**Testimony of Commissioner Roberta Reardon**
**New York State Department of Labor**
**Sexual Harassment in the Workplace Hearing**
**February 13, 2019**

Distinguished members of the committees, thank you for the opportunity to discuss this extremely important issue of combatting sexual harassment in the workplace and to highlight the work of Governor Cuomo, the Labor Department and the Division of Human Rights.

Sexual harassment comes in many forms. It's both blatant and insidious. As someone who spent most of my life in the entertainment industry I've seen it first hand. I've also been a target. I've seen it go unmentioned, unreported and unaddressed. And I've seen it ruin people's lives. There was a time in the not-so-distant past when it was seen by so many as just part of the job. We knew it felt wrong, but we were so scared to speak out, often for fear of losing our livelihood and being blacklisted.

I'm so proud today to say those dark days are being relegated to a history that is gone, but never forgotten. In recent years, a growing number of women and men have said "no more" to sexual harassment by saying "#MeToo." The bravery of these survivors has given life to an international movement and brought this important issue into the mainstream. By speaking the truth about what has happened to them instead of hiding in the shadows, these women are working to change long-held beliefs that blame the victim and have allowed aggressors to continue without punishment. No more.

There is no longer any question, any gray area or any doubt when it comes to what constitutes sexual harassment in the workplace. Any conduct of a sexual nature that makes an employee uncomfortable has the potential to be sexual harassment. And with the world changing so fast, we must constantly be exploring and implementing new ways to prevent it. As the Governor said, there's no doubt this is a systemic, cultural problem. We are committed to leading the way with a statewide policy that sends the message loud and clear that our state does not tolerate discrimination or sexual harassment of any kind, period.

## Workplace Protections

Last April, with your resounding support, Governor Cuomo signed into law the nation's strongest and most comprehensive package of laws to combat sexual harassment in the workplace -- a signature proposal from his 2018 Women's Agenda. These efforts build on New York State's record of ensuring equal opportunity in the workplace and improving the lives of all workers:

- A statewide $15 minimum wage, restoring economic justice and fairness to working families, boosting the economy and bringing a direct wage increase to more than 2.3 million people;
- The nation's strongest and most comprehensive Paid Family Leave program, providing job-protected, paid time off to employees who need time away from their job to bond with a child, care for a close relative with a serious health condition or help relieve family pressures when a family member is called to active military service abroad;
- As part of the 2016 Women's Equality Agenda, amending the human rights law to protect all employees – regardless of the size of the employer – from sexual harassment in the workplace and ensuring that complainants may now recover attorney's fees in employment in cases where sex discrimination is found.
- Executive orders that prohibit state entities from evaluating candidates based on wage history and require state contractors to disclose data on the gender, race and ethnicity of employees;
- Another executive order that directs the Governor's Office of Employee Relations to take over all investigations of complaints of discrimination and harassment in state agencies and tasks the Chief

Diversity Officer and Commissioner of Civil Service with the responsibility for new statewide workforce diversity and inclusion efforts;
- Directing the Department of Labor to study the causes, scope and economic impact of the gender wage gap in New York State and issue policy recommendations to help close it;
- Championing legislation to prohibit all public and private employers who do business in New York State from asking prospective employees about their salary history and compensation. If a woman makes less than a man to begin with, or if she takes time off to raise a child, she shouldn't be penalized for the rest of her career;
- Combating worker exploitation with the first-of-its-kind statewide Exploited Workers Task Force in 2015 and later combining the missions, powers and duties of the Nail Salon, Joint Enforcement and Exploited Workers' task forces into the Joint Task Force on Employee Misclassification and Worker Exploitation; and
- Returning more money to workers victimized by wage theft that any other state in the nation. Since 2011, the Department of Labor has recovered and returned more than $285 million to more than a quarter of a million workers.

**Overview of New Laws**

Our new laws to combat sexual harassment in the workplace are game-changers. Today in New York State, every employer -- public and private -- must have a policy for preventing sexual harassment in their workplace. Every employee in New York State must be given that policy and must receive interactive training every year. This applies to all employers, whether they are governmental, nonprofit or private businesses, and whether they have one employee or 10,000. There are no exceptions.

I want to acknowledge that the New York Human Rights Law has provided strong protections for employees against sexual harassment for decades, and that some employers have had a strong sexual harassment prevention policy in place for years. Unfortunately, many continue to face sexual harassment in the workplace. And as we heard last year, many employers haven't known where to start to address these issues. These new laws help employers that don't have the resources to organize a policy and training for their workers on their own. They also send a clear message that sexual harassment is no longer tolerated in New York and allowing it to happen comes with harsh consequences.

These new laws also extend the human rights law's sexual harassment workplace protections to contractors, subcontractors, vendors, interns, job applicants, consultants or any others providing services in the workplace -- regardless of their immigration status. There is no longer any gray area about who is covered. The new laws also:
- Prohibit employers from using a mandatory arbitration provision in an employment contract in relation to sexual harassment;
- Require officers and employees of the state or of any public entity to reimburse the state for any state or public payment made upon a judgment of intentional wrongdoing related to sexual harassment; and
- Ensure that nondisclosure agreements can only be used when the condition of confidentiality is the explicit preference of the victim.

**Outreach**

These are commonsense policies aimed at helping employees and employers know their rights and responsibilities without having to sort through legalese or hire an attorney to do it for them. And we did not create these guidance materials alone – quite the opposite, and far beyond what we were legally required to do.

Last summer, following months of research and work with experts in employment law, worker's rights and addressing sexual harassment, we launched an extensive public review of draft materials. We worked with stakeholders across the spectrum to create model policy and training materials that are turnkey and cost-effective for employers and meaningful for employees. This outreach targeted worker advocacy groups, as well as business and industry groups across the state -- including several dozen meetings and phone calls with statewide and industry specific business groups, individual business owners and groups who work with those targeted by sexual harassment. The many people we worked with were overwhelmingly supportive of this initiative and welcomed the change it promised for both employers and workers.

During the comment period, the state received and reviewed hundreds of constructive and substantive comments from a wide range of individuals, advocates, industries, worker groups, employers and business organizations. The state was responsive to many of the questions and concerns raised and received public praise for these efforts, for example, making sure there was adequate time to properly train workers and provide translated materials.

Once the documents were finalized, we launched an additional outreach campaign that included phone calls, notices, emails to hundreds of representative groups, press releases, social media, presentations and webinars. Our efforts to make sure employers across the state are training their workers about sexual harassment in the workplace continues today. I have personally called dozens of the largest chambers of commerce, business organizations in numerous industries and labor leaders to talk to them about the materials. To date, the state has fielded hundreds of phone calls asking specific and nuanced questions, primarily from small employers. And we are happy to help.

We have trained field staff from multiple state agencies, all of whom are armed with answers and continue to spread the word far and wide, especially in industries that may not have a direct connection to a large advocacy group.

We are well aware of calls from unendorsed private companies selling training products. While we don't condone the aggressive business practices some have exhibited, especially when the sales pitch seems threatening, this has actually helped spread the word even further about the requirement for related policies and trainings.

**Ease of Implementation**

From the beginning, we knew we had to walk a fine line in creating these materials. They needed to be both effective, understandable for workers across the wide range of workplaces in New York State, and something employers could easily adopt and implement, without being overly burdensome. And they needed to hit the right note from the beginning, or we would cast a negative light on these important tools.

We started with a set of minimum standards for sexual harassment prevention policies and trainings, as outlined in statute. We then created a model policy and model training that could be used essentially off-the-shelf or adapted to meet the needs of an employer or industry. These products already exceed the minimum standards, so we set the bar high. In addition, employers can use existing policies and training programs or modify them, so long as they meet those statutory minimum standards.

We provided all of the materials in multiple file formats, recognizing that not everyone has access to regular office settings, computers or standard software. We provided training videos, toolkits for employers and employees, public posters to highlight available resources and extensive answers to frequently asked questions. We have all of this on an accessible website to make this information even more available to employers and transparent for employees.

We also translated all of these materials into eight languages – Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali and Haitian-Creole – and required employers to use these materials for workers whose primary language is not English.

**Next steps**

In the months ahead, we will continue our outreach efforts. We will continue providing and refining guidance for anyone with specific questions. We will help any employer that doesn't understand how to implement these programs. If you know of an organization that needs assistance or of a worker who hasn't yet been trained and doesn't know how to approach their employer, we are here to help. Contact our agency and we will assist.

As with any new policy, New York State is first and foremost committed to ensuring that all employers adopt a sexual harassment prevention policy and are training their employees as required. The first phase of outreach and compliance will extend well into the fall. While we know many have already done so, businesses now have fewer than eight months left to come into compliance with the required employee training. It is imperative that employees are trained as quickly as possible as employers will held liable for their actions under the law.

Finally, the Department of Labor supports the Governor's proposals as part of his FY2020 budget submission to strengthen New York's protections against workplace harassment and discrimination even further, by:

- Amending the Human Rights Law to make clear that it should be interpreted liberally and that federal law should set the floor, not the ceiling of rights protected in New York State -- specifically to clarify that harassment need not be severe or pervasive to constitute actionable conduct.
- Requiring that all non-disclosure agreements in employment contracts inform employees of their right to pursue a complaint in state and local agency and to testify in government investigations for any future sexual harassment.
- Amend our new laws to additionally require employers to post a poster in a conspicuous location informing workers of their rights related to sexual harassment.

**Conclusion**

Any assistance, including today's hearing, to help broadcast this message and the importance of combatting sexual harassment, is welcomed. On behalf of Governor Cuomo, thank you for allowing me the opportunity to present this testimony, outlining our efforts to date and our plans for the future. Along with countless women and men, as someone who bears the burden of being the target of sexual harassment, I understand the gravity of this topic and how meaningful it can be to have these crucial policies in place. And we need this conversation to continue.

I want to thank you for your leadership in working with the Governor and our state agencies to see these laws through and to your commitment to combating these horrific practices in workplaces across the state. This is our collective responsibility.

I also want to thank the many individuals, both in the past and today, who have demonstrated incredible courage by re-opening healed wounds and telling their painful stories. No longer must you hide in the shadows. And to the many people who have supported targets of sexual harassment along the way, thank you. We need more people like you. Let's bring perpetrators to justice and recognize that only they, and they alone, are to blame. You are not alone. Thank you.