

The EMPOWER Act

Ending the Monopoly of Power Over Workplace harassment through Education and Reporting

Each year, millions of workers face harassment based off of sex, gender identity, sexual orientation, race, and other factors. The Equal Employment Opportunity Commission (EEOC) estimates that 90% of individuals who say they have experienced harassment never take formal action, often due to a pervasive culture of abuse and retaliation.

Workplace harassment is illegal, but still pervasive. We must address gaps in the law that make it so.

First, in many workplaces, silence is reinforced by nondisparagement and nondisclosure agreements (NDAs) that employees are often forced to sign as a condition of employment, which can be hidden in simple employment contracts and offers of employment. Individuals who sign on to silence as a condition of employment often do so without representation.

Second, public companies owe a duty to their shareholders and customers to disclose expenses paid in connection with harassment claims. Allowing companies to keep silent workplace harassment settlements and awards allows them to perpetuate the culture of abuse.

Third, companies are allowed to write off their costs when litigating or settling claims of workplace harassment. This effectively allows companies to treat workplace harassment claims as simply the “cost of doing business.” Ultimately, these write-offs remove important financial incentives for employers to prevent or punish harassers.

Fourth, on the survivors’ side, there are financial disincentives for plaintiffs to stand up against harassers in litigation or settlements. Survivors who speak out against workplace harassment should not be penalized under the tax code when they receive payments for a settlement.

Finally, the silence around harassment in the workplace may persist because some individuals lack critical knowledge and awareness about what qualifies as harassment. We must ensure that all employers and employees are educated about their rights and duties at the workplace, and know how to create a respectful workplace culture to prevent harassment in the future.

Accordingly, the EMPOWER Act:

- Prohibits non-disparagement and non-disclosure agreements (NDAs) as a condition of employment, promotion, compensation, benefits, or change in employment status;
- Requires publicly-traded companies to disclose in annual SEC filings the number of settlements, judgments, and aggregate settlement amounts in connection with workplace harassment;
- Prohibits companies from receiving tax deductions for expenses paid in connection with workplace harassment settlements, litigation, and awards;
- Protects plaintiffs’ awards and settlements received in connection with workplace harassment settlements as nontaxable income; and ensures that backpay is not taxed unjustly;
- Requires development and dissemination of workplace training programs at the EEOC to educate workers and employers on how to foster safe and respectful workplaces.

This bipartisan bill is co-led by Rep. Lois Frankel and Rep. John Katko. With questions or to cosponsor, please contact Becca Flikier in Rep. Frankel’s office at Becca.Flikier@mail.house.gov.