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NON-COMPETE AGREEMENT GOT YOU STUCK IN SEXUAL
HARASSMENT? #METOO: AN ANALYSIS OF THE
CORRELATION BETWEEN NON-COMPETE AGREEMENTS
AND SEXUAL HARASSMENT

*Raquel Flynn**

I. INTRODUCTION

Most Americans today are aware that sexual harassment is a serious problem in the United States.¹ However, many are unaware of the correlation between non-compete laws and the prevalence of sexual harassment.² In fact, in the state that has the most lenient non-compete laws, the ratio of reported sexual harassment claims to the population is approximately ten times higher than that of the state with the strictest non-compete laws.³ “Nothing excuses sexual assault. Sexual assault happens to people of all genders, races, ages, and sexual orientations. Nothing about who you are or what you did caused your assault.”⁴ This is what a twenty-three-year-old sexual assault survivor would like every victim to know when they are going through the aftermath of sexual assault.⁵

In the past two years, countless victims have come forward complaining of sexual harassment in some form by their superiors in

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1. See Good Morning America, *Sexual Assault Survivor Shares 3 Things She Wants Victims to Know*, ABC NEWS (Apr. 6, 2018, 4:14 AM), <https://abcnews.go.com/GMA/News/sexual-assault-survivor-shares-things-victims/story?id=54217063> [<https://perma.cc/E94U-RPAV>].

2. See *infra* Section IV.B.

3. See *infra* text accompanying notes 136, 145. Further, the five states with the most lenient non-compete laws, on average, have ratios about five times higher than the five states with the strictest laws. See *infra* notes 135–45 and accompanying text.

4. See Good Morning America, *supra* note 1.

5. *Id.*

the workplace.⁶ The entertainment industry has specifically become known as an industry with rampant sexual harassment claims.⁷ On October 5, 2017, actress Ashley Judd came forward and accused Hollywood media mogul Harvey Weinstein of sexual harassment in a story published in the New York Times, which set off the chain of events now known as the #MeToo Movement.⁸

In addition to the number of complaints coming from celebrities in their work environments, a large amount of complaints have also come from working class men and women who have been victims of some sort of sexual harassment in their everyday jobs.⁹ For example, Nupur Preeti Alok was employed in an office where she lived what she considered to be an everyday, normal life.¹⁰ That is, until she was sexually assaulted repeatedly by her supervisor.¹¹ Alok is just one example of many women who have experienced some sort of sexual harassment in the workplace and, upon reporting the misconduct, suffered some form of retaliation at the hands of their superiors.¹²

Along with sexual harassment, another factor in the workplace which contributes to the environment and experience of many members of the workforce is the existence of non-compete agreements.¹³ Non-competes in the workplace are regulated, but the regulation of these agreements is mostly left up to the state

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6. See *#MeToo: A Timeline of Events*, CHI. TRIB. (July 9, 2019, 8:15 AM), <http://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html> [<https://perma.cc/7KAN-KWBX>].
 7. See *id.* (discussing the timeline of events of the #MeToo movement and the various actors who have come forward and claimed some form of victimization).
 8. *Id.*
 9. See, e.g., Nupur Preeti Alok, *How I Suffered Sexual Harassment at Workplace and What I Know About It*, FEMINISM INDIA (Sept. 29, 2016), <https://feminisminindia.com/2016/09/29/sexual-harassment-at-workplace-survivor-story/> [<https://perma.cc/XHG9-3FUR>].
 10. *Id.*
 11. *Id.*
 12. See Laura Cohn, *Sexual Harassment Survivors Talk About the Aftermath of Going Public*, FORTUNE (Dec. 15, 2016), <http://fortune.com/sexual-harrasment-victims-job-aftermath/> [<https://perma.cc/4W7G-QWEK>]; see generally *infra* Part III.
 13. Alison Doyle, *What Is a Noncompete Agreement?*, BALANCE CAREERS, <https://www.thebalancecareers.com/what-is-a-non-compete-agreement-2062045> [<https://perma.cc/G9HV-RD8U>] (last updated Sept. 2, 2019) (“A non-compete agreement is a contract between an employee and an employer in which the employee agrees not to enter into competition with the employer during or after employment.”); see also *infra* Part IV.

legislatures; therefore, the laws vary among the states.¹⁴ There has been a recent development in the political climate which has led to many lawmakers to call for the reform, or even the elimination, of non-compete agreements, particularly in low-wage environments.¹⁵ However, with the ever-changing laws, it has become almost impossible for the average person to keep abreast of their rights, and many workers do not even know what they are agreeing to when they sign their employment contract on the first day of work.¹⁶ Further complicating the issue, employees who are subject to a non-compete agreement are normally unaware of the ways in which a non-compete agreement is invalidated—such as being subjected to sexual harassment.¹⁷

Coupling the lack of employee knowledge regarding non-compete agreements with the ongoing increase in reports of sexual harassment in the workplace begs the question of whether there is a connection between the two.¹⁸ Although experiencing sexual harassment is one reason to break one's non-compete agreement with an employer, most are unaware of this loophole as they are unfamiliar with the practice of employment law.¹⁹ Therefore, it is likely that there are many employees who have been or continue to be victims of sexual harassment but are afraid to report it due to probable repercussions, including the inability to find another job in fear of violating their non-compete agreement.²⁰ The Equal Employment Opportunity Commission (EEOC) publishes data each year on the number of charges filed in each state and divides the charges based on type.²¹ By using the data provided on the charges along with the populations of each state, ratios can be calculated to show the apparent relationship between the severity of the non-compete laws in each

14. WHITE HOUSE, NON-COMPETE AGREEMENTS: ANALYSIS OF USAGE, POTENTIAL ISSUES, AND STATE RESPONSES 3 (2016).

15. *See infra* Part IV.

16. *See infra* Part IV.

17. *See generally* Maya Murphy, *Five HR Errors That Can Invalidate a Non-Compete Agreement*, MAYALAW (Oct. 28, 2016), <http://www.mayalaw.com/2016/10/28/five-hr-errors-can-invalidate-non-compete-agreement/> [https://perma.cc/Y6MF-429Z] (explaining five recognized errors by employers that invalidate non-compete agreements).

18. *See infra* Part V.

19. *See infra* Part V.

20. *See infra* Part V.

21. *Enforcement & Litigation Statistics*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, https://www1.eeoc.gov/eeoc/statistics/enforcement/charges_by_state.cfm [https://perma.cc/G7GM-FRFV] (last visited Nov. 6, 2019).

state and the number of sexual harassment charges filed within that state.²²

Part II of this Comment provides background on sexual harassment in the workplace and its increasing prevalence in the media in recent times.²³ Part III examines state laws on non-compete agreements and the recent push to strengthen regulation of these agreements in order to make the labor-force more worker-friendly.²⁴ Part III also discusses the discouragement of non-compete agreements in low-wage work environments, particularly in the restaurant industry, where sexual harassment is most prevalent.²⁵ Part IV combines the effects of sexual harassment with the existence of non-compete agreements and discusses the ratios of the two among various states, which, in turn, will yield calculations that display a correlation between the two factors.²⁶ Finally, Part V further analyzes the correlation between sexual harassment claims and non-compete agreements, and proposes a solution to this important issue which would empower victims and eradicate the use of intimidation to keep employees trapped in a toxic environment.²⁷

II. BACKGROUND OF SEXUAL HARASSMENT IN THE WORKPLACE AND ITS INCREASING PREVALENCE IN SOCIETY

Approximately one-fifth of all American adults have experienced some form of sexual harassment in the workplace.²⁸ In 2017, CNBC polled adults from various geographic locations, income levels, and political affiliations.²⁹ The poll revealed that about ten percent of men and about twenty-seven percent of women reported experiencing some form of sexual harassment.³⁰ Those who experience sexual harassment in the workplace know that most of the pain results from the lack of power the victims experience,³¹ like one survivor who stated:

22. *See infra* Part V.

23. *See infra* Part II.

24. *See infra* Part III.

25. *See infra* Part III.

26. *See infra* Part IV.

27. *See infra* Part V.

28. Hailey Lee, *One-Fifth of American Adults Have Experienced Sexual Harassment at Work, CNBC Survey Says*, CNBC (Dec. 19, 2017, 5:04 PM), <https://www.cnbc.com/2017/12/19/one-fifth-of-american-adults-have-been-sexually-harassed-at-work.html> [<https://perma.cc/56L3-B9DD>].

29. *Id.*

30. *Id.*

31. *See Stopping Sexual Harassment*, UE UNION (Nov. 2017), <https://www.ueunion.org/>

Sexual harassment is not about sex. It's about power. It's about the power a boss can exercise over a worker, the power a teacher can exercise over a student, and the power—less concretely defined—that male co-workers can exert over their female peers. It's a kind of power play, manifested as sexual discrimination.³²

Due to the increase of complaints of sexual misconduct in the workplace,³³ many groups, politicians, and celebrities have called for the end of sexual harassment and for abusers to be held more accountable.³⁴

Not only is the actual event of sexual assault traumatizing,³⁵ but so is the aftermath that a victim experiences after coming forward and reporting their harasser.³⁶ Many victims leave the workforce altogether, rather than trying to piece their careers back together after being victimized by someone they trusted or even admired.³⁷ Although most survivors would choose the same course of action and prosecute their abusers if given the opportunity, that does not mean

es/node/189 [https://perma.cc/QGE3-TGXB].

32. *Id.*

33. See Andrew Keshner, *Why Workplace Sexual-Harassment Complaints Keep Climbing*, MKT. WATCH (Apr. 29, 2019, 9:34 AM), <https://www.marketwatch.com/story/why-workplace-sexual-harassment-complaints-keep-climbing-2019-04-25> [https://perma.cc/MFP3-62KF].

34. Katherine Tully-McManus, *Lobbying Groups Join Fight Against Sexual Harassment*, ROLL CALL (Aug. 1, 2018, 2:39 PM), <https://www.rollcall.com/news/politics/lobbying-groups-join-fight-against-sexual-harassment> [https://perma.cc/BR4F-G34G] (analyzing the prevalence of various lobbying groups coming forward to call for more accountability for those who commit sexual harassment against their employees or fellow co-workers); *Actor Emma Watson Donates £1m to Anti-Harassment Campaign*, BBC (Feb. 18, 2018), <https://www.bbc.com/news/entertainment-arts-43101184> [https://perma.cc/6QNV-6EZ2] (“The donation comes as more than 200 female British and Irish stars have signed an open letter calling for an end to sexual harassment at work.”); see Kelsey Snell, *Congress to Make Members Pay Out of Pocket for Sexual Harassment Settlements*, NAT’L PUB. RADIO (Dec. 12, 2018, 7:20 PM), <https://www.npr.org/2018/12/12/676209258/congress-to-make-members-pay-out-of-pocket-for-sexual-harassment-settlements> [https://perma.cc/B7AR-74HE] (discussing politicians ending tolerance with sexual harassment and the call for more accountability).

35. See *Effects of Sexual Violence*, RAPE, ABUSE & INCEST NAT’L NETWORK, <https://www.rainn.org/effects-sexual-violence> [https://perma.cc/DUK6-FKLP] (last visited Nov. 6, 2019).

36. Cohn, *supra* note 12.

37. *Id.*

that their lives have been easy.³⁸ To protect victims of sexual assault from the ongoing trauma, sexual harassment must be stopped in the workplace overall.³⁹ Victim-blaming has become a social construct that is omnipresent in the media during the height of sexual harassment complaints.⁴⁰ One recent example of victim-blaming is that of “Emily Doe,” the unnamed victim of Brock Turner who was also referred to as “Jane Doe” in the media.⁴¹ Despite being the victim of a brutal sexual assault after attending a party at her university, Emily Doe was blamed for “drinking too much alcohol” on the night of her attack.⁴²

A. *Sexual Harassment in Low-Wage Work Environments*

In 2014, the Restaurant Opportunities Centers United, along with the group Forward Together, conducted a so-called “glass floor” study which analyzed the likelihood of the increased presence of sexual harassment in the restaurant industry due to the tipped wage standard.⁴³ Sexual harassment in restaurants is considered “kitchen talk” and is a normalized part of the work environment.⁴⁴ Accordingly, more than a third of all sexual harassment charges filed

38. *Id.*

39. *See Chipotle Mexican Grill Sued by EEOC for Sexual Harassment, Retaliation*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION (Sept. 18, 2017), <https://www.eeoc.gov/eeoc/newsroom/release/9-18-17d.cfm> [<https://perma.cc/9Y7B-GFTM>]. Even once the suit was settled, articles were still written outlining the details of the assault, which would retraumatize the victim for many times to come. Heather Long, *Chipotle to Pay 16-Year-Old Nearly \$8 Million for ‘Outrageous’ Sexual Assault*, CNN MONEY (Sept. 29, 2016, 12:29 PM), <https://money.cnn.com/2016/09/29/news/chipotle-teen-worker-wins-sexual-assault-case/index.html> [<https://perma.cc/WBR3-C3ZN>].

40. *See Cohn, supra* note 12; *see also Rape Culture, Victim Blaming, and the Facts*, S. CONN. ST. U., <http://www2.southernct.edu/sexual-misconduct/facts.html> [<https://perma.cc/TEC2-D9TY>] (last visited Nov. 6, 2019).

41. Sam Levin, *Stanford Sexual Assault Victim Faced Personal Questions at Trial, Records Show*, GUARDIAN (July 19, 2016, 6:06 PM), <https://www.theguardian.com/us-news/2016/jul/19/stanford-sexual-assault-brock-turner-victim-personal-questions> [<https://perma.cc/QTA9-5FME>].

42. *Id.*; Sam Levin, *Stanford Sexual Assault: Woman Who Blamed Victim for Drinking Apologizes*, GUARDIAN (June 8, 2016, 7:54 PM), <https://www.theguardian.com/us-news/2016/jun/08/stanford-sexual-assault-brock-turner-court-letter-apology> [<https://perma.cc/Q5WD-XPS3>].

43. THE REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, *THE GLASS FLOOR: SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY 1* (2014), https://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf [<https://perma.cc/S58Y-HC77>].

44. *Id.*

with the EEOC come from individuals working in the restaurant industry.⁴⁵

In conducting this survey, 688 current and former restaurant workers were polled across thirty-nine states.⁴⁶ The results revealed that approximately half of restaurant employees were uncomfortable going to work due to the sexual harassment they were experiencing.⁴⁷ In the past ten years, over ten million dollars was paid out in settlements and damages to employees within the restaurant industry due to sexual harassment charges filed with the EEOC.⁴⁸ Due to the young ages of many of the employees, these results are especially troubling because the restaurant industry workforce is being exposed to high rates of sexual harassment earlier and earlier in their youth.⁴⁹

Women like seventeen-year-old Marisa Licandro, who was almost raped by a co-worker when working in a restaurant, deserve to be able to make a living and not fear being the target of a sexual assault.⁵⁰ “One in three people in the United States begin their working lives in the restaurant industry, and half of the United States’ workforce will work in it at some point in their lives.”⁵¹ Therefore, it is increasingly important to remedy the sexual harassment issue in the restaurant industry in order to remedy the problem in all other industries as well.⁵²

B. Recent EEOC Cases Involving Sexual Harassment

In addition to a Chipotle supervisor who sexually assaulted her employee,⁵³ there have been numerous EEOC charges filed for

45. *Id.*

46. *Id.* at 2.

47. *Id.*

48. *Id.* at 15.

49. *Id.* at 3. “Many women are likely to experience sexual harassment in the restaurant industry early in their work life, something that could stick with them throughout their time in the workforce.” Bryce Covert, *Addressing Sexual Harassment in the Restaurant Industry Is Key to ‘Solve Harassment in All Industries’*, REWIRE NEWS (May 9, 2018, 4:49 PM), <https://rewire.news/article/2018/05/09/addressing-sexual-harassment-restaurant-industry-key-solve-harassment-industries/> [https://perma.cc/LY7X-DUHH].

50. *See* Covert, *supra* note 49.

51. *Id.*

52. *See* THE REST. OPPORTUNITIES CTNS. UNITED & FORWARD TOGETHER, *supra* note 43, at 3–4.

53. *See* *Chipotle Mexican Grill Sued by EEOC for Sexual Harassment, Retaliation*, *supra* note 39.

various claims of sexual harassment since 2016.⁵⁴ Commissioner of the EEOC, Chai Feldblum, reported that harassment claims are up more than three percent in 2018 when compared with 2016.⁵⁵ A recent case settled with the EEOC resulted in Draper Development LLC paying out \$80,000 after a former manager sent text messages to two female applicants offering them a job in exchange for sex.⁵⁶ Both applicants were only seventeen years old at the time of the texts.⁵⁷ One of the texts stated “[b]ang my brains out [and] the job is yours.”⁵⁸ Interactions like this are common for employees in the restaurant industry⁵⁹—and will continue to be—unless those accused are finally held accountable.⁶⁰

III. HISTORY OF NON-COMPETE AGREEMENTS THROUGHOUT THE UNITED STATES AND REFORM

While most countries allow businesses to place restrictions on which types of businesses a former employee can start after the termination of their relationship with their current employer,⁶¹ non-compete agreements are overly common in the United States.⁶² Down to the basics, a non-compete agreement is a separate contract between an employee and employer which prohibits the employee from entering into competition with the employer during or after employment for a specified duration.⁶³ Labor and employment is an area of law that is typically left to the individual states, therefore

54. Chris Opfer, *Sex Harassment Claims on Rise, EEOC Finds*, BLOOMBERG L. (Sept. 12, 2018, 7:27 PM), <https://news.bloomberglaw.com/daily-labor-report/sex-harassment-claims-on-rise-eec-finds> [<https://perma.cc/H679-BM6W>].

55. *Id.*

56. EEOC v. Draper Dev. LLC, No. 1:15-cv-877 (GLS/TWD), 2018 WL 3384427, at *1–2 (N.D.N.Y. July 11, 2018).

57. *Id.*

58. *Id.* at *2.

59. See THE REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, *supra* note 43, at 1.

60. See *id.* at 31.

61. *The Case Against Non-Compete Clauses*, ECONOMIST (May 19, 2018), <https://www.economist.com/leaders/2018/05/19/the-case-against-non-compete-clauses> [<https://perma.cc/P784-3HHW>].

62. *Lawmakers Are Trying to Curb Contracts that Make It Harder to Change Jobs*, ECONOMIST (May 17, 2018), <https://www.economist.com/finance-and-economics/2018/05/17/lawmakers-are-trying-to-curb-contracts-that-make-it-harder-to-change-jobs> [<https://perma.cc/CT7D-WBYQ>].

63. See Doyle, *supra* note 13.

resulting in a large amount of conflict regarding the best practices for non-compete agreements in the United States.⁶⁴

Some non-compete agreements are considered unnecessary, and in response to the growing unemployment rate, many states have started to pass reforms to change the way non-compete agreements are regulated.⁶⁵ Georgia has several laws and regulations which address non-compete agreement policies.⁶⁶ Specifically, Georgia follows the “no-modification’ rule,” which invalidates the entire agreement if any part of a covenant is illegal.⁶⁷ Georgia policy sets out a reasonableness requirement test that the covenant must pass to be considered legal.⁶⁸ This determination is left up to the courts as a question of law.⁶⁹ Public policy is the most important consideration Georgia courts take into account when determining the validity of a restriction.⁷⁰ States like Georgia are a prime example of the need for an overarching rule when it comes to regulating non-compete agreements to ensure that people across the country know what they are signing when they begin their employment at a new job.⁷¹

Similarly, Texas is another state where the interpretation of non-compete agreements has been left to the wind (and the courts) to decide with little guidance.⁷² The Business and Commerce Code in Texas provides minimum conditions that both parties must meet in order for a non-compete agreement to be valid and enforceable under the law.⁷³ One clear step that Texas took in their laws regulating

64. See WHITE HOUSE, *supra* note 14. With eighteen percent of American workers currently under the enforcement of a non-compete agreement, it is critical to synthesize the legality and illegality of these documents to ensure those affected are protected by the law. *Id.*

65. *See id.*

66. Shogun J. Khadye, *An Uncertain Future: Georgia’s Policy on Restrictive Covenants in Employment Contracts*, 2 J. MARSHALL L.J. 208, 209 (2009).

67. *Id.* at 214.

68. *See* W.R. Grace & Co. v. Mouyal, 422 S.E.2d 529, 531 (Ga. 1992).

69. *Id.*

70. Thomas E. Jordan, *The Application of Contract Law to Georgia Non-Compete Agreements: Have We Been Overlooking Something Obvious?*, 41 MERCER L. REV. 723, 734 (1999).

71. *See* Khadye, *supra* note 66, at 243. “A growing number of state legislators are concerned about the spread of non-compete agreements and their potential impact on worker morale, wage growth, job mobility and career development, labor turnover, and economic development.” WHITE HOUSE, NON-COMPETE REFORM: A POLICYMAKER’S GUIDE TO STATE POLITICS 1 (2016).

72. *See* Benjamin Agee, *Would You Like Reform with That?: Reexamining Noncompete Laws in Texas*, 49 TEX. TECH L. REV. ONLINE EDITION 1, 11–12 (2017).

73. TEX. BUS. & COM. CODE ANN. § 15.50(a) (West 2019).

non-compete agreements is the explicit ban on non-compete agreements for physicians.⁷⁴ However, unlike Georgia, Texas law permits the modification and enforcement of non-compete agreements when some parts of the agreement are valid and others are not.⁷⁵

A. Non-Compete Agreements in Low-Wage Work Environments and the Ensuing Issues

“Evidence shows that non-compete clauses, once linked with highly compensated managerial and executive talent, have become more widespread and are shifting to affect more workers.”⁷⁶ Astoundingly, fifteen percent of employees without a college degree are covered by a non-compete agreement, demonstrating that a vast number of the employees subjected to non-compete contracts may not be skilled workers.⁷⁷ Many of the low-wage and low-skilled workers who are now covered by non-compete agreements do not possess any sort of trade secret, which used to be a requirement in allowing the enforcement of such a contract.⁷⁸

Jimmy John’s, a popular fast food chain, previously included a non-compete agreement in their employment contracts which barred any departing employees from working for a competitor of Jimmy John’s for two years.⁷⁹ Further, employees could not work for a store that made more than ten percent of its revenue within two miles of any Jimmy John’s location.⁸⁰ In 2016, after being subjected to an investigation and having to pay out a settlement, Jimmy John’s announced it will no longer use those agreements.⁸¹ “Non-compete agreements for low-wage workers are unconscionable They

74. *Id.*; see Agee, *supra* note 72, at 12.

75. Compare Khadye, *supra* note 66, at 214 (explaining Georgia’s “no-modification rule,” which prevents courts from rewriting or striking overly broad provisions), with BUS. & COM. § 15.50(a) (stating a covenant not to compete is enforceable “if it is ancillary to or part of an otherwise enforceable agreement”).

76. See WHITE HOUSE, *supra* note 71, at 1.

77. *Id.*; OFFICE OF ECON. POLICY, U.S. DEP’T OF THE TREASURY, NON-COMPETE CONTRACTS: ECONOMIC EFFECTS AND POLICY IMPLICATIONS 4, 6 (2016).

78. See OFFICE OF ECON. POLICY, U.S. DEP’T OF THE TREASURY, *supra* note 77, at 4, 14.

79. Sarah Whitten, *Jimmy John’s Drops Noncompete Clauses Following Settlement*, CNBC (June 22, 2016, 1:38 PM), <https://www.cnbc.com/2016/06/22/jimmy-johns-drops-non-compete-clauses-following-settlement.html> [<https://perma.cc/2T6Y-9RR9>].

80. *Id.*

81. *Id.* All franchisees who implemented any of these agreements agreed to void all of them and the franchisor itself stated it would work closely to ensure best practices were being followed. *Id.*

limit mobility and opportunity for vulnerable workers and bully them into staying with the threat of being sued.”⁸²

Partially due to the increasing trend of including non-compete agreements in low-wage work environments, there has been a call from those in power to eliminate the contracts altogether.⁸³ In 2018, a number of U.S. Senators introduced legislation entitled the Workforce Mobility Act, to prohibit the use of covenants not to compete nationwide.⁸⁴ The Senators advocated that the restrictions on worker mobility are “anti-worker” and “anti-market” and that they “stifle competition and innovation.”⁸⁵ Despite the broad research in this area of the law, there has yet to be research forming a connection between non-compete agreements in low-wage occupations and the prevalence of sexual harassment in those same jobs.⁸⁶

IV. CONNECTION BETWEEN LAWS PERMITTING NON-COMPETE AGREEMENTS AND THE PREVALENCE OF SEXUAL HARASSMENT IN THE WORKPLACE

With non-compete agreements becoming more popular in low-skilled and low-wage work environments,⁸⁷ sexual harassment is increasing.⁸⁸ The increased presence of these restrictions may be forcing employees to remain in unsatisfactory work environments, even when they do not have to.⁸⁹ If an employee is sexually harassed, the employment contract is breached and the non-compete agreement is rendered invalid.⁹⁰ Because many workers in this

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82. Ballard Spahr LLP, *Maryland Joins Trend Banning Noncompete Agreements for Low-Wage Workers*, JD SUPRA (Oct. 4, 2019), <https://www.jdsupra.com/legalnews/maryland-joins-trend-banning-noncompete-28084/> [<https://perma.cc/62GF-A4QT>].
83. Erik Weibust & Anne Dunne, *Democratic U.S. Senators Seek to Abolish Non-Compete Agreements*, SEYFARTH SHAW (May 2, 2018), <https://www.tradesecretslaw.com/2018/05/articles/legislation-2/democratic-u-s-senators-seek-to-abolish-non-compete-agreements/> [<https://perma.cc/HQ4K-N9XN>].
84. *Id.*
85. *Id.*
86. *See supra* Part II.
87. *See* OFFICE OF ECON. POLICY, U.S. DEP’T OF THE TREASURY, *supra* note 77, at 3–4, 7.
88. Although sexual harassment is deeply tied to the Hollywood industry, it is most prevalent in low-wage and service industries where workers have little power. Leah Fessler, *The Poorest Americans Are 12 Times As Likely to Be Sexually Assaulted As the Wealthiest*, QUARTZ (Jan. 3, 2018), <https://qz.com/1170426/the-poorest-americans-are-12-times-as-likely-to-be-sexually-assaulted/> [<https://perma.cc/N2ZJ-R27S>].
89. *See* OFFICE OF ECON. POLICY, U.S. DEP’T OF THE TREASURY, *supra* note 77, at 3–4, 6, 12, 25.
90. *See generally* Murphy, *supra* note 17 (discussing how a change in employment status changes the validity of employment contracts).

situation are unaware of their options and cannot afford the cost of litigation, the ability to challenge the enforceability of an agreement is merely theoretical.⁹¹ The lack of awareness may be keeping them from obtaining new employment and leaving their hostile work environment, even though they have the right to do so.⁹² Even though these documents in low-wage work environments are likely illegal and unenforceable, they have an “in terrorem”⁹³ effect on workers who can not afford to meet with a lawyer and get advice on their options.⁹⁴

A. *Ratios of States’ EEOC Charges As Compared to the Population Based on Severity of Non-Compete Laws*⁹⁵

Although every state has its own work climate and differing practices,⁹⁶ studies have shown that sexual harassment permeates all state lines.⁹⁷ Therefore, in order to compare the sexual harassment

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91. Cf. Grace Segers, *Low-Income New Yorkers Unaware of Programs Protecting Workers’ Rights*, CITY & ST. N.Y. (Jan. 12, 2018), <https://www.cityandstateny.com/articles/policy/labor/poor-new-yorkers-unaware-of-workers-rights-programs.html> [<https://perma.cc/9L5H-FVN3>] (stating that although there are programs in place to assist low-wage workers, the citizens who would most benefit from the programs “have little to no awareness of them”).
92. *See id.*; *see also* OFFICE OF ECON. POLICY, U.S. DEP’T OF THE TREASURY, *supra* note 77, at 3–4, 6, 12, 25.
93. The *in terrorem* effect can best be defined as that of a clause or line included in a document for the purpose of having a fearful or chilling effect on those affected. *In terrorem*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/in%20terrorem> [<https://perma.cc/C93Y-7SWV>] (last visited Nov. 6, 2019).
94. Suresh Naidu et al., *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 536, 544–45 (2018).
95. All calculations are made based on the EEOC charge statistics number of sexual harassment charges per state in any given year, divided by the population of each state according to the U.S. Census 2017 table rounded to the nearest ten thousand. *EEOC Sexual Harassment Charges by State & Gender*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_eeoc_only_by_state.cfm [<https://perma.cc/RK3W-E4D3>] (last visited Nov. 6, 2019); *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017*, U.S. CENSUS BUREAU, http://home.ubalt.edu/students/id36vs00/Flynn_FN95_2017CensusBureau.pdf [<https://perma.cc/G9FJ-DKCG>] (last visited Nov. 6, 2019). Each ratio is then multiplied by one hundred thousand for ease and clarification purposes.
96. *See National Survey on Restrictive Covenants*, FOX ROTHSCHILD 1–29 (July 2017), <https://www.foxrothschild.com/content/uploads/2015/05/National-Survey-on-Restrictive-Covenants-July-2017.pdf> [<https://perma.cc/RK3W-E4D3>]; *see Employee Noncompetes: A State by State Survey*, FAIR COMPETITION L. 1–17 (Aug. 5, 2018), <https://faircompetitionlaw.com/wp-content/uploads/2018/08/Noncompetes-50-State-Survey-Chart-20180805.pdf> [<https://perma.cc/5VCB-4UUC>].
97. *See* THE REST. OPPORTUNITIES CTRS. UNITED & FORWARD TOGETHER, *supra* note 43, at 1–3, 5, 13, 15–19, 23, 30.

charges with the EEOC from each state, it is necessary to perform ratio calculations and compare the states based on the severity of their non-compete laws.⁹⁸ States such as California and North Dakota explicitly outlaw non-compete agreements, whereas other places like the District of Columbia and Alabama allow the use of covenants not to compete in almost any situation.⁹⁹

The ratio of EEOC charges for sexual harassment to the population in North Dakota is approximately 1.9.¹⁰⁰ North Dakota law explicitly states that “[e]very contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void.”¹⁰¹ The only exceptions are for businesses that result in goodwill of customers and dissolution of partnerships.¹⁰² Therefore, it is not surprising that the prevalence of sexual harassment charges in North Dakota reported to the EEOC is low.¹⁰³

In comparison, the ratio in Alabama is about 21.0.¹⁰⁴ Alabama law permits covenants not to compete in many situations to preserve protectable interests such as trade secrets, confidential information, commercial relationships, goodwill, specialized training, and other such interests.¹⁰⁵ Reports of increased claims of sexual harassment have cropped up in the media in many states,¹⁰⁶ but particularly in Alabama.¹⁰⁷

Based on the above calculations,¹⁰⁸ the ratio of EEOC sexual harassment charges to the estimated population to the nearest 10,000 in 2010 is approximately ten times higher in Alabama than in North Dakota.¹⁰⁹ While there may be many other factors that contribute to

98. See sources cited *supra* note 96.

99. See *National Survey on Restrictive Covenants*, *supra* note 96, at 1–4, 19–20; see *Employee Noncompetes: A State by State Survey*, *supra* note 96, at 1–3, 12.

100. See *supra* note 95 (explaining the method of calculation for the relevant ratio).

101. N.D. CENT. CODE ANN. § 9-08-06 (West 2017) (amended 2019).

102. *Id.*

103. See *Enforcement & Litigation Statistics*, *supra* note 21.

104. See *supra* note 95.

105. See ALA. CODE § 8-1-190 (2019).

106. Brian Steinberg, *Media Coverage of Sexual Assault, #MeToo, Is Rising*, VARIETY (Oct. 5, 2018, 6:06 AM), <https://variety.com/2018/biz/news/media-coverage-sexual-assault-metoo-1202970077/> [https://perma.cc/L3YL-377G].

107. See Lindsay Gibbs, *2017 Was a Year for Trying to Believe Women*, THINKPROGRESS (Dec. 14, 2017, 8:19 AM), <https://thinkprogress.org/try-believing-women-6bc804e514c6/> [https://perma.cc/U9SU-MJY4].

108. See *supra* text accompanying notes 100, 104.

109. See *supra* text accompanying notes 100, 104. Calculations for comparison are performed by dividing the higher ratio (in this case Alabama at 21.0) by the smaller

the vast difference in the number of sexual harassment charges reported to the EEOC within these two states, the results suggest that there is a relation due to the extreme variances in their non-compete laws.¹¹⁰

Another comparison can be made between California and the District of Columbia.¹¹¹ As previously mentioned, California has fairly strict non-compete laws, only allowing non-compete agreements in select cases for trade secret protection.¹¹² Specifically, California law states that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.”¹¹³ The ratio for sexual harassment charges reported to the EEOC in 2010 when compared to the population in California in 2010 is approximately 5.0.¹¹⁴

Contrarily, the District of Columbia has relatively lenient laws when it comes to non-compete agreements.¹¹⁵ D.C. law allows the agreements to exist for anything from trade secrets to expert training and fruits of employment.¹¹⁶ The calculated ratio for sexual harassment charges to population in 2010 for D.C. is about 35.2.¹¹⁷ D.C.’s ratio is therefore approximately seven times higher than that of California.¹¹⁸ The difference in the ratios of these states highlights the issue that many workers today are stuck in a job where they are being sexually harassed, but feel that they cannot leave due to non-compete agreements that they do not fully comprehend.¹¹⁹

B. Comparison of Top Five States with Most Strict Non-Compete Laws with Top Five States with Least Strict Non-Compete Laws

Because state law governs non-compete agreements, along with most labor and employment decisions, there is a wide variety of laws across the states.¹²⁰ While there is varying criteria, there are many

ratio (here North Dakota at 1.9) using the ratios calculated above. *See supra* text accompanying notes 100, 104.

110. *See National Survey on Restrictive Covenants, supra* note 96, at 1, 19–20.

111. *See infra* notes 112–19 and accompanying text.

112. *ReadyLink Healthcare v. Cotton*, 24 Cal. Rptr. 3d 720, 731 (Cal. Ct. App. 2005); *see supra* text accompanying note 99.

113. CAL. BUS. & PROF. CODE § 16600 (West 2019).

114. *See supra* note 95.

115. *See Employee Noncompetes: A State by State Survey, supra* note 96, at 3.

116. *Id.* The only requirement that D.C. places on restrictions on competition is that they cannot be unreasonable. *See id.*

117. *See supra* note 95.

118. *See supra* text accompanying notes 95, 109, 114, 117.

119. *Cf. Suresh Naidu et al., supra* note 94, at 595.

120. *See Employee Noncompetes: A State by State Survey, supra* note 96.

categories across the board for which some states allow non-compete agreements where others do not.¹²¹ Therefore, despite the varying laws,¹²² it is possible to rank the states by those most “non-compete agreement friendly” versus those “most harsh on non-compete agreements.”¹²³

The criteria for determining which states fall at either end of the spectrum is composed of two main factors: (1) whether the state allows for non-compete agreements; and (2) how many reasons are given by the state as a valid reason to have such an agreement.¹²⁴ Based on that criteria, the two states with the strictest non-compete laws are North Dakota and California, followed by Hawaii, Nebraska, and Arizona.¹²⁵ Neither North Dakota nor California allow the use of non-compete agreements.¹²⁶ Although Hawaii, Nebraska, and Arizona allow for the use of non-compete agreements, their use is permitted only in limited circumstances.¹²⁷ Hawaii only allows the use of non-compete agreements to protect trade secrets or confidential information.¹²⁸ Similarly, the laws of Nebraska and Arizona limit the use of the agreements to situations involving trade secrets, confidential information, and goodwill.¹²⁹

Conversely, the five states who have the most lenient laws regarding non-compete agreements are Alabama, Arkansas, Tennessee, Georgia, and New Mexico.¹³⁰ Alabama’s statutory scheme allows for the use of non-compete agreements in ten different situations.¹³¹ Comparably, Arkansas allows for the use of such

121. *Id.* For example, every state that allows for non-compete agreements specifically mentions the protection of trade secrets as a justifiable reason for having such an agreement. *Id.*

122. *Id.*

123. *See infra* text accompanying notes 124–45.

124. *See Employee Noncompetes: A State by State Survey*, *supra* note 96, at 1–17.

125. *Id.* at 1–2, 4, 9, 12.

126. *See id.* at 2, 12; N.D. CENT. CODE ANN. § 9-08-06 (West 2019); CAL. BUS. & PROF. CODE § 16600 (West 2019). California’s code does state there *may* be an exception for trade secrets, but courts have held that there is a large burden to overcome when enforcing. CAL. BUS. & PROF. CODE § 16607 (West 2019); *AMN Healthcare, Inc. v. AYA Healthcare Servs., Inc.*, 239 Cal. Rptr. 3d 577, 594–96 (Cal. Ct. App. 2018).

127. *See Employee Noncompetes: A State by State Survey*, *supra* note 96, at 1, 4, 9.

128. HAW. REV. STAT. ANN. § 480-4(c) (West 2019).

129. NEB. REV. STAT. ANN. § 59-1603 (West 2019); *see Gaver v. Schneider’s O.K. Tire Co.*, 856 N.W.2d 121, 130 (Neb. 2014); *see Employee Noncompetes: A State by State Survey*, *supra* note 96, at 1.

130. *See Employee Noncompetes: A State by State Survey*, *supra* note 96, at 1–2, 4, 11, 15.

131. ALA. CODE §§ 8-1-190 to -191 (2019). Alabama’s laws allow for the use of non-compete agreements in the event of trade secrets, confidential information,

agreements in many of the same situations, amounting to nine circumstances when an employee's future employment in regard to competition can be regulated.¹³² Additionally, Tennessee allows for the use of these restrictive covenants in six different scenarios where the employer's interests are "protectable."¹³³ Finally, both Georgia and New Mexico allow for the regulation of a former employee's future competition in five scenarios where the employer's interests are particularly protectable.¹³⁴

Unsurprisingly, the five states with the strictest non-compete agreement laws have very low ratios of EEOC charges filed for sexual harassment when compared with the ratios of those states with the most lenient non-compete laws:

relationships with customers, relationships with vendors, relationships with patients, relationships with clients, customer goodwill, patient goodwill, client goodwill, or specialized training. *Id.*

132. ARK. CODE ANN. § 4-75-101 (West 2019). The statute lays out the nine situations in which a non-compete agreement would be enforceable. *Id.*
133. *Vantage Tech., LLC v. Cross*, 17 S.W.3d 637, 644 (Tenn. Ct. App. 1999). Tennessee does not have an overarching statute regulating the use of non-compete agreements, only one statute specifically regulating the use of such agreements with regard to physicians. J. Gregory Grisham, *Tennessee Non-Compete Law: A Continued Focus on the Employer's Alleged Protectable Interests*, HR PROFS. MAG., Aug. 2017, at 10, (citing TENN. CODE ANN. § 63-1-148 (West 2019)), https://issuu.com/hrprofessionalsmagazine/docs/august_2017_issue [<https://perma.cc/3MDF-NJK9>].
134. GA. CODE ANN. § 13-8-53 (West 2019); *Insure N.M., LLC v. McGonigle*, 995 P.2d 1053, 1058–59 (N.M. Ct. App. 2000) (holding that New Mexico will uphold non-compete agreement in those situations where the restrictions are "reasonable").

*Table 1. Sexual Harrassment Ratios of Sexual Harassment Reported to State Population: Five Strictest and Five Most Lenient*¹³⁵

State	Ranking	Ratio
North Dakota	1	1.9 ¹³⁶
California	2	5.0 ¹³⁷
Hawaii	3	7.1 ¹³⁸
Nebraska	4	1.1 ¹³⁹
Arizona	5	1.2 ¹⁴⁰
New Mexico	46	18.0 ¹⁴¹
Georgia	47	18.1 ¹⁴²
Tennessee	48	16.7 ¹⁴³
Arkansas	49	16.3 ¹⁴⁴
Alabama	50	21.0 ¹⁴⁵

Clearly, a relationship exists between the amount of regulation placed on non-compete agreements and the number of EEOC charges filed within that same state.¹⁴⁶

C. Comparison of Charges Filed with the EEOC Before and After Enactment of Non-Compete Reform Laws in Different States

Another method of determining whether there is a relationship between non-compete laws and sexual harassment charges is to compare the amount of sexual harassment charges in one state before

135. States are ranked in order from strictest laws to most lenient according to my criteria gathered from state-by-state surveys and state laws. *See supra* notes 98, 124–34 and accompanying text.

136. *See supra* note 95.

137. *See supra* note 95.

138. *See supra* note 95.

139. *See supra* note 95.

140. *See supra* note 95.

141. *See supra* note 95.

142. *See supra* note 95.

143. *See supra* note 95.

144. *See supra* note 95.

145. *See supra* note 95.

146. *See supra* notes 135–45 and accompanying text.

and after the enactment of key laws regarding regulation of non-compete agreements.¹⁴⁷ Although comparing the ratios between different states with varying laws may show a trend and can be helpful, the optimal method of analyzing these statistics is to utilize controlled variables.¹⁴⁸ Accordingly, this section will analyze the difference in the number of sexual harassment charges filed before and after the enactment of key statutes.¹⁴⁹

In 2015, Hawaii enacted a key statute limiting the use of non-compete agreements.¹⁵⁰ This statute changed Hawaii law by narrowing the circumstances in which non-compete agreements are permissible, only allowing such agreements in two scenarios.¹⁵¹ In 2015, when this statute was enacted, the ratio of sexual harassment charges filed with the EEOC to the population of Hawaii at the time was approximately 6.5.¹⁵² In 2014, one year prior to the enactment of this statute, the ratio was about 8.3.¹⁵³ This shows a decrease of reported sexual harassment charges by roughly 21.73%.¹⁵⁴

Similarly, Georgia enacted a statute to deregulate the restrictions on restrictive covenants in 2011.¹⁵⁵ This law broadened the horizon for the use of non-compete agreements in Georgia to include five situations in which the agreements would be enforced.¹⁵⁶ In 2011, prior to the enactment of the law later in the year, the ratio of sexual harassment charges to the population of Georgia was about 16.7.¹⁵⁷ The following year, the ratio increased to approximately 18.7.¹⁵⁸ This is an increase in the ratio of approximately 11.94%.¹⁵⁹ Despite the possible existence of other factors, the increase and decrease of the ratios in these two states is likely attributable to the new statutes within these two states.

147. See *infra* notes 148–59 and accompanying text.

148. See *supra* Sections IV.A–B; see Martyn Shuttleworth, *Controlled Variables*, EXPLORABLE, <https://explorable.com/controlled-variables> [https://perma.cc/LU45-NAZT] (last visited Nov. 6, 2019).

149. See *infra* notes 150–59 and accompanying text.

150. HAW. REV. STAT. ANN. § 480-4(c) (West 2019).

151. *Id.*

152. See *supra* note 95.

153. See *supra* note 95.

154. See *supra* notes 152–53 and accompanying text.

155. GA. CODE ANN. § 13-8-53 (West 2019).

156. *Id.*

157. See *id.*; see *supra* note 95.

158. See *supra* note 95.

159. See *supra* notes 157–58 and accompanying text.

V. IS THERE A SOLUTION?

If the reason for increased EEOC charges of sexual harassment in certain states is indeed the existence of lenient non-compete laws,¹⁶⁰ perhaps we should listen to the call placed in the media by many politicians, professors, and public figures over the past few years.¹⁶¹ The eradication of these non-compete agreements is of particular importance in low-wage work environments.¹⁶²

An example of a case of non-compete agreements being used in the low-wage work environment is the Jimmy John's franchise.¹⁶³ In *Butler v. Jimmy John's Franchise, LLC*,¹⁶⁴ a former employee of the company brought a class action suit against the operators of the chain.¹⁶⁵ The employee alleged that the company made their employees sign non-compete agreements which included a number of rules including the provisions that they could not work at any "sandwich" shop within a few miles of "any Jimmy John's franchisee in the United States" and, if the employee did do so, they had to reimburse the franchise for all costs, including the attorney's fees that resulted from the dispute.¹⁶⁶ The U.S. District Court for the Southern District of Illinois held that the provision would likely "lock[] low-wage workers into their jobs and prohibit[] them from seeking better paying jobs elsewhere."¹⁶⁷ Accordingly, the court denied Jimmy John's Motion to Dismiss with regard to the Sherman Antitrust Act claims in the plaintiff's complaint.¹⁶⁸

160. See *supra* Part IV.

161. See, e.g., Lorraine Mirabella, *Employers Use Non-Compete Agreements Even for Low-Wage Workers*, BALT. SUN (July 7, 2017, 4:00 PM), <https://www.baltimoresun.com/business/bs-bz-noncompete-low-wage-20170705-story.html> [<https://perma.cc/Q68B-F6FG>] (discussing a University of Maryland Professor's opinion in the systemically damning use of non-compete agreements in low-wage work environments); see also Lydia DePillis, *Can the Senate Stop Low-Wage Employers from Tying Up Workers with Non-Competes?*, WASH. POST (June 2, 2015, 5:16 PM), https://www.washingtonpost.com/news/wonk/wp/2015/06/02/can-the-senate-stop-low-wage-employers-from-tying-up-their-workers-with-noncompetes/?noredirect=on&utm_term=.3d182677b0f1 [<https://perma.cc/7XBM-PGJJ>] (analyzing the introduction of a bill in the Senate that would ban non-compete agreements for workers making less than fifteen dollars an hour).

162. See *infra* notes 163–76 and accompanying text.

163. See Whitten, *supra* note 79.

164. *Butler v. Jimmy John's Franchise, LLC*, 331 F. Supp. 3d 786 (S.D. Ill. 2018).

165. *Id.* at 790–91.

166. *Id.* at 790.

167. *Id.* at 794.

168. *Id.* at 798.

Alongside the use of non-compete agreements, sexual harassment is prevalent and may be stopped by eliminating the agreements that make low-wage workers feel trapped.¹⁶⁹ In order to encourage the reporting of sexual harassment in the workplace and to make victims feel as though they will not be re-traumatized,¹⁷⁰ victims should be given the opportunity to leave hostile work environments without fear of repercussions.¹⁷¹

Although it was ultimately not enacted, the Mobility and Opportunity for Vulnerable Employees (MOVE) Act of 2015 would have been a tremendous reform in this industry.¹⁷² The MOVE Act, if enacted, would have completely outlawed any non-compete agreements between employers and low-wage workers.¹⁷³ It was the introduction of this failed act that got the White House's attention in 2016 and resulted in the release of two reports on restrictive covenant policy.¹⁷⁴ It would be best practice to reform non-compete laws by banning non-compete agreements altogether for certain categories of workers (such as low-wage).¹⁷⁵ Doing so would allow workers, particularly those with few other options, to move about to different careers without fear of being harmed for doing the right thing for themselves and other potential victims, or for reporting harassment.¹⁷⁶

VI. CONCLUSION

Sexual harassment in the workplace has become too much of a norm in society for it to be overlooked anymore.¹⁷⁷ Similarly, low-wage workers being trapped in low-level jobs with no future where

169. J.J. Prescott et al., *Understanding Noncompetition Agreements: The 2014 Noncompete Survey Project*, 2016 MICH. ST. L. REV. 369, 374 n.13 (2016).

170. Beverly Engel, *Why Don't Victims of Sexual Harassment Come Forward Sooner?*, PSYCHOL. TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner> [<https://perma.cc/2DAY-UMD5>].

171. See sources cited *supra* note 161.

172. See Kevin Burns, *The Latest on State-Level Noncompete Reform*, FISHER PHILLIPS (June 11, 2018), <https://www.fisherphillips.com/resources-articles-the-latest-on-state-level-noncompete-reform> [<https://perma.cc/H9RE-L9B6>].

173. *Id.*

174. *Id.*; see WHITE HOUSE, *supra* note 14, at 2–3; see *supra* note 71.

175. See, e.g., *Illinois Freedom to Work Act: One State's Reaction to Overreaching Non-Compete Agreements*, JACKSON LEWIS (Aug. 25, 2016), <https://www.jacksonlewis.com/publication/illinois-freedom-work-act-one-state-s-reaction-overreaching-non-compete-agreements> [<https://perma.cc/5WMB-QWAP>].

176. See *supra* notes 14, 17 and accompanying text.

177. See *supra* Part II.

they may even be subjected to sexual harassment, has become a topic which many are fighting against.¹⁷⁸ The unexplained correlation between lax non-compete laws and a prevalence of sexual harassment charges filed with the EEOC is troubling and must be addressed.¹⁷⁹

The MOVE Act was one step in the right direction,¹⁸⁰ now Congress and local state governments must follow in the recently-created footpaths and enact reform to protect low-wage workers. By doing so, we will shield those in our workforce who are most susceptible to not only sexual harassment and predatory non-compete agreements but an even more dangerous combination of the two.¹⁸¹

178. See, e.g., Dawn Mertineit et al., *At Long Last, Non-Compete Legislation: Massachusetts Finally Passes Non-Compete Bill After Nearly a Decade*, SEYFARTH SHAW (Aug. 1, 2018), <https://www.tradesecretslaw.com/2018/08/articles/legislating-at-long-last-non-compete-legislation-massachusetts-finally-passes-non-compete-bill-after-nearly-a-decade/> [<https://perma.cc/UU3Y-6YWA>].

179. See *supra* notes 135–45 and accompanying text.

180. See Burns, *supra* note 172.

181. See discussion *supra* Section IV.C.

