 50 or more thresholds).
- Require training of all employees**, not just supervisory employees.
- Require training not only to be supervisor-focused, but also protected employee focused**, with ample information about remedies and prohibited behavior.
- Give CHRO the resources it needs** to go out into the community and conduct on-site trainings.

PROBLEM: COMPLAINT PROCESS FAR TOO RESTRICTIVE

Currently, victims of sexual harassment and other employment discrimination are forced to file a complaint with CHRO within an unfairly short period of time – within 6 months of the actual harassment or discrimination – or forever lose their rights to file a complaint or sue. That is not right. Moreover, the statute of limitations to file a lawsuit after CHRO has released jurisdiction is similarly unfairly brief.

- A victim of sexual harassment is required to go through CHRO to file a complaint before they can bring suit in Superior Court. However, the “statute of limitations” for filing a complaint at CHRO is very tight – within 6 months of the sexual harassment or other employment discrimination (46a-82 (f)).
- Then, in the event that CHRO allows a complainant to sue in Superior Court, the suit must be filed 1) within 90 days of the CHRO release (46a-101 (e)), and 2) within two years of the CHRO complaint having been brought (46a-102).



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SOLUTIONS: It is difficult for many victims of sexual harassment and other employment discrimination to come forward, that's why Senate Democrats are proposing:

- a) **Extend the deadline for a victim to go to CHRO and file a complaint to 2 years** after the alleged harassment or discrimination, instead of 180 days.
- b) **Eliminate the 90 day deadline to file after CHRO release**, and instead just extend the statute of limitations for filing suit in court to 2 years after CHRO has released jurisdiction, instead of the current 2 years after the complaint is initially filed.

PROBLEM: INADEQUATE INJUNCTIVE RELIEF

Employees at businesses large and small deserve to be protected under Connecticut law. However;

- Under current law CHRO can only petition the court for protective injunctive relief for employees at employers with 50 or more employees. That is grossly unfair to employees at smaller employers, who deserve just as much protection as employees at larger employers.

SOLUTION: Permit CHRO to protect employees with temporary injunctive relief if they work for employers with 3 or more employees, not the current 50 employee threshold.

PROBLEM: INADEQUATE PENALTIES AND LIABILITY

Punitive damages are currently not allowed.

First, unlike several of its other subject areas, CHRO cannot petition the court for punitive damages, for sexual harassment and other employment discrimination, even at employers where there are repeat offenses and especially egregious instances of harassment or discrimination. Second, and equally important, under current Connecticut Supreme Court precedent, punitive damages are not allowed for sexual harassment and other employment discrimination even in private lawsuits. Senator Looney

- **We need to strengthen CHRO's powers.** Right now, CHRO can't petition the court for damages, including punitive damages for sexual harassment and other employment discrimination, even at employers where there is repeat and especially egregious instances of harassment and discrimination.
- With regard to punitive damages in private actions, the Connecticut Supreme Court in its December 2016 decision in the Tomick v. UPS case held that section 46a-104 of the General Statutes does not allow for punitive damages for sexual harassment and other employment discrimination, even though the statute allows courts in such cases to grant "such legal and equitable relief which it deems appropriate, including, but not limited to, temporary or permanent injunctive relief, attorney's fees and court costs." The Court based its decision on the fact that, despite the seemingly broad allowance of damages, punitive damages are not specifically allowed.

SOLUTION: Senate Democrats want to allow both CHRO and private litigants to request punitive damages in sexual harassment and other employment discrimination cases, especially at employers that have retaliated against complainants, been egregiously negligent in punishing or preventing harassment, or have multiple complaints about harassment or other discrimination.

- **Authorize CHRO to petition Superior Court for damages**, including punitive, as is permitted in CGS § 46a-89(b) (2) for other discriminatory practices. Penalties should increase at employers with repetitive violations.
- Amend 46a-104 to specifically allow punitive damages to private litigants.
- Additionally, our plan calls for allowing a judge to require legal fees be awarded to the victim and requiring immediate corrective action that does not penalize the victim.



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PROBLEM: (CHRO IS UNDERRESOURCED FOR ITS MASSIVE, CRITICALLY IMPORTANT RESPONSIBILITIES).

There are not enough investigators and other enforcement officers to allow the agency to fulfill its critically important role of protecting Connecticut citizens from sexual harassment, other employment discrimination, housing discrimination and the myriad of other areas it must cover

- CHRO is a currently a mandatory stop for administrative enforcement for state remedies for sexual harassment and other employment discrimination .
- During calendar year 2017, CHRO processed 4600 total complaints and received 2490 new complaints. Over 1800 of these new complaints were about employment discrimination, and 158 were about sexual harassment. However, the last three months of 2017 saw a 37 percent increase in sexual harassment filings compared to the same period in 2016.
- And yet, CHRO has only 66 employees, only 32 of whom are investigators. Of those 32, only 20 are available to investigate matters other than Affirmative Action Contract Compliance and fair housing.
- Because of these inadequate resources, complaints take significant time to bring to a conclusion. According to CHRO, the average time for finding reasonable cause for all cases since 2011 is 20.4 months just to find reasonable cause (just under the statutory 21 month limit). Then, additional significant time goes by if reasonable cause is found and the case is certified for public hearing.

SOLUTIONS:

- a) In addition to giving CHRO additional enforcement tools, we must provide for more investigative and enforcement capacity at the agency.
- b) At the same time we significantly strengthen CHRO, we also should explore ways to allow employees to better directly utilize the court system in certain circumstance.
- c) Following California's lead, Connecticut could create new authority for attorneys and other private actors to bring actions on behalf of CHRO for violations of anti-discrimination statutes and sexual harassment protections. California responded to similar problems Connecticut faces by passing the Private Attorney General Act. Cali. Lab. Code § 2698 et seq. In California, anyone wishing to bring a claim must give notice to the state agency, and the other parties, and only after the state has had 60 days to act on the matter can the private actor bring the action. The private actor can bring a claim for violations against herself or himself, but also for violations committed against other employees. The monetary damages are determined by statute, based on the number of employees and time exposed to the harassment, with allocation to the state and all the victims.

PROBLEM: SECRET AGREEMENT FOR NON_DISCLOSURE

What we have seen in Hollywood with Harvey Weinstein, at Fox News with Bill O'Reilly and Roger Ailes, and in the Boston Archdiocese, is that when settlement agreements have non-disclosure agreements victims are unable to warn others at risk. The offenders become emboldened and continue to commit sex crimes.

SOLUTIONS: Prohibition on settlement agreements and contracts that prohibit a party from disclosing information regarding sexual harassment or sexual assault.



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Eliminating the Criminal Statute of Limitation on Sexual Assault

PROBLEM: DRACONIAN STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT

Victims of sexual assault can take decades to acknowledge what happened and build up the courage to accuse their offenders and we need to ensure that they are able to seek justice under Connecticut law

- In some cases the statute of limitations for sexual assault of a minor is the victim's 48th birthday, and there is no statute of limitations for rape of a minor or when DNA evidence was collected at the crime scene, but for other acts of rape and sexual assault, the statute of limitations is five years.

SOLUTION: Eliminate the statute of limitations for all felony sexual assault crimes, which would include forced rape, rape by drugging the victim, unwanted sexual contact, and sexual assault with use of a firearm.

Strengthening and Expanding Mandated Reporter Laws

PROBLEM: INADEQUATE PROTECTION OF MINORS IN THE FORM OF MANDATED REPORTERS AND SCHOOL ADMINISTRATORS

From Larry Nassar and US Gymnastics Team to Jerry Sandusky and Penn State, well publicized cases of sexual assault committed against minors and a system that failed to protect them.

SOLUTION: Connecticut should conduct a thorough review of and potentially expand its list of mandated reporters of sexual assault committed against minors and enact penalties against those who are mandated reporters and fail to report. In order to protect our students and teachers Connecticut should require school administrators be placed on an immediate leave of absence when an accusation of sexual harassment has been made.

- The superintendent of the school district should be required to immediately conduct an investigation into the accusation to determine its validity.