

Moonlighting in the Margins: Protecting the Rights of Workers Engaged in Lawful Off-Duty Online Sex Work

JARED M. TRUJILLO*

TABLE OF CONTENTS

INTRODUCTION	1364
I. ONLINE SEX WORK AS GIG WORK	1369
A. DEFINING ONLINE SEX WORK	1369
B. HOW WORKPLACES PUNISH WORKERS FOR SIDE GIGS INVOLVING EROTIC LABOR	1373
C. THE GROWTH OF ONLINE EROTIC LABOR AND THE NEED FOR PROTECTIONS	1374
II. EXISTING ANTIDISCRIMINATION AND ANTI-HARASSMENT PROTECTIONS AND THEIR LIMITS	1375
A. TITLE VII AND FEDERAL SEX STEREOTYPING FRAMEWORKS	1376
B. STATE AND LOCAL ANTIDISCRIMINATION PROTECTIONS	1379
C. HARASSMENT AND IMAGE-BASED SEXUAL HARASSMENT STATUTES	1382
III. PROPOSED MODEL ANTIDISCRIMINATION AND PRIVACY STATUTES: FORTIFYING PROTECTIONS AND CLOSING LOOPHOLES	1386
A. LAWFUL SOURCE-OF-INCOME NONDISCRIMINATION PROTECTIONS . . .	1386
B. STATUS-BASED AND CONDUCT-BASED NONDISCRIMINATION LAWS TO PROTECT WORKERS WHO MOONLIGHT AS LAWFUL ONLINE SEX WORKERS	1392
C. STATUTORY LIMITS ON DISCLOSURE AND RESTRICTIONS ON SURVEILLANCE OF OFF-DUTY ONLINE SEX WORK	1396
IV. UTILIZING FREE SPEECH AND FREE EXPRESSION PRINCIPLES TO DEFEND ONLINE SEX WORKERS	1397

* Associate Professor of Law at CUNY School of Law and Law & Policy Counsel at Equality New York. © 2026, Jared M. Trujillo. The author thanks *The Georgetown Law Journal* editorial staff for their thoughtful editing and stewardship of this piece, as well as the many sex workers and advocates who shared their insight and expertise, particularly Gregory Locke. He is especially grateful to Ioannis Kaloidis and Professor Chaumtoli Huq, and research assistants Payal Doctor and Sarah Ramirez. The author also acknowledges the profound influence of the late Cecilia Gentili. This Article is dedicated to the memory of the author's father, Eric Trujillo, the first person he told about the piece.

A. FIRST AMENDMENT RIGHTS FOR WORKERS WHO MOONLIGHT AS ONLINE SEX WORKERS	1398
B. STATE PROTECTIONS FOR FREE EXPRESSION	1400
C. MODEL LANGUAGE TO EXPAND FREE EXPRESSION PROTECTIONS FOR PUBLIC WORKERS, AND TO INCORPORATE THOSE PRINCIPLES FOR WORKERS IN PRIVATE INDUSTRIES	1403
V. CENTERING ONLINE SEX WORKERS AND PROFILED INDIVIDUALS IN MOVEMENT WORK	1404
CONCLUSION	1405

INTRODUCTION

While prostitution is often dubbed the world’s oldest profession, it remains one of the most surveilled, criminalized, and culturally diminished.¹ Sex workers have long been excluded from the legal protections afforded to other laborers, rendered invisible in employment law yet hyper-visible in moral discourse.² In the digital age, online sex work has emerged as a rapidly expanding labor sector.³ Platforms like OnlyFans,⁴ as well as erotic webcamming,⁵ offer low barriers to entry, creative autonomy, creator-controlled monetization, and relative safety compared to many forms of gig work⁶ that require

1. See Kenneth Shuster, *On the Oldest Profession: A Proposal in Favor of Legalized but Regulated Prostitution*, 5 U. FLA. J.L. & PUB. POL’Y 1, 3–6 (1992).

2. See, e.g., Monica R. Moukalif, *See No Evil: Applying a Labor Lens to Prostitute Organizing*, 20 HASTINGS WOMEN’S L.J. 253, 256–57 (2009) (describing how sex workers are placed outside of traditional labor protections); Toni Daniel, Jessica Lamb & Christine Campbell, *Avoidance and Empowerment: How Do Sex Workers Navigate Stigma?*, 28 SEXUALITIES 470, 471–73 (2025) (discussing stigma perpetrated against sex workers).

3. See, e.g., KURT FOWLER, *THE RISE OF DIGITAL SEX WORK* 48 (2023) (“[T]he Internet is being used at ever-growing rates to access and advertise all varieties of sexual services.”); Eram Shaikh, *OnlyFans Statistics 2025*, SIMPLEBEEN (Oct. 22, 2025), <https://www.simplebeen.com/onlyfans-statistics> [<https://perma.cc/ZW36-G72F>] (reporting that the United States, with 1.1 million creators, has the most OnlyFans creators of any country); *Ultimate Guide to OnlyFans*, INFLUENCER MARKETING HUB, <https://influencermarketinghub.com/glossary/onlyfans> [<https://perma.cc/4VCV-ALME>] (last visited May 10, 2026) (estimating 210 million registered users and rapid year-over-year growth).

4. OnlyFans is a subscription-based platform widely used for adult erotic content. See Jacob Bernstein, *OnlyFans Reverses Its Decision to Ban Explicit Content*, N.Y. TIMES (Sep. 14, 2021), <https://www.nytimes.com/2021/08/25/style/onlyfans-ban-reversed.html> (noting the centrality of OnlyFans to online sex work).

5. Erotic webcamming, or “camming,” involves performers creating live, interactive sexual or erotic content for viewers, often responding in real time to audience messages or requests. See ANGELA JONES, *CAMMING: MONEY, POWER, AND PLEASURE IN THE SEX WORK INDUSTRY* 2–7 (2020).

6. This Article uses “gig work” and “gig economy” to describe contingent, freelance, or platform-based labor performed outside traditional employment relationships, including work mediated through digital platforms such as app-based services, streaming or subscription content sites, and other online marketplaces. This usage includes online sex work and other forms of digitally mediated creative labor that operate through direct consumer engagement rather than formal employment. See Veena Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65, 67 (2017) (describing the emergence of “non-legally cognizable employee labor”); see also Josie

physical proximity.⁷ For some, online sex work is a full-time livelihood.⁸ Yet many others rely on it as a side hustle to offset inflation, fund education, subsidize dream careers, or otherwise make ends meet.⁹ It can also be an art form, a mode of sexual expression, or a form of community care.¹⁰ However, even legal online sex work remains tethered to the same moralistic stigma that has historically punished sex workers and branded them with a scarlet mark of unworthiness for other employment.¹¹ Hiring entities and coworkers in other employment settings police workers' off-duty expression, often treating lawful online sex work as if it were misconduct.¹² The resulting termination or other adverse work consequences are devastating.¹³ Protecting the rights of workers who engage in lawful online sex work is therefore not a niche concern but a central labor and civil rights question. It tests whether modern employment law will adapt to new forms of gig work or continue to police morality at the expense of worker autonomy.

Judge Gregory Locke's story illustrates how readily lawful off-duty expression can be recast as misconduct, triggering termination and reputational harm despite having no bearing on job performance. He was an administrative law judge in New York City, where his docket involved traffic and parking violations.¹⁴ In 2021, Locke left a big law firm for a small private practice, where much of his

Rachel West, *Online Sex Workers' Absence from Gig Economy Discourse: The Politics of Seeing in the Neoliberal Sexual Agenda*, 28 EUR. J. CULTURAL STUD. 699, 700 (2024) ("Online sex work is increasingly recognised as gig economy labour.").

7. See Shaikh, *supra* note 3 (noting 1.1 million U.S. creators); JONES, *supra* note 5, at 236–37 (noting that online sex work provides "physical safety" compared to in-person sex work because it provides physical separation from clients who could be hostile).

8. See, e.g., ROBBIE WARIN, POLLY BLAKE, MARK GRAHAM & ALESSIO BERTOLINI, PLATFORM SEX WORK: WORKING CONDITIONS IN THE ONLINE SEX WORK INDUSTRY 29 (2025), <https://fair.work/en/fw/publications/sex-work-report/> [<https://perma.cc/GV9W-9NVG>] (describing one OnlyFans creator who earned between \$80,000 and \$90,000 a year).

9. See RAVEN BOWEN, WORK, MONEY AND DUALITY: TRADING SEX AS A SIDE HUSTLE 1–5 (2021) (discussing sex work as a supplemental income stream within precarious labor markets); see also ARNE L. KALLEBERG, PRECARIOUS LIVES: JOB INSECURITY AND WELL-BEING IN RICH DEMOCRACIES 31–33 (2018) (discussing the rise of precarious work amidst stagnating wages and financial insecurity).

10. See Marquitta Dorsey, Jaih Craddock & Tyriesa Howard-Howell, "I Don't Really Need You. I Got a Body That's Going to Get Me What I Need": A Case Study on Sexual Autonomy and Agency Through Camming and Social Media Engagement Among Black Young Adult Females, 15 J. SOC'Y FOR SOC. WORK & RES. 303, 312 (2024) (reporting that "[r]espondents appeared empowered and energized when discussing their decisions to engage in work related to their sexual expression"); Danielle Blunt & Ariel Wolf, *Erased: The Impact of FOSTA-SESTA and the Removal of Backpage on Sex Workers*, 14 ANTI-TRAFFICKING REV. 117, 119–20 (2020) (documenting how digital sex work spaces provide harm-reduction information, emotional support, and community care infrastructures).

11. See, e.g., Laurel Rogers, *The Platformisation of Sex Work: Affordances, Challenges, Precarities*, AUTONOMY INST. (Feb. 14, 2024), <https://autonomy.work/portfolio/the-platformisation-of-sex-work-affordances-challenges-precarities/> [<https://perma.cc/6HNY-XU4F>] (discussing stigma around online sex work).

12. See, e.g., EJ Dickson, *Fired for Doing Porn: The New Employment Discrimination*, SALON (Sep. 30, 2013), https://www.salon.com/2013/09/30/fired_for_doing_porn_the_new_employment_discrimination [<https://perma.cc/8JRZ-SCAZ>].

13. *Id.*

14. Telephone Interview with Gregory Locke, Former A.L.J., N.Y.C. Dep't of Fin. (Sep. 23, 2025) [hereinafter Locke Telephone Interview].

work focused on helping queer communities, including some sex workers.¹⁵ He maintained two separate Twitter accounts, erecting a wall of separation between his online life and his work as a judge.¹⁶ On one account, he posted about his legal practice, community issues, and current events, while occasionally engaging local politicians.¹⁷ On a separate, less public “alt” account,¹⁸ he posted erotic content of himself, solely while off-duty from his judicial work, with much of the content monetized.¹⁹ In the same way that many workers pick up rideshare shifts with Uber or sell handmade goods on Etsy, Locke supplemented his transition to solo practice with online sex work.²⁰ That work also gave him an expressive outlet and a flexible schedule.²¹

Yet, in March 2023, New York City Councilmember Vickie Paladino torpedoed Locke’s carefully maintained wall of separation.²² A far-right politician known for “Stop the Steal” rhetoric, Councilmember Paladino frequently weaponized her Twitter account to attack gay people as “groomers,” to describe drag performances as “grotesque” and as a form of child “grooming” and “child sexualization,” and to threaten to defund schools in her district that hosted LGBTQ+ events.²³ On March 19, 2023, she tweeted that Drag Queen Story Hour, a program hosted by local

15. *Id.*; see also LaLa B. Holston-Zannell, *Sex Work Is Real Work—and It’s Time to Treat It That Way*, ACLU (June 10, 2020), <https://www.aclu.org/news/lgbtq-rights/sex-work-is-real-work-and-its-time-to-treat-it-that-way> [<https://perma.cc/DF47-H9TN>] (explaining that LGBTQ+ people are more likely to engage in sex work due to discrimination and exclusion from traditional employment).

16. Locke Telephone Interview, *supra* note 14.

17. *Id.*

18. “Alt,” short for alternative, is a secondary account where users share stigmatized or otherwise personal content with a restricted audience for the purpose of keeping such material separate from their public-facing identities. See Yusuf Tamanna, “A Form of Damage Limitation”: Why We Use Twitter Alts and Finstas, VICE (Apr. 16, 2019, at 03:30 ET), <https://www.vice.com/en/article/finsta-twitter-alts-why-secret-social-media-accounts-feature> [<https://perma.cc/VD2L-Q6P3>].

19. Locke Telephone Interview, *supra* note 14; see Mikelle Street, *Fired Gay Judge Breaks Silence, Pledges to Continue OnlyFans*, ADVOCATE (Apr. 3, 2023, at 00:22 ET), <https://www.advocate.com/people/onlyfans-gay-judge> [<https://perma.cc/SMM4-9SRX>] (reporting that Locke’s alt account promoted his monetized sex work and sometimes referred to his work as an attorney at a law firm); see also Mey Rude, *Ex-Judge & OnlyFans Creator Speaks Out About Being Fired*, OUT MAG. (Apr. 3, 2023), <https://www.out.com/news/new-york-judge-onlyfans> [<https://perma.cc/W24X-5YPG>] (describing Locke’s experience with sex work and response to his firing).

20. Locke Telephone Interview, *supra* note 14.

21. *Id.*

22. *Id.*

23. See Rude, *supra* note 19; Coral Murphy Marcos, *Vickie Paladino Calls for Disbarment of NYC Judge Amid Scandal*, PATCH (Mar. 27, 2023, at 16:54 ET), <https://patch.com/new-york/bayside/vickie-paladino-calls-disbarment-nyc-judge-amid-scandal-report> [<https://perma.cc/72N9-G9QF>] (reporting that Councilmember Paladino claimed Drag Queen Story Hour involved “child grooming” and called for Locke’s disbarment); Jacob Kaye, *Queens Lawmaker Faces Potential Punishment for Anti-LGBTQ+ Remarks*, QUEENS DAILY EAGLE (June 17, 2022), <http://queenseagle.com/all/2022/6/17/queens-lawmaker-faces-potential-punishment-for-anti-lgbtq-remarks> [<https://perma.cc/WK5H-TWKF>] (reporting that Councilmember Paladino “vow[ed] to withhold funding from schools that host drag queen events”); see also Image posted by Vickie Paladino (@vickiefornyc2025), Instagram, *Stop the Steal. Thanks, keep the pictures coming* (Nov. 14, 2020), <https://www.instagram.com/p/CHIJVudFdvT> [<https://perma.cc/E42K-68J5>] (depicting a “Stop the Steal” protest).

schools and libraries, was an “absolute shameful display.”²⁴ In a moment of unapologetic solidarity with the targets of the councilmember’s attacks, Locke replied from his main account, telling her to “choke on a dick.”²⁵ Shortly thereafter, an anonymous Twitter user linked Locke’s primary Twitter account with his “alt” account, which contained his sexual and erotic images.²⁶ Councilmember Paladino seized on the connection, demanding that Locke be disbarred and invoking his online sex work as grounds for his removal.²⁷

Although the City Council eventually censured Councilmember Paladino and revoked her committee assignment following repeated anti-LGBTQ+ remarks,²⁸ she still achieved part of her aim regarding Locke. Within days, the New York City Department of Finance sent him a letter removing him from the bench.²⁹ The letter offered only vague justifications, asserting that his Twitter posts violated the Ethical Rules of Conduct for Administrative Law Judges in New York City by detracting from the “dignity of judicial office” and failing to “uphold the integrity of the tribunal on which he . . . serve[d].”³⁰ While Locke sought assistance from several legal organizations to contest his termination, no one agreed to represent him.³¹ He has continued his private practice and his online sex work, but he describes the experience as bewildering and disheartening:

Sex work never interfered with my job—I was professional, consistent, and respected by my colleagues. I hoped that my role as an administrative law judge could serve as a springboard to becoming an elected civil judge in New York, where LGBTQ+ representation on the bench is scarce. But I’ve watched how candidates navigate the party machine for these roles, and how mayoral appointments operate. I don’t think New York City voters would care that I was fired for sex work, but gatekeepers do. And now, with the termination on my record, every route to becoming an elected judge feels obstructed.³²

24. Vickie Paladino (@VickieforNYC), X (Mar. 19, 2023, at 16:08 ET), <https://x.com/VickieforNYC/status/1637546732614475776> [https://perma.cc/KY2M-ZZ5U]; Street, *supra* note 19; *see also* Marcia Kramer, *New York City Council Member Vickie Paladino Denounced for Comments on Drag Queen Story Hour at Public Schools*, CBS NEWS (June 17, 2022, at 18:32 ET), <https://www.cbsnews.com/newyork/news/vickie-paladino-nyc-council-member-drag-queen-story-hour-comments/> [https://perma.cc/57DQ-7AMB] (describing the Drag Queen Story Hour program).

25. Locke Telephone Interview, *supra* note 14; *see* Staci Zaretsky, *New York Judge Fired After His Pornographic OnlyFans Side Hustle Is Revealed*, ABOVE THE L. (Mar. 27, 2023, at 14:14 ET), <https://abovethelaw.com/2023/03/new-york-judge-fired-onlyfans-porn> [https://perma.cc/P8PV-FW3P] (reporting Locke’s “choke on a dick” tweet and his subsequent firing).

26. Locke Telephone Interview, *supra* note 14.

27. *See* Marcos, *supra* note 23 (quoting Councilmember Paladino’s statement that Locke’s “second career in pornography” and “vile remarks” violated judicial conduct rules); Zaretsky, *supra* note 25 (noting Councilmember Paladino’s demands for Locke to be disbarred).

28. Jacob Kaye, *Paladino Kicked Off Committee for Anti-LGBTQ Remarks*, QUEENS DAILY EAGLE (Mar. 15, 2023), <https://queenseagle.com/all/2023/3/15/paladino-kicked-off-committee-for-anti-lgbtq-remarks> [https://perma.cc/W3QZ-JP8E].

29. Locke Telephone Interview, *supra* note 14.

30. Letter from N.Y.C. Dep’t of Fin. to Gregory Locke, A.L.J. (Mar. 21, 2023) (on file with author) (asserting that Locke’s Twitter activity detracted from the “dignity of judicial office” and failed to “uphold the integrity of the tribunal on which he or she serve[d]”).

31. Locke Telephone Interview, *supra* note 14.

32. *Id.*

Locke's case is striking and emblematic of the paucity of protection available to workers who moonlight as sex workers, even when they hold relative privilege. He is a white man with a legal background, an advanced degree, and connections to bar associations and their lawyer members.³³ Yet despite these advantages and outreach to free speech attorneys and legal organizations, he was unable to secure representation following his termination.³⁴ That failure is especially jarring because, as a public employee speaking on a matter of public concern, Locke should have enjoyed free speech protections.³⁵ Moreover, New York labor law protects a public employee's engagement in lawful off-duty conduct, and has enhanced safeguards for LGBTQ+ employees and other vulnerable groups.³⁶ Although his case attracted media coverage, no elected officials spoke in his defense. Many New York City elected officials support and have advanced stronger housing, immigration, and labor protections for sex workers, but none spoke for Locke.³⁷ This silence is not unusual. With rare exception, politicians rarely defend workers terminated for sex work.³⁸ However, no notable LGBTQ+ rights, free speech, or worker rights organizations spoke up for him either.³⁹ His case thus raises a sobering question: If a lawyer, in New York City, with institutional knowledge, professional networks, and experience navigating the system, cannot secure relief or even representation, what chance does a nurse, firefighter, home health aide, or artist have? What if that individual is less well-connected than Locke? Or lives in a rural area? Locke's story shows that the stigma surrounding sex work is so entrenched that it can override privilege. His case is not an indictment of one judge, but of a system that renders workers vulnerable to termination, and thereby financial ruin, for merely having a job that some find distasteful.

This Article underscores that advocates must urgently deploy the existing, though imperfect, legal tools that protect workers who moonlight as online sex workers *and* expand the menu of rights available to ensure meaningful protection.

33. *Id.*

34. *Id.*

35. See *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 468–70 (1995) (establishing protections for government employees against the prior restraint of off-duty expression unrelated to the individual's work); *Rankin v. McPherson*, 483 U.S. 378, 386 (1987) (holding that public employees retain free speech protections when speaking as private citizens on matters of public concern).

36. N.Y. LAB. LAW § 201-d (prohibiting employment discrimination based on lawful off-duty conduct); N.Y.C. ADMIN. CODE § 8-107(1) (prohibiting discrimination based on sexual orientation and gender identity).

37. See, e.g., *The Rights of Persons Who Engage in Sex Work*, N.Y.C. Int. No. 0149-2024, N.Y.C. Council (introduced Feb. 28, 2024) (prime sponsor Tiffany Cabán) (proposing to expand housing and employment protections for sex workers and prohibit discrimination based on sexual labor).

38. But see Lauren Frias, *Rep. Alexandria Ocasio-Cortez Defended the 23-Year-Old NYC Paramedic Whose OnlyFans Account Was Doxxed by the New York Post*, BUS. INSIDER (Dec. 15, 2020, at 00:46 ET), <https://www.businessinsider.com/aoc-ent-onlyfans-doxxed-by-new-york-post-2020-12> [https://perma.cc/5UD5-R856] (reporting that Rep. Ocasio-Cortez publicly defended a paramedic after the *New York Post* revealed her OnlyFans account, tweeting “Leave her alone. The actual scandalous headline here is ‘Medics in the United States need two jobs to survive’”).

39. Locke Telephone Interview, *supra* note 14.

Part I situates online sex work within contemporary labor and civil rights frameworks, using recent case studies to show how lawful off-duty sexual expression is recast as professional misconduct and how stigma operates through discipline, morality clauses, and reputational policing. Part I provides a broad definition of online sex work for the purpose of this Article and explains how workplace policies targeting it can chill sexual expression while harming survivors of nonconsensual sexual image sharing. Part II surveys existing legal frameworks, including antidiscrimination statutes, off-duty conduct laws, and contract-level protections. Part III provides model statutory language to address gaps in current protections. Part IV analyzes state and federal constitutional law, while also suggesting model contractual language. Part V calls for a reimagining of labor advocacy that includes stigmatized economies within broader movements for worker solidarity. While this Article focuses on lawful online sex work, it argues that the struggles of criminalized sex workers are deeply intertwined with those of formal-sector workers, and that preserving their rights advances the dignity, privacy, and expressive freedom of all workers.

I. ONLINE SEX WORK AS GIG WORK

This Part defines the scope of online sex work and explains why its regulation matters. Section A offers a broad working definition that captures consensual erotic expression, paid or unpaid, as well as content often mischaracterized and punished by workplaces as if it were sex work. Section B describes how employers discipline workers for such off-duty expression. Section C situates these dynamics within the rapid growth and precarity of online erotic labor, underscoring the need for stronger protections.

A. DEFINING ONLINE SEX WORK

Similar to offline sex work, there is no universally agreed-upon definition of online sex work.⁴⁰ What counts as “sex work” is contested by workers themselves, advocates, opponents, and law enforcement. Even the law collapses diverse forms of labor under the same stigmatized category.⁴¹ To be sure, the conflation of fundamentally different forms of erotic image creation or distribution—such as commercial content creation, artistic and intimate sex expression,

40. See Teela Sanders, *A Continuum of Risk? The Management of Health, Physical and Emotional Risks by Female Sex Workers*, 26 SOCIO. HEALTH & ILLNESS 557, 560–61 (2004) (discussing definitional difficulties and the varied forms of sex work); Lara Gerassi, *A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work*, 42 J. SOCIO. & SOC. WELFARE 79, 81–86 (2015) (noting disagreement among scholars about whether sex work must be monetized, whether coercion is always present, and how theoretical frames shape what is counted as “sex work”); Sarah Finley ed., *Sex Work*, 24(2) GEO. J. GENDER & L. 761, 761–62 (2023) (defining “sex work” expansively to include phone and internet sex, stripping, pornography, and other services and acknowledging that some of the services are legal).

41. See, e.g., Aaron Mackey, *The Fight to Overturn FOSTA, an Unconstitutional Internet Censorship Law, Continues*, ELEC. FRONTIER FOUND. (Sep. 15, 2022), <https://www.eff.org/deeplinks/2022/09/fight-overturn-fosta-unconstitutional-internet-censorship-law-continues> [<https://perma.cc/ARQ4-VYAN>] (noting that a federal anti-sex trafficking law “conflat[es] . . . sex work with coercive trafficking”).

education, and nonconsensual image sharing—flattens meaningful distinctions in autonomy, consent, and the expression itself. However, this very collapse requires a capacious working definition broad enough to encompass those who engage in such conduct and those perceived or at risk of being labeled as online sex workers. For the purpose of this Article, online sex work refers to the creation, distribution, or performance of sexual or erotic content solely featuring consenting adults, including literature, through internet-mediated platforms, whether compensated or offered without payment, as well as content perceived by employers as sexual or erotic.⁴² This definition is capacious enough to include, but is certainly not limited to, erotic work on subscription-based services like OnlyFans, livestream camming, performance in pornography and its production and distribution, erotic and sexual literature, professional domination, and other fetish and fantasy services offered online.

This definition also recognizes that some forms of expression, while not generally considered sex work, risk censorship and punishment as if they were. Recent efforts by Project 2025 and state legislators seek to redefine constitutionally protected expression—including comprehensive sex education, LGBTQ+ health resources, contraception information, drag performance, and other speech that implicates sex or the LGBTQ+ communities—as “pornographic” or sexually explicit to justify censorship and moral regulation.⁴³ While this Article does not accept the premise that such speech constitutes sex work, workers engaged in these forms of expression may face penalties akin to those imposed on erotic labor.⁴⁴ Accordingly, it is necessary to acknowledge how the proposals in this Article can extend protections to these forms of speech.

Importantly, this definition includes both paid and unpaid labor, which reflects the reality that free content is often inseparable from monetized content, and even unpaid erotic expression can trigger stigma, surveillance, and employment consequences.⁴⁵ First, free content is often offered to entice

42. See, e.g., Thomas Ramirez, *Sex Worker Criminalization in the United States*, AIDS UNITED (Oct. 17, 2023), <https://aidsunited.org/sex-worker-criminalization-in-the-united-states-a-landscape-analysis-of-the-criminalization-health-effects-on-the-sex-worker-population-in-the-united-states> [https://perma.cc/K8TE-CFK3] (defining sex work broadly to include camming, pornography, escorting, street-based work, and professional domination).

43. Project 2025 is a comprehensive policy blueprint coordinated by the Heritage Foundation and allied conservative organizations to guide federal executive action under a Republican administration. Its recommendations have shaped state-level efforts to expand the definition of “sexually explicit” materials in education and public libraries. See HERITAGE FOUND., MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 4–6 (Paul Dans & Steven Groves eds., 2023); see also S.B. 12, 88th Leg., Reg. Sess. (Tex. 2023) (restricting “sexually oriented performances,” including drag performances).

44. This Article uses “erotic labor” to denote the creation or sharing of online sexual or sexually expressive materials, regardless of whether the worker receives payment.

45. See Susanna Paasonen, *Labors of Love: Netporn, Web 2.0 and the Meanings of Amateurism*, 12 NEW MEDIA & SOC’Y 1297, 1307–08 (2010) (explaining that unpaid or “free” erotic online content functions as sexual labor and attracts stigma and surveillance); see also Evan Ribot, *Revenge Porn and the First Amendment: Should Nonconsensual Distribution of Sexually Explicit Images Receive Constitutional Protection?*, 2019 U. CHI. LEGAL F. 521, 527 (noting that survivors of nonconsensual pornography struggle to gain employment or lose current employment due to their sexual images).

potential customers to purchase paywalled material.⁴⁶ Second, some people post erotic content online as a form of self-expression or simply because they enjoy it.⁴⁷ Because employers rarely distinguish between content that is paid, promotional, or freely shared, this Article's definition encompasses unpaid sexual labor as well.⁴⁸

Critically, this definition is also capacious enough to encompass forms of non-consensual sexual expression that are often punished as if they were sex work.⁴⁹ This includes nonconsensual pornography, such as “revenge porn,” or the creation or distribution of sexual images, often to shame a person;⁵⁰ “deepfakes,” or the use of artificial intelligence to superimpose a person's likeness onto sexual images without consent;⁵¹ content that individuals were forced to create; and the nonconsensual archiving of sexual material.⁵² Each of these phenomena can inflict reputational devastation, harassment, extortion, and enduring digital

circulated online); Kendra Albert, *Five Reflections from Five Years of FOSTA/SESTA*, 40 CARDOZO ARTS & ENT. L.J. 413, 425 (2022) (noting that free websites used by sex workers “were among the first to shut down” after a new law created a risk of criminal investigation).

46. See, e.g., Paasonen, *supra* note 45, at 1306–07.

47. See Anna Kelberga (Kelberg) & Baiba Martinsone, *Motivation of Sex Workers Who Provide Camming Services to Engage in Sex with Their Real-Life and Virtual Partners*, FRONTIERS IN PSYCH., July 3, 2023, at 5 <https://pmc.ncbi.nlm.nih.gov/articles/PMC10352917> [<https://perma.cc/7REH-9KGU>]; Alan McKee, Lily Moor, Catherine Page Jeffery & Jennifer Power, *Sexual Self-Representation in Digital Media*, CULTURE, HEALTH & SEXUALITY, Apr. 12, 2025, at 1, <https://www.tandfonline.com/doi/full/10.1080/13691058.2025.2485615> (describing “the diverse ways in which people use digital media for sexual self-representation”).

48. Employers are mainly concerned with the legality of the off-duty work, whether it conflicts with the employer's legitimate business interests, or violates other contractual or professional obligations. See, e.g., *Truitt v. Salisbury Bank & Trust Co.*, 52 F.4th 80, 88, 86 (2d Cir. 2022) (applying N.Y. LAB. LAW § 201-d, which prohibits “refus[al] to hire, employ or license, or to discharge from employment or otherwise discriminate against any individual” because of activities outside of work, off the employer's premises, and without use of the employer's equipment or other property if such activities are legal); Lauren Boone, “*Because of Sex*”: Title VII's Failures Leave Legal Sex Workers Unprotected, 100 N.C. L. REV. 883, 910–11 (2022) (describing arguments employers make defending against Title VII sex discrimination claims, but not distinguishing between whether the legal sex work is paid, promotional, or freely shared); Heather Hollingsworth, *Teachers Have Lost Their Jobs for Moonlighting in Adult Content. Do They Have Legal Recourse?*, NBC CONN. (Dec. 11, 2023, at 08:04 ET), <https://www.nbcconnecticut.com/news/national-international/onlyfans-creators-who-got-fired-from-their-day-jobs-begin-to-seek-legal-recourse> [<https://perma.cc/SJT6-ZM7Q>] (reporting that employers have disciplined or terminated workers for online sexual expression on OnlyFans). For further discussion of unpaid consensual erotic labor, see *infra* note 111 and accompanying text.

49. See Ribot, *supra* note 45, at 527.

50. See Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345, 353–54, 357 (2014) (defining nonconsensual pornography and explaining its harms).

51. See Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 CALIF. L. REV. 1753, 1757 (2019); John Villasenor, *Artificial Intelligence, Deepfakes, and the Uncertain Future of Truth*, BROOKINGS INST. (Feb. 14, 2019), <https://www.brookings.edu/articles/artificial-intelligence-deepfakes-and-the-uncertain-future-of-truth> [<https://perma.cc/25DQ-9APK>].

52. See *Frequently Asked Questions*, CYBER C.R. INITIATIVE, <https://www.cybercivilrights.org/faqs/> [<https://perma.cc/M5BZ-3WQZ>] (last visited May 10, 2026) (noting the range of coercive and nonconsensual erotic content, including forced creation and unauthorized archiving).

permanence that individuals cannot control.⁵³ While all fifty states have enacted statutes criminalizing revenge porn, substantive workplace protections for employees and contractors targeted by such acts remain slim or nonexistent.⁵⁴ Survivors often have no right to removal, no labor protections, and no remedies that address the economic and professional fallout of being stigmatized as sex workers.⁵⁵ Much like in-person sex work, online sexual expression and nonconsensual pornography are often conflated, leading survivors to face the same forms of stigma and discipline imposed on consensual sex workers.⁵⁶ Recognizing the sharp line between consensual and nonconsensual sexual expression is essential, but extending labor protections to survivors of online sexual coercion is equally critical.

At the same time, this definition does not extend to in-person sexual services arranged or facilitated online. Criminalized in-person sex work raises distinct issues of policing and labor rights.⁵⁷ While consensual adult commercial sex is work that merits labor protection and is briefly acknowledged in Part IV, it remains beyond this Article's scope. Still, it is important to recognize the line between criminalized and non-criminalized sex work.⁵⁸ A couple may lawfully record their sexual activity, distribute it online, and profit from the views. Yet if the same encounter were negotiated privately without a camera, the state could prosecute the participants for prostitution.⁵⁹ "Sugar dating," in which wealthier partners provide financial support or gifts to younger companions in exchange for intimacy or company, is widely advertised online as legitimate, while escorting—typically a more explicit paid agreement for companionship and sex—is

53. See Citron & Franks, *supra* note 50, at 353–57 (describing reputational, emotional, and economic harms associated with the nonconsensual distribution of sexual material).

54. See *Nonconsensual Distribution of Intimate Images*, CYBER C.R. INITIATIVE (2024), <https://cybercivilrights.org/nonconsensual-distribution-of-intimate-images> [<https://perma.cc/9NSV-RGB3>] (last visited May 10, 2026) (explaining that fifty states, Washington, D.C., and two territories have statutes against nonconsensual distribution of intimate images); *Revenge Porn Laws: State by State*, C.A. GOLDBERG, <https://www.cagoldberglaw.com/resources/states-with-revenge-porn-laws> [<https://perma.cc/HFX5-Z9SA>] (last visited May 10, 2026); Nora Greene, *When 'Revenge Porn' Constitutes Domestic Violence: Applying Workplace Anti-Discrimination Protections to Victims of Nonconsensual Pornography*, AM. U. J. GENDER, SOC. POL'Y & L.: BLOG (Apr. 19, 2022), <https://jgspl.org/when-revenge-porn-constitutes-domestic-violence-applying-workplace-anti-discrimination-protections-to-victims-of-nonconsensual-pornography> [<https://perma.cc/7JTD-596T>] (last visited May 11, 2026).

55. Greene, *supra* note 54.

56. See Ribot, *supra* note 45, at 527.

57. See AMNESTY INT'L, POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFILL THE HUMAN RIGHTS OF SEX WORKERS 10–13 (2016), <https://www.amnesty.org/en/documents/pol30/4062/2016/en> [<https://perma.cc/9Q44-HVLF>].

58. See 18 U.S.C. § 2257 (imposing record keeping and age verification requirements on producers of sexually explicit materials, thereby implicitly recognizing lawful adult entertainment as protected expressive or commercial content in contrast to prostitution, which is treated as unprotected criminal sexual conduct); Sherry F. Colb, *The Legal Line Between Porn and Prostitution*, CNN (Aug. 12, 2005, at 14:20 ET), <https://www.cnn.com/2005/LAW/08/12/colb.pornography/index.html> [<https://perma.cc/TAS7-4HUS>] (distinguishing pornography, which is treated as protected expressive conduct, from prostitution, which is criminalized as a commercial sex act).

59. Colb, *supra* note 58 (observing that pornography and prostitution are often distinguished only by context and formal consent to filming).

criminalized despite similar dynamics.⁶⁰ Such inconsistencies highlight that the boundaries of legality reflect political and moral judgment rather than coherent legal principles.⁶¹

B. HOW WORKPLACES PUNISH WORKERS FOR SIDE GIGS INVOLVING EROTIC LABOR

Workers who moonlight as online sex workers are fired for varying reasons. Some terminations rely on morality clauses, which are contractual provisions that prohibit so-called immoral or unprofessional behavior and often grant hiring entities⁶² broad discretion to determine what that constitutes.⁶³ Moreover, hiring entities weaponize morality clauses not due to a worker's actual conduct, but because of the public's reaction or the purported anticipation of it, thereby further broadening the scope and potential for abuse.⁶⁴ For instance, Missouri high school teacher Brianna Coppage was dismissed after her OnlyFans account became public, despite that work being lawful and conducted entirely outside school hours.⁶⁵ Similarly, Joe Gow, the long-time chancellor of the University of Wisconsin–La Crosse, was removed from his position because he and his wife produced and sold pornography, even though it was consensual, legal, and unrelated to his administrative role.⁶⁶ In Arizona, Stacie Halas,

60. See Kavita Nayar Jablonka, *Sugar Dating: What Counts as Sex Work*, in *SEX WORK TODAY: EROTIC LABOR IN THE TWENTY-FIRST CENTURY* 31, 31–32 (Bernadette Barton, Barbara G. Brents & Angela Jones eds., N.Y.U. Press 2024) (describing sugar dating as an arrangement involving financial support in exchange for intimacy or companionship, and noting its blurred boundary with criminalized sex work); H.R. REP. NO. 115-572, pt. 1, at 3–5 (2018) (warning that platforms facilitating adult services could face liability under the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), Pub. L. No. 115-164, 132 Stat. 1253 (2018), a statute that generally creates liability for online platforms that promote or facilitate prostitution, further blurring lines between consensual sexual labor and criminalized prostitution); *Woodhull Freedom Found. v. United States*, 948 F.3d 363, 370–72 (D.C. Cir. 2020) (noting that, under FOSTA–SESTA, “[t]he terms ‘promote’ and ‘facilitate,’ when considered in isolation, ‘are susceptible of multiple and wide-ranging meanings’” (citing *United States v. Williams*, 553 U.S. 285, 294 (2008))).

61. For a discussion of various approaches to regulating sex work through a Governance Feminism model, see Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health*, 34 HARV. J.L. & GENDER 225, 231–34 (2011).

62. The term “hiring entity” is used throughout this Article to encompass both traditional employers and other persons or organizations that engage workers for compensation, including those who retain independent contractors, freelancers, or platform-based labor. The term is intended to capture relationships that may not meet the common law or statutory definitions of “employer” under Title VII or the Fair Labor Standards Act but that nonetheless exercise economic or supervisory control over a worker's conditions of labor. See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323–24 (1992) (applying common law agency test to determine “employee” status under ERISA); RESTATEMENT (THIRD) OF EMP. L. § 1.01 (A.L.I. 2015) (defining “employer” broadly to include entities that control or contract for the performance of work).

63. See Patricia Sánchez Abril & Nicholas Greene, *Contracting Correctness: A Rubric for Analyzing Morality Clauses*, 74 WASH. & LEE L. REV. 3, 9–10 (2017).

64. *Id.* at 11.

65. *Missouri Teacher Who Performed on Website Known for Explicit Content Has Resigned, Official Says*, AP NEWS (Oct. 11, 2023, at 14:17 ET), <https://apnews.com/article/676e2fcfd9f238c6a0c2388a6d94206c> [<https://perma.cc/7B22-JUKM>] (reporting Brianna Coppage's resignation following discovery of her OnlyFans account).

66. *Regents Pick New Hampshire Provost to Replace UW–La Crosse Chancellor Fired Over Porn Career*, AP NEWS (Mar. 13, 2024, at 18:02 ET), <https://apnews.com/article/da4a8e56c97a1a4593c9d7d3f983af97> [<https://perma.cc/N6K8-6S4C>].

an elementary school teacher, was fired after parents discovered her OnlyFans page, despite her spotless classroom record.⁶⁷ These cases differ in detail, but their through-line is that the punishment stems not from job performance but from their employers' discontent with their off-duty conduct.

Even when not formally terminated, workers suffer professional fallout based on off-duty online sex work. In 2020, New York paramedic Lauren Kwei was outed by the New York Post for her OnlyFans account, which included erotic content.⁶⁸ The outlet even contacted her mother, her colleagues disparaged her capability to be an EMT to the press based solely on her sex work, and she was summoned to meetings with her supervisors.⁶⁹ Though she was not fired, the incident unleashed a wave of media reports, underscoring how easily online sex work can be weaponized to jeopardize a career.⁷⁰ Similarly, in 2021, Colorado Sheriff's Deputy Melissa Williams resigned under pressure after her OnlyFans account was exposed.⁷¹ An internal affairs complaint described her actions as "a discredit to the Arapahoe County Sheriff's Office," despite there being no allegations of misconduct in her policing duties.⁷²

C. THE GROWTH OF ONLINE EROTIC LABOR AND THE NEED FOR PROTECTIONS

The urgency for worker protections for employees and contractors who moonlight as sex workers is only growing. The widespread availability of smartphones, low entry barriers, flexible scheduling, accessibility for those with disabilities,⁷³ and autonomy have transformed online sex work into a significant and increasingly visible labor sector.⁷⁴ Many previously engaged in in-person sex work move online for reduced physical and criminal risk.⁷⁵ One survey estimated that there are more than two million content creators on OnlyFans with active

67. *Teacher Fired for Appearing in Porn Loses Appeal to Get Job Back*, CBS NEWS (Jan. 15, 2013, at 23:04 ET), <https://www.cbsnews.com/losangeles/news/teacher-fired-for-appearing-in-porn-loses-appeal-to-get-job-back> [https://perma.cc/HM2E-TBTC].

68. EJ Dickson, *An EMT Joined OnlyFans to Make Ends Meet. Then the "New York Post" Shamed Her*, ROLLING STONE (Dec. 14, 2020), <https://www.rollingstone.com/culture/culture-news/onlyfans-emt-lauren-kwei-1103336>.

69. *Id.*

70. *Id.* Indeed, it appears that her side jobs were outed in an attempt to embarrass or discredit her. It seems unlikely that a media outlet would have published a salacious article that would cause her to fear for her employment if her off-duty gig were as a babysitter or tax preparer.

71. Emma Colton, *Colorado Deputy with OnlyFans Account Retires After Being Discovered By Female Officer*, FOX NEWS (Jan. 25, 2022, at 09:25 ET), <https://www.foxnews.com/us/colorado-sheriffs-deputy-retires-30k-settlement-only-fans> [https://perma.cc/4ENJ-LGFT].

72. *Id.*

73. See JONES, *supra* note 5, at 3.

74. *Unveiling the Digital Revolution: How Technology and Communications Fueled the OnlyFans Phenomenon*, CLOUD STREET, <https://cloudstreet.co/technology-communications-onlyfans-revolution> [https://perma.cc/H4JM-3UPB] (last visited May 16, 2026) (describing how the proliferation of smartphones and digital platforms such as OnlyFans have transformed online sex work into a mainstream and accessible labor sector); Angela Jones, *Sex Work in a Digital Era*, 9 SOCIO. COMPASS 558, 564 (2015) (arguing that digital platforms allow sex workers to exercise greater autonomy and flexibility while facing similar precarity as other gig-economy laborers).

75. See JONES, *supra* note 5, at 3, 236–37.

accounts, and 40% of those creators are based in the United States.⁷⁶ Most creators earn only modest supplemental income,⁷⁷ yet they face unstable earnings, exclusion from banking, frozen funds, and stigma that render this lawful work precarious while simultaneously jeopardizing workers' primary jobs or other gig work.⁷⁸

While there are few public examples of workers penalized for moonlighting as online sex workers, this reflects how stigma, privacy concerns, and economic precarity suppress disclosure, rather than a lack of terminations.⁷⁹ Settlements may be confidential, and most workers are at-will employees, where no explanation is required, or contract workers with few worker protections.⁸⁰ The underreporting itself underscores the core problem: workers face consequences so severe that they cannot safely assert their rights or even tell their stories, reinforcing the need for systemic protections.⁸¹

II. EXISTING ANTIDISCRIMINATION AND ANTI-HARASSMENT PROTECTIONS AND THEIR LIMITS

Part II evaluates how existing state and federal antidiscrimination and anti-harassment laws can, and often cannot, protect workers disciplined for moonlighting as lawful online sex workers. Section A considers Title VII's disparate-impact, disparate-treatment, and sex-stereotyping doctrines, which offer conceptual footholds for reframing penalties for online sex work as sex discrimination, though courts have not yet applied them squarely in this context. Section B evaluates state and local statutes governing off-duty conduct, source-of-income discrimination, and "good cause" termination, illustrating that the broadest versions of these laws offer protection beyond Title VII, yet they remain fragmented. Section C

76. Alexander Eser, *OnlyFans Earnings Statistics*, ZIPDO: EDUC. REP. 2026 (May 30, 2025), <https://zipdo.co/onlyfans-earnings-statistics> [<https://perma.cc/Q8L7-VHSL>] (estimating that 40% of OnlyFans creators are based in the United States).

77. *Average OnlyFans Income: Real Earnings, Figures, and Stats*, SOCIAL RISE (Aug 28, 2024), <https://social-rise.com/blog/average-onlyfans-income> [<https://perma.cc/E2YD-HMYF>] (reporting that, on average, OnlyFans creators earn between \$150 and \$180 per month, with significant disparities between top earners and the majority of users).

78. See, e.g., FREE SPEECH COAL., FINANCIAL DISCRIMINATION AND THE ADULT INDUSTRY 4 (2023), <https://action.freepresscoalition.com/wp-content/uploads/2023/05/Financial-Discrimination-and-the-Adult-Industry-Updated-May-2023.pdf> (documenting how U.S. financial institutions routinely close accounts and freeze funds of adult content creators despite the legality of their work); Zahra Stardust, Danielle Blunt, Gabriella Garcia, Lorelei Lee, Kate D'Adamo & Rachel Kuo, *High Risk Hustling: Payment Processors, Sexual Proxies, and Discrimination by Design*, 26 CUNY L. REV. 57, 69–74 (2023) (describing how financial discrimination, platform instability, and payment freezes heighten the economic precarity of online sex workers and threaten their ability to sustain other forms of employment).

79. See Michael Gomes, *Who to Tell?: An Analysis of the Disclosure Experiences of Online Sex Workers* 12–31 (Aug. 18, 2022) (Undergraduate Honors Thesis, Bridgewater State Univ.) (on file with Bridgewater State Univ. Virtual Commons) (interviewing creators who describe suppression of disclosure due to stigma, reputational risk, or blacklisting); cf. Hollingsworth, *supra* note 48 (describing reported cases of content creators alleging termination).

80. See Cynthia L. Estlund, *Wrongful Discharge Protections in an At-Will World*, 74 TEX. L. REV. 1655, 1655–56 (1996) (noting that employment in the United States is presumptively at-will, allowing employers to discharge employees "for good reason, for bad reason, or for no reason at all").

81. See Cynthia Estlund, *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, 105 COLUM. L. REV. 319, 334–36 (2005).

then examines harassment and image-based sexual harassment laws, tracing how federal and local doctrines address the circulation of sexual images at work and how these protections apply both to consensual creators and to survivors of non-consensual pornography. Collectively, these statutory schemes offer valuable, if limited, tools that the next Part expands through proposed legislative reforms.

A. TITLE VII AND FEDERAL SEX STEREOTYPING FRAMEWORKS

Federal employment discrimination law can, depending on the facts of a particular case, provide protection for employees disciplined for lawful online sex work. Title VII of the Civil Rights Act of 1964 prohibits discrimination “because of . . . sex,”⁸² encompassing both disparate-treatment and disparate-impact frameworks.⁸³ While courts have not yet applied Title VII squarely in the context of online sex work, the doctrine offers a valuable, though underdeveloped, tool for resisting stigma-driven terminations.⁸⁴

From a disparate-impact perspective, workplace rules that penalize off-duty online sex work often operate like other ostensibly “neutral” policies that disproportionately burden women and LGBTQ+ workers. Women provide the majority of online sexual labor, and LGBTQ+ people are overrepresented in this sector when compared to their share of the population.⁸⁵ Morality clauses, character requirements, and vague notions about preserving professionalism and the employer’s reputation reproduce gendered and sexualized assumptions about who engages in online sex work and how it diminishes their value.⁸⁶ Further, vague standards about preserving a hiring entity’s brand or reputation may be facially neutral, but they replicate longstanding gendered assumptions about who engages in online sex work and why.⁸⁷ As Derek J. Demeri argues, such rules are functionally indistinguishable from height or weight requirements that courts have invalidated for excluding women at disproportionate rates.⁸⁸ Just as those

82. 42 U.S.C. § 2000e-2(a)(1) (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s . . . sex.”).

83. Disparate impact refers to facially neutral rules or policies that disproportionately impact a protected characteristic such as race, gender, religion, or national origin, regardless of the employer’s intent. *See* *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). Disparate treatment refers to disparate treatment between employees or applicants because of a protected characteristic, such as race, gender, religion, or national origin. *See* *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–05 (1973).

84. Derek J. Demeri, *Who Needs Legislators? Discrimination Against Sex Workers Is Sex Discrimination Under Title VII*, 72 RUTGERS U. L. REV. 247, 258–64 (2019).

85. *See* DANIELLE BLUNT & ARIEL WOLF, HACKING//HUSTLING, ERASED: THE IMPACT OF FOSTA–SESTA AND THE REMOVAL OF BACKPAGE 7–8 (2020) (finding disproportionate LGBTQ+ and trans representation in online sex work and adjacent digital labor); Ribot, *supra* note 45, at 543 (noting that, *inter alia*, women and LGBTQ+ people are disproportionately likely to be the targets of nonconsensual pornography).

86. Demeri, *supra* note 84, at 261–77 (explaining that facially neutral “morals” or “reputation” standards replicate gendered assumptions about sexuality and thus operate as sex-based screens).

87. *See id.*; *see also* *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250–51 (1989) (plurality opinion) (describing sex stereotyping as “when an employer . . . evaluate[s] employees by assuming or insisting that they match[] the stereotype associated with their group”).

88. *See* Demeri, *supra* note 84, at 264–65.

screens imported gendered assumptions about physical capacity, morality clauses import assumptions about women's chastity, queer people's promiscuity, and trans people's supposed deviance, producing unlawful disparate impact.⁸⁹

Title VII also prohibits disparate treatment rooted in stigma-based gender stereotyping.⁹⁰ Feminist scholars have long observed that sex work is policed through ideals of female modesty and respectability, casting women who sell sex as fallen and therefore unfit for other forms of labor.⁹¹ Queer and trans workers face parallel tropes, with gay men stereotyped as promiscuous, queer women as deviant, and trans people as hypersexual or deceptive.⁹² Title VII doctrine already recognizes the harms of such stereotyping. In *Price Waterhouse v. Hopkins*, for example, the Supreme Court held that penalizing a worker for failing to conform to stereotypes about women constituted discrimination "because of their sex,"⁹³ and, in *Bostock v. Clayton County*, the Court extended that logic to LGBTQ+ workers.⁹⁴ Applying this precedent, hiring entities that punish workers for lawful off-duty online sex work are effectively penalizing gender nonconformity and sexual expression that defies heteronormative expectations.⁹⁵ At least one lower court applied this logic in holding that a plaintiff had offered sufficient evidence to support a sex stereotyping claim, where a school administrator told an applicant who had previously worked as an erotic performer that "it takes a classy woman to be a nurse, and unclassy women . . . shouldn't be nurses," implying that her prior work was too much of a deviation from expectations for "classy women."⁹⁶

Hiring entities may argue that penalties target "conduct" rather than gender or sexual orientation, or recast discipline as policy in furtherance of brand

89. See *Griggs v. Duke Power Co.*, 401 U.S. 424, 431–32 (1971) (holding that facially neutral practices with disparate effects violate Title VII absent business necessity); see also *Dothard v. Rawlinson*, 433 U.S. 321, 329–31 (1977) (invalidating height and weight requirements that disproportionately excluded women).

90. *Price Waterhouse*, 490 U.S. at 251.

91. See Victoria Bateman, *How Decriminalisation Reduces Harm Within and Beyond Sex Work: Sex Work Abolitionism as the "Cult of Female Modesty" in Feminist Form*, 18 *SEXUALITY RSCH. & SOC. POL'Y* 819, 829–33 (2021) (describing how abolitionist feminist arguments against sex work are grounded in gendered expectations of modesty, propriety, and respectable womanhood). See generally Elizabeth Bernstein, *What's Wrong with Prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 *HASTINGS WOMEN'S L.J.* 91 (1999) (exploring how prostitution is regulated through gendered expectations of modesty, propriety, and respectable womanhood).

92. See Annalisa Anzani et al., *From Abstinence to Deviance: Sexual Stereotypes Associated with Transgender and Nonbinary Individuals*, 21 *SEXUALITY RSCH. & SOC. POL'Y* 27, 31 (2023) (describing how transgender individuals are often associated with sexual deviance); Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 *WOMEN: SEX & SEXUALITY* 631, 632 (1980) (describing how lesbian desire is framed as deviant within compulsory heterosexual norms).

93. *Price Waterhouse*, 490 U.S. at 251–52.

94. 590 U.S. 644, 650–52, 662 (2020).

95. Lower courts have begun to apply gender stereotyping logic to discipline based on sexual-expression history. In *Gilliland v. Southwestern Oregon Community College District*, a court denied summary judgment to a defendant where a plaintiff's history as an adult-content performer was purportedly used to suggest she did not meet gendered expectations of her newly chosen profession. No. 6:19-cv-00283, 2021 WL 5760848, at *6 (D. Or. Dec. 3, 2021).

96. *Id.*

protection, customer preference, or religious prerogative. However, Title VII forbids policing gendered and sexual norms through facially neutral rules.⁹⁷ Sex-stereotyping is actionable even when framed as conduct regulation.⁹⁸ Pretext can be shown through inconsistent explanations, departures from regular disciplinary practices, or the unequal application of a rule or consequences to members of protected groups.⁹⁹ Meanwhile, business necessity and bona fide occupational qualification defenses are narrow, “reputation” and customer preference are insufficient, and plaintiffs can prevail by identifying less discriminatory alternatives to any screening policy.¹⁰⁰ Religious defenses reach only limited contexts and do not authorize sex discrimination.¹⁰¹ Imperatively, public employers need evidence of a disruption when enacting blanket prohibitions on off-duty protected speech, which should include prior restraints on workers engaging in off-duty, lawful sex work.¹⁰²

Still, Title VII is no panacea. Few courts have addressed whether termination for lawful online sex work constitutes discrimination “because of sex,”¹⁰³ and many claims will falter at the pleading stage absent concrete evidence of sex-based stereotyping or meaningful comparators.¹⁰⁴ Further, workers may have difficulty showing that an employer’s “morality” or “reputation” rationale was actually pretextual. The statute also excludes independent contractors and entities

97. See *Bostock*, 590 U.S. at 650–52; 42 U.S.C. § 2000e-2(k)(1)(A)–(C) (codifying disparate-impact liability); *Griggs v. Duke Power Co.*, 401 U.S. 424, 431–32 (1971); *Price Waterhouse*, 490 U.S. at 251.

98. See *Price Waterhouse*, 490 U.S. at 251.

99. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147–48 (2000) (explaining that pretext may be inferred from inconsistencies, implausibility, or falsity in the employer’s stated reasons); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804–05 (1973) (noting that deviations from standard practices or differential treatment can support a finding of pretext); *Coleman v. Donahoe*, 667 F.3d 835, 857–58 (7th Cir. 2012) (recognizing that pretext may be shown where an employer selectively enforces rules or imposes harsher discipline on workers inside the protected class).

100. See 42 U.S.C. § 2000e-2(k)(1)(A)–(C) (codifying the business-necessity defense and requirement to consider less discriminatory alternatives); *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385, 388–89 (5th Cir. 1971) (rejecting airline’s argument that women stewardesses being better at non-mechanical job aspects and customer preference for female flight attendants constituted a bona fide occupational qualification); *Griggs*, 401 U.S. at 431 (explaining that the business necessity defense requires an employment practice to be reasonably related to job performance and that less discriminatory alternatives must be considered).

101. See 42 U.S.C. § 2000e-1(a) (2022) (noting inapplicability of subchapter to certain aliens and employees of religious entities); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012) (noting that the ministerial exception is limited to certain roles); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020) (same).

102. See *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 465–66, 475 (1995) (holding that broad, prospective restrictions on off-duty speech require a strong, evidence-based justification); *infra* notes 200–04 and accompanying text (discussing prior restraints under *National Treasury Employees Union*). For an explanation of how robust anti-harassment policies can be more effective than disciplining workers for lawful off-duty sex work, see *infra* Section II.C.

103. See *Demeri*, *supra* note 84, at 258–61 (noting the paucity of case law directly addressing Title VII claims by sex workers and urging courts to apply sex discrimination theories).

104. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–57 (2007) (holding that conspiracy claims must plead sufficient facts to suggest an agreement was made); *Ashcroft v. Iqbal*, 556 U.S. 662, 678–80 (2009) (holding that pleadings must render discrimination claims plausible, not merely conceivable); *McDonnell Douglas Corp.*, 411 U.S. at 802–05 (establishing burden-shifting framework for disparate treatment claims).

with few employees.¹⁰⁵ These gaps limit the statute's practical effect even as its disparate-impact, disparate-treatment, and sex-stereotyping doctrines provide critical conceptual ground for challenging stigma-driven terminations. Yet, despite these gaps, Title VII offers conceptual scaffolding for reframing stigma against sex workers as sex discrimination.

B. STATE AND LOCAL ANTIDISCRIMINATION PROTECTIONS

State and local laws sometimes provide richer protection than Title VII, but their application to online sex work is underdeveloped. New York Labor Law § 201-d prohibits employers from disciplining employees for lawful off-duty “recreational activities,” political expression, or union membership.¹⁰⁶ At first glance, this might seem promising for workers moonlighting in online sex work. However, Section 201-d defines “recreational activity” narrowly, expressly limiting it to unpaid activities, thereby excluding off-duty secondary jobs.¹⁰⁷ In *State v. Wal-Mart Stores, Inc.*, for example, the Appellate Division of the Supreme Court rejected an expansive reading of “recreational activities,”¹⁰⁸ and the Second Circuit followed that narrow approach in *McCavitt v. Swiss Reinsurance America Corp.*¹⁰⁹ Recent cases maintain the narrow definition of “recreation,” excluding off-duty expressive activity from protection where the employer disciplines the content rather than the activity.¹¹⁰ When applied to online, off-duty sexual expression, this produces an almost absurd result: “freemium”¹¹¹ content offered without charge could be protected as “recreation,” while subscription-based, paywalled content, less publicly accessible precisely because it is paywalled, falls outside the statute. In short,

105. See 42 U.S.C. § 2000e(b) (clarifying that under Title VII, “employer” means one with fifteen or more employees); § 2000e(f) (defining “employee”); *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322–24 (1992) (employing common law agency test that distinguishes employees from independent contractors).

106. See N.Y. LAB. LAW § 201-d(2)(c)–(d).

107. N.Y. LAB. LAW § 201-d(1)(b).

108. See 207 A.D.2d 150, 151–52 (N.Y. App. Div. 1995) (finding that dating was not a “recreational activity” protected by N.Y. LAB. LAW § 201-d).

109. See 237 F.3d 166, 167–68 (2d Cir. 2001) (affirming dismissal and holding that romantic dating is not a “recreational activity” within § 201-d, relying on *Wal-Mart*).

110. *Sander v. Westchester Reform Temple*, 228 A.D.3d 688, 689 (N.Y. App. Div. 2024) (assuming arguing blogging might be “recreational,” but holding discharge based on content of post is not discrimination “due to” a protected recreational activity under § 201-d(2)(c)).

111. “Freemium” refers to a business or content model in which creators provide some material for free while charging users for premium or exclusive access. See *How OnlyFans Makes Money: The Business and Revenue Model Explained*, UNTAYLORED (Feb. 9, 2024), <https://www.untaylored.com/post/how-onlyfans-makes-money-the-business-and-revenue-model-explained> [<https://perma.cc/J36P-N8A8>]. Online sex workers often post free preview clips and snippets of erotic scenes to entice platform users to purchase content. See *id.*; CHRIS ANDERSON, FREE: THE FUTURE OF A RADICAL PRICE 36–38 (2009) (explaining the economic logic of freemium models); Felix Salmon, *How MindGeek Transformed the Economics of Porn*, JEZEBEL (Oct. 10, 2015, at 11:00 ET), <https://www.jezebel.com/how-mindgeek-transformed-the-economics-of-porn-1793851713> [<https://perma.cc/XDV5-TF39>]. This common practice obscures the distinction between paid labor and uncompensated expressive conduct, yet exposes workers to the same professional, reputational, and privacy risks as labor clearly done for financial remuneration. For the purposes of this Article, the term also encompasses erotic or sexual expression that individuals post for personal or artistic reasons without payment.

§ 201-d leaves online sex workers unprotected at the very moment they monetize their labor. It is a statutory gap that cries out for amendment.

Other jurisdictions, though imperfect, have avoided some of New York's statutory gaps. Colorado's off-duty conduct statute prohibits employers from firing employees for any legal, off-duty activity conducted off the premises, subject only to narrow exceptions for bona fide occupational requirements or conflicts of interest.¹¹² California's Labor Code § 96(k) similarly empowers the Labor Commissioner to pursue claims when employees are disciplined for lawful off-duty conduct, including off-duty jobs.¹¹³

Even under these broader laws, however, employers will likely argue that discovery of an employee's sex work causes disruption, reputational harm, or undermines "public trust" in sensitive professions.¹¹⁴ Courts have sometimes credited these claims, especially for teachers, nurses, and public employees, when their off-duty work becomes a source of work gossip or grievance within the organization.¹¹⁵ Yet this defense highlights the underlying stigma problem: the distraction stems not from diminished job performance but from cultural discomfort with sex work.¹¹⁶ In fact, it may be less burdensome—and more consistent with the logic of these laws—for employers to prohibit harassment and gossip relating to an employee's lawful off-duty conduct than to punish the worker for engaging in it.¹¹⁷

Similarly, Montana's approach offers promise, though it does not offer complete protection for all workers who moonlight in erotic labor. It remains the only state with a generally applicable "good cause" employment statute.¹¹⁸ In most jurisdictions, at-will statutes permit employers to terminate workers for nearly

112. COLO. REV. STAT. § 24-34-402.5(1).

113. CAL. LAB. CODE § 96(k) (authorizing the Labor Commissioner to take assignment of claims for loss of wages resulting from discharge or discipline for "lawful conduct occurring during nonworking hours away from the employer's premises"). Illinois has similar protections. 820 ILL. COMP. STAT. 55/5 (providing similar off-duty conduct protections, short of a general good-cause requirement).

114. See *City of San Diego v. Roe*, 543 U.S. 77, 84 (2004) (per curiam) (holding that a police department could terminate an officer for selling sexually explicit videos online because the conduct was "detrimental to the mission and functions of the employer"); *Brown v. City of Syracuse*, 673 F.3d 141, 150–51 (2d Cir. 2012) (recognizing employer interest in avoiding reputational harm where public trust is implicated).

115. See *Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 477–80 (3d Cir. 2015) (affirming summary judgment for the school district and holding that a school teacher's off-duty blog posts criticizing students were not protected when their discovery generated disruption and grievances within the school community).

116. See Adrienne D. Davis, *Regulating Sex Work: Erotic Assimilationism, Erotic Exceptionalism, and the Challenge of Intimate Labor*, 103 CALIF. L. REV. 1195, 1247–48 (2015) (describing how social stigma targeting sex workers impacts their professional relationships).

117. See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986) (recognizing that employers may be liable for failing to prevent harassment by coworkers); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1796–99 (1998) (arguing that the most effective solutions to workplace sexual harassment involves accountability and targeting perpetrators of harassment); see also *infra* notes 138–43 and accompanying text.

118. MONT. CODE ANN. §§ 39-2-901 to -915. Other jurisdictions provide only limited or industry-specific good cause protections. See, e.g., CAL. LAB. CODE § 2922 (codifying the at-will presumption but

any reason, including moral disapproval of lawful off-duty conduct, so long as the reason is not explicitly prohibited by antidiscrimination laws or another statute.¹¹⁹ By contrast, Montana's "good cause" statute, the Wrongful Discharge From Employment Act (WDEA), requires employers to have a legitimate business reason for terminating employees after an initial probationary period¹²⁰ and to show a demonstrable connection between the employee's conduct and the employer's legitimate business interests.¹²¹ To date, there is no reported case law in which a worker who moonlights as an online sex worker has invoked the WDEA to challenge an adverse employment action. Nonetheless, by invoking WDEA protections, workers could compel hiring entities to demonstrate actual harm, such as measurable workplace disruption or a direct conflict of interest, rather than relying on vague claims about brand image or values. This recalibrates the balance of power between employers and employees by ensuring that personal autonomy in lawful off-duty activities is not subordinated to unchecked subjective notions of morality.

Despite its promise, Montana's statute leaves room for employers to undermine the protections it purports to offer workers whose off-duty conduct involves online sex work. The WDEA defines "good cause" broadly, encompassing "any reasonable job-related grounds" for dismissal, which may include considerations of the employer's business reputation or customer relations.¹²² While "some" standard is more than what at-will states provide, this breadth still gives employers discretion to argue that an employee's lawful online activity creates reputational risk or undermines workplace efficiency.¹²³ Moreover, the statute limits remedies to lost wages and benefits for a maximum of four years and excludes punitive damages, which may deter litigation in cases involving more than tangible economic loss.¹²⁴ Finally, because the WDEA does not explicitly protect off-duty lawful conduct,¹²⁵ workers who engage in legal sex work may still face terminations justified under the guise of business necessity. These limits illustrate that

permitting good-cause protections only through collective bargaining agreements, individual contracts, or statutory carve-outs); CONN. GEN. STAT. § 31-51bb (preserving limited common-law wrongful discharge claims for employees with contractual or statutory rights); N.J. STAT. ANN. § 34:11B-9 (creating good-cause-like protection only in the family-leave context); P.R. LAWS ANN. tit. 29, § 185a (requiring "just cause" for most terminations under Puerto Rico's wrongful-discharge statute); N.Y.C. ADMIN. CODE §§ 20-1271 to -1275 (requiring just cause for fast-food workers and limiting arbitrary scheduling changes); PHILA., PA., CODE §§ 9-4701 to -4708 (extending just cause and scheduling protections to parking workers).

119. See Richard A. Epstein, *In Defense of the Contract at Will*, 51 U. CHI. L. REV. 947, 951-53 (1984) (explaining the at-will rule and its exceptions).

120. MONT. CODE ANN. § 39-2-904(1)(b).

121. See MONT. CODE ANN. § 39-2-903(5). For further discussion of the meaning of at-will employment, see Estlund, *supra* note 80, at 1658-60, 1662.

122. See MONT. CODE ANN. § 39-2-903(5).

123. See Estlund, *supra* note 80, at 1663-65 (noting that even under good cause regimes, employers may rely on broad claims of business judgment or reputation).

124. See MONT. CODE ANN. § 39-2-905(1) (limiting recovery to "lost wages and fringe benefits for a period not to exceed 4 years").

125. See MONT. CODE ANN. §§ 39-2-901 to -915.

while good cause statutes narrow the scope of arbitrary dismissal and broad statutes like Montana's should be adopted by states and municipal governments, they must be supplemented by explicit protections for lawful off-duty activity to meaningfully protect sex workers' economic autonomy.

While existing frameworks offer important footholds, they remain piecemeal. The most meaningful progress will come from enacting source-of-income non-discrimination laws and explicit protections based on sex worker status, supplemented with broader privacy rights. Yet approximately two large cities and no states have these protections. Chicago's Human Rights Ordinance bars employment discrimination on the basis of "source of income," a term defined to mean the lawful manner by which a person supports themselves—language capacious enough to encompass lawful online sex work income.¹²⁶ Likewise, Portland enacted a statute to prohibit workplace discrimination based on the worker's lawful source of income, which the city defines as expansively as Chicago.¹²⁷ However, these ordinances still give employers latitude to weaponize morality clauses, vague fears of reputational harm, and customer preferences to penalize workers.

C. HARASSMENT AND IMAGE-BASED SEXUAL HARASSMENT STATUTES

Crucially, workplace harassment statutes provide a separate avenue of protection both to sex workers who consensually share erotic content online and to survivors of nonconsensual pornography.¹²⁸ It may seem intuitive that individuals who post sexual images online forfeit their privacy interests and assume the risk of workplace exposure, but that assumption misapprehends both the nature of online sharing and the realities of consent.¹²⁹ Creators may post for limited audiences, under pseudonyms, or during periods of economic precarity. Others simply do not anticipate coworkers encountering their material in the vastness of the internet. Regardless of intent, these workers and survivors do not bring sex into the workplace—harassers do. The workplace harms of gossip, ostracization, reputational harm, and humiliation are shared by those who engage in consensual off-duty online sex work, and survivors of nonconsensual pornography alike.¹³⁰ Accordingly, harassment protections should encompass all workers whose sexual

126. See CHI., ILL., MUN. CODE § 6-10-030; *id.* § 6-10-020 (defining "source of income" as "the lawful manner by which individuals support themselves and their dependents").

127. See PORTLAND, OR., CITY CODE § 23.01.050(B); *id.* § 23.01.030(B) (defining "source of income" to include "money and property from any occupation, profession or activity," but excluding income "derived in a manner made illegal").

128. See Citron & Franks, *supra* note 50, at 353 (arguing that dissemination of sexual images without consent constitutes sex-based harassment and discrimination).

129. See *id.* at 354–56, 362 (discussing misconceptions about "voluntary" exposure and consent in the digital age).

130. See Schultz, *supra* note 117, at 1762–65 (arguing that harassment encompasses workplace hostility, gossip, and bullying that undermine dignity and equal participation); *Espinoza v. Cnty. of Orange*, No. G043067, 2012 WL 420149, at *9–10 (Cal. Ct. App. Mar. 12, 2012) (holding that electronic harassment among employees can create a hostile work environment under California law); see also *Blakey v. Continental Airlines, Inc.*, 751 A.2d 538, 549 (N.J. 2000) (holding that an employer could be liable for failing to prevent online harassment of a female pilot on company message boards).

images are misused, and anti-harassment statutes should proscribe employers from invoking reputational and disruption-based defenses to discipline the workers targeted, rather than those who perpetrate the harassment.¹³¹

Harassment law offers a distinct framework for addressing workplace harms that arise when colleagues circulate an individual's sexual images in the workplace. Under federal law, harassment must be sufficiently "severe or pervasive" to alter the conditions of employment in order to be actionable,¹³² and courts and the U.S. Equal Employment Opportunity Commission (EEOC) have begun to recognize the nonconsensual circulation of sexual images in the workplace as sexual harassment. For instance, in *EEOC v. United Airlines, Inc.*, the agency alleged that United perpetuated harassment by failing to take remedial action after a pilot repeatedly shared sexually explicit photographs of a flight attendant, conduct the agency described as "reported and continued harassment."¹³³ Likewise, in *Abbt v. City of Houston*, a firefighter alleged that her supervisor circulated an erotic video she made for her husband, fostering humiliation, shame, and missed work.¹³⁴ The Fifth Circuit held that the plaintiff "presented sufficient evidence to create a genuine dispute as to whether the City knew or should have known about the harassment, and thus can be held liable."¹³⁵ While these cases demonstrate that courts are sometimes willing to find that circulating nonconsensual pornography can constitute harassment, courts have also been reluctant to find liability unless the dissemination was repeated, highly public, or accompanied by other forms of abuse.¹³⁶

Notably, some local human rights laws adopt standards that are more attainable for targeted parties. For instance, the New York City Human Rights Law prohibits conduct that rises above "petty slights or trivial inconveniences," a far more protective standard than Title VII.¹³⁷ Similarly, the Chicago Human Rights Ordinance bars discrimination and harassment that "substantially interfer[es] with an individual's work performance or creat[es] an intimidating, hostile, or offensive working environment,"¹³⁸ and the Washington, D.C. Human Rights Act extends coverage to harassment even when it involves a single incident as is not

131. See *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998) (holding that an employer may be vicariously liable for supervisor harassment and emphasizing employer's duty to exercise reasonable care to prevent and promptly correct harassing behavior).

132. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993) (describing "severe or pervasive" standard).

133. See Complaint at 8, *EEOC v. United Airlines, Inc.*, No. 5:18-cv-817 (W.D. Tex. Aug. 9, 2018).

134. *Abbt v. City of Hou.*, 28 F.4th 601, 605–06 (5th Cir. 2022).

135. *Id.* at 610.

136. See *id.* at 613 (noting that supervisor's circulation of firefighter's private video created atmosphere of humiliation and abuse); Complaint, *supra* note 133, at 1 (alleging that an airline's failure to act after pilot shared flight attendant's intimate images constituted a hostile work environment); Scott Lowder, *Revenge Porn and Antidiscrimination Law: A Traditional Solution for the Modern Age*, 43 YALE L. & POL'Y REV. 526, 548–49 (2025) (noting courts' "hesitancy" to apply disparate impact liability to "single employment decision[s]"); see also Citron & Franks, *supra* note 50, at 357–61 (describing the limitations of civil law in deterring and redressing revenge porn).

137. N.Y. EXEC. LAW § 296; see *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 40–41 (N.Y. App. Div. 2009) (rejecting Title VII's "severe or pervasive" test and holding that the New York City Human Rights Law must be construed broadly in favor of discrimination plaintiffs).

138. CHI., ILL., MUN. CODE §§ 6-10-020, 6-10-040.

“pervasive,”¹³⁹ while the San Francisco Human Rights Commission Guidelines interpret harassment protections liberally to effectuate the city’s broad remedial purposes.¹⁴⁰ Moreover, at least one California Court of Appeal suggested that employers may even have an affirmative duty to protect workers from harassment once they learn of employees circulating the worker’s sexual images.¹⁴¹ These frameworks can readily encompass harms from circulating nonconsensual pornography, thus providing remedies where federal law falls short.

These dynamics parallel those faced by survivors of intimate-partner abuse whose sexual images are distributed without consent. A growing number of states and municipalities recognize that workplaces should not be conduits for extending the abuse workers face at home, and they prohibit employers from disciplining workers for their status as survivors of domestic violence.¹⁴² Such statutes may also provide worker protections to seek protective orders, relocate, or participate in court proceedings related to the violence. In states such as California, Illinois, and New York, these protections extend beyond job security to include confidentiality guarantees and retaliation prohibitions.¹⁴³

Although these laws were not designed with online sexual harm in mind, their underlying rationale—shielding workers from workplace punishment for victimization that occurs outside employment—maps closely onto the experiences of people whose sexual images are circulated without consent.¹⁴⁴ In many instances, nonconsensual pornography arises within intimate or dating relationships, placing survivors squarely within the definitional scope of “domestic violence” under some state statutes.¹⁴⁵ Yet even when the relationship does not qualify, the *nature* of the harm—sexual exposure leading to reputational damage, harassment, or termination—parallels the discrimination that domestic violence survivor statutes aim to prevent. As Scott Lowder argues, harms such as revenge porn subject

139. D.C. CODE § 2-1402.11(c-2)(3).

140. See S.F., CAL., ADMIN. CODE § 12A.1.

141. See *Espinoza v. Cnty. of Orange*, No. G043067, 2012 WL 420149, at *9–10 (Cal. Ct. App. Mar. 12, 2012).

142. See, e.g., D.C. CODE § 2-1402.11(a) (prohibiting employment discrimination based upon “status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking”); 820 ILL. COMP. STAT. 180/30 (prohibiting employment discrimination because an individual “is or is perceived to be a victim of domestic violence, sexual violence, gender violence, or any criminal violence”); N.Y. EXEC. LAW § 296(1)(a) (prohibiting employment discrimination based upon “status as a victim of domestic violence”); N.Y.C., N.Y., ADMIN. CODE § 8-107(27)(a) (prohibiting employment discrimination based upon “status as a victim of domestic violence, or as a victim of sex offenses or stalking”).

143. See, e.g., N.Y.C., N.Y., ADMIN. CODE § 8-107(27)(c) (requiring survivors’ requests for reasonable accommodations “shall be retained in the strictest confidence”); CAL. LAB. CODE § 230.5 (prohibiting employers from discriminating or retaliating against victims of crimes who take off work to appear at court proceedings); 820 ILL. COMP. STAT. 180/30 (prohibiting retaliation against employees because of their status as “a victim of domestic violence”); N.Y. EXEC. LAW § 296(7) (prohibiting retaliation against an employee because they have requested a reasonable accommodation or have “filed a complaint, testified, or assisted in any proceeding” under the antidiscrimination statute).

144. See *Citron & Franks*, *supra* note 50, at 351.

145. See *id.* at 351, 354 (observing that much nonconsensual pornography occurs within intimate relationships); Lowder, *supra* note 136, at 551.

workers to sex-based harm, and therefore fit squarely within the logic of antidiscrimination law, even if statutory schemes have yet to recognize them explicitly.¹⁴⁶

However, these laws often require survivors to out themselves as victims.¹⁴⁷ In most jurisdictions, workers must produce police reports, restraining orders, or documentation from a court, counselor, or advocate to prove survivor status.¹⁴⁸ This documentation requirement effectively forces survivors to disclose traumatic experiences to supervisors or human resources personnel, generating new risks of stigma and retaliation.¹⁴⁹ This trauma may be compounded for victims of nonconsensual pornography, who must disclose not only the abusive or exploitative relationship but also the existence of sexual images of themselves.¹⁵⁰ Many survivors, particularly criminalized survivors, undocumented survivors, people of color, LGBTQ+ people, and others who have many reasons to be wary of law enforcement, are unable or unwilling to meet these formalistic burdens.¹⁵¹ As Leigh Goodmark observes, the law's skepticism of survivors "who don't fit the 'profile'" of victimhood is one of many ways the legal system deprives them of agency and, thereby, replicates the coercive dynamics of abuse, substituting state control for intimate control.¹⁵² Likewise, Nils Christie's "Ideal Victim" framework explains how legal regimes often privilege those who appear weak, blameless, and normatively respectable, while excluding survivors who do not meet that standard.¹⁵³ This all creates a chilling effect, leaving

146. See Lowder, *supra* note 136, at 540–43 (arguing that nonconsensual image sharing can be addressed through Title VII's antidiscrimination frameworks).

147. Bisma Shoaib, *A Pathway to Protect the Privacy of Domestic Abuse Survivors in Washington*, 21 SEATTLE J. FOR SOC. JUST. 329, 331 (2022), (arguing for "allow[ing] survivors to seek legal recourse without jeopardizing their privacy . . . as they navigate the legal system for support and justice").

148. See, e.g., 34 U.S.C. § 12491(3) (listing documentation requirements to obtain housing assistance under the Violence Against Women Act); N.Y.C., N.Y., ADMIN. CODE § 8-107 (permitting employers to request documentation from a "professional service provider . . . a police or court record; or other corroborating evidence" prior to providing accommodations).

149. See, e.g., Alyssa Glace Maryn & Tessa L. Dover, *Reporting Rape: Stigmatizing Reactions to Survivors Who Seek Accountability*, 30 VIOLENCE AGAINST WOMEN 3005, 3027 (2024) (finding that survivors of sexual violence are at higher risk of stigmatization if they file a report than if they do not).

150. See Citron & Franks, *supra* note 50, at 350–54 (describing the profound and ongoing trauma experienced by survivors of nonconsensual pornography, including fear of disclosure and reputational harm); Clare McGlynn & Erika Rackley, *Image-Based Sexual Abuse*, 37 OXFORD J. LEGAL STUD. 534, 545–49 (2017) (explaining that survivors are re-traumatized by the continued existence and circulation of sexual images).

151. See Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 36–37 (2004).

152. *Id.* at 32.

153. Joseph Patrick McAulay, *Less than Ideal Victims: Understanding Barriers to Queer Men's Recognition of Male-Perpetrated Intimate Partner Violence Through Christie's 'Ideal Victim' Framework*, 30 INT'L REV. VICTIMOLOGY 282, 284 (2024) (arguing that Nils Christie's framework of the Ideal Victim is "a means of determining who can be legitimately classed as a victim, and any potential victim will have their conduct and circumstances judged against this image. . . . [T]he victim must be: weak, carrying out a respectable project, unblamed for their victimisation, weaker and less powerful than their offender, and unrelated and previously unknown to their offender. Christie emphasised that the legitimacy granted to the victim is heavily dependent on the concurrent social construction of the offender." (alterations omitted)).

many unprotected.¹⁵⁴ Disclosure-for-protection may create an impossible bargain for any worker who fears that outing themselves as a survivor will expose them to further harm.¹⁵⁵

Rather than replicate these flaws, employment protections should focus on the *experience of harm*, such as nonconsensual image sharing or sexual stigmatization, without forcing workers to adopt a formal “victim” identity.¹⁵⁶ Broader protections prohibiting discrimination based on experiences of sexual harm or online sexual exposure would safeguard both domestic violence survivors and those whose sexual privacy is violated, ensuring that dignity and livelihood are not contingent on attaining formal “victim” status.¹⁵⁷ The forthcoming model statutory language and model contract language provide examples.

III. PROPOSED MODEL ANTIDISCRIMINATION AND PRIVACY STATUTES: FORTIFYING PROTECTIONS AND CLOSING LOOPHOLES

Part III moves from diagnosis to design, offering three model statutory frameworks to close the gaps identified above. Section A proposes a lawful source-of-income nondiscrimination act that protects workers from adverse actions based on legal outside earnings. Section B outlines status- and conduct-based protections for current and former online lawful sex workers and survivors of nonconsensual pornography. Section C advances a workplace sexual privacy statute that limits surveillance and disclosure of intimate information, reinforcing these protections and reducing the likelihood of harassment *ex ante*.

A. LAWFUL SOURCE-OF-INCOME NONDISCRIMINATION PROTECTIONS

One of the most comprehensive approaches is a lawful source-of-income non-discrimination statute that explicitly prohibits hiring entities from refusing to hire, terminate, or harass a worker based on that individual’s legal means of earning income. Currently, twenty-four states and more than 140 local jurisdictions prohibit “source-of-income” discrimination in housing.¹⁵⁸ The scope of these

154. See LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* 35 (2018) (explaining that survivors often must self-identify and engage with the criminal legal system to access legal protections at great economic expense).

155. See *id.* (discussing economic harms of reporting domestic violence); Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 5 (1999) (noting the harmful effects of domestic violence litigation on survivors).

156. See GOODMARK, *supra* note 154, at 35–37.

157. See Danielle Keats Citron, *Sexual Privacy*, 128 YALE L.J. 1870, 1890–91 (2019) (explaining the value of broad privacy protections).

158. POVERTY & RACE RSCH. ACTION COUNCIL, APPENDIX B: STATE, LOCAL, AND FEDERAL LAWS BANNING SOURCE OF INCOME DISCRIMINATION 3–8 (2026) [hereinafter APPENDIX B], <https://www.prrac.org/appendixb> [<https://perma.cc/2RRX-QQ6U>] (listing twenty-five states and 152 local jurisdictions with source-of-income protections); see also MARY CUNNINGHAM ET AL., OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URB. DEV., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS 12 (2018), <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf> [<https://perma.cc/8589-G479>] [hereinafter HUD PILOT

laws varies by jurisdiction, and the most robust cover all legal sources of income, including public assistance, housing vouchers, stipends for people aging out of foster care, self-employment income, and gig-economy work.¹⁵⁹ Although there are no reported cases squarely applying these laws to off-duty income from online sex work, there is no doctrinal reason why it would not be covered.¹⁶⁰ Empirical evidence suggests these laws are effective at reducing discriminatory denials and eliminating a structural barrier to housing.¹⁶¹ A U.S. Department of Housing and Urban Development-sponsored field experiment, for example, found that jurisdictions with source-of-income protections had significantly fewer voucher-based rental denials than those without such laws.¹⁶²

The logic animating source-of-income protections in housing translates naturally to the workplace. Both contexts involve gatekeepers—hiring entities and landlords—hindering access to necessities of life based on moral or social stigma about how people earn money. Yet few jurisdictions extend source-of-income discrimination protections to workplaces.¹⁶³

States and localities should follow their lead and extend protections even further to cover more workers. To do so, their laws must include several core features, which are also part of the proposed model statute: the law must (1) prohibit hiring entity inquiries into lawful outside income absent a demonstrable, material

STUDY] (finding that local ordinances which protect against discrimination based on lawful income source increase utilization rates of housing vouchers).

159. See J. Rosie Tighe, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLAN. LITERATURE 3, 6–8 (2017) (describing the range of source-of-income laws, from those narrowly limited to recipients of public benefits to broader statutes covering any lawful income source).

160. This Article focuses on the more comprehensive statutes—those encompassing all lawful income sources—because they most clearly illustrate the potential for analogous protections in employment and other work contexts. See *id.* See generally APPENDIX B, *supra* note 155 (noting substantial variation among jurisdictions, with some covering only voucher holders and others extending protections to all lawful income).

161. See HUD PILOT STUDY, *supra* note 158, at 66 (finding reduced discrimination in jurisdictions with local source-of-income protections).

162. See *id.* at 32; see also LANCE FREEMAN, OFF. OF POL’Y DEV. & RSCH., U.S. DEP’T OF HOUS. & URBAN DEV., THE IMPACT OF SOURCE OF INCOME LAWS ON VOUCHER UTILIZATION AND LOCATIONAL OUTCOMES 11 (2011), https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf [<https://perma.cc/5BN8-NER3>] (finding an eleven-point increase in housing voucher utilization in jurisdictions with source-of-income protections compared to neighboring jurisdictions); Lance Freeman, *The Impact of Source of Income Laws on Voucher Utilization*, 22 HOUS. POL’Y DEBATE 297, 309–10 (2012) (finding statistically significant increases in housing voucher utilization in jurisdictions with source-of-income protections).

163. Some localities extend such protection directly. See CHI., ILL., MUN. CODE §§ 6-10-020, 6-10-030 (prohibiting source-of-income discrimination in employment); PORTLAND, OR., CITY CODE § 23.01.050(B) (providing employment-based source-of-income protections); see also POVERTY & RACE RSCH. ACTION COUNCIL, *supra* note 158, at 2–4 (listing twenty-four states and 145 local jurisdictions with source-of-income protections). But not all jurisdictions with source-of-income discrimination protections make it unlawful for employers to engage in such discrimination. Compare PONTIAC, MICH., CODE OF ORDINANCES, ch. 78, art. III, § 78-56 (prohibiting source-of-income discrimination in employment), and HOLLAND, MICH., CODE OF ORDINANCES, pt. II, ch. 25, § 25-3 (same), with TUCSON, ARIZ., CODE OF ORDINANCES, §§ 17-12(b), 17-52(a) (prohibiting source-of-income discrimination in housing but not employment), and QUINCY, MASS., CODE OF ADMIN. LEGIS., art. IX, § 12-30 (prohibiting source-of-income discrimination in employment as a matter of city policy).

conflict of interest; (2) include explicit anti-harassment and anti-retaliation provisions; (3) establish a “workplace separation” standard ensuring that when workers keep their off-duty jobs distinct from the hiring entity’s operations, the off-duty job cannot be used as a pretext for discipline under claims of reputational harm; (4) explicitly reject “reputational harm” and fear of the public’s moral aversion—an argument once used to terminate LGBTQ+ teachers,¹⁶⁴ and currently used to justify discrimination against those with conviction histories¹⁶⁵—as a sole defense; (5) expressly cover contractors and freelancers; (6) limit hiring entity restrictions on outside work to situations of genuine operational interference, never stigma or moral disapproval; and (7) provide a private right of action for aggrieved individuals.

Private enforcement is particularly critical in the employment context, where discrimination often occurs behind closed doors and remains invisible to regulators.¹⁶⁶ As demonstrated across civil rights law, from Title VII to the Fair Labor Standards Act, private rights of action, damages, and fee-shifting provisions transform protections from symbolic promises into enforceable rights, ensuring accountability even in politically unsympathetic jurisdictions.¹⁶⁷ Moreover, agency enforcement priorities can shift dramatically with new leadership or political winds, as seen in past rollbacks of civil rights enforcement.¹⁶⁸ Workers whose livelihoods are stigmatized should not have to depend on administrative discretion or electoral cycles to secure that their rights remain meaningful even when administrative enforcement wanes.

The following model bill offers a concrete template for advocates and lawmakers seeking to enact robust source-of-income nondiscrimination statutes with the aforementioned protections.¹⁶⁹

164. See *Gaylord v. Tacoma Sch. Dist. No. 10*, 559 P.2d 1340, 1347 (Wash. 1977) (affirming dismissal of a high school teacher because school district believed his homosexuality was immoral and sufficiently impaired his ability to perform his job).

165. See James Jacobs & Tamara Crepet, *The Expanding Scope, Use, and Availability of Criminal Records*, 11 N.Y.U. J. LEGIS. & PUB. POL’Y 177, 177 n.3, 178–79 (2008) (exploring how reputational fears contribute to employment discrimination against individuals with criminal histories).

166. See Schultz, *supra* note 117, at 1738 (discussing invisibility of gender-based workplace harassment); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 45–46 (1974) (recognizing individual enforcement as central to Title VII’s purpose).

167. See Catherine R. Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. REV. 1087, 1120–30 (2007) (finding weakened private enforcement produces steep declines in civil rights litigation and outcomes).

168. See, e.g., Katie Benner & Erica L. Green, *Justice Dept. Seeks to Pare Back Civil Rights Protections for Minorities*, N.Y. TIMES (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/justice-department-disparate-impact.html> (reporting the Trump administration’s work to limit disparate-impact enforcement, illustrating how shifts in political leadership can constrict civil rights enforcement priorities).

169. The model bills in this Article mirror the form and conventions of real-world legislative drafting, which does not employ footnotes. For evidentiary and doctrinal support for the legislative findings, see *supra* Parts I, II, and III.

Model Language for a State or Municipal Source-of-Income Employment Nondiscrimination Act

§ 2. Findings and Purpose.

(a) **Findings.** The [Legislative Body] finds the following:

1. Many workers lawfully earn supplemental income through gig platforms, online content creation, self-employment, and other nontraditional work in order to make ends meet.
2. Discrimination based on lawful outside income undermines economic mobility, harms workers and their families, and perpetuates stigma. These harms are felt most by workers who are low-income, disabled, members of the LGBTQ+ community, and people of color.
3. Empirical and anecdotal evidence demonstrate that workers who engage in lawful outside work, including gig and online labor, face discrimination, harassment, and termination based on the nature of that work. Similar patterns of bias have been documented in housing markets, but have been reduced through source-of-income nondiscrimination laws. These patterns will continue in working arrangements absent legislative intervention.
4. Existing employment discrimination statutes are not sufficiently expansive to protect all workers from lawful sources of income discrimination.
5. This [state or municipality] has a compelling interest in preventing and remedying such discrimination and in ensuring workers do not face retaliation for merely earning supplemental income from *any* legal source.

(b) **Purpose.** The purpose of this Act is to prohibit discrimination against workers in employment based on *any* lawful source of income and to ensure equal opportunity in employment and contracting relationships.

§ 3. Definitions.

For purposes of this Act:

- (a) “Hiring entity” means any employer, employment agency, labor organization, person, or organization that hires or contracts with one or more workers.
- (b) “Worker” means any individual who performs work for a hiring entity for compensation, whether as an employee, independent contractor, freelancer, or as part of some other work arrangement.
- (c) “Lawful source-of-income” means any lawful source of money, compensation, public benefit, subsidy, or financial support, including income from employment, gig work, self-employment, online content creation, public assistance, housing assistance, disability benefits, child support, spousal support, and any other lawful labor, enterprise, benefit, or source of financial support.

§ 4. Prohibited Conduct.

- (a) A hiring entity may not refuse to hire, discharge, demote, discipline, harass, or otherwise discriminate against a worker or applicant wholly or partly because of that individual's lawful source-of-income.
- (b) A hiring entity may not publish or circulate any statement, advertisement, or inquiry that expresses a limitation or preference based on a lawful source-of-income that would violate this Act.
- (c) Hiring entities may not inquire into, require disclosure of, or use information about an employee's lawful source-of-income as a condition of hiring, promotion, or continued employment, unless the employer can demonstrate, based on clear and specific evidence, that the outside work creates a direct and material conflict of interest substantially related to the employee's essential job duties. A conflict of interest shall not be inferred from general reputational concerns, customer or coworker preferences, or speculative assessments of potential workplace disruption.

§ 5. Retaliation Prohibited.

It is an unlawful discriminatory practice for an employer to retaliate or discriminate against any employee for asserting rights under this Act, for filing a complaint, or for participating in any investigation or proceeding under this Act.

§ 6. Remedies and Enforcement.

- (a) **Private Right of Action.** Any worker aggrieved by a violation of this Act may bring a civil action in any court of competent jurisdiction against the hiring entity or person alleged to have violated this Act.
- (b) **Relief.** In such an action, the court may award any appropriate relief, including but not limited to:
 - 1. Injunctive relief;
 - 2. Reinstatement or hiring, with or without back pay;
 - 3. Compensatory damages, including for emotional distress or reputational harm;
 - 4. Punitive damages where the violation is willful or malicious; and
 - 5. Reasonable attorney's fees and costs.
- (c) **Administrative Complaints.** A worker may file a complaint with [state or municipal human rights agency], which shall have authority to investigate, mediate, and enforce violations under this Act. The filing of an administrative complaint may not preclude a subsequent civil action.
- (d) **Limitations Period.** A civil action under this Act shall be commenced within three years after the alleged violation or the exhaustion of administrative proceedings, whichever is later.

§ 7. Savings Clause.

Nothing in this Act shall be construed to require or permit any activity that is prohibited by federal law. This Act must be enforced to the maximum extent permissible under federal law, and any invalid provision may be severable to preserve the remainder.

- (a) **Conflict-of-Interest Policies.** Nothing in this Act may be construed to prohibit a hiring entity from enforcing bona fide conflict-of-interest policies, provided that such policies are narrowly tailored to advance a legitimate business interest, are applied consistently to all workers, and are not used as a pretext for discrimination based on a worker's lawful source-of-income.
- (b) **Workplace Separation.** A hiring entity may not take adverse action against a worker based on lawful outside work if the worker keeps such work separate from the hiring entity's workplace, does not use the hiring entity's resources or work time to perform that work, and the outside work does not materially interfere with the worker's essential job functions. Generalized concerns about customer or coworker reactions, public image, reputational risk, or the nature of the lawful outside work may not, standing alone, constitute a material interference under this Subsection.
- (c) **Preservation of Other Rights.** Nothing in this Act may be construed to limit, restrict, or preempt any broader rights, remedies, or protections available under federal, state, or local law.

By affirming that all lawful wages are equal, a workplace source-of-income nondiscrimination law is broad enough to unite advocates from various industries around the core ideals of economic solidarity and the notion that all lawful wages are valid labor. This could help coalitions pass legislation and insulate enacted bills from cultural backlash and legislative retrenchment.¹⁷⁰

However, this statute has potential limits. Broad coalitions may invite opposition from a wider set of employer interests, who fear that an additional tool for workers to hold hiring entities accountable may increase legal liability.¹⁷¹ Antidiscrimination laws can curb overt bias but cannot, on their own, dismantle the deeper cultural and economic stigmas that make sex work precarious.¹⁷² Because the statute is tied to income, it may not reach unpaid images, such as nonconsensual pornography or “freemium” content. Enforcement also poses challenges, as workers whose secondary income involves sexual or erotic content

170. See Estlund, *supra* note 81, at 333–35 (discussing how employer resistance to expansive worker protections succeeded in replacing labor-empowering self-governance with employer-led self-regulation).

171. *Id.*

172. See Davis, *supra* note 116, at 1248–49 (linking the precarity of sex work to entrenched social and moral stigma rather than lack of legality).

may hesitate to disclose that fact in formal complaints.¹⁷³ And without complementary privacy protections, these laws could expose workers to greater scrutiny.¹⁷⁴ Source-of-income protections should therefore be seen as an essential foundation to protect workers who moonlight as sex workers, but they must be paired with other statutes.

B. STATUS-BASED AND CONDUCT-BASED NONDISCRIMINATION LAWS TO PROTECT WORKERS WHO MOONLIGHT AS LAWFUL ONLINE SEX WORKERS

Jurisdictions should also adopt protections that explicitly prohibit discrimination based on status as a lawful sex worker, defined broadly, and for individuals who have sexual or erotic images online. While targeted at a narrower population than source-of-income laws, they can address particular stigmas attached to sexual and erotic labor that broader frameworks often miss. For instance, drafters can develop legislative history and use the Findings section of a bill to name and confront the distinct moralized biases these workers face, and note that while digital sexual labor is largely lawful, it remains uniquely punished through reputational policing, as compared to other, less stigmatized professions.¹⁷⁵

A well-designed statute must prohibit discrimination on two overlapping grounds: (1) the individual's status as a current or former lawful sex worker and (2) income derived from lawful sex work. This dual framing covers both paid and unpaid digital erotic labor and prevents hiring entities from using past participation as a proxy for moral unfitness. Like status-based protections for veterans or survivors of violence, it acknowledges that bias often attaches to who the worker *is* as well as what they *do*.¹⁷⁶

Emerging legislation offers useful models. New York City's Sex Worker Protection Act is a sex-worker-specific source-of-income nondiscrimination bill that provides housing protections, but falls short of offering workplace protections.¹⁷⁷ Illinois's Keeping Sex Workers Safe Act (also known as the Sex Workers' Bill of Rights) goes further, treating sex workers as a protected class and extending protections across employment, housing, and healthcare while

173. See Pia Struyf, *To Report or Not to Report: A Systematic Review of Sex Workers' Willingness to Report Violence and Victimization to Police*, 24 TRAUMA, VIOLENCE, & ABUSE 3065, 3065 (2023) (finding that sex workers avoid formal complaints and government systems due to fear of exposure, punishment, and maltreatment).

174. See Citron, *supra* note 157, at 1890–91 (arguing that privacy protections are essential to prevent secondary harms from exposure of sexual expression).

175. See Jarrod Shobe, *Enacted Legislative Findings and Purposes*, 86 U. CHI. L. REV. 669, 669 (2019) (arguing that statutory “findings” sections offer the legal system critical insight into the purposes of legislation, which should guide judicial interpretation).

176. See, e.g., 38 U.S.C. § 4311(a) (prohibiting employment discrimination against any person who “performs, or has performed . . . service in a uniformed service . . . on that basis of that . . . performance of service”); N.Y. EXEC. LAW § 296(1)(a) (making it unlawful for an employer to discriminate based on, *inter alia*, “status as a victim of domestic violence”); Deborah L. Brake, *Retaliation*, 90 MINN. L. REV. 18, 50 (2005) (discussing how the “act/status distinction” obscures “how status merges with actions”).

177. Sex Worker Protection Act, Int. No. 0149-2024, 2024 Council, Sess. 13 (N.Y.C. 2024) (Version A).

advancing decriminalization.¹⁷⁸ The proposed model bill below builds on these frameworks.

Many provisions of this model statute, the Sexual Expression, Erotic Labor, and Nonconsensual Pornography Antidiscrimination Act, mirror those in the Source-of-Income in Employment Nondiscrimination Act detailed above, including prohibitions on retaliation, remedies and enforcement mechanisms, and the savings clause. To avoid redundancy, those provisions are omitted from this second model bill. In addition to the prior bill's guarantees, the Lawful Sexual Expression and Erotic Labor Antidiscrimination Act includes an expansive Findings section that articulates the unique precarity faced by lawful sex workers; broad definitions encompassing consensual online sex workers, targets of nonconsensual pornography, and individuals profiled as such; prohibitions on employer discrimination based on both sex worker- or survivor-status and related conduct; and an affirmative duty for hiring entities to prevent sexual harassment based on a worker's online sexual expression or status as a sex worker. Importantly, the model statute bars forced disclosure of a worker's erotic content and requires hiring entities to establish confidential complaint procedures to prevent further harm from exposure. In this way, the model deliberately sets a threshold far below Title VII's "severe or pervasive" standard,¹⁷⁹ acknowledging that mere exposure can inflict significant harm on both online sex workers and survivors, and that a low bar for actionability both deters misconduct and allows prompt, effective intervention when it occurs.¹⁸⁰

Model Language for a State or Municipal Sexual Expression, Erotic Labor, and Nonconsensual Pornography Antidiscrimination Act

§ 2. Findings and Purpose.

(a) **Findings.** The [Legislative Body] finds the following:

1. The democratization of technology and the low barriers to entry have made online platforms that host consensual sexual and erotic expressive content a flexible source-of-income for many workers. Many individuals use these platforms to supplement their primary employment or to earn income alongside other side jobs in order to make ends meet. In addition, artists, caregivers, and others who need or want flexibility are often drawn to the autonomy and adaptability that this form of work provides.
2. Workers and creators who lawfully engage in online sexual expression, including sex workers, erotic content creators, and others whose work involves sexual themes, face widespread discrimination. Such discrimination occurs in employment, contracting,

178. Keeping Sex Workers Safe Act, H.B. 3518, 104th Gen. Assemb., Reg. Sess. (Ill. 2025).

179. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993).

180. See Citron & Franks, *supra* note 50, at 351–54 (discussing the severe psychological, professional, and reputational harms that flow from nonconsensual disclosure of intimate images).

education, financial services, and public accommodations, regardless of the legality of their conduct.

3. Employers have frequently justified adverse actions against such workers by invoking “reputational harm,” “public trust,” or workplace “disruption.” Online sex workers are uniquely susceptible to such pretextual firings, as their work often becomes a target of moral panic and stigma, despite it not having any material impact on job performance.
 4. Survivors of nonconsensual pornography encounter ongoing risks that their sexual images will be circulated or discovered by hiring entities and colleagues. Such exposure can lead to humiliation, retaliation, and workplace harassment, which can retraumatize survivors. Ensuring job security and protection from harassment for these individuals is essential to promoting recovery, economic stability, and equal opportunity.
 5. Discrimination based on lawful sexual expression or a history of sex work undermines equal opportunity; chills free expression; and perpetuates gendered, racial, and moral hierarchies that disproportionately harm women, LGBTQ+ people, and people of color.
 6. [This state or municipality] has a compelling interest in ensuring that all workers, regardless of how they lawfully express themselves or earn income online, are judged by the quality of their work and not by the sexual nature of their lawful expression or past experiences.
- (b) **Purpose.** The purpose of this Act is to prohibit discrimination based on (1) lawful sexual or erotic expression, whether compensated or uncompensated, and (2) status as a current or former sex worker or survivor of nonconsensual pornography. This Act is intended to protect workers and creators from discrimination, retaliation, and harassment arising from lawful online sexual expression and to ensure that lawful sexual expression and lawful sources of income receive equal protection under the law. Employers and hiring entities should further affirmatively ensure a workplace free from harassment based on these protected statuses or conduct.

§ 3. Definitions.

For purposes of this Act:

- (a) “Hiring entity” means any employer, employment agency, labor organization, or person that hires, contracts with, or otherwise engages the services of one or more workers, whether as employees, independent contractors, or freelancers.
- (b) “Worker” means any individual who performs work or provides services to a hiring entity for compensation, or who applies to do so, including employees, independent contractors, freelancers, and platform-based workers.
- (c) “Lawful sexual expression” means any consensual sexual, erotic, or adult-themed expression, including digital content, imagery, performances, or

communications, which is created, distributed, or shared lawfully regardless of whether it is monetized, promotional, or uncompensated.

- (d) “Sex worker” means any individual who lawfully engages, or has engaged, in the provision of sexual services or erotic performances, whether in person or online, in exchange for money or other consideration.
- (e) “Survivor of online sexual exploitation or trafficking” means any individual who has been coerced, trafficked, or otherwise exploited through online sexual activity or imagery. For the purpose of this law, “exploitation” includes nonconsensual pornography.
- (f) “Nonconsensual pornography” refers to the creation, distribution, or sharing of sexually explicit images or videos of an identifiable person without that person’s consent. The term includes both images originally obtained without consent, such as through hacking, coercion, or surreptitious recording, as well as images initially shared consensually within a private context but later disclosed without authorization.

§ 4. Prohibited Conduct.

- (a) A hiring entity may not refuse to hire, discharge, demote, discipline, harass, or otherwise discriminate against a worker or applicant wholly or partly because of that individual’s:
 - 1. Engagement in lawful sexual or erotic expression, whether paid or unpaid;
 - 2. Status as a current or former sex worker; or
 - 3. Status as a survivor of online sexual exploitation or trafficking.
- (b) A hiring entity may not publish or circulate any statement, advertisement, or inquiry that expresses a limitation, preference, or bias based on lawful sexual expression, sex work status, or lawful source-of-income.
- (c) No hiring entity may inquire into, require disclosure of, or use information about an individual’s lawful sexual expression, sex work history, or status as a survivor of online sexual exploitation or trafficking as a condition of hiring, promotion, or continued employment, unless the hiring entity can provide clear and specific evidence that demonstrates that such outside work or expression materially conflicts with the individual’s essential job duties.
- (d) A conflict of interest may not be inferred from general reputational concerns, coworker or customer preferences, or speculative assessments of potential workplace disruption.

§ 5. Affirmative Duty to Prevent Harassment.

- (a) Each hiring entity has an affirmative duty to take reasonable steps to prevent and promptly correct harassment of any worker based on lawful off-duty sexual expression, lawful income derived from sex work, status as a sex worker, or status as a survivor of online sexual exploitation or trafficking.

- (b) Failure to take such action constitutes an independent violation of this Act.

§ 6. Remedies and Enforcement. [Omitted for redundancy. *See supra* Model Source-of-Income in Employment Nondiscrimination Act.]

§ 7. Savings Clause. [Omitted for redundancy. *See supra* Model Source-of-Income in Employment Nondiscrimination Act.]

Ideally, jurisdictions would adopt this statute in tandem with the broader source-of-income protections and the complementary reforms described throughout this Article. However, the feasibility of such comprehensive reform will depend on each jurisdiction's prevailing Overton window for change.¹⁸¹

Notably, this bill is restricted to lawful sex workers and those profiled as such because it only provides protections for those in legal professions and, therefore, does not extend protections to workers engaged in criminalized forms of sex work. Part IV of this Article addresses criminalized sex work in limited depth. For present purposes, it is sufficient to note that individuals engaged in criminalized sex work are often among the most economically precarious, and they would benefit immensely if both model statutes included them.¹⁸² *Ad arguendo*, if deterrence is one of any given state's rationales for criminalizing prostitution, then providing this additional measure of job security for workers who also engage in criminalized adult consensual sex work could, paradoxically, advance that stated goal by offering stability in non-sex work employment. A full exploration of those dynamics, however, lies beyond the scope of this Article.

C. STATUTORY LIMITS ON DISCLOSURE AND RESTRICTIONS ON SURVEILLANCE OF OFF-DUTY ONLINE SEX WORK

As workplace harms in this context often arise only after intimate information is accessed or circulated, a framework that limits employer surveillance and disclosure helps prevent them from occurring in the first place.¹⁸³ The third model statute, the Sexual Privacy and Worker Dignity Act, focuses on a hiring entity's conduct. Importantly, it restricts the collection and monitoring of lawful sexual expression, bars adverse actions based solely on a worker's erotic content when that content does not interfere with work duties, and prohibits the

181. *The Overton Window*, MACKINAC CTR. FOR PUB. POL'Y, <https://www.mackinac.org/OvertonWindow> [<https://perma.cc/ZVW4-WCJ9>] (last visited May 12, 2026) (explaining that the "Overton Window" is the spectrum of politically viable policy options and noting that the window's shifts over time can make previously radical proposals mainstream).

182. *See* GLOB. NETWORK OF SEX WORK PROJECTS, ECONOMIC EMPOWERMENT FOR SEX WORKERS 3–5 (2018), https://www.nswp.org/sites/default/files/economic_empowerment_for_sws_bp_prf01.pdf [<https://perma.cc/THH2-5HET>] (finding that criminalized sex workers are highly susceptible to poverty and exclusion).

183. Notably, almost all states recognize some form of the four invasion-of-privacy torts, two of which are public disclosure of private facts and intrusion upon seclusion. RESTATEMENT (SECOND) OF TORTS § 652A & reporter's note (A.L.I. 1977).

nonconsensual use or dissemination of such material. By imposing defined duties and consequences, the bill disincentivizes the disclosure of intimate information and reinforces a workplace culture rooted in privacy and dignity. For brevity, this model bill includes only a Prohibited Conduct section, which is the lone section substantively different from the model statutes listed above. As with those bills, this Act could be incorporated into an omnibus bill or as stand-alone legislation.

Model Language for a State or Municipal Sexual Privacy and Worker Dignity Act

§ 3. Prohibited Conduct.

- (a) It shall be unlawful for any employer to:
 1. Collect, monitor, or inquire into an employee's or applicant's lawful sexual expression, sexual history, or participation in lawful erotic or adult content creation;
 2. Discipline, discharge, or otherwise take adverse action against an employee or applicant based on information relating to such lawful sexual expression or history, including the lawful operation of online subscription-based platforms; or
 3. Use, disclose, or cause disclosure of any intimate or sexually explicit materials, images, or information relating to an employee or applicant without that individual's consent.
- (b) Employers shall take reasonable steps to prevent workplace harassment, retaliation, or dissemination of private sexual information concerning employees.
- (c) Nothing in this Section shall be construed to restrict legitimate investigation or discipline where an employee's conduct creates a demonstrable conflict of interest, violates a bona fide occupational requirement, or constitutes unlawful sexual misconduct.

IV. UTILIZING FREE SPEECH AND FREE EXPRESSION PRINCIPLES TO DEFEND ONLINE SEX WORKERS

This Part examines how advocates can use principles of free speech and free expression to champion the rights of workers who moonlight as online sex workers. Section A examines the First Amendment's protections and its limits. Section B turns to state constitutional free-speech provisions that, while imperfect, offer broader protections than the federal baseline and offer an additional tool to shield workers from discipline. Section C then provides model language that could be used in a contract, a worker handbook, or another agreement between hiring entities and workers to expand expressive freedom for lawful off-duty expression.

A. FIRST AMENDMENT RIGHTS FOR WORKERS WHO MOONLIGHT AS ONLINE SEX WORKERS

Online sex work, as a form of consensual adult sexual expression, is generally protected by the First Amendment's Free Speech Clause.¹⁸⁴ Yet even constitutionally protected expression may still be subject to employer discipline when the government acts as an employer. Because the First Amendment binds only state actors, these constitutional constraints apply to public and quasi-public employers, not private workplaces.¹⁸⁵ The Court has long recognized that government workers retain First Amendment rights and that, through this protection, the state may not punish certain forms of their speech.¹⁸⁶ In *Rankin v. McPherson*, a law enforcement office employee was terminated for making a private, politically charged remark about President Ronald Reagan.¹⁸⁷ The Court held that because her statement addressed a matter of public concern and caused no disruption to the workplace, the termination was a violation of the First Amendment.¹⁸⁸ Yet the framework governing government-employee speech only protects a public employee's speech if it is made (1) on a matter of public concern¹⁸⁹ (2) in their capacity as a private citizen outside of their official employment duties¹⁹⁰ and (3) the employee's interest in speech and the public's interest in hearing said speech outweighs the government's interest as an employer.¹⁹¹ Issues of public concern include speech that is political, social, of community interest, or that seeks to expose actual wrongdoing, potential wrongdoing, or other matters of public importance.¹⁹² Once the first two requirements are met, the Court then balances the employee's interest in free expression against the government's interest in workplace efficiency, discipline, and maintaining public trust.¹⁹³ However, courts treat sexually expressive speech as if it is less valuable than other forms of constitutionally protected speech,¹⁹⁴ and they rarely deem it a matter of public concern in cases about

184. See *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 811–15 (2000) (holding that non-obscene sexual expression is protected under the First Amendment, subject to narrow content-based restrictions that serve a compelling state interest); *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) (recognizing that sexual and indecent speech, though subject to limited regulation, is protected under the First Amendment); *Reno v. ACLU*, 521 U.S. 844, 849, 874–75 (1997) (striking down statute restricting online sexual expression and reaffirming that “[s]exual expression which is indecent but not obscene is protected” (alteration in original) (quoting *Sable*, 492 U.S. at 126)); see also *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245–46 (2002) (holding that virtual sexual expression could not be prohibited absent obscenity, defamation, incitement, or the sexual exploitation of minors).

185. *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019) (“[T]he Free Speech Clause prohibits only *governmental* abridgment of speech. The Free Speech Clause does not prohibit *private* abridgment of speech.”).

186. See *Lane v. Franks*, 573 U.S. 228, 231 (2014).

187. 483 U.S. 378, 380–82 (1987).

188. *Id.* at 384, 388, 392.

189. See *Connick v. Myers*, 461 U.S. 138, 146–48 (1983).

190. See *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006).

191. See *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968).

192. See *Connick*, 461 U.S. at 146, 148; *Lane v. Franks*, 573 U.S. 228, 241 (2014).

193. See *Pickering*, 391 U.S. at 568; *Connick*, 461 U.S. at 150–51; *Garcetti*, 547 U.S. at 419–20.

194. See Jerrold J. Kippen, *Sexually Explicit Speech*, 28 HASTINGS CONST. L.Q. 799, 809–13 (2001) (describing various cases in which the Supreme Court granted lesser First Amendment protection to sexual speech and considered sexual speech less valuable); *Constitutionality of Sexually Oriented*

public employees.¹⁹⁵ For example, in *City of San Diego v. Roe*, the Court upheld the termination of a police officer who sold erotic videos online, reasoning that his off-duty expression was “detrimental to the mission and functions of [his] employer” and “d[id] not qualify as a matter of public concern.”¹⁹⁶

Nevertheless, advocates for sex workers should argue that sexual labor is a matter of public concern with First Amendment protection. The “public concern” test is context-specific, and courts assess content, form, and context rather than subject matter alone.¹⁹⁷ Because sexual expression often critiques social norms and involves issues of gender, privacy, and concerns about issues of disfavored speech, some erotic labor could plausibly meet the standard. Further, as detailed in Part II, there is a growing effort by Project 2025 and state legislators to categorize drag performances, comprehensive sex education, and reproductive speech as “pornography” or sexually explicit to justify censoring this disfavored speech as if it were erotic labor.¹⁹⁸ The *Pickering* line of cases readily lends itself to protecting public workers’ speech about drag performance, comprehensive sex education, reproductive rights, and related sexuality and gender issues, as these are matters of public concern.¹⁹⁹

Crucially, even if courts continue to construe “public concern” narrowly when evaluating individual disciplinary actions, *United States v. National Treasury Employees Union (NTEU)* identifies an alternate line of cases protecting off-duty expression that is unrelated to the individual’s work from blanket bans and prior restraints unless the state can show the banned speech would actually threaten the integrity or efficiency of public office.²⁰⁰ In *NTEU*, the Court struck down a federal statute preventing specific Executive Branch employees from accepting honoraria for speeches or articles, holding that when the government imposes a

Speech: Obscenity, Indecency, and Child Pornography, 14 GEO. J. GENDER & L. 319, 324 (2013) (noting that the courts provide fewer First Amendment protections to non-obscene sexual speech than more valuable types of speech); see also Cass R. Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589, 602–08 (1986) (explaining that pornography is “low-value” speech and therefore courts accord it diminished First Amendment protection).

195. See *City of San Diego v. Roe*, 543 U.S. 77, 79–81, 84 (2004) (holding that a police officer’s online sale of erotic videos depicting himself in uniform was not protected because it “does not qualify as a matter of public concern”).

196. *Id.* at 84–85.

197. See *Connick*, 461 U.S. at 147–48; *Rankin v. McPherson*, 483 U.S. 378, 384–85 (1987).

198. See HERITAGE FOUND., *supra* note 43, at 1, 5; Melissa Gira Grant, *The Real Targets of Project 2025’s War on Porn*, NEW REPUBLIC (Jul. 10, 2024), <https://newrepublic.com/article/183636/project-2025-war-porn-trans-drag> [https://perma.cc/YKR7-KG8P]; see, e.g., Protection of Minors from Pornography and Obscenities Act, H. 4123, 2025 Gen. Assembl., 126th Sess. (S.C. 2025) (redefining “harmful to minors” and “material” to expand speech prohibitions); S.B. 593, 60th Leg., 1st Sess. (Okla. 2025) (introducing a bill that dramatically expands the definition of “unlawful pornography” and prohibits pornography statewide).

199. See *Connick*, 461 U.S. at 146 (defining employee expression that relates to “political, social, or other concern to the community” as matters of public concern); see also *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 679 (6th Cir. 2001) (holding that classroom discussion about race, gender, and power conflicts involved matters of “overwhelming” public concern).

200. 513 U.S. 454, 465, 468–70, 474–75 (1995).

broad, prospective restriction on expression rather than disciplining specific speech after the fact, it bears a “far stronger” burden to demonstrate actual harm.²⁰¹ In later cases, including *City of San Diego v. Roe*, the Court reaffirmed that when government employees speak or act on their own time on subjects unrelated to their official duties, their speech may receive First Amendment protection absent a substantial and concrete justification for regulation.²⁰² This framework should encompass categorical policies that prohibit workers from engaging in online sex work, including morality clauses and other employment restrictions that could reasonably be interpreted as doing so. To prohibit this speech, a government employer would have to demonstrate a significant interest in doing so, such as showing concrete evidence that the speech disrupts agency operations.²⁰³ Speculative concerns about reputation or morality are insufficient under *NTEU*’s heightened scrutiny standard.²⁰⁴

Employers will argue that workers who post sexually explicit material undermine public trust or workplace credibility.²⁰⁵ In some contexts, those concerns may carry weight, but they must be supported by evidence rather than conjecture.²⁰⁶ The government cannot rely on speculation of future moral disapproval to justify prior restraints on lawful off-duty expression.²⁰⁷ More importantly, state employers cannot ignore the impact of broad bans: when workers fear that any expressive activity related to sex, gender, or identity might jeopardize their employment, speech on those subjects vanishes from the public sphere.²⁰⁸ This chilling effect is especially acute for online speech about sexuality—precisely the kind of lawful expressive content that initiatives like Project 2025 target by deterring workers not only from online erotic labor, but also from participating in public discourse by instilling fear that their jobs will be the price of speaking.²⁰⁹

B. STATE PROTECTIONS FOR FREE EXPRESSION

In addition to the First Amendment, several state constitutions and charters contain speech clauses broader than the federal Constitution and interpreted to provide stronger, independent rights of expression. These guarantees could shield

201. *Id.* at 457, 461, 468, 475.

202. *See, e.g., City of San Diego v. Roe*, 543 U.S. 77, 80–81 (2004); *Lane v. Franks*, 573 U.S. 228, 242 (2014).

203. *See Nat’l Treasury Emps. Union*, 513 U.S. at 464, 476.

204. *Cf. id.* at 474–75 (requiring more than “mere speculation about serious harms” to justify “a blanket burden on the speech” of public employees).

205. *See Roe*, 543 U.S. at 81 (upholding discipline because off-duty erotic video “brought the mission of the employer and the professionalism of its officers into serious disrepute”); *Smith v. N.C. Dep’t of Pub. Instruction*, 820 S.E.2d 561, 571 (N.C. Ct. App. 2018).

206. *See Rankin v. McPherson*, 483 U.S. 378, 388–89 (1987) (protecting employee speech where employer failed to show actual workplace disruption).

207. *See Nat’l Treasury Emps. Union*, 513 U.S. at 476.

208. *See Connick v. Myers*, 461 U.S. 138, 170 (1983) (Brennan, J., dissenting) (acknowledging that punishment of employee speech has a chilling effect and impedes the dissemination of information).

209. *See generally* HERITAGE FOUND., *supra* note 43.

workers who moonlight as sex workers, especially when their off-duty activity is creative, performative, or communicative. As with federal law, most state provisions constrain only government action,²¹⁰ but some states have moderately extended speech protections to private contexts through expansive readings of their constitutions or state statutes.²¹¹

California's constitution provides the clearest example, guaranteeing every person the right to "speak, write, and publish" freely.²¹² The California Supreme Court treats this clause as more expansive than the First Amendment.²¹³ In *Robins v. Pruneyard Shopping Center*, the court emphasized the state's affirmative commitment to a broad expressive freedom exceeding that of the First Amendment.²¹⁴ Later cases recognized protected expressive rights in leafleting, protest, film, theater, and other performance-based arts.²¹⁵

Under this jurisprudence, the output of erotic labor fits comfortably within protected expression. Like other performance-based arts, it often involves aesthetic and narrative choices about costume, lighting, tone, and audience engagement, which courts view as hallmarks of protected expression.²¹⁶ Its commercial dimension does not strip it of protected status.²¹⁷

Additionally, California's "expressive conduct" test—originating in federal jurisprudence in *Spence v. Washington*,²¹⁸ then adopted and expanded by California courts²¹⁹—asks whether the actor intended to convey a message and

210. Carlos Chèvere-Lugo, *No State Actor, No Problem: State Constitutional Rights and Private Actors*, 75 SYRACUSE L. REV. 607, 618 (2025).

211. *Id.* at 648–49; *see, e.g.,* *Robins v. Pruneyard Shopping Ctr.*, 592 P.2d 341, 347–48 (Cal. 1979), *aff'd*, 447 U.S. 74 (1980); *State v. Schmid*, 423 A.2d 615, 628 (N.J. 1980).

212. CAL. CONST. art. I, § 2(a).

213. *See Robins*, 592 P.2d at 347.

214. *See id.*

215. *See, e.g.,* *Fashion Valley Mall, LLC v. NLRB*, 172 P.3d 742, 751–53 (Cal. 2007) (recognizing that California's free speech clause protects expressive activity, including leafletting in privately owned shopping centers); *Gerawan Farming, Inc. v. Lyons*, 12 P.3d 720, 735 (Cal. 2000) (interpreting California's constitutional protections as broader than the First Amendment); *see also* *Locust Club v. Hotel & Club Emps.' Union, Local No. 658*, 155 A.2d 27, 33–34 (Pa. 1959) (recognizing peaceful protest as expressive activity protected under the Pennsylvania state constitution); *Elane Photography, LLC v. Willock*, 284 P.3d 428, 438 (N.M. Ct. App. 2012) (recognizing some artistic creations like photographs, films, paintings, and drawings are protected expressive activity, even if they are commissioned); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 565 (1991) (recognizing nude dancing as protected expressive activity).

216. *See* *People v. Freeman*, 758 P.2d 1128, 1131–32 (Cal. 1988) (holding erotic motion pictures fall under the same free speech protections as theatrical performance); *Barnes*, 501 U.S. at 565–70 (holding that nude dancing is expressive conduct).

217. *See* *Elane Photography*, 284 P.3d at 438; *Freeman*, 758 P.2d at 1132–33. *But see* C.R. Dep't v. Cathy's Creations, Inc., 329 Cal.Rptr.3d 846, 893 (Cal. Ct. App. 2025) (noting that even when commercial items have artistic features and "are designed with attention to aesthetic details that may reflect the designer's sense of color, balance and perspective, . . . they are primarily applied and intended for broad appeal and profitability—not as a medium for self-expression").

218. 418 U.S. 405, 410–11 (1974).

219. *See Freeman*, 758 P.2d at 1132–33 (applying expressive conduct principles to adult film production).

whether that message would be understood by an audience.²²⁰ Some erotic content creation on platforms such as OnlyFans readily satisfies both elements. Frequently, performers curate self-presentation to communicate ideas about desire, intimacy, identity, or power, and audiences interpret these as meaning-laden acts of self-expression.²²¹ In a culture where sexuality remains politicized, the production and publication of erotic work can serve as a comment on autonomy, shame, pleasure, the inherent value of stigmatized bodies, or resistance to moral regulation.²²²

Moreover, attempting to parse which adult performances are sufficiently “artistic” or “creative” to merit protection risks precisely the kind of line-drawing that *Jacobellis v. Ohio* made infamous—the judiciary’s equivalent of “I know it when I see it.”²²³ While not every instance of erotic labor will constitute expression, it is a more coherent doctrinal approach for courts to presume that such work satisfies the “expressive conduct” test,²²⁴ rather than require case-by-case inquiries into whether a creator’s aesthetic choices are sufficiently artistic to warrant protection. Adopting this presumption also advances principles of fairness and notice by affording workers greater assurance that their expressive activity, and the income derived from it, receive constitutional protection. The fact that workers receive financial remuneration for this expression does not diminish its protected status under California’s expansive constitutional guarantee.²²⁵

Other states follow similar, though less expansive, approaches. Oregon’s Article I, Section 8, and Washington’s Article I, Section 5 guarantee expressive freedom “on any subject whatever,”²²⁶ and “on all subjects”²²⁷ respectively, which courts have applied expansively to expressive conduct and performance.²²⁸ These provisions could support challenges to workplace discipline or licensing sanctions rooted in moral disapproval rather than workplace harm.

A state-level free speech claim could proceed under several complementary theories. In California, for example, an employee terminated for lawful online erotic expression might bring a wrongful discharge action premised on public

220. See, e.g., *Ctr. for Bio-Ethical Reform, Inc. v. Irvine Co.*, 249 Cal. Rptr. 3d 391, 406 (Cal. Ct. App. 2019).

221. See NEIL O’BOYLE, COMMUNICATION THEORY FOR HUMANS 103–20 (2022) (discussing how performers communicate messages about identity and intimacy, and how audiences interpret these performances as expressive acts).

222. See, e.g., Davis, *supra* note 116, at 1210 & n.45.

223. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

224. See *Spence v. Washington*, 418 U.S. 405, 410–11 (1974).

225. See *Elane Photography, LLC v. Willock*, 284 P.3d 428, 438 (N.M. Ct. App. 2012).

226. OR. CONST. art. I, § 8.

227. WASH. CONST. art. I, § 5.

228. See, e.g., *Alderwood Assocs. v. Wash. Env’t Council*, 635 P.2d 108, 114–17 (Wash. 1981) (interpreting Article I, Section 5 as affording broader expressive rights than the First Amendment and extending protection to expressive activity in privately owned shopping centers); *State v. Ciancanelli*, 121 P.3d 613, 629 (Or. 2005) (holding that nude dancing and sexually explicit performances fall within Oregon’s broad free-expression guarantee).

policy grounded in the state's constitutional commitment to expressive freedom.²²⁹ Courts have recognized that the California constitution can supply an independent and fundamental public policy sufficient to support such claims, particularly where the alleged misconduct implicates individual expression rather than workplace performance.²³⁰ Similarly, a municipal or quasi-public employer, such as a public university or state hospital, could face direct constitutional challenge under California's speech clause, which courts have interpreted as self-executing and applicable to some nonstate actors.²³¹

In Oregon, litigants could pursue a claim that discipline for off-duty expressive conduct restrains the free expression of opinion under Article I, Section 8—a provision that the Oregon Supreme Court has applied broadly, even when the expression is sexual or controversial.²³²

C. MODEL LANGUAGE TO EXPAND FREE EXPRESSION PROTECTIONS FOR PUBLIC WORKERS, AND TO INCORPORATE THOSE PRINCIPLES FOR WORKERS IN PRIVATE INDUSTRIES

Both public and private hiring entities play a decisive role in shaping the practical contours of workers' rights to expression. Even where constitutional or statutory protections fall short, collective bargaining agreements, employee handbooks, and internal policies can expand expressive freedom, clarify boundaries, and reduce the chilling effect that vague or overly moralized standards impose on workers. The proposed model contract, handbook, or worker-agreement language is simple, but it provides more protections than the First Amendment and most state constitutions.

229. *See, e.g.,* *Tameny v. Atl. Richfield Co.*, 610 P.2d 1330, 1331 (Cal. 1980) (noting that a discharged employee may sue the employer in tort “when [the] employer’s discharge . . . violates fundamental principles of public policy”); *Gantt v. Sentry Ins.*, 824 P.2d 680, 689 (Cal. 1992) (upholding validity of plaintiff’s claim against employer because discharge for failure to lie to state investigators “plainly contravenes [California’s] public policy”).

230. *See Gantt*, 824 P.2d at 687; *see also* *Robins v. Pruneyard Shopping Ctr., Inc.*, 592 P.2d 341, 347–48 (Cal. 1979) (recognizing that the California Constitution’s free speech clause provides broader protection for expressive activity than the First Amendment).

231. *See, e.g.,* *Golden Gateway Ctr. v. Golden Gateway Tenants Ass’n*, 29 P.3d 797, 810 (Cal. 2001) (holding that California’s free speech clause can be applied against private property owners “if the property is freely and openly accessible to the public”).

232. *See, e.g.,* *Ciancanelli*, 121 P.3d at 621–22 (discussing application of Article I, Section 8 to cases involving sexually explicit expression).

Model Contract Language

This model contract language could be used—in modified form—in a union contract, worker handbook, or other document that defines the rights and relationship between a hiring entity and workers.

1. Off-duty Conduct.

[Hiring Entity] respects employees' privacy and autonomy outside the workplace. Employment decisions will not be based on lawful, off-duty work or expression that does not conflict with the employee's job responsibilities or the Employer's legitimate business interests. Personal expression or outside work that complies with law and does not impair job performance will not, by itself, be grounds for discipline or discharge. Moral disapproval or reputational concerns alone shall not constitute a legitimate business interest.

2. Harassment and Dignity.

The Employer is committed to maintaining a professional environment free from harassment, bias, or retaliation related to any employee's lawful, off-duty activities. Disparagement, gossip, or differential treatment based on such activities will be addressed as a violation of the Employer's anti-harassment or professionalism policies.

V. CENTERING ONLINE SEX WORKERS AND PROFILED INDIVIDUALS IN MOVEMENT WORK

Protecting the speech and privacy rights of online sex workers requires more than litigation or statutory reform. It demands collective action. Labor movements have long recognized that freedom of expression and dignity at work are intertwined.²³³ Today's policies that chill off-duty, online sexual expression can warp into broader policies that prohibit other worker speech and conduct. This risks job security, personal autonomy, human creativity, and potentially even worker organizing.²³⁴

Moreover, advocacy for online sex workers is in the best interest of all workers. Many workers are a flat tire, rent increase, or medical bill away from needing a side gig if they do not already have one.²³⁵ For some, that gig might be food delivery, tutoring, or online sexual labor. Regardless, moonlighting should not mean risking harassment or reputational harm.

233. See, e.g., Julius Getman, *Labor Law and Free Speech: The Curious Policy of Limited Expression*, 43 MD. L. REV. 4, 12 (1984) ("Unions have claimed first amendment protection for two traditional tactics: picketing and boycotts.").

234. See, e.g., Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 44 & n.228 (2016) (noting the connection between First Amendment rights and workers' ability to organize).

235. See BD. OF GOVERNORS OF THE FED. RESRV. SYS., *ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2023*, at 2 (2024), <https://www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf> [<https://perma.cc/7QH7-A8QP>] (finding that 37% of adults report they could not cover or would have to resort to borrowing money or selling possessions to cover a \$400 emergency expense).

Unions and worker centers can incorporate online sex workers by reframing their advocacy around speech, safety, and consent rather than stigma. Bargaining demands and worker-proposed handbooks can include privacy protections, limits on surveillance, protections for nonconsensual sexual-image sharing, and nondiscrimination clauses covering lawful sexual labor and expression.²³⁶ Campaigns for just cause statutes, data protection rules, and algorithmic transparency already align with the interests of digital content creators.²³⁷ Law school clinics, bar associations, and other organizations can partner with sex-worker-led groups to draft and support model contract language, privacy protocols, and mutual aid funds that protect against doxing and employer retaliation. Ultimately, all workers can push back against the maligning of online sex work, helping to reduce stigma and shift workplace attitudes.

While this Article centers online sex work, solidarity must extend further. Criminalized sex workers face greater vulnerability to coercion, violence, and economic exclusion.²³⁸ Criminalization normalizes the idea that some labor is unworthy of protection. Encouragingly, mainstream organizations have begun to embrace decriminalization as part of workers' rights and civil rights agendas. In 2018, Pride at Work, the LGBTQ+ constituency group of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), adopted a resolution formally supporting the decriminalization of sex work as a matter of worker safety and dignity.²³⁹ Organizations such as the Human Rights Watch and Amnesty International have similarly recognized sex workers' rights as integral to gender and labor justice.²⁴⁰ This illustrates that sex-worker organizing is not peripheral. It is central to redefining who counts as a worker and what it means to labor with dignity. Building solidarity with decriminalized and criminalized workers alike affirms that labor rights, speech rights, and bodily autonomy are inseparable.

CONCLUSION

The treatment of workers who engage in lawful, off-duty online sex work exposes how private stigma becomes professional punishment. These workers

236. See, e.g., INT'L LAB. ORG., SOCIAL DIALOGUE REPORT 2022: COLLECTIVE BARGAINING FOR AN INCLUSIVE, SUSTAINABLE AND RESILIENT RECOVERY 92 (2022) (noting the emergence of privacy and anti-surveillance provisions in collective bargaining agreements).

237. See Charlotte Garden, *Platform Unions*, 108 MINN. L. REV. 2013, 2064–67 (2024) (reviewing instances of collective action by digital content creators).

238. See AMNESTY INT'L, *supra* note 57, at 11 (explaining that criminalization “can lead to forced evictions, arbitrary arrests, investigations, surveillance, prosecutions and severe punishment of sex workers” and “limit their ability to access housing, education and social security”).

239. *Decriminalization of Sex Work to Improve Community Health and Safety, and to Protect the Human Rights of Sex Workers*, PRIDE AT WORK: RESOLS. (Aug. 25, 2018), <https://www.prideatwork.org/2018> [<https://perma.cc/QJN5-PC5X>] (supporting the decriminalization of sex work as a labor and LGBTQ+ rights issue).

240. See *Why Sex Work Should Be Decriminalized: Questions and Answers*, HUM. RTS. WATCH (Aug. 7, 2019, at 03:31 ET), <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized> [<https://perma.cc/G6MA-P9TK>] (“In countries that ban sex work, sex workers are less likely to be able to organize as workers, advocate for their rights, or to work together to support and protect themselves.”); AMNESTY INT'L, *supra* note 57, at 3 (noting that the “full realization of sex workers' rights” also promotes gender equality and labor rights).

merely seek to be judged by performance, not others' moral anxieties. While advocates must aggressively use existing legal frameworks in championing workers who moonlight as online sex workers, these tools are fragmentary. Civil rights and labor movements must simultaneously work to expand source-of-income and sex-worker-status nondiscrimination statutes, robust privacy rules, explicit anti-harassment duties, contractual protections, and rejection of reputation-based defenses. Protecting workers at the margins protects everyone's ability to labor, create, and live without fear.