

Bill Seeks To Block NDAs For Job-Based Sexual Harassment

By [Rachel Stone](#) · Jun 29, 2022, 6:23 PM EDT ·

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House representatives from both sides of the aisle said Wednesday that they had introduced a bill that would permit workers to speak up about sexual harassment or sexual assault in the workplace, regardless of whether they signed a nondisclosure agreement.

The bill, known as the "Speak Out Act" or H.R.8227, would ban the enforcement of pre-dispute nondisclosure agreements and nondisparagement contract clauses for workers who have experienced sexual harassment in the workplace, an issue that affects one in three women over the course of their careers, according to the bill.

"Sexual harassment in the workplace forces many women to leave their occupation or industry, or pass up opportunities for advancement," the bill text reads. "In order to combat sexual harassment and assault, it is essential that victims and survivors have the freedom to report and publicly disclose their abuse."

According to the bill, these confidentiality agreements can allow harassment and discrimination to continue by muzzling survivors and enabling those who commit abuse.

"Prohibiting pre-dispute nondisclosure and nondisparagement clauses will empower survivors to come forward, hold perpetrators accountable for abuse, improve transparency around illegal conduct, enable the pursuit of justice, and make workplaces safer and more productive for everyone," the bill continues.

Democratic Rep. Lois Frankel of Florida sponsored the bill and was joined by Democratic co-sponsors, Reps. Jerrold Nadler of New York, Pramila Jayapal of Washington, David Cicilline of Rhode Island and Cheri Bustos of Illinois, along with Republican Reps. Ken Buck of Colorado, Morgan Griffith of Virginia and Burgess Owens of Utah.

The Speak Out Act was introduced in the House on Friday and was referred to the House Committee on the Judiciary.

Pre-dispute nondisclosure agreements are provisions found in employment contracts agreed to before a potential lawsuit that prevent parties from talking about conduct or whether there was a related settlement, or sharing certain information. The bill does not address post-dispute agreements or contract clauses.

In an interview with Law360 on Wednesday, Frankel said that she believes that if it passes, this bill will make workplaces safer, in part, because perpetrators will be aware that wrongdoings can't be hidden. "To me, this is more prevention," she said.

And while she noted that "everything is pretty rocky up here in Congress," she cited a recent successful bipartisan bill prohibiting workers from having to arbitrate sexual harassment and assault claims, and she noted that the bill

had many of the same co-sponsors. The bill, The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, became law in March 2022.

"When you take this bill and you put it alongside what we did with the prohibition against forced arbitration...we will have made a giant step towards making the workplace safer for everyone," Frankel said Wednesday.

Gretchen Carlson and Julie Roginsky, two former Fox News employees who sued Fox chairman Roger Ailes for sexual harassment and later founded an advocacy group aimed at eliminating NDAs and arbitration clauses, have vehemently backed the legislation and advocated for its passage.

In an interview with Law360 on Wednesday, Carlson said she sees it as a continuation of the March forced arbitration law, which she called the biggest change to labor law in the last hundred years. Lawmakers have credited her with helping shepherd the bill toward a rare showing of bipartisan support.

"We both have been under NDAs, as have millions of other women facing harassment and assault across our country, unfortunately," Carlson told Law360.

"We at our organization Lift Our Voices believe that these two silencing mechanisms, [NDAs and forced arbitration], are really what have kept these issues at bay and pushed women out of the workforce," she said.

Since Roginsky and Carlson began advocating, Carlson said that there has been a change in how the issue is perceived among Republican lawmakers. When she first introduced the arbitration bill in 2017, she said, it garnered

mostly Democrat support. However, when she re-introduced the bill last July, she said she noticed a different tone.

"I do think there has been this shift as more stories come out, and as people realize the movement isn't going away," she said. "It became indefensible, and I think that it has helped."

According to Wednesday's news release from Frankel, a "companion" bill is forthcoming in the Senate by a bipartisan group of lawmakers including Sens. Kirsten Gillibrand, D-N.Y., Marsha Blackburn, R-Tenn., Mazie Hirono, D-Hawaii, and Lindsey Graham, R-S.C.

--Additional reporting by Amanda Ottaway. Editing by Nick Petrucio.