SENATOR MARTIN M. LOONEY
PRESIDENT PRO TEMPORE

Eleventh District
New Haven, Hamden & North Haven

State of Connecticut
SENATE

State Capitol
Hartford, Connecticut 06106-1591
132 Fort Hale Road
New Haven, Connecticut 06512
Home: 203-468-8829
Capitol: 860-240-8600
Toll-free: 1-800-842-1420
www.SenatorLooney.cga.ct.gov

Good afternoon, Senator Kushner, Representative Porter, Senator Miner, Representative Polleta and members of the Labor and Public Employees Committee. Thank you for the opportunity to testify today in strong support of several bills you have before you today; Senate Bill 1, An Act Concerning Paid Family Medical Leave, House Bill 5003, An Act Implementing a Paid Family Medical Leave Program, Senate Bill 697, An Act Concerning Nondisclosure Agreements in the Workplace, and Senate Bill 765, An Act Ensuring Fair and Equal Pay for Equal Work.

Senate Bill 1, An Act Concerning Paid Family and Medical Leave and House Bill 5003 An Act Implementing a Paid Family Medical Leave Program

Senate Bill 1 and House Bill 5003 each propose to establish a system that provides critically needed *paid* family and medical leave benefits to individuals employed in Connecticut. The United States is very much in the minority of developed nations that do not explicitly provide employees with the ability to take such paid leave. Individual states, on the other hand, have the authority to require this benefit to be provided to employees, and I believe we have an obligation to do so. As with bills on this subject that have been offered over the past few legislative sessions, the paid salary replacement benefits provided for in both Senate Bill 1 and House Bill 5003 would be *employee funded.* An employee would contribute a very small amount of his or her pay – approximately one half of one percent – into a fund administered by the State. Thereafter, in the event the employee needs to take family or medical leave for either a serious medical condition of his or her own or needs to care for either a family member suffering from such a serious medical condition or a new baby, he or she would be eligible for *paid* family benefits out of the trust fund in the manner laid out in the bill.

According to the 2016 Institute for Women's Policy Research (IWPR) report entitled "Implementing Paid Family Medical Leave Insurance [in] Connecticut" (the "Implementation Report"), "only 13 percent of workers have access to paid family leave through their employers and fewer than 40 percent have access to personal medical leave through employer-provided short-term disability insurance." According to the Implementation Report, for families with incomes below $25,000, 62.7 percent of leaves taken are uncompensated. While some Connecticut workers may be eligible for 12 weeks of unpaid, job-protected leave per year under the federal Family and Medical Leave Act (FMLA), many Connecticut employees are ineligible for this unpaid benefit. Even for those that are eligible, they often do not take the leave because they simply cannot afford to go without income even for a short period of time.

Given the real world make-up of our modern day workforce, filled with many, many constituents of ours who are working parents with young children; or who are working full time while taking care of aging parents, I strongly believe that providing for a reasonable

level of paid family and medical leave is both pragmatically necessary and also humane. The inability of employees to take paid time off to care for loved ones or themselves can leave them with no choice but to neglect family members in their time of need or compromise their own health. Working families should not have to face the prospect of economic ruin when presented with serious family needs such as caring for a newborn, spouse, or parent.

Providing family and medical leave benefits is critical to the health of Connecticut children and families. The Implementation report found that "[74] percent of Connecticut children . . . live in households where all parents work." A lack of paid family and medical leave means the parents of these 550,000 children are unlikely to have the ability to take time from work to care for these children without a severe financial loss. Time spent with newborn and young children is necessary for their health, making access to parental leave an important indicator of child well-being.

In addition to parental leave, a large, growing number of our constituents face the often overwhelming burden of caregiving for adult family members. With roughly 777,000 people over age 60 in our state, many workers are finding themselves caring for both children and aging parents.

Because this benefit is so necessary for our young and modern workforce, while actually being a positive for employers, Connecticut is now literally surrounded by states that have passed paid family and medical leave. Massachusetts, New York, Rhode Island and New Jersey now all provide this critical benefit to their residents – providing significant financial and psychological relief not only to their residents in the workforce, but also to those for whom they are providing needed care. Connecticut is now an outlier in this respect in our region. I firmly believe that this situation is not only unfair to our residents, it is also potentially a significant detriment to Connecticut being able to retain and attract the younger, highly educated workforce that we all know is absolutely necessary for the future health of our economy.

Finally, I also believe it is significant that there was major bipartisan support for the most recently enacted comprehensive family and medical leave laws, in our neighbors Massachusetts and New York, and also Washington State. This bipartisan regional unanimity shows that this issue does not have to be partisan here in Connecticut. I believe we can – and for the future health of our economy must-- come together across party lines and enact this meaningful benefit for our workforce and those in their care. Thank you.

Senate Bill 697, An Act Concerning Nondisclosure Agreements in the Workplace

Thank you for holding a subject matter public hearing on S.B. 697, An Act Concerning Nondisclosure Agreements in the Workplace, which I strongly support. It has become frustratingly clear that nondisclosure agreements (NDAs) have harmed not only the victims of sexual misconduct, but have emboldened offenders, perpetuated a culture of complacency, and created secrecy that leads to additional victims.

NDAs arise in two types of agreements that deserve our attention. First, employers are increasingly requiring employees to sign NDAs as a condition of employment. These NDAs often include clauses that prohibit the employee from saying anything negative about the company, or disclosing any non-public information, both of which can be used to silence victims of sexual harassment. For a victim who wants to speak out, she finds herself contractually prohibited from doing so due to what she was told is a "standard" HR form signed at the start of employment. These documents can be drafted broadly to prohibit discussing sexual harassment or assault without using those terms.

As a matter of public policy, we should be commending the victims who come forward with their personal stories. Their bravery has shamed offenders and employers into admitting their mistakes. The #MeToo movement has inspired victims of workplace harassment to publicly share their experiences, and have seen that women are more comfortable sharing when they hear the experiences of others. For too long women have blamed themselves, or believed harassment is just something to be tolerated. It isn't—and silencing all employees with the use of NDAs perpetuates the status quo.

The second use of an NDA worth our review occurs after a victim informs her employer of workplace harassment or assault and the parties seek to reach a settlement. The employer often has an incentive to keep the matter confidential. Any settlement reached that avoids a prolonged litigation battle often includes an NDA. It has been deeply disturbing to learn that victims of Harvey Weinstein and Larry Nassar were silenced by NDAs for years because we know now that these men continued to commit criminal acts.

Yet, we must be cautious if we are to limit the use of NDAs in settlement agreements. The victim, understandably so, may wish to keep the matter confidential. There is the concern employers will be less likely to settle quickly without the advantage of silencing victims, thereby leading to time consuming trials or mediations. Employers may offer lower payments for settlements if the victim is not prohibited from disclosing details of the matter.

While acknowledging these concerns, the National Women's Law Center, Leadership Conference on Civil and Human Rights, National Alliance to End Sexual Violence and 50 other state and national advocacy groups have jointly identified the abusive consequences of NDAs and called on Congress to take action.[1] When more than a dozen women have accused our President of sexual misconduct ranging from harassment to assault, we should not wait for legislation out of Washington to come first.

Were we to take action, we would join fellow states that have responded in recent years to the growing criticism. In 2006, California became the first state to bar NDAs in civil cases if the alleged offense could also be prosecuted as a felony sex crime. In 2018, Washington passed a law to prohibit employers from requiring employees sign NDAs as a condition of employment.

---

[1] A Call For Legislative Action to Eliminate Workplace Harassment, December 2018, available at https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/Workplace-Harassment-Legislative-Principles.pdf

Arizona, Maryland, New York, Tennessee, and Vermont also adopted legislation in 2018 to put restrictions on the use of NDAs with regard to sexual misconduct.

Thank you again for your time and interest in this issue. I look forward to working with you to forge an appropriate response to the use of NDAs that can protect all employees in our state.

Senate Bill 765, An Act Ensuring Fair and Equal Pay for Equal Work

Senate Bill 765 is an important measure to continue to help close the wage gap between men and women here in Connecticut. While we have made progress during the 2018 legislative session with the passage of Public Act 18-8, there is still room to strengthen this legislation. By clarifying legal language and definitions we can remove loopholes and prevent misinterpretations.

Senate bill 765 will take a look at a number of these instances. For example, the word "comparable" is the new standard on comparing positions held by men and women which is very close to "similar" which was the previous standard in workplace pay. In Massachusetts a new Equal Pay law that went into effect in July, 2018 defines "comparable work" as work that requires substantially similar skill, effort, and responsibility, and is performed under similar working conditions. "Comparable work" is broader and more inclusive than "equal work" which is the standard of the federal Equal Pay Act as it requires an analysis of the job as a whole.

We also want to look at the operation of the seniority system. Many employers no longer use this system when deciding on wages and have moved to a merit based system. In many jobs, the value of any particular employee is subjective and ultimately determined by a supervisor without clearly measurable standards. This lack of transparency leaves opportunities to strengthen our laws in this area as well.

By making these improvements, Senate Bill 765 would be building off the progress previously made in providing greater equity for Connecticut's workforce.