CONNECTICUT ALLIANCE TO END SEXUAL VIOLENCE

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Testimony of Lucy Nolan, Director of Policy and Public Relations
Labor and Public Employees
Thursday, February 14, 2019

Testimony on SB 697, AN ACT CONCERNING NONDISCLOSURE AGREEMENTS IN THE WORKPLACE.

Senator Kushner, Representative Porter, Senator Miner, Representative Poletta and members of the Labor and Public Employees Committee. My name is Lucy Nolan and I am the Director of Policy and Public Relations at The Alliance. Thank you for the opportunity to provide testimony on behalf of the Connecticut Alliance to End Sexual Violence, on SB 697, AN ACT CONCERNING NONDISCLOSURE AGREEMENTS IN THE WORKPLACE.

The Alliance is the statewide coalition of nine community-based sexual assault crisis services centers. Our mission is to create communities free of sexual violence and to provide culturally affirming, trauma-informed advocacy, prevention, and intervention services centered on the voices of survivors. Last year certified sexual assault crisis counselors and victim advocates at our member centers and within the state's sex offender management and supervision probation and parole units, served more than 8,500 child, adolescent and adult survivors and provided prevention education and training programs to over 50,000 residents. Our legal team works with victims daily.

We support a victim-centered approach to non-disclosure agreements. When they are a condition of employment, it is women, women of color and immigrants who are vulnerable, as they are more likely to be in low-income jobs without recourse to access legal protections, higher wages, fair and predictable schedules, health insurance, paid time off and other critical supports that add in reporting their abuse.

However, when NDAs are an option, they can offer some survivors of sexual assault and harassment the ability to maintain their privacy, protect them from retaliation, use them as leverage in negotiating a settlement and find a trauma-informed approach through self-determination.

Banning NDAs entirely may lead employers to be less likely to settle claims of harassment when a victim so desires, forcing victims to take up the difficult, expensive and time-consuming task of pursuing legal recourse. NDAs must never be a mandatory contingency of employment. In recent years, they have become broader in scope to the point they cover items such as preventing workers from discussing sexual harassment claims, which is allowed by the National Labor Relations Act. Most workers don't know their legal protections under NLRA or simply comply with the NDA because they are fearful of what will happen if they break their silence. NDAs shield a hostile company culture and allow harassment to persist.

The National Alliance to End Sexual Violence has developed suggestions for any policy concerning NDAs in order to develop fair standards for both employees and employers. These include:

1. Restore power to survivors by prohibiting employers from requiring employees to sign:

a. NDAs as a condition of employment, compensation, benefits or change in employment status or contractual relationship.
b. NDAs as a prerequisite to reporting and/or investigating workplace harassment or discrimination.
c. NDAs that are a mandatory condition of settlement.

2. Require documentation and/or a finding when a survivor signs a NDA that they are doing so voluntarily with meaningful access to legal advice, not under duress or coercion.
3. Require employers to ensure confidentiality throughout the reporting and investigation process rather than compel employees to sign an NDA as a prerequisite to reporting and/or investigating.
4. Require that NDAs signed during a separation or settlement agreement shall not restrict the individual who made the claim from:
    a. Lodging a complaint of sexual harassment committed by any person with any local, state or federal agency;
    b. Testifying or participating in any manner with an investigation related to a claim of sexual harassment conducted by any local, state or federal agency;
    c. Complying with a valid request for discovery or testimony related to litigation alleging sexual harassment;
    d. Exercising any right the individual may have pursuant to state and federal labor relations laws to engage in activities for the purposes of collective bargaining or mutual aid and protection;
    e. Waiving any rights or claims that may arise after the date the settlement agreement is executed.
5. Address the enforceable scope of NDAs with unambiguous language regarding the consequences for employers who attempt to enact provisions of NDAs that are inconsistent with federal or state law and/or regulations.
6. Address a broader context for protection from unfair NDAs by using "workplace harassment and discrimination, which includes sexual harassment," instead of "sexual harassment.".[1]

NDAs should never be used to silence victims of sexual harassment or assault, nor should they be used as a weapon by employers. We urge you to pass this bill out of committee with the suggestions outlined above to keep survivors needs at the center of the discussion. NDAs may be helpful to both survivor and employer, but it should be the survivor's decision whether to use one or not.

Thank you.

Lucy Nolan
Lucy@EndSexualViolenceCT.org

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[1] National Alliance to End Sexual Violence, Position Statemenet: Non-disclosure Agreements and Workplace Harassment, August. 2018