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S. 585

One Hundred Fifteenth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and seventeen

An Act

To provide greater whistleblower protections for Federal employees, increased awareness of Federal whistleblower protections, and increased accountability and required discipline for Federal supervisors who retaliate against whistleblowers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EMPLOYEES GENERALLY

Sec. 101. Definitions.
Sec. 102. Stays; probationary employees.
Sec. 103. Prohibited personnel practices.
Sec. 104. Discipline of supervisors based on retaliation against whistleblowers.
Sec. 105. Suicide by employees.
Sec. 106. Training for supervisors.
Sec. 107. Information on whistleblower protections.

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

Sec. 201. Prevention of unauthorized access to medical records of employees of the Department of Veterans Affairs.
Sec. 202. Outreach on availability of mental health services available to employees of the Department of Veterans Affairs.
Sec. 203. Protocols to address threats against employees of the Department of Veterans Affairs.
Sec. 204. Comptroller General of the United States study on accountability of chiefs of police of Department of Veterans Affairs medical centers.

TITLE I—EMPLOYEES GENERALLY

SEC. 101. DEFINITIONS.

In this title—

(1) the term "agency"—

(A) except as provided in subparagraph (B), means an entity that is an agency, as defined under section 2302 of title 5, United States Code, without regard to whether one or more portions of title 5 of the United States Code are inapplicable to the entity; and

(B) does not include any entity that is an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4));

(2) the term "employee" means an employee (as defined in section 2105 of title 5, United States Code) of an agency; and

(3) the term "personnel action" has the meaning given that term under section 2302 of title 5, United States Code.

SEC. 102. STAYS; PROBATIONARY EMPLOYEES.

(a) REQUEST BY SPECIAL COUNSEL.—Section 1214(b)(1) of title 5, United States Code, is amended by adding at the end the following:

"(E) If the Merit Systems Protection Board grants a stay under this subsection, the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.".

(b) PROBATIONARY EMPLOYEES.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

"(k) If the Merit Systems Protection Board grants a stay to an employee in probationary status under subsection (c), the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.".

(c) STUDY REGARDING RETALIATION AGAINST PROBATIONARY EMPLOYEES.—The Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report discussing retaliation against employees in probationary status.

SEC. 103. PROHIBITED PERSONNEL PRACTICES.

Section 2302(b) of title 5, United States Code, is amended—

(1) in paragraph (12), by striking "or" at the end;

(2) in paragraph (13), by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).".

SEC. 104. DISCIPLINE OF SUPERVISORS BASED ON RETALIATION AGAINST WHISTLEBLOWERS.

(a) IN GENERAL.—Subchapter II of chapter 75 of title 5, United States Code, is amended by adding at the end the following:

"§ 7515. Discipline of supervisors based on retaliation against whistleblowers

"(a) DEFINITIONS.—In this section—

"(1) the term 'agency'—

"(A) except as provided in subparagraph (B), means an entity that is an agency, as defined under section 2302, without regard to whether any other provision of this chapter is applicable to the entity; and

"(B) does not include any entity that is an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4));

"(2) the term 'prohibited personnel action' means taking or failing to take an action in violation of paragraph (8), (9), or (14) of section 2302(b) against an employee of an agency; and

"(3) the term 'supervisor' means an employee who would be a supervisor, as defined under section 7103(a), if the entity employing the employee was an agency.

"(b) PROPOSED DISCIPLINARY ACTIONS.—

"(1) IN GENERAL.—If the head of the agency employing a supervisor, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency employing a supervisor determines that the supervisor has committed a prohibited personnel action, the head of the agency employing the supervisor, in accordance with the procedures required under paragraph (2)—

"(A) for the first prohibited personnel action committed by a supervisor—

"(i) shall propose suspending the supervisor for a period of not less than 3 days; and

"(ii) may, in addition to a suspension described in clause (i), propose any other action, including a reduction in grade or pay, that the head of the agency determines appropriate; and

"(B) for the second prohibited personnel action committed by a supervisor, shall propose removing the supervisor.

"(2) PROCEDURES.—

"(A) NOTICE.—A supervisor against whom an action is proposed to be taken under paragraph (1) is entitled to written notice—

"(i) stating the specific reasons for the proposed action; and

"(ii) informing the supervisor of the right of the supervisor to review the material which is relied on to support the reasons for the proposed action.

"(B) ANSWER AND EVIDENCE.—

"(i) IN GENERAL.—A supervisor who is notified under subparagraph (A) that the supervisor is the subject of a proposed action under paragraph (1) is entitled to 14 days following such notification to answer and furnish evidence in support of the answer.

"(ii) NO EVIDENCE FURNISHED; INSUFFICIENT EVIDENCE.—After the end of the 14-day period described in clause (i), if a supervisor does not furnish evidence as described in clause (i) or if the head of the agency determines that such evidence is not sufficient to reverse the proposed action, the head of the agency shall carry out the action.

"(C) SCOPE OF PROCEDURES.—An action carried out under this section—

"(i) except as provided in clause (ii), shall be subject to the same requirements and procedures (including regarding appeals) as an action under section 7503, 7513, or 7543; and

"(ii) shall not be subject to—

"(I) paragraphs (1) and (2) of section 7503(b);

"(II) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7513; or

"(III) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7543.

"(3) DELEGATION.—

"(A) IN GENERAL.—Except as provided in paragraph (B), the head of an agency may delegate any authority or responsibility under this subsection.

"(B) NONDELEGABILITY OF DETERMINATION REGARDING PROHIBITED PERSONNEL ACTION.—If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of paragraph (1), the head of the agency may not delegate that responsibility.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 75 of title 5, United States Code, is amended by adding at the end the following:

"7515. Discipline of supervisors based on retaliation against whistleblowers.".

SEC. 105. SUICIDE BY EMPLOYEES.

(a) REFERRAL.—The head of an agency shall refer to the Special Counsel, along with any information known to the agency regarding the circumstances described in paragraphs (2) and (3), any instance in which the head of the agency has information indicating—

(1) an employee of the agency committed suicide;

(2) prior to the death of the employee, the employee made any disclosure of information which reasonably evidences—

(A) any violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; and

(3) after a disclosure described in paragraph (2), a personnel action was taken against the employee.

(b) OFFICE OF SPECIAL COUNSEL REVIEW.—For any referral to the Special Counsel under subsection (a), the Special Counsel shall—

(1) examine whether any personnel action was taken because of any disclosure of information described in subsection (a)(2); and

(2) take any action the Special Counsel determines appropriate under subchapter II of chapter 12 of title 5, United States Code.

SEC. 106. TRAINING FOR SUPERVISORS.

In consultation with the Special Counsel and the Inspector General of the agency (or senior ethics official of the agency for an agency without an Inspector General), the head of each agency shall provide training regarding how to respond to complaints alleging a violation of whistleblower protections (as defined in section 2307 of title 5, United States Code, as added by section 107) available to employees of the agency—

(1) to employees appointed to supervisory positions in the agency who have not previously served as a supervisor; and

(2) on an annual basis, to all employees of the agency serving in a supervisory position.

SEC. 107. INFORMATION ON WHISTLEBLOWER PROTECTIONS.

(a) EXISTING PROVISION.—

(1) IN GENERAL.—Section 2302 of title 5, United States Code, is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 4505a(b)(2) of title 5, United States Code, is amended by striking "section 2302(d)" and inserting "section 2302(c)".

(B) Section 5755(b)(2) of title 5, United States Code, is amended by striking "section 2302(d)" and inserting "section 2302(c)".

(C) Section 110(b)(2) of the Whistleblower Protection Enhancement Act of 2012 (5 U.S.C. 2302 note) is amended by striking "section 2302(f)(1) or (2)" and inserting "section 2302(e)(1) or (2)".

(D) Section 1217(d)(3) of the Panama Canal Act of 1979 (22 U.S.C. 3657(d)(3)) is amended by striking "section 2302(d)" and inserting "section 2302(c)".

(E) Section 1233(b) of the Panama Canal Act of 1979 (22 U.S.C. 3673(b)) is amended by striking "section 2302(d)" and inserting "section 2302(c)".

(b) PROVISION OF INFORMATION.—Chapter 23 of title 5, United States Code, is amended by adding at the end the following:

"§ 2307. Information on whistleblower protections

"(a) DEFINITIONS.—In this section—

"(1) the term 'agency'—

"(A) except as provided in subparagraph (B), has the meaning given that term in section 2302; and

"(B) does not include any entity that is an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4));

"(2) the term 'new employee' means an individual—

"(A) appointed to a position as an employee of an agency on or after the date of enactment of the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017; and

"(B) who has not previously served as an employee; and

"(3) the term 'whistleblower protections' means the protections against and remedies for a prohibited personnel practice described in paragraph (8), subparagraph (A)(i), (B), (C), or (D) of paragraph (9), or paragraph (14) of section 2302(b).

"(b) RESPONSIBILITIES OF HEAD OF AGENCY.—The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Special Counsel and the Inspector General of the agency) that employees of the agency are informed of the rights and remedies available to them under this chapter and chapter 12, including—

"(1) information regarding whistleblower protections available to new employees during the probationary period;

"(2) the role of the Office of Special Counsel and the Merit Systems Protection Board with regard to whistleblower protections; and

"(3) how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct

of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures.

"(c) TIMING.—The head of each agency shall ensure that the information required to be provided under subsection (b) is provided to each new employee of the agency not later than 6 months after the date the new employee begins performing service as an employee.

"(d) INFORMATION ONLINE.—The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency, and on any online portal that is made available only to employees of the agency if one exists.

"(e) DELEGEES.—Any employee to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall, within the limits of the scope of the delegation, be responsible for the activities described in subsection (b).".

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by adding at the end the following:

"2307. Information on whistleblower protections.".

TITLE II—DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES

SEC. 201. PREVENTION OF UNAUTHORIZED ACCESS TO MEDICAL RECORDS OF EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) DEVELOPMENT OF PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall—

(A) develop a plan to prevent access to the medical records of employees of the Department of Veterans Affairs by employees of the Department who are not authorized to access such records;

(B) submit to the appropriate committees of Congress the plan developed under subparagraph (A); and

(C) upon request, provide a briefing to the appropriate committees of Congress with respect to the plan developed under subparagraph (A).

(2) ELEMENTS.—The plan required under paragraph (1) shall include the following:

(A) A detailed assessment of strategic goals of the Department for the prevention of unauthorized access to the medical records of employees of the Department.

(B) A list of circumstances in which an employee of the Department who is not a health care provider or an assistant to a health care provider would be authorized to access the medical records of another employee of the Department.

(C) Steps that the Secretary will take to acquire new or implement existing technology to prevent an employee of the Department from accessing the medical records of

another employee of the Department without a specific need to access such records.

(D) Steps the Secretary will take, including plans to issue new regulations, as necessary, to ensure that an employee of the Department may not access the medical records of another employee of the Department for the purpose of retrieving demographic information if that demographic information is available to the employee in another location or through another format.

(E) A proposed timetable for the implementation of such plan.

(F) An estimate of the costs associated with implementing such plan.

(b) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on Homeland Security and Governmental Affairs and the Committee on Veterans' Affairs of the Senate; and

(2) the Committee on Oversight and Government Reform and the Committee on Veterans' Affairs of the House of Representatives.

SEC. 202. OUTREACH ON AVAILABILITY OF MENTAL HEALTH SERVICES AVAILABLE TO EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS.

The Secretary of Veterans Affairs shall conduct a program of outreach to employees of the Department of Veterans Affairs to inform those employees of any mental health services, including telemedicine options, that are available to them.

SEC. 203. PROTOCOLS TO ADDRESS THREATS AGAINST EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS.

The Secretary of Veterans Affairs shall ensure protocols are in effect to address threats from individuals receiving health care from the Department of Veterans Affairs directed towards employees of the Department who are providing such health care.

SEC. 204. COMPTROLLER GENERAL OF THE UNITED STATES STUDY ON ACCOUNTABILITY OF CHIEFS OF POLICE OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTERS.

The Comptroller General of the United States shall conduct a study to assess the reporting, staffing, accountability, and chain

of command structure of the Department of Veterans Affairs police officers at medical centers of the Department.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.