



Rhode Island Society for Human Resource Management State Chapter

Statement of Gregory Tumolo, Esq.

On behalf of the Rhode Island Society for Human Resource Management State Chapter

Submitted to the House Committee on Labor

H8277 – An Act Relating to Labor and Labor Relations – Sexual Harassment, Education and Training in the Workplace

June 7, 2018

To Chairman Craven and the Honorable Members of the House Committee on Labor:

My name is Gregory Tumolo and I currently serve in the role of Co-Director of State Legislative Affairs for the Rhode Island Society for Human Resource Management State Chapter (“RI SHRM”). RI SHRM is an affiliate of the Society for Human Resource Management (“SHRM”), the world’s largest HR professional society representing more than 290,000 members in more than 165 countries around the world. I am grateful for the opportunity to provide testimony to the House Committee on Labor on **H8277 – An Act Relating to Labor and Labor Relations – Sexual Harassment, Education and Training in the Workplace.**

RI SHRM represents more than 800 HR professionals throughout the State of Rhode Island. Our members are a true cross-section of the Rhode Island economy, coming from such diverse sectors as education, government, healthcare, hospitality, manufacturing, non-profit, professional services, small business, and technology. Our perspective on workplace issues is unique because we represent a profession that spans all industries, including companies and workforces large and small.

As many of you know, HR professionals are on the front lines of preventing and addressing unlawful sexual harassment in the workplace. Their day-to-day responsibilities often include implementing and periodically updating their employer’s workplace policies against sexual harassment; conducting education and training programs on sexual harassment prevention for existing employees and new hires as part of the on-boarding process; investigating harassing behavior, whether or not a formal complaint is filed; imposing disciplinary action, up to and including termination of employment, for employees found to have engaged in harassing behavior;

and ensuring that victims of sexual harassment have the tools and resources that they need to feel safe and comfortable at work, including referral to employee assistance programs. Simply put, the role of HR professionals in building healthy workplace cultures cannot be overstated.

RI SHRM is deeply troubled by the fact that unlawful sexual harassment remains a persistent problem in Rhode Island, despite past legislative efforts to mandate the dissemination of workplace policies against sexual harassment and to encourage employers to provide education and training to new and existing employees. While we believe that H8277 represents an important step toward strengthening existing sexual harassment protections under Rhode Island law, we cannot support the legislation for two reasons: (1) the legislation fails to take into consideration the paramount role of organizational culture in preventing workplace harassment; and (2) the legislation imposes a new compliance burden on Rhode Island employers already struggling to comply with existing employer mandates (e.g. paid sick and safe leave mandate that goes into effect on July 1, 2018) and may lead to the use of inferior training methodologies.

I. The Role of Organizational Culture in Harassment Prevention

In January 2018, SHRM's President and CEO, Johnny C. Taylor, Jr. testified before a special legislative commission in California similar to Rhode Island's own House Special Legislative Commission to Study Unlawful Sexual Harassment in the Workplace. In his testimony, President Taylor repeatedly reaffirmed that "culture will always trump compliance" and that policies, education, and training "must be part of a holistic culture of non-harassment that starts at the top."

An organization's culture is much more than being a nice place to work where employees feel happy and engaged. An organization's culture represents who we are and what we believe on a deeper level. President Taylor stressed—and RI SHRM agrees—that employers cannot rely solely on legal compliance strategies if they want to succeed in preventing and addressing sexual harassment in the workplace. There needs to be a renewed focus at the highest levels of the organization on creating and maintaining a positive and productive workplace culture built on principles of inclusivity, mutual respect, and non-harassment.

A renewed focus on the role of organizational culture recognizes that many problematic behaviors and situations in the workplace never rise to the legal definition of "sexual harassment" and may fall outside the scope of an employer's sexual harassment policy. Professor Kim M. Cobb of the Georgia Institute of Technology, a leading proponent for the advancement of women in the sciences, summarized this problem in a recent interview with the *Chronicle of Higher Education*: "There's a big gray zone between legal sexual harassment and a culture of inclusion. . . . In that gradient, real damage is done on a daily basis that changes people's lives and changes people's careers."

As a practicing labor and employment attorney, I have spent approximately a decade drafting and implementing sexual harassment policies, investigating allegations of sexual harassment and retaliation, and conducting sexual harassment prevention training for employers throughout Rhode

Island and neighboring Massachusetts. I know from firsthand experience that President Taylor and Professor Cobb are correct: that education and training are simply not enough to address the real and lasting damage that occurs when a workplace is permeated by unacceptable behaviors that do not rise to meet the legal definition of a hostile work environment.

I have found that “zero tolerance” policies are ineffective when employees don’t feel safe to report harassment, when there is no mechanism to protect employees who do report, and when there is no trust in what will eventually happen to the harasser. I also have found that regular education and training are ineffective in a workplace where bad behavior is silently tolerated and employees who report are marginalized, distrusted, bullied, or forced out. Accordingly, I fear that H8277’s new education and training mandate will impose a new burden on Rhode Island employers without resulting in a measurable decrease in claims of workplace harassment.

II. Mandatory Sexual Harassment Education and Training

As a general rule, RI SHRM is opposed to one-size-fits-all employer mandates. We believe that the benefits of such mandates are generally outweighed by the administrative burden and expense placed on employers. Rhode Island employers—particularly, the small businesses with less than fifty employees that form the backbone of our state’s economy—need more flexibility to respond to workplace issues and not less.

Moreover, our experience has shown that employers with healthy workplace cultures already take sexual harassment prevention seriously without being mandated to do so. They take every allegation seriously, investigate promptly, adjudicate fairly, discipline appropriately, train at least annually, and reinforce training and education regularly. In doing so, they are able to recruit and retain top talent, enhance employee engagement, reduce turnover costs, and increase productivity. They recognize that fostering a voluntary culture of compliance is a true competitive advantage.

Instead of mandating that all Rhode Island employers provide sexual harassment prevention training on an aggressive timeline (i.e. within three months of commencement of employment or promotion to a managerial role), policymakers should refocus their efforts on how to incentivize employers to voluntarily develop and maintain healthy workplace cultures. With the right culture in place, inappropriate behavior would be averted or resolved long before it rises to a violation of the employer’s sexual harassment prevention policy.

By way of example, policymakers could provide employers with an affirmative defense to harassment liability if they can demonstrate: (1) that they have adopted written policies against sexual harassment (as required by existing law); (2) that they have voluntarily provided sexual harassment education and training to their employees and supervisors on at least an annual basis; (3) that they have exercised reasonable care to prevent and correct any harassing behavior; and (4) the plaintiff employee has unreasonably failed to take advantage of the reporting opportunities provided by the employer to avoid harm. A slightly different formulation of this affirmative defense is

available under the Supreme Court’s decisions in Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998) and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998).

If signed into law, H8277 may also lead to a perverse result: it may encourage Rhode Island employers—particularly, smaller employers with modest training budgets—to utilize less effective sexual harassment education and training programs. RI SHRM’s collective experience as training providers has shown that there is simply no substitute for in-person training sessions facilitated by a qualified trainer. Particularly when provided in a small group setting, in-person training allows for an interactive dialogue between the trainer and participants on a wide variety of highly sensitive issues. This dialogue is impossible when employers are forced to utilize “off the shelf” training modules or the free training materials provided by the Department of Administration to meet their compliance obligations.

III. Conclusion

RI SHRM believes that legislative initiatives that promote positive cultural change within organizations are the most important thing that the General Assembly can do to ensure that all Rhode Islanders feel respected, valued, and empowered to succeed at work. Our members stand ready to work with the House Committee on Labor and all interested stakeholders to put an end to sexual harassment in the workplace without imposing another expensive and burdensome mandate on Rhode Island employers.

Respectfully submitted by:

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