



**SURVIVORS  
SPEAKING  
OUT**

**A TOOLKIT** About Defamation Lawsuits  
and Other Retaliation By and For People  
Speaking Out About Sex-Based Harassment



# ACKNOWLEDGEMENTS

**AUTHORS:** Elizabeth Tang at the National Women’s Law Center; Sage Carson, Dharma Koffer, Naina Agrawal-Hardin, Tanaya Kollipara, and Emma Grasso Levine at Know Your IX, a project of Advocates for Youth; Kendall Maxwell, Isabella Berkley, and Tara Ahluwalia at Harvard Law School’s Cyberlaw Clinic; and Rachel Blumenstein, T.S. Goodall, Miles Malbrough, Meredith Rolfs Severtson, and Kristen Smith at Vanderbilt University Law School’s First Amendment Clinic.

**DESIGN AND PRODUCTION:** Beth Stover, Art Director, at the National Women’s Law Center

**EDITORIAL ASSISTANCE:** We gratefully acknowledge the following individuals who provided leadership and editorial assistance: Christopher Bavitz at Harvard Law School’s Cyberlaw Clinic; Gautam Hans and Jennifer Safstrom at Vanderbilt University Law School’s First Amendment Clinic; Jim Davy at All Rise Trial & Appellate; Liz Chacko, Lizzy Vogel, Jennifer Mondino, Hilary Woodward, Shiwali Patel, and Emily Martin at the National Women’s Law Center (NWLC); and former NWLC staff Sarah David Heydemann and Sharyn Tejani (during their employment at NWLC); and former NWLC intern Alyssa Leader.

# Dear Reader

This toolkit was written by advocates and survivors, many of whom have spoken out about **sex-based harassment** and then faced **defamation lawsuits** and other **retaliation**. We wrote this toolkit to share the things many of us wish we had known back when we spoke out. If you have faced sex-based harassment (including at school or work) and are thinking about speaking out about the harassment (or already have spoken out), then this toolkit is for you.

It is so powerful that more and more people are starting to speak out about facing **sex-based harassment**. Speaking out and sharing your story can be hard, but it can also be empowering and healing. Many survivors also share their story because they want to help keep their communities safe from violence.

Sadly, this powerful movement of storytelling and advocacy has led to a backlash. Many victims are understandably worried about the risks of speaking out, such as facing **retaliation**. Retaliation includes the risk of being sued for **defamation** by the person who harmed them (the **abuser**). Unfortunately, many abusers and their supporters are using defamation lawsuits and other forms of retaliation<sup>1</sup> against survivors to try to keep us silent.

We wrote this toolkit to give survivors a starting point: to help you understand your rights, risks, and options if you have faced **sex-based harassment** and are worried about **retaliation**, including a potential **defamation lawsuit**. We hope this toolkit will help you (1) make an informed decision about how and whether to speak out and (2) protect yourself from harm.

Our hope in writing this toolkit is not to discourage survivors from speaking out, but to ensure you can make an informed decision when sharing your story. We hope this toolkit can help you in your journey to reclaim power and control over your life.

*With love and solidarity,*

Survivors, Students, and Advocates at National Women's Law Center;  
Know Your IX, Advocates for Youth; Harvard Law School's Cyberlaw Clinic;  
and Vanderbilt University Law School's First Amendment Clinic

**Note:** This toolkit uses both the terms **victim** and **survivor** to refer to people who have experienced **sex-based harassment**. This is because some people use one or both terms to describe themselves, and others feel that neither term accurately captures the complexity of their identity or experience. The toolkit also uses the term **abuser** to refer to people who have caused sex-based harassment.

<sup>1</sup> For example, some abusers are also suing their victims because the abuser is upset ("intentional infliction of emotional distress") or has lost a job or contract ("intentional interference with existing contracts" or "tortious interference with business expectancies") as a result of the victim speaking out.

# WHAT'S IN THIS TOOLKIT

**DEAR READER:** Read this opening letter from the authors to understand why we wrote this toolkit.

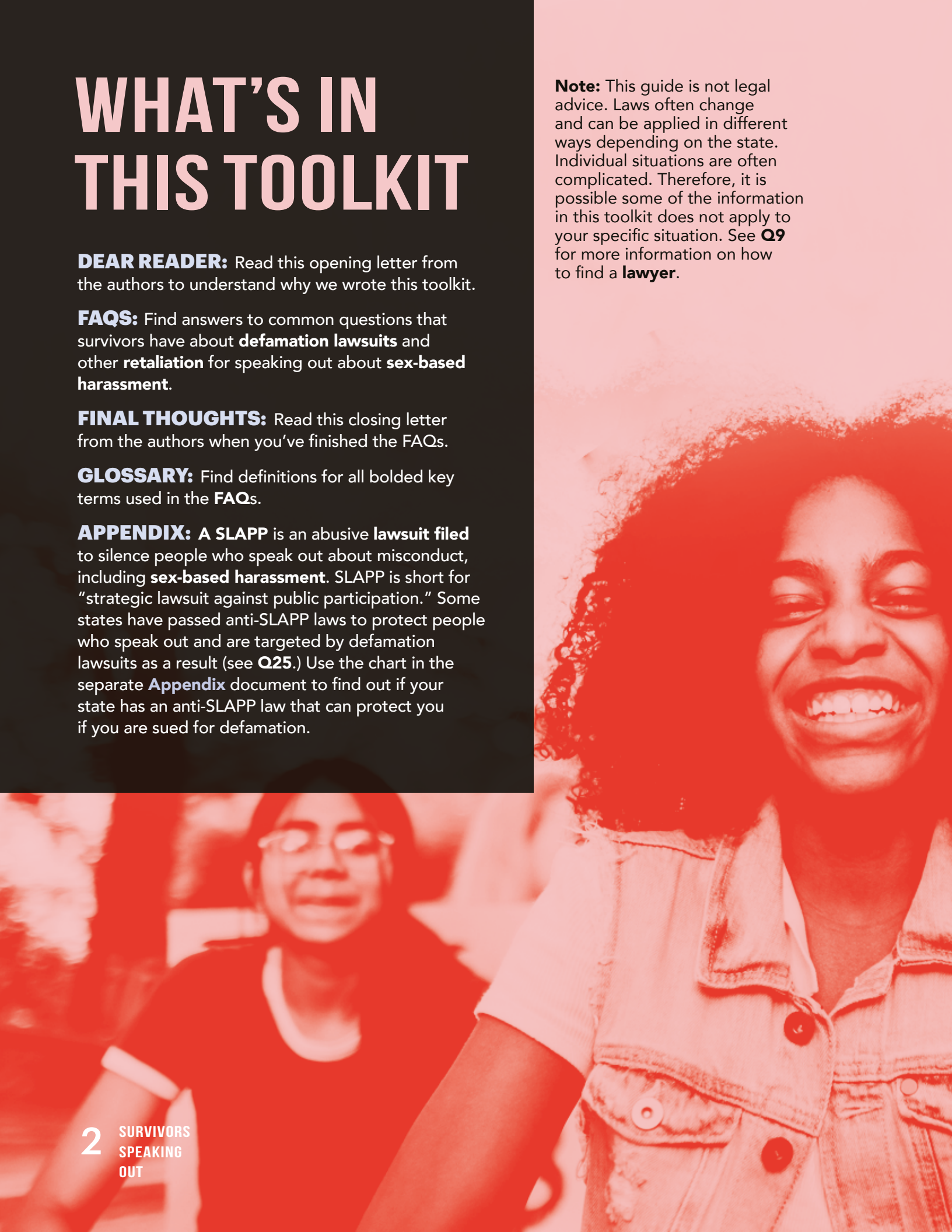
**FAQS:** Find answers to common questions that survivors have about **defamation lawsuits** and other **retaliation** for speaking out about **sex-based harassment**.

**FINAL THOUGHTS:** Read this closing letter from the authors when you've finished the FAQs.

**GLOSSARY:** Find definitions for all bolded key terms used in the **FAQS**.

**APPENDIX: A SLAPP** is an abusive **lawsuit filed** to silence people who speak out about misconduct, including **sex-based harassment**. SLAPP is short for "strategic lawsuit against public participation." Some states have passed anti-SLAPP laws to protect people who speak out and are targeted by defamation lawsuits as a result (see **Q25**.) Use the chart in the separate **Appendix** document to find out if your state has an anti-SLAPP law that can protect you if you are sued for defamation.

**Note:** This guide is not legal advice. Laws often change and can be applied in different ways depending on the state. Individual situations are often complicated. Therefore, it is possible some of the information in this toolkit does not apply to your specific situation. See **Q9** for more information on how to find a **lawyer**.



# FAQS

The decision to share your story is deeply personal, but you don't have to figure it all out on your own. You can use this toolkit as a starting point, along with other resources. You can also ask for help from a trusted friend, family member, mentor, teacher, or co-worker.

<b>PART A. WAYS TO SPEAK OUT .....</b>	<b>3</b>
Q1. I'm thinking about sharing my story and/or reporting my abuser. What are my options?.....	4
Q2. Is it possible to remain anonymous?.....	8
Q3. What if I don't name my abuser?.....	10
Q4. Does naming my abuser orally carry the same risks as writing or posting online?.....	10
<b>PART B. THINGS TO KEEP IN MIND WHEN SPEAKING OUT .....</b>	<b>11</b>
Q5. How can I stay safe while speaking out?.....	12
Q6. How might speaking out affect my mental health?.....	13
Q7. Can my abuser sue me for speaking out? Can I sue them?.....	13
Q8. Should I talk to a lawyer about speaking out?.....	13
Q9. Where can I find a lawyer? How much could a lawsuit cost?.....	14
Q10. Can the police investigate the violence against me even if I don't want them to?.....	15
Q11. Can speaking out publicly affect my civil protection order hearing or a police investigation?.....	16
<b>PART C. SPEAKING OUT AS A STUDENT .....</b>	<b>17</b>
Q12. Can speaking out affect my education?.....	18
Q13. If I speak out about harassment by another student or a school employee, can my school investigate the harassment even if I don't want them to?.....	19
Q14. Can my school prevent me from speaking out publicly about the harassment?.....	19
Q15. Can my school punish me for "bullying" my abuser because I have spoken out about the harassment?.....	20
<b>PART D. SPEAKING OUT AS A WORKER .....</b>	<b>21</b>
Q16. Can speaking out affect my job?.....	22
Q17. If I speak out about workplace harassment, can my employer investigate the harassment even if I don't want them to?.....	23
Q18. Can my employer prevent me from speaking out publicly about the harassment?.....	23
Q19. Can my employer punish me for being a "troublemaker" in the workplace because I have spoken out about workplace harassment?.....	24
<b>PART E. RESPONDING TO A DEFAMATION LAWSUIT .....</b>	<b>25</b>
Q20. What should I do if I receive a cease-and-desist letter?.....	26
Q21. What if my abuser is famous? What if they're not?.....	27
Q22. What happens if I get sued? How do defamation lawsuits work?.....	28
Q23. What are possible legal defenses against a defamation lawsuit?.....	29
Q24. I've been sued. How do I find a lawyer?.....	32
Q25. Does my state have protections against retaliatory defamation lawsuits?.....	32

A photograph of two young women in a library or study area. The woman on the right is wearing a grey hoodie and looking towards the woman on the left, who is wearing a white hoodie and speaking. The background shows bookshelves and a desk with books. The entire image has a purple tint.

**PART A.**

**WAYS**

**TO SPEAK**

**OUT**

**3**

**SURVIVORS  
SPEAKING  
OUT**

**SHARING YOUR STORY** publicly can come with certain risks. You are the only person who can decide whether speaking out is the best option for you.

Before you begin, these are words that we will use throughout the **FAQs**:

- **Sex-based harassment** means unwanted conduct based on sex. It includes **sexual harassment, sexual assault, dating violence, domestic violence,** and **stalking**. It also includes harassment based on sexual orientation or gender identity.
- **Retaliation** means punishment or backlash against someone who speaks out or reports misconduct, such as sex-based harassment.
- **Defamation** is a false statement that harms someone's reputation. **Libel** is written defamation. **Slander** is spoken defamation. Defamation **lawsuits** are sometimes filed against survivors to intimidate them and make it seem like their story of sex-based harassment is false.

As you think about speaking out, you may want to keep in mind the following things:

- What are my options for speaking out? (**Q1**)
- Is it possible to remain anonymous? (**Q2**)
- What if I don't name my abuser? (**Q3**)
- Does naming my abuser orally carry the same risks as writing or posting online? (**Q4**)

## **Q1. I'M THINKING ABOUT SHARING MY STORY AND/OR REPORTING MY ABUSER. WHAT ARE MY OPTIONS?**

If you want to speak out, there are many ways that you can share your story, report your abuser, or both. Here are some ways that folks choose to speak out:

You could tell people in your community:

- Tell your family and friends
- Post on social media
- Talk to a news reporter
- Write an op-ed or personal essay
- Make an anonymous public statement
- Make an anonymous online document, spreadsheet, or social media account for others in your community to share their stories of sex-based harassment
- Speak at a public event

**IF YOU ARE A STUDENT** speaking out about harassment you experienced related to your education, you are probably protected by **Title IX**. Title IX is a federal law that prohibits sex discrimination, including **sex-based harassment and retaliation**, in schools that receive federal funds. This means it applies to all public schools, some private K-12 schools, and almost all private colleges and universities. If Title IX applies to you, you have several more formal reporting options:

**School complaint:** Report the harassment to your school's **Title IX** office.

- If you report **sex-based harassment** to your school's Title IX office and it fits certain criteria, **Title IX** requires your school to offer you **supportive measures** that help you learn or feel safe at school.

- Your school should have a policy that explains how it responds to **complaints of sex-based harassment**. If you are a K-12 student, this policy might be on your school district's website on a page called "Policies," "Board Policies," or "School Board Policies." If you are a college or graduate student, this policy might be on your school's website on a page called "Title IX Policy," "Sexual Misconduct Policy," or "Gender-Based Harassment Policy." If you can't find the policy, you could ask a teacher, professor, or other school staff to help you find it.





**Government agency complaint:** If your school does not help you or makes things worse, you can **file a complaint** against your school with a government agency:

- **Federal agency:** You can file a **Title IX complaint** against your school with the U.S. Department of Education's Office for Civil Rights (OCR). Depending on your specific situation, OCR may investigate your school for violating your **Title IX** rights. In general, you have 180 days after the last act of discrimination by your school to file a complaint with OCR.
- **State agency:** Depending on where you live, you may also be able to file a complaint against your school with a state or city agency.

Different states have different systems for addressing harassment in schools, but depending on your state, you might file with the education department, attorney general's office, or another agency. The state agency may investigate your school for violating your rights under state law.

**Lawsuit:** If your school does not help you or makes things worse, you can file a **Title IX lawsuit** against your school.

- The deadline for filing a lawsuit is called the **statute of limitations**.
- In general, the deadline for filing a **Title IX lawsuit** depends on your state's personal injury law and ranges from **one to six years**.<sup>2</sup>
- Some states have a longer statute of limitations for **sexual assault**.

2 Different courts have different rules for calculating when this deadline starts running. For example, it could start from the last time you told the school you were harassed or the last time your school did something in response to the harassment (like finishing a **Title IX** investigation). In some courts, the deadline could start from when you realized an experience you had was **sex-based harassment**, when you learned your school should have helped you but didn't, when you learned your school knew about prior incidents of sex-based harassment but didn't help those victims, or another event.

You don't need a lawyer to **file** a school or **agency complaint**, but it can be helpful to have one. You also don't need a lawyer to **file a lawsuit**, but it's really recommended to have one. One way to be connected with **lawyers** is to fill out a quick form with the National Women's Law Center Fund's **Legal Network for Gender Equity**. Lawyers in the Legal Network have agreed to do a first free consultation with people who seek help related to sex-based harassment, discrimination, or retaliation at school.

**IF YOU ARE A WORKER** speaking out about workplace harassment you experienced, you are probably protected by **Title VII**. Title VII is a federal law that prohibits discrimination, including **sex-based harassment**, and **retaliation** against employees. It applies to private employers and state or local government employers with 15 or more employees. It also applies to all federal government employers. If Title VII applies to you, you have several more formal reporting options:

**HR complaint:** Report the harassment to your boss or human resources (HR) office. Your employer may have a policy that explains how to make a complaint and how it responds to complaints of **sex-based harassment**. You can ask your boss or the HR office about this policy or look for it in your employee handbook. (Even if **Title VII** does not apply to you, your employer may have a policy against harassment and process for making an internal harassment complaint.)

**Union complaint:** If you're part of a labor union, you can report it to your union and see if they can help you.

**Government agency complaint:** If your employer does not help you or makes things worse, you can **file a complaint** against your employer with a government agency:

- **Federal agency:** You can file a **Title VII charge** against your employer with the U.S. Equal Employment Opportunities Commission (EEOC). Depending on your specific situation, the EEOC may investigate your employer for violating your **Title VII** rights. In general, you have 180 days after the last incident of harassment to file an EEOC charge. Or, if your state or local government has its own fair employment practices agency that enforces state or local laws against sex-based harassment, then you have 300 days.
- **State agency:** Depending on where you live, you may also be able to **file a complaint** against your employer with a state or city agency. For example, you might file with the state labor commission, human rights commission, or civil rights department. There could also be another state or city agency that receives complaints about sex discrimination or workplace discrimination. Depending on your specific situation, the agency may investigate your employer for violating your rights under state or city law. Some of these state and city laws against workplace harassment cover more employers and workers than Title VII does.
- If your employer **retaliates** against you because you talked to your co-workers about the **sex-based harassment** that you or another co-worker experienced, you may be protected under the National Labor Relations Act (NLRA), even if you are not in a labor union. You can file an NLRA complaint against your employer with the **National Labor Relations Board** (NLRB).

**Lawsuit:** If your employer does not help you or makes things worse, you can **file a Title VII lawsuit** against your employer.

- To file a Title VII lawsuit against your employer, you must first file an EEOC charge against your employer (see page 7).
- Once the EEOC gives you a “Notice of Right to Sue,” you will have 90 days to file a Title VII lawsuit against your employer.
- You may also be able to file a lawsuit under state or local anti-harassment laws.

You don’t need a lawyer to **file** an HR, union, or agency **complaint**, but it can be helpful to have one. You also don’t need a lawyer to **file a lawsuit**, but it’s really recommended to have one. One way to connect with **lawyers** is to fill out a quick form with the National Women’s Law Center Fund’s **Legal Network for Gender Equity**. Lawyers in the Legal Network have agreed to do a first free consultation with people who seek help related to sex-based harassment, discrimination, or retaliation at work.

**IF YOU ARE A STUDENT, WORKER, OR ANYONE ELSE**, you can report **sexual assault, violence, threats, or stalking** to the police. Some people find it helpful to **file** a police report. Others find that the police are not helpful, or that going through a police investigation is more traumatizing than helpful. If you want to file a police report, there may be a **rape crisis center** near you that can help you, including by sending an advocate to go with you to the police.

## **Q2. IS IT POSSIBLE TO REMAIN ANONYMOUS?**

You can choose to tell your story anonymously—without sharing your name. Making a statement this way can help protect your privacy. But even if you share your story anonymously, there is always a chance that some people will recognize who you are based on the details you share or that your abuser may otherwise be able to identify you. Sadly, naming your abuser can increase the chances of you—and those who help you publish your statement anonymously—being sued for **defamation**.

The ability to remain anonymous may also depend on *who* you share your story with. For example:

- If you are under 18 and report **sexual assault, domestic violence, or dating violence** to school staff or medical staff, that person is probably a “mandatory reporter.” This means they are required to report the incident to the police or another government agency. Find out who is a **mandatory reporter** in your state.

- If you are a student, the person you talk to may be required to report the incident to the school's **Title IX** office (see **Q13** for more information).
- If you report harassment to your employer, your employer has a legal obligation to investigate, which may require identifying you to your abuser or relevant witnesses.
- If your abuser sues you, they will name you in the **complaint**, and your identity will be public. In some cases, you could ask the court to change your name to a pseudonym. Even if you can't change your name to a pseudonym, you might still be able to get a "protective order" from the court to redact (hide) your contact info and other private information from court documents. A **lawyer** can help you with this.

It is sometimes possible to be anonymous in a **lawsuit**. Most court documents are public information. But in some cases, you can use a "pseudonym"—a fake name like "Jane Doe" or "Alex Doe" or your first and last initials—instead of your full legal name.

- If you **file a lawsuit**, you might be able to do so with a pseudonym. This means the person or organization you are filing the lawsuit against would know who you are, but the public would not. In some courts, you can just file a lawsuit with a pseudonym. In other courts, you have to ask the court for permission first. Most courts will look at whether: (1) the lawsuit involves a highly sensitive and personal matter; (2) identifying you would cause you physical, emotional, or reputational harm; and (3) you've stayed anonymous so far. A **lawyer** can help you decide if you can sue under a pseudonym.

In some cases, people can be sued for **defamation**, even if they are anonymous. For example, in 2017, a news reporter made an anonymous spreadsheet for women in the media industry to share their stories of **sex-based harassment**. When the spreadsheet was made public, one of the men named in the spreadsheet sued the reporter for defamation, seeking \$1.5 million. He also sued 30 other anonymous women ("Jane Does 1-30") who added men's names to the spreadsheet and tried to force disclosure of the women's identities. In 2023, the reporter agreed to pay the man a six-figure sum to **settle** the entire case, including against the 30 anonymous women.

### **Q3. WHAT IF I DON'T NAME MY ABUSER?**

You can also share your story under your name without naming your abuser. In some cases, this makes it less likely for your abuser to sue you for **defamation**. But even this is not completely without risk. If many people know that you and your abuser were in a romantic or sexual relationship, then your abuser might claim you defamed them even if you didn't name them. For example, when actress Amber Heard published a Washington Post **op-ed** in 2018, she did not name her ex-husband Johnny Depp. She only wrote that she "spoke up against sexual violence" and "became a public figure representing domestic abuse." However, Depp sued Heard, and a **jury** sided with him on some of his defamation claims. Heard later **appealed** the jury's decision and then **settled** the case with Depp. (Importantly, the **settlement** does not stop Heard from making future statements that Depp abused her.)

It is also possible for your school, employer, or other organization to punish you, even if you don't name an abuser. For example, in 2019, a high school student in Maine posted a sticky note in the school bathroom that said, "There's a rapist in our school and you know who it is." While she did not name any student as the rapist, her school gave her a three-day suspension. (Luckily, a **judge** later **blocked** the suspension.) If you are punished by your school, employer, or other organization for sharing your story, even if you don't name your abuser, then you may have a **retaliation claim** against the organization. See **Q1** for more info on reporting retaliation.

### **Q4. DOES NAMING MY ABUSER ORALLY CARRY THE SAME RISKS AS WRITING OR POSTING ONLINE?**

Sharing your story in writing or in an online post creates a written record (or audio or video record) of you speaking out. This may make it easier for your abuser to sue you. But no matter how you choose to share your story, naming an abuser is never risk-free, as it is possible that an abuser might bring a **lawsuit**, threaten a **defamation lawsuit**, or otherwise **retaliate**. See **Q1** for ways to speak out, such as orally, in writing, or by posting a statement, image, audio, or video online.



**PART B.**

**THINGS**

**TO KEEP IN**

**MIND WHEN**

**SPEAKING OUT**

**THERE ARE MANY THINGS** to keep in mind when deciding whether to share your story. You should weigh the factors that are most important to you, including:

- The power of speaking and owning your truth
- The value of sharing your story with others who can support you in your healing journey
- The value of naming your abuser and warning others in your community to keep them safe
- The potential of using your story to demand change
- The effects on your physical safety and privacy (**Q5**)
- The effects on your mental and emotional well-being (**Q6**)
- The risk of being sued or threatened with a **lawsuit** (**Q7**)
- Whether you want to talk to a **lawyer** (**Q8**)
- The possible costs of defending against a **lawsuit** (**Q9**)
- The risk of the police opening up an investigation into your report, even if you don't want one (**Q10**)
- The risk of police using your statements in a criminal investigation (**Q11**)

## **Q5. HOW CAN I STAY SAFE WHILE SPEAKING OUT?**

Your safety is very important. In some cases, people who speak out publicly face threats of physical harm. Some people are harassed on social media or other platforms. Online harassment may include “doxxing,” which means putting someone’s private personal information, such as an address or phone number, online without their consent. This can be extremely threatening and intimidating.

So, if you are planning to share or have shared your story publicly, you should think about your access to support systems and safe spaces. A **support system** is a network of people who can give you practical or emotional support. This network can include family members, friends, or mentors whom you feel comfortable speaking with about your experiences. A **safe space** is a place that gives you physical and emotional safety. You can find safe spaces in school organizations, support groups for survivors of **sex-based harassment**, or among friends.

You might also consider making a safety plan. A **safety plan** is a personalized set of actions that can help keep you safe. This may include:

- Mapping safe routes to places you often go to, and finding a safe public place you can go to in an emergency.
- Making a list of people who are in your **support system** and telling them what to do if your abuser shows up.
- Blocking your abuser, changing your online passwords, deactivating or making private your social media accounts, and **removing** your personal information from the internet.

For more on making a **safety plan**, check out these guides from **Love Is Respect** and the **National Domestic Violence Hotline**.

## Q6. HOW MIGHT SPEAKING OUT AFFECT MY MENTAL HEALTH?

Survivors of **sex-based harassment** are more likely to experience anxiety, depression, and post-traumatic stress disorder (PTSD). For example, a recent **Know Your IX study** of student survivors found that more than 33% had anxiety, more than 25% became depressed, and more than 40% had PTSD.

For some people, speaking out can be a helpful way to regain control and heal from trauma. But for others, especially those with preexisting mental health conditions, recounting a traumatic experience can be overwhelming. Any public backlash can also be hard on one's mental and emotional well-being.

If you are deciding whether to speak out or have spoken out, it can be helpful to plan ways to protect your mental health. You can think about who in your life can be part of your personal **support system**. You may also want to research local therapists, psychologists, or other mental health providers. Some good starting points are the **National Sexual Assault Telephone Hotline (800.656.HOPE)** and the **National Domestic Violence Hotline (800.799.SAFE)**.

## Q7. CAN MY ABUSER SUE ME FOR SPEAKING OUT? CAN I SUE THEM?

People can be sued or threatened with a **lawsuit**, such as a **defamation** lawsuit, for speaking publicly about sex-based harassment. Defamation means falsely saying or writing things that tend to harm someone's reputation (like accusing them of **sex-based harassment**).

Unfortunately, there is no way to prevent an abuser from filing a lawsuit, even if they do not have a strong legal **claim**. While this does not always happen, even when a harassment victim is telling the truth, some abusers may sue or threaten to sue their victims to cause more harm. This is known as "abusive litigation." Abusers have sometimes **filed** pointless **claims** with the court, sought a protective order against their victim, or dragged out **lawsuits** to hurt their victim. See **Q22** for more information on how lawsuits work and what to do if you are sued.

You may have your own legal claims against your abuser. For example, you could sue your abuser for harassing you. Or, if your abuser **files** a **defamation lawsuit** against you, you may be able to countersue. **Countersue** means a **defendant** filing a **claim** against the **plaintiff** of the initial lawsuit. For example, if your abuser sues you for defamation, depending on your state and situation, you may be able to countersue your abuser for civil rape, aggravated assault, battery, and/or something else. Sometimes victims have sued their abusers for defamation for calling the victim a liar. For example, when Donald Trump called one of his victims' sexual abuse claims against him a "hoax" and "con job," she **sued** him for defamation, and the court **ordered** him to pay her about \$3 million. See **Q22**, **Q25**, and the **Appendix** for more information on countersuing.

## Q8. SHOULD I TALK TO A LAWYER ABOUT SPEAKING OUT?

When you are sharing your story, it can be a good idea to get advice from a **lawyer**, especially if you are afraid your abuser will sue you. A lawyer can also help you figure out if you have legal **claims** of your own. See **Q9** on where to find free or low-cost lawyers.

If you've already been sued, then you should get a **lawyer**. See **Q9** on where to find free or low-cost lawyers. See **Q24** on how to choose a lawyer to represent you.



## Q9. WHERE CAN I FIND A LAWYER? HOW MUCH COULD A LAWSUIT COST?

Hiring a **lawyer** can be expensive. Most lawyers charge an hourly rate, which depends on their experience and where you live. An hourly rate can range from a few hundred dollars to over a thousand dollars an hour. Even if a lawyer has a low hourly rate, a **lawsuit** can require many hours of work, which can lead to high costs. If you end up in a lawsuit, you'll also have to pay for the costs supporting your lawsuit, like postage, delivery, photocopying, filing papers with the court, and other costs. Before you hire a lawyer, you should ask them for a written cost estimate. If you are worried about the cost of a lawyer, keep in mind:

**Pro bono lawyers:** Some law firms provide "pro bono" (at no cost) or "low bono" (at a low cost) representation for certain groups of people or certain types of cases. There are also nonprofits that represent people at no cost. For example, **Electronic Frontier Foundation** accepts requests for help with defamation lawsuits related to online statements. Some law firms may represent survivors in **anti-SLAPP** lawsuits for free (see **Q25** and the **Appendix** for more about anti-SLAPP).

**Legal Network for Gender Equity lawyers:** If you want to speak out about **sex-based harassment** you experienced as a student, as a worker, or as a patient, you can be connected with lawyers through the National Women's Law Center Fund's **Legal Network for Gender Equity**. All lawyers in the Legal Network are required to give you a free first legal consultation. Some lawyers in the Legal Network offer pro bono or low bono services.

**Law school clinics:** Some law schools have a class (called a "clinic") where law students help people with lawsuits under the guidance of their professor, who is a practicing lawyer.

The clinic can give you free advice and may be able to take your case. You can look up law schools in your state to see if they have a **First Amendment clinic** (see the list on the right side of the linked webpage), technology law clinic, or another similar clinic that can help you. For example, Harvard Law School has a **Cyberlaw Clinic** that could help you.

**Contingency fees:** Some lawyers work for free (or very little money) upfront and only charge you if you win your case and recover money. This is called working on a "contingency basis."

**Lawsuit funding:** If you were harassed in the workplace, spoke up about it, and are now suing or being sued, and a lawyer is willing to take your case, your lawyer can apply to the National Women's Law Center's **TIME'S UP Legal Defense Fund** to ask for funding for your case. *Note: Funding decisions are made based on a set of criteria included in the application. Not all cases that meet the criteria will be funded.*

**Insurance policies:** Many renter's and homeowner's insurance policies include something called a "personal injury endorsement," which can help you pay for the costs of defending against a **defamation** lawsuit. Check your policy (or, if you live with your parent, your parent's policy) to see if you would be covered.

**Anti-SLAPP laws:** Your state may also have an **anti-SLAPP law** that requires your abuser to pay your lawyer's fees and other legal costs if you win (see **Q25** and the **Appendix** for more). But if you lose, depending on the state where the lawsuit happens, there is a chance you will have to pay for some or all of your abuser's **lawyer's** fees. You should discuss this risk with your lawyer.

It also takes a lot of time and energy to defend against a **lawsuit**. They often take years and can take time and energy away from the other parts of your life. For example:

- You may have to miss class or need to pay extra tuition to retake a class that you miss because of the time it takes to defend the lawsuit. See this [Supportive Measures FAQ](#) to learn more about how your school can help you make up classes and with tuition.
- You may have to miss work and lose out on wages.
- The lawsuit may be traumatizing, and you may need to pay more for mental health treatment.

## **Q10. CAN THE POLICE INVESTIGATE THE VIOLENCE AGAINST ME EVEN IF I DON'T WANT THEM TO?**

Yes. If you report sex-based crimes such as **sexual assault**, **domestic violence**, or **stalking** to the police, they may decide to investigate and arrest your abuser. If the police investigate the abuse, a prosecutor may **file** criminal charges and try to put your abuser in prison. They can do this even if you change your mind later on and no longer want to press charges or help the police with their investigation, although sometimes they will drop the case if you no longer want to participate.

**Note:** Many school staff and medical staff are mandatory reporters. This means they must tell the police or another government agency if they know or think a student or patient younger than 18 or who is protected under the Individuals with Disabilities Education Act (IDEA) has faced **sexual assault** (including child sexual abuse), **dating violence**, or **domestic violence**. Find out who is a **mandatory reporter** in your state.

In some cases, especially **domestic violence** cases, if you decide you don't want to testify anymore in the criminal proceeding against your abuser, a prosecutor could ask a **judge** to order you to testify. If you refuse a judge's order, you could be fined, arrested, or even jailed, depending on your state's law and the prosecutor's decision.

## **Q11. CAN SPEAKING OUT PUBLICLY AFFECT MY CIVIL PROTECTION ORDER HEARING OR A POLICE INVESTIGATION?**

A **civil protection order** is a court order that requires a person to stop doing something, like an order requiring your harasser to stay away from you or to stop contacting you. Depending on your state and the relationship between you and your abuser, it might be called a "protective

order," "injunctive order," "restraining order," or something else. Naming your abuser publicly while you are trying to get a civil protection order should not affect whether the court grants the order. Keep in mind that civil protection orders are typically public record, which means anyone can look them up.

A police investigation is a criminal investigation that could result in your abuser going to prison. Naming your abuser publicly should not stop the police from investigating your abuser. But the police may ask you not to share some information publicly because it could hurt their investigation. Keep in mind that any information you share publicly may be used as **evidence** in the investigation, and you may be questioned by police, prosecutors, or your abuser's **lawyer** about your statements.



**PART C.**

**SPEAKING**

**OUT**

**AS A**

**STUDENT**

**IF YOU ARE A STUDENT**, you should also keep in mind the following factors:

- The value of naming your abuser and warning your classmates to keep them safe
- The potential of using your story to demand policy changes at your school
- The benefit of your school offering you supportive measures and, if you want, investigating the harassment (**Q12**)
- The risk to your education (**Q12**)
- The risk of your school opening an investigation into your report if you don't want one (**Q13**)
- The risk that your school could try to prevent you from speaking out publicly about the harassment (**Q14**)
- The risk of being punished by your school for "bullying" or "harassing" your abuser (**Q15**)

## **Q12. CAN SPEAKING OUT AFFECT MY EDUCATION?**

Speaking out can be a way to get the help you need to end the harassment and address any harm from the harassment on your education. If you report **sex-based harassment** to your school's Title IX office and it fits certain criteria, **Title IX** requires your school to offer you **supportive measures** that help you learn or feel safe at school. Supportive measures are actions or strategies that help ensure that the harassment (or the time and energy needed to speak out about it) does not harm your ability to succeed at school. For example, supportive measures may include a safety plan, tutoring, or deadline extensions.

In addition, if you report sex-based harassment to your school, you can ask for a Title IX investigation. If your school's investigation concludes that you were harassed, your school may decide to discipline your abuser or remove them from your school environment. See **Q13** for more about school investigations. *Note:* You can get supportive measures even if you don't want an investigation.

**Helpful Tip:** If you are thinking about how to speak out and want to reduce the chances that your abuser will claim you are bullying or **defaming** them, it is probably less risky to file a complaint with your school or OCR (see **Q1** for how to do this) than, say, naming your abuser on social media.

Unfortunately, speaking out at school can also have negative consequences. When a school's response to **sex-based harassment** results in more harm to the victim in addition to the harassment itself, this is called "institutional betrayal." For example, a recent **Know Your IX study** found that 15% of survivors who reported sex-based harassment to their schools faced or were threatened with punishment by their schools. Furthermore, 63% of those who faced or were threatened with punishment either took a leave of absence, transferred schools, or dropped out. It is illegal for schools to **retaliate** against students who make good-faith reports of sex-based harassment. See **Q1** for more info on how to **file a complaint** against your school with a federal or state agency or with a court.

## Q13. IF I SPEAK OUT ABOUT HARASSMENT BY ANOTHER STUDENT OR A SCHOOL EMPLOYEE, CAN MY SCHOOL INVESTIGATE THE HARASSMENT EVEN IF I DON'T WANT THEM TO?

Yes, in some cases. Many school employees who find out that you've faced **sex-based harassment** are required to tell the school's **Title IX** office about it. Once the Title IX office knows about the harassment, it is required to offer you **supportive measures** and tell you how to **file** a "formal **complaint**" asking for an investigation. In general, your school will not investigate sex-based harassment unless you ask them to. But in some cases, your school may decide they will investigate even if you don't want an investigation. For example, if you speak about sexual abuse by a teacher or report that your abuser has harmed other victims, your school may decide to investigate regardless of whether you want an investigation, if the school decides it's necessary to protect other students or prevent additional harassment.

**Helpful Tip:** If you're worried your school may decide to investigate the harassment without your consent but you would still like other help from your school, you can try telling a trusted school employee that it happened to your "friend" instead. For example: "My friend was sexually assaulted and is struggling in chemistry. How can they move to another class?"

## Q14. CAN MY SCHOOL PREVENT ME FROM SPEAKING OUT PUBLICLY ABOUT THE HARASSMENT?

It depends. Some schools have asked students who reported **sex-based harassment** to sign a **nondisclosure agreement** or "gag order" that prohibits students from publicly naming an abuser or sharing information about sex-based harassment outside of a Title IX investigation. Some schools have also required students not to **disparage** (say bad things about) their abuser.

- If you signed a **nondisclosure** or **nondisparagement agreement** before reporting **sex-based harassment**, then those agreements cannot be enforced against you. This is because Congress passed the Speak Out Act in December 2022, which bans nondisclosure and nondisparagement agreements that prevent someone from speaking out about sexual harassment or assault if they were signed before a dispute related to sexual harassment or sexual assault arose.
- If your school wants you to sign a **nondisclosure** or **nondisparagement agreement** after you report **sex-based harassment**, keep in mind that **Title IX** does not require victims to keep quiet during a school investigation.

It is a good idea to talk with a **lawyer** before signing any agreement with your school that would force you to not talk to anyone about your **complaint**.

## **Q15. CAN MY SCHOOL PUNISH ME FOR “BULLYING” MY ABUSER BECAUSE I HAVE SPOKEN OUT ABOUT THE HARASSMENT?**

Your abuser may try to get you in trouble by claiming that you are the “bully.” For example:

- Your abuser might claim that by publicly naming them as your abuser, you are the one who is “bullying” or “defaming” them, in violation of school policy or state law.
- Your abuser might **file a Title IX complaint** against you, claiming that you are the one who “harassed,” “assaulted,” or “abused” them.

It is important to know that **Title IX** prohibits schools from punishing you for reporting **sex-based harassment**; this is called **retaliation**. For example, it’s illegal for your school to suspend or expel you, give you lower grades, remove you from an activity or leadership position, force you to take time off, force you to change your classes or activities, or do anything else that has a negative effect on you because you reported the harassment. If your school investigates or disciplines you because your abuser wrongly accused you of bullying them, then you may have a **retaliation claim** against your school. It is a good idea to talk with a **lawyer** about your legal options (see **Q1** for more info).



**PART D.**

**SPEAKING**

**OUT**

**AS A**

**WORKER**



**IF YOU ARE A WORKER,** you should also keep in mind the following factors:

- The value of naming your abuser and warning your co-workers to keep them safe
- The potential of using your story to demand policy changes in your workplace
- The benefit of your workplace addressing the harassment (**Q16**)
- The risk to your job or job opportunities (**Q16**)
- The risk of your employer opening an investigation into your report if you don't want one (**Q17**)
- The risk that your employer could try to prevent you from speaking out publicly about the harassment (**Q18**)
- The risk of being punished by your employer for being a "troublemaker" (**Q19**)

## **Q16. CAN SPEAKING OUT AFFECT MY JOB?**

Speaking out at work can lead to your employer taking steps to end the harassment and otherwise making positive changes. For example, your employer could make changes to help you feel safe at work. **Many states** require employers to give accommodations and/or time off to victims of **sexual assault, domestic violence, dating violence, or stalking** so they can address the violence. In addition, if you report **sex-based harassment** to your employer, you can ask for a human resources (HR) investigation. If your employer's investigation concludes that you were harassed, your employer may decide to discipline your abuser or remove them from your work environment. See **Q17** for more about HR investigations.

Unfortunately, speaking out at work may negatively affect your job opportunities—both now and in the future. For example, survivors who share their stories publicly have sometimes been demoted, not hired by other employers in the industry, treated worse by bosses and co-workers, evaluated unfairly, or faced other workplace discrimination. Among workers who asked the National Women's Law Center Fund for legal help with sex-based harassment, 70% said they faced some form of **retaliation** when they reported the harassment.

It is important to know that it is illegal under **Title VII** for employers to retaliate against employees because they have made good-faith reports of **sex-based harassment** experienced on the job. **Some states** also have laws that prohibit workplace discrimination, including retaliation, against people because of their status as a victim of **sexual assault, domestic violence, dating violence, or stalking**. See **Q1** for more info on how to **file a complaint** of retaliation against your employer with a federal or state agency.

**Helpful Tip:** If you are thinking about how to speak out and want to reduce the chances that your abuser will claim you are bullying or **defaming** them, it is probably less risky to file a complaint with your employer or a charge with the EEOC (see **Q1** for how to do this) than, say, naming your abuser on social media.

## **Q17. IF I SPEAK OUT ABOUT WORKPLACE HARASSMENT, CAN MY EMPLOYER INVESTIGATE THE HARASSMENT EVEN IF I DON'T WANT THEM TO?**

Yes, in some cases. In general, your employer will not investigate the harassment unless you make a **complaint** about it to your employer (but there are exceptions). You can make a **complaint** by reporting the harassment, orally or in writing, to your boss or your employer's human resources (HR) department. Look to see what process, if any, your employer says you should use for harassment complaints. If you tell your boss or HR about **sex-based harassment** that might violate **Title VII** or a state law, then your employer has a legal obligation to address it, even if you don't want them to. Similarly, if you tell a co-worker about harassment that might violate the law, and the co-worker then tells your boss or HR, then your employer will be required to investigate or take other action, even if you don't want them to.

## **Q18. CAN MY EMPLOYER PREVENT ME FROM SPEAKING OUT PUBLICLY ABOUT THE HARASSMENT?**

It depends. Some employers require their employees to sign broad agreements when they are first hired promising not to share certain types of information publicly. When an employee makes an HR complaint, some employers have had employees sign a **nondisclosure agreement** that prohibits employees from publicly sharing certain information, like information about harassment or HR investigations of harassment. Some employers also have had employees sign a **nondisparagement agreement** that prohibits employees from saying anything bad about the employer.

- If you signed a **nondisclosure** or **nondisparagement agreement** before reporting **sex-based harassment**, then those agreements cannot be enforced against you. This is because Congress passed the Speak Out Act in December 2022, which bans nondisclosure and nondisparagement agreements that prevent someone from speaking out about sexual harassment or assault if they were signed before a dispute related to sexual harassment or sexual assault arose.
- If your employer wants you to sign a **nondisclosure** or **nondisparagement agreement** after you report **sex-based harassment**, keep in mind that **Title VII** does not require victims to keep quiet during an HR investigation.

If you are being laid off for any reason, your employer may offer you severance (money and/or other benefits). Depending on your employment status, it is likely illegal for your employer to force you to include a **nondisparagement clause** or a **nondisclosure clause** about what's in the severance agreement in order for you to receive severance.

Keep in mind your employer may still ask you to keep quiet, even if it's illegal to require you to keep quiet in your situation. It is a good idea to talk with a **lawyer** if your employer wants you to keep quiet and you want to speak out, to get a clearer sense of your legal rights in your particular situation. (And a **nondisclosure agreement** can never legally prevent you from talking with a lawyer or filing a charge with the EEOC.)

## **Q19. CAN MY EMPLOYER PUNISH ME FOR BEING A "TROUBLEMAKER" IN THE WORKPLACE BECAUSE I HAVE SPOKEN OUT ABOUT WORKPLACE HARASSMENT?**

It's illegal, but it does happen. **Title VII** prohibits **retaliation** by your employer based on your **complaints** of **sex-based harassment** or other sex discrimination. This means your employer can't punish you for reporting sex-

based harassment. For example, it's illegal for your employer to fire or demote you; cut your pay; change your shifts, hours, benefits, or duties; ask you to take time off; or do anything else that has a negative effect on you because you reported the harassment. But these things still sometimes happen to workers who report sex-based harassment.

Your abuser may also try to get your employer to punish you. For example:

- Your abuser might argue to your employer that by publicly naming them as your abuser, you are the one who is "bullying" or "defaming" them in violation of workplace policy or state law.
- Your abuser might **file** an HR **complaint** against you, claiming that you are the one who "harassed," "assaulted," or "abused" them. If so, your employer may be required to investigate.

If your employer investigates or disciplines you because your abuser **filed** a bad faith **complaint** against you, then you may have a **retaliation claim** against your employer. It is a good idea to talk with a **lawyer** about your legal options (see **Q1** for more info).



PART E.

**RESPONDING**

**TO A**

**DEFAMATION**

**LAWSUIT**

**WHAT IF YOU ARE WORRIED** about speaking out because you could be sued for **defamation**? What if you already spoke out and your abuser is now suing you or threatening to sue you for **defamation**? The legal process can be intimidating, especially for victims of **sex-based harassment**. Here are some things you should know:

- What should I do if I receive a cease-and-desist letter? (**Q20**)
- What if my abuser is famous? What if they're not? (**Q21**)
- What happens if I get sued? How do defamation lawsuits work? (**Q22**)
- What are possible legal defenses against a defamation lawsuit? (**Q23**)
- I've been sued. How do I find a lawyer? (**Q24**)
- Does my state have protections against retaliatory defamation lawsuits? (**Q25**)

## **Q20. WHAT SHOULD I DO IF I RECEIVE A CEASE-AND-DESIST LETTER?**

Before suing you, your abuser may send you a cease-and-desist letter from their **lawyer**. This is often the first way an abuser contacts a survivor to make them stop talking or writing about the abuse. The letter will ask you to stop speaking out or take back what you said about your abuser. It may also say that if you do not stop, they will sue you.

Keep in mind:

- A cease-and-desist letter is not an order from a court. You are not legally required to do what it says. It is up to you whether you want to continue speaking out. But if you decide to continue speaking out, it is possible your abuser will **file a lawsuit** against you, and you should prepare for that.
- The letter may tell you that you have a limited amount of time to respond to the letter, but you do not have to respond right away (or at all).
- Whether you want to respond, are not sure if you should respond, or don't want to respond, you should talk to a **lawyer** about your situation first. This is important for many reasons, including because your abuser could use any response you make against you in a later **defamation lawsuit**. A lawyer can explain your options to you, so you can decide together on what's best for you. See **Q9** to learn more about finding free or low-cost lawyers.

## Q21. WHAT IF MY ABUSER IS FAMOUS? WHAT IF THEY'RE NOT?

The law makes it easier for a **private figure** than a **public figure** to sue someone for **defamation**. This is because public figures are often in the news, and other people have an interest in public figures. If reporters got in trouble for every wrong statement about a public figure, they might stop reporting on important topics. Also, public figures can correct wrong things said about them in the news more easily than private figures can.

**A private figure** is someone who is not widely known by the public. If a private figure sues you for defamation, they have to prove that you acted "negligently" in making a false statement about them. **Negligence** means even if you didn't know for sure that your statement was false, you can still be in trouble for defamation if you *should have known*. In other words, negligence means you didn't check to make sure your statement was true.

**A public figure** is someone who is widely known by the public. A public figure might be a politician, celebrity, or, in some cases, even a teacher, professor, or school administrator. They don't have to be nationally famous to be a public figure. If a public figure sues you for defamation, they have to prove you acted with actual malice. **Actual malice** means either you knew for sure that your statement was false, or you didn't care that your statement was very likely false. It is harder to prove actual malice than **negligence**.

**A limited purpose public figure** is someone who willingly creates or participates in a public issue and becomes a **public figure** for the purposes of statements about that issue. If a limited purpose public figure sues you for defamation, they have to prove you acted with **actual malice**. Some courts have said that **sex-based harassment** is a public issue. So, if you speak out about sex-based harassment, and your abuser publicly attacks or victim-blames you before later suing you for defamation, then they have willingly created or participated in a public issue, which means they have become a limited purpose public figure.

### Who is a limited purpose public figure?

Here are some examples based on how some courts have decided defamation cases:

- Let's say someone writes an op-ed in a major newspaper about **Title IX**, education, "traditional values," "cancel culture," or some other related topic. They would be a **limited purpose public figure** regarding the topic of their op-ed because they willingly wrote and published it. So, if you name them as an abuser around the time the op-ed is published and they sue you for **defamation**, they would probably have to prove you acted with **actual malice**. But let's say they disappear from the news after that. If you name them as an abuser a few years later and they sue you, they would probably be a **private figure** and would only have to prove you acted with **negligence**.
- Let's say a regular person in your city goes to a city council meeting (or posts on Facebook) to say "#MeToo has gone too far." They would probably be a **limited purpose public figure** regarding #MeToo in your city because they willingly made this public statement. So, if you name them as an abuser and they sue you for **defamation**, they would probably have to prove you acted with **actual malice**.

## Q22. WHAT HAPPENS IF I GET SUED? HOW DO DEFAMATION LAWSUITS WORK?

If you are sued, it's important to know that most courts only give you **30 days** to respond. So, if you are looking for a **lawyer**, you should look for one as soon as possible. If you need more time to find a **lawyer**, it is possible the court can give you an extension if you **file** a formal request with the court asking for one.

Every **lawsuit** looks different, but here are the things that stay the same in every case. (Remember, it is your **lawyer's** job to guide you through the lawsuit.)

**Parties:** The **plaintiff** is the person who starts, or **files**, the lawsuit (your abuser). The **defendant** is the person being sued (in a defamation lawsuit, that would be you). Together, the plaintiff and defendant are the **parties**.

**Service:** A person called a process server will **serve** you papers informing you of the lawsuit. The process server may serve you at your home, school, workplace, or other place you often go, or give the papers to someone you live with. The papers will include the **complaint**, a document that explains your abuser's legal **claims** and version of the facts. Don't ignore the lawsuit once you are served, because your abuser can win by default if you don't respond in time.

**Motion to dismiss:** Your lawyer will probably **file** a **motion** to **dismiss** the lawsuit. In a motion to dismiss, you could argue that even if your abuser's version of the facts were true, you would still win the lawsuit. Depending on your state, you may also be able to file an **anti-SLAPP motion** (often called a "special motion to strike"). If the **judge** grants your motion to dismiss or anti-SLAPP motion, the lawsuit is over unless your abuser **appeals**. See **Q25** and the **Appendix** for more information on **anti-SLAPP laws**.

**Answer:** If the lawsuit is not **dismissed**, you will have to answer the **complaint**. In the **answer**, you can tell the court why your abuser's claims are wrong. You can also file a counterclaim, which is a legal **claim** against your abuser that you want to add to the lawsuit.

**Settlement:** At any time during the **lawsuit**, you and your abuser can **settle** the case. This means you agree to do certain things (such as paying your abuser), and your abuser agrees to do certain things, including dropping the lawsuit.

**Discovery:** If your case is not **settled** or **dismissed**, the next step is **discovery**. This is where both sides have a chance to ask each other for information to collect **evidence** for the lawsuit. Discovery can be deeply invasive. Your abuser may ask to see your emails, text messages, and other documents. You may have to do a **deposition**, which means your abuser's lawyer will ask you questions under oath and your answers can be used at **trial**. Your abuser will not be able to ask you questions directly (unless they are acting as their own lawyer).

**Note:** We encourage you to reach out to a friend, family member, medical provider, or mental health provider to get support. But keep in mind that if your abuser later sues you for **defamation**, there is a risk that they could ask to see your communications with your family and friends during **discovery**. Even so, regardless of what state you're in and what your situation is, your abuser should not be allowed to see your communications with your therapist, psychologist, or other mental health provider unless you agreed to it or you brought the topic of your mental health into the lawsuit. And, depending on your state and situation, your abuser may also not be able to see your communications with your doctor, nurse, or other medical provider.

**Motion for summary judgment:** After **discovery**, you can file a **motion** for summary judgment. This motion asks the court to throw out the lawsuit because based on all of the **evidence** collected during discovery, your abuser would not be able to win at **trial**. Your abuser may also file a motion for summary judgment against you, arguing that the evidence collected during discovery shows that there is no way they could lose at trial.

**Trial:** If the court denies all motions for summary judgment and the case is not **settled**, then your case will go to trial. It may be at least several months from the time you are served until you go to trial. At trial, you will attend court with your lawyer. You can also bring others to support you, such as friends or family members. You will likely have to testify, which means answering questions under oath in court that your lawyer and abuser's lawyer

will ask. Your abuser will not be able to ask you questions directly (unless they are acting as their own lawyer). Either a **judge** or a **jury** (a group of six to 12 people) will decide who should win the lawsuit.

**Appeal:** The losing side can **appeal** at each stage when a decision is made. "Appeal" means asking a higher court to change the original court's decision. After all appeals are over, the lawsuit is done. If you lose, you will probably have to pay your abuser. If you win, in some states, you can ask the court to order your abuser to pay for your lawyer's fees.

## Q23. WHAT ARE POSSIBLE LEGAL DEFENSES AGAINST A DEFAMATION LAWSUIT?

**DEFAMATION LAW** is different in each state, but these are some common **defenses** against a defamation claim:

**Truth:** You can't be punished for defamation if you can prove you were telling the truth. It can be empowering for you to take back the narrative about the harassment you faced. But proving the truth can often be hard, so you may need to use other **defenses** if it is too hard to prove that your statements were true.

### **Opinion:**

- The U.S. Supreme Court has said that you can't be punished for an opinion that can't be proven as false or that is subjective, figurative, or hyperbolic. For example, you could say, "[abuser's name] is a monster." This is an opinion that can't be proven true or false. (But it might be considered **defamation** if you give an opinion alongside other statements about sex-based harassment.)



- In many states, you can't be punished for defamation if you were only sharing an opinion based on **nondefamatory** facts that you share along with your opinion. For example, you could say, "XYZ fraternity is dangerous [*this is your opinion*]. Last night, I saw 3 XYZ frat members take a woman who was very drunk upstairs during their frat party, and then today one of the guys told me that he had had group sex last night [*each of these facts is not defamatory on its own*]."

**Consent:** You can't be punished for defamation if your abuser explicitly said it was okay for you to make that statement. For example, if your abuser said to you in a text or email, "You can tell everyone! No one will believe you," you would have proof of their consent. But if your abuser simply didn't react when you started speaking out, that would not mean they consented to you continuing to speak out.

**Timing:** You can't be liable for defamation if too much time has passed since you made the statement. Each state has a **statute of limitations** of between **six months and three years** to **file** a defamation lawsuit after a statement is made. After that amount of time has passed, your abuser can't sue you for that statement.

**ANOTHER DEFENSE** is that the statement was **privileged**. This means the statement was made in a situation that generally deserves protection against **defamation** lawsuits. You should talk to a **lawyer** about these privilege defenses because they are different in every state.

**Absolute privilege** means you can never be liable for defamation based on your statement. Depending on your state's laws, an absolute privilege **might** cover statements made:

- In court
- By high-level elected and appointed public officials
- In speeches by a politician  
To your spouse

**Qualified privilege** means that you can't be liable for defamation unless you made your statement with **actual malice**. Depending on your state's laws, a qualified privilege **might** cover statements made:

- In a meeting with a lawmaker
- By lower-level government officials
- While testifying in a legislative proceeding
- In a **complaint** to your school, employer, or other organization
- To someone who has an interest in protecting you or others from your abuser and an ability to do so. If you have an existing relationship with that person, you can tell them what your abuser did even if that person doesn't ask. If you don't otherwise have a relationship with this person, they would have to ask you about your abuser before you could tell them. This is often called a "common interest privilege."

### What is a common interest privilege?

Here are some examples:

- Let's say your friend tells you that she matched with your abuser on a dating app, so you tell her that your abuser harassed you. If your state has a common interest privilege, then your statements to your friend are likely to be protected. This is because you had an existing relationship with your friend (so she didn't have to ask you about your abuser first), and she has both an interest in keeping herself safe and an ability to keep herself safe by unmatching with your abuser.
- Let's say your abuser is interviewing for a job and lists you as a reference. The employer asks you about your abuser, so you tell them that your abuser harassed you. If your state has a common interest privilege, then your statements to the employer are likely to be protected. This is because you made your statements to the employer after it asked you about your abuser, and it has both an interest in keeping its employees safe and an ability to keep its employees safe by not hiring your abuser.

**FINALLY**, depending on your specific situation, some other **defenses** might be helpful against **defamation**:

**No damage:** You might be able to argue that your statement did not harm your abuser's reputation. For example, they could have already had a bad reputation, so your statement did not change that. Or your statement could be about behavior that is seen as bad by some people but not so bad by other people, with the result that it didn't really harm your abuser's reputation.

**Mostly true:** If you can prove that most of your statement was true, and that the true parts of your statement were the most harmful to your abuser's reputation, then the court could decide to throw out the lawsuit.

**Retraction:** Most states have laws that allow a **defendant** in a defamation lawsuit to retract (take back) their statement to end the lawsuit or to reduce the amount of money they might owe if they lose. You may want to do this as a last resort.

See this [Defamation Guide](#) to learn more about your state's defamation laws.

**Helpful Tip:** You may want to prepare **evidence** for these **defenses** before you speak out. If you have already spoken out, you should collect and save documents and other evidence in case you are sued (or in case you want to sue your abuser). If you have been sued, it is a crime to destroy documents related to your **lawsuit**.

## Q24. I'VE BEEN SUED. HOW DO I FIND A LAWYER?

You should try to get a **lawyer** if you've been sued. As you can see from **Part E** of this FAQ, defending against a **defamation lawsuit** is very complicated. Having a **lawyer** will help you follow the rules, meet strict deadlines, and present the best arguments to defend yourself given the laws that apply in your specific situation. This will improve your chances of getting a good outcome. (You do have the choice of representing yourself in court without a lawyer, but it is really not recommended.) See **Q9** for more information on how to find free or low-cost lawyers.

When you talk to potential **lawyers**, you may want to bring the following:

- A short summary of the key issues in your case and what you'd like a lawyer to help you with
- A copy of any letters, complaints, and other legal documents from your abuser  
The names and contact info of any of your past lawyers and your abuser's lawyers
- Names of witnesses, important dates, key news articles, or any other background information about your case or your abuser
- A list of questions for the lawyer, including about their experience with defamation suits against survivors of sex-based harassment

**Note:** The U.S. government gives **lawyers to defendants** in criminal cases if they can't afford one. But **defamation** is typically a civil (not criminal) law, meaning you can't go to jail or prison for it. So, the government will not give you a lawyer to defend yourself against a defamation lawsuit, even if you can't afford one.

## Q25. DOES MY STATE HAVE PROTECTIONS AGAINST RETALIATORY DEFAMATION LAWSUITS?

An **anti-SLAPP law** is a law that protects against SLAPPs. **SLAPP** stands for Strategic Litigation Against Public Participation. A SLAPP is a **lawsuit** aimed at intimidating someone so they don't speak out about misconduct or **retaliating** against them for speaking out. People who **file** SLAPPs don't necessarily expect to win in court, but SLAPPs are still effective at silencing victims. This is because defending against even the most pointless defamation lawsuit can still require a lot of time and money, and SLAPP filers tend to have more money and power than their victims. For example, an abuser may sue you for **defamation** knowing they cannot win but hoping to scare you out of speaking out.

An **anti-SLAPP law** protects your right to speak out about misconduct without being targeted by a **SLAPP**. Not all states have an anti-SLAPP law, and not all states' anti-SLAPP laws are strong enough. Your state may have an anti-SLAPP law that can end your abuser's **defamation lawsuit** against you if they don't have enough evidence to support their claim against you. Depending on your state's laws, you may be able to use an anti-SLAPP law to file an **anti-SLAPP motion** (often called a "special motion to strike"). If the court agrees with you and **dismisses** the lawsuit, the anti-SLAPP law usually requires your abuser to pay your **lawyer's** fees and court costs. See the **Appendix** for more information about the anti-SLAPP law in your state.

FINAL

THOUGHTS

# Dear Reader

We know deciding whether or not to share your story can be a big decision for some and an easier choice for others. At the end of the day, the decision to share your story is deeply personal, and only you know what's best for you.

Although our communities are filled with survivors, decades of backlash from our society and abusers have kept many survivors silent. Our hope in creating this toolkit is to empower survivors through providing a thorough understanding of your rights, risks, and options. We hope this toolkit can be a resource to help you feel confident in how you move forward with your story—no matter what that looks like.

Whatever you decide to do, we support your decision. Most of all, we send you our support and solidarity in your unique journey to heal.

*Warmly,*

Survivors, Students, and Advocates at National Women's Law Center; Know Your IX, Advocates for Youth; Harvard Law School's Cyberlaw Clinic; and Vanderbilt University Law School's First Amendment Clinic

# GLOSSARY

**THIS GLOSSARY** provides simple definitions for key terms bolded in the FAQs, but it is not legal advice, and some legal definitions will vary from state to state. For more detailed legal information, you should talk with a lawyer.

**Actual malice:** When someone makes a statement knowing that it is false or not caring that it is very likely false.

**Answer:** In a **lawsuit**, the document **filed** by the **defendant** that contains their responses to the **plaintiff's complaint**.

**Anti-SLAPP law:** A law that protects people who speak out about misconduct from being targeted by a **SLAPP**.

**Appeal:** To ask a higher court to change a lower court's decision. The appellate court can "affirm" (agree with) or "reverse" (disagree with) the lower court's decision. It can also "vacate and remand," which means getting rid of the lower court's decision and telling it to re-decide the case based on what the appellate court said.

**Assembly or association.** Your right to assembly or association includes joining a group of people to promote a shared interest.

**Civil protection order:** A court order that requires a person to stop doing something, like requiring your harasser to stay away from you or to stop contacting you. Depending on your state and the relationship between you and your abuser, it might be called a "protective order," "injunctive order," "restraining order," or something else.

**Claim:** A formal demand for a person to repair a wrong or injury.

**Complaint:** In a **lawsuit**, the document that states what the **plaintiff** thinks the **defendant** did wrong. In a non-lawsuit setting, a document that asks an organization (like a school, employer, or agency) for help with misconduct.

**Dating violence:** Insults, threats, violence, and/or **stalking** from someone you are dating or used to date. Dating violence is also called "intimate partner violence."

**Defamation:** A false statement that harms someone's reputation.

**Defendant:** In a **lawsuit**, the person who is being sued by the **plaintiff**.

**Defense:** A reason given by the **defendant** in a **lawsuit** about why the defendant should win. A defense can be based on facts or procedure.

**Deposition:** A formal interview of a **plaintiff**, **defendant**, or other person (like a witness) under oath that aims to collect information for a **lawsuit**. The interview is recorded in writing, audio, or video.

**Discovery:** In a **lawsuit**, a process where the **plaintiff** and **defendant** get **evidence** and information from each other.

**Dismiss:** A court's decision to end a **lawsuit**.

**Domestic violence:** Insults, threats, violence, and/or **stalking** from someone you are dating or used to date, living with or used to live with, or have a child with. Domestic violence is also known as "intimate partner violence."

**Evidence:** In a **lawsuit**, a fact or thing that is used to prove the **plaintiff's** or **defendant's** side of the story.

**File:** To start a **lawsuit** or a **complaint** with a school, employer, agency, or other organization.

**Government proceeding:** A government meeting or hearing, such as a lawsuit, agency investigation, legislative hearing, school board meeting, or workers' rights commission.

**Judge:** A person whose job is to run a courtroom and decide the outcome of a **lawsuit**.

**Jury:** A group of six to 12 people who decide the outcome of a **lawsuit**.

**Lawsuit:** A formal dispute between two or more people or organizations that is **filed** with a court.

**Lawyer:** A person whose job is to offer advice about the law or represent someone in a legal matter. Lawyers are also called “attorneys.”

**Libel: Defamation** that is written.

**Motion:** In a **lawsuit**, a document that asks the court to do something specific, like end the lawsuit or give more time to **answer a complaint**.

**Negligence:** When someone fails to act as a reasonable person would (when they should have known to do something but didn’t do it).

**Nondisclosure agreement:** An agreement that prohibits someone from publicly sharing certain information, like information about harassment or an investigation of harassment.

**Nondisparagement agreement:** An agreement that prohibits someone from saying anything bad about the other side, such as their school or employer.

**Petition:** Asking your government to fix a bad outcome or change a policy. In most states, your right to petition includes speaking at a **government proceeding** or talking about an issue being considered by a government proceeding.

**Plaintiff:** In a **lawsuit**, the person who sues the **defendant**.

**Press:** Your right to press includes publishing information in the news and other media.

**Private figure:** Someone who is not widely known by the public.

**Public figure:** Someone who is widely known by the public.

**Retaliation:** Punishment or backlash against someone who speaks out or reports misconduct. The legal definition of retaliation refers to a school punishing you because you reported harassment or other discrimination as a student, or an employer punishing you because you reported harassment or other discrimination as an employee.

**Safe space:** A place that gives you physical and emotional safety. You can find safe spaces in school organizations, support groups for survivors of **sex-based harassment**, or among friends.

**Safety plan:** A personalized set of actions that can help keep you safe. For more on making a safety plan, check out these guides from **Love Is Respect** and the **National Domestic Violence Hotline**.

**Service:** In a **lawsuit**, the process of telling the **defendant** they are being sued by giving them the **complaint** and other documents related to the **lawsuit**.

**Settlement:** An agreement outside of court between the **plaintiff** and **defendant** to do certain things to drop the **lawsuit**.

**Sex-based harassment:** Unwanted conduct based on sex. Sex-based harassment includes sexual harassment, **sexual assault**, **dating violence**, **domestic violence**, and sex-based **stalking**. It also includes unwanted conduct (whether sexual or non-sexual) based on your gender, pregnancy, sexual orientation, or transgender status.

**Sexual harassment:** Unwanted conduct of a sexual nature. Sexual harassment includes unwanted “jokes,” insults, rumors, gestures, messages, pictures, videos, kissing, or touching, including **sexual assault**.

**Sexual assault:** Unwanted touching of a sexual nature, including rape.

**Slander: Defamation** that is spoken.

**SLAPP:** A **lawsuit** aimed at intimidating someone from speaking out about misconduct or **retaliating** against them for speaking out. Short for “Strategic Litigation Against Public Participation.”

**Speech:** In most states, your right to speech means speaking in a public place about an issue of public interest.

**Stalking:** Being followed by someone you know or don’t know in a way that makes you afraid for yourself or someone else.

**Statute of limitations:** The deadline for **filing a lawsuit** or other **complaint**.

**Support system:** A network of people who can give you practical or emotional support. This can include family members, friends, or mentors whom you feel comfortable speaking with about your experiences.

**Title IX:** A federal law (pronounced “title nine”) that prohibits sex discrimination in schools that receive federal funding. Title IX requires schools to address **sex-based harassment** that affects a person’s access to education.

**Title VII:** A federal law (pronounced “title seven”) that prohibits employers from discriminating against someone based on race, color, national origin, sex (including pregnancy, sexual orientation, and gender identity) or religion. Title VII requires employers to address **sex-based harassment** in the workplace.

**Trial:** In a **lawsuit**, the process of showing **evidence** to a court about what happened. After seeing the evidence, a **judge** or **jury** decides the outcome of the lawsuit.

# APPENDIX:

# ANTI-SLAPP LAWS

Use the chart in the separate [Appendix](#) document to find out what protections you have under an anti-SLAPP law. Here is a summary of each column in the chart:

**State:** Find your state or U.S. territory in this column.

**Anti-SLAPP?:** This column explains if your state has an anti-SLAPP law. If it does, you can click on the link to read the full **statute**.

**Statutes vs. Court Cases:** When Congress or state lawmakers write a law, that written law is called a **statute**. When a **court** decides a case, it explains how the statute applies to the specific facts of the case. The law is made up of both statutes and court cases.

**Rights:** This column explains what rights are protected by each state's anti-SLAPP law.

- Most states' anti-SLAPP laws only protect your right to **petition**. Petition means asking your government to fix a bad outcome or change a policy. In most states, your right to petition includes speaking at a government proceeding or talking about an issue being considered by a government proceeding. A **government proceeding** is a government meeting or hearing, such as a lawsuit, agency investigation, legislative hearing, school board meeting, or workers' rights commission.
- Some states' anti-SLAPP laws also protect your right to **speech**, which usually means speaking in a public place about an "issue of public interest" (see **Sex-Based Harassment** column below for more). In some states, your right to **speech**

can also include writing consumer reviews or complaints or saying something about a book, movie, or other work of art.

- Some states' anti-SLAPP laws also protect your right of free **press, assembly, and association**. Press usually means news and other media. Assembly and association usually mean joining a group of people to promote a shared interest.

**Example:** Let's say your state has an **anti-SLAPP** law that protects only the right to **petition**. If you spoke out about your abuser in a legislative hearing (**petition**), then the anti-SLAPP law would apply to your statement. But if you posted the same exact statement on social media (**speech**), then the anti-SLAPP law would not apply.

**Sex-Based Harassment:** This column explains if your state's **anti-SLAPP law** protects statements about **sex-based harassment in general**, outside of a **petition** to the government. In other words, this column explains if your state thinks **speech** about sex-based harassment is speech about an "issue of public interest" and thus protected by the anti-SLAPP law. In most states, the answer is unclear because the courts haven't yet decided an anti-SLAPP case about sex-based harassment. In some states, the **statute** says "political" and "social" issues are "issues of public interest," but many of their courts don't think sex-based harassment is a political or social issue. In some other states, the **statute** says "health" and "safety" are "issues of

public interest,” and most of their courts do think sex-based harassment is a health or safety issue. (In general, you don’t have to worry about this column if you spoke out about sex-based harassment in a statement to the government asking for help, and your state’s anti-SLAPP law protects the right to petition.)

**Discovery:** This column explains if **discovery** will be paused (“stayed”) during your **anti-SLAPP motion**. Most states’ anti-SLAPP laws require the court to pause discovery while the court decides your anti-SLAPP motion. This is helpful because discovery can be very invasive, expensive, and time-consuming. But most states also allow the court to order limited discovery in certain situations, like if you or your abuser needs to get specific **evidence** to win the anti-SLAPP motion.

**\$: If You Win:** This column explains whether your abuser will have to pay your **lawyer’s** fees and court costs (“fees and costs”) if you win your **anti-SLAPP motion**. The answer is yes in almost all states with an anti-SLAPP law. In a few states, the court gets to decide if your abuser will pay your fees and costs.

**\$: If You Lose:** This column explains whether you will have to pay your abuser’s fees and costs if you lose your **anti-SLAPP motion**. In most states, this will only happen if the court thinks your motion was not serious (“frivolous”) or filed only to delay the **lawsuit** (“dilatory”). In some states, the **anti-SLAPP statute** doesn’t mention at all if you might have to pay your abuser, and the courts haven’t said anything yet either.

**Appeal:** This column explains whether you can **appeal** right away if you lose your **anti-SLAPP motion**. (This is called an “interlocutory appeal.”) The answer is yes in most states with an anti-SLAPP law. This is helpful because it means you don’t have to wait to finish the rest of the **lawsuit** (which can be invasive, expensive, and time-consuming) before appealing.

**Timing:** Some states may have passed or updated their **anti-SLAPP law** recently, after you were sued and while your **lawsuit** is still ongoing. Your abuser may argue that the new law doesn’t protect you because they sued you when the old law was in effect. Your lawyer can help you argue that the new law protects you because it also applies to lawsuits that began before the new law was passed but are still ongoing. (This is called a “retroactive” law.)

The chart in the separate **Appendix** document uses the following colors to describe how well each part of a state’s anti-SLAPP law protects you:



**Note:** This **Appendix** should not be used as a replacement for talking with a **lawyer**. This is because many state and federal courts are still figuring out how to apply **anti-SLAPP statutes** to cases involving **defamation** and **sex-based harassment**. Some courts may have never even heard a case involving defamation and sex-based harassment before. And sometimes, even if a state statute seems broad, a court could apply it narrowly. So, it is very important to talk to a lawyer about your specific situation, your state’s laws, and trends in the courts.