

117TH CONGRESS  
1ST SESSION

# H. R. 5842

To deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2021

Ms. LOIS FRANKEL of Florida (for herself, Mr. KATKO, Ms. BLUNT ROCHESTER, Mr. FITZPATRICK, Mr. NADLER, Ms. UNDERWOOD, Mrs. AXNE, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BOWMAN, Mr. CARSON, Mr. CASTEN, Ms. CASTOR of Florida, Ms. CHU, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. COHEN, Mr. COOPER, Mr. CRIST, Mr. DANNY K. DAVIS of Illinois, Ms. DELAURO, Mrs. DEMINGS, Mr. DESAULNIER, Mrs. DINGELL, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. FOSTER, Ms. GARCIA of Texas, Mr. GRIJALVA, Mrs. HAYES, Ms. JACOBS of California, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. KILMER, Mrs. KIRKPATRICK, Ms. KUSTER, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mr. LOWENTHAL, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Ms. MANNING, Ms. MCCOLLUM, Mr. MCGOVERN, Ms. MENG, Ms. MOORE of Wisconsin, Mrs. NAPOLITANO, Ms. NEWMAN, Ms. NORTON, Ms. PINGREE, Mr. RASKIN, Miss RICE of New York, Ms. ROYBAL-ALLARD, Ms. SCANLON, Ms. SCHAKOWSKY, Ms. SPEIER, Ms. STRICKLAND, Ms. TLAIB, Mrs. TRAHAN, Mr. VEASEY, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILD, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Ways and Means, the Judiciary, House Administration, Oversight and Reform, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

# A BILL

To deter, prevent, reduce, and respond to harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories; and to amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

1       *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ending the Monopoly  
 5 of Power Over Workplace Harassment through Education  
 6 and Reporting Act” or the “EMPOWER Act”.

7 **TITLE I—PREVENTING AND RE-**  
 8 **SPONDING TO WORKPLACE**  
 9 **HARASSMENT**

10 **SEC. 101. PURPOSE AND AUTHORITY.**

11       It is the purpose of this title, through the exercise  
 12 by Congress of its power to regulate commerce among the  
 13 several States, to deter, prevent, reduce, and respond to  
 14 harassment in the workplace, including sexual harass-  
 15 ment, sexual assault, and harassment based on other pro-  
 16 tected categories.

17 **SEC. 102. DEFINITIONS.**

18       In this title:

1           (1) APPLICANT.—The term “applicant” means  
2           an applicant for employment as an employee, inde-  
3           pendent contractor, or outside worker.

4           (2) CHARGE OF DISCRIMINATION.—The term  
5           “Charge of Discrimination” means a charge or com-  
6           plaint of discrimination filed pursuant to section 706  
7           of the Civil Rights Act of 1964 (42 U.S.C. 2000e-  
8           5), section 7 of the Age Discrimination in Employ-  
9           ment Act of 1967 (29 U.S.C. 626), section 107 of  
10          the Americans with Disabilities Act of 1990 (42  
11          U.S.C. 12117), or section 207 of the Genetic Infor-  
12          mation Nondiscrimination Act of 2008 (42 U.S.C.  
13          2000ff-6).

14          (3) COMMISSION.—The term “Commission”  
15          means the Equal Employment Opportunity Commis-  
16          sion.

17          (4) EMPLOYEE.—The term “employee”  
18          means—

19                 (A) an individual employed by an employer  
20                 described in paragraph (5), including an outside  
21                 worker in such individual’s office or place of  
22                 employment;

23                 (B) an employee to which section 703,  
24                 704, or 717(a) of the Civil Rights Act of 1964  
25                 (42 U.S.C. 2000e-2, 2000e-3, 2000e-16(a))

1 applies, including an outside worker in such an  
2 employee's office or place of employment, sec-  
3 tion 4 of the Age Discrimination in Employ-  
4 ment Act of 1967 (29 U.S.C. 623), section 102  
5 of the Americans with Disabilities Act of 1990  
6 (42 U.S.C. 12112), or sections 202, 203, and  
7 204 of the Genetic Information Nondiscrimina-  
8 tion Act of 2008 (42 U.S.C. 2000ff-1, 2000ff-  
9 2, 2000ff-3);

10 (C) a State employee to which section  
11 302(a) of the Government Employee Rights Act  
12 of 1991 (42 U.S.C. 2000e-16b(a)) applies, in-  
13 cluding an outside worker in such a State em-  
14 ployee's office or place of employment; or

15 (D) a covered employee, as defined in sec-  
16 tion 101 of the Congressional Accountability  
17 Act of 1995 (2 U.S.C. 1301) or section 411(c)  
18 of title 3, United States Code, including an out-  
19 side worker in such a covered employee's office  
20 or place of employment.

21 (5) EMPLOYER.—The term “employer”  
22 means—

23 (A) a person engaged in an industry affect-  
24 ing commerce, and any agent of such a person;

1 (B) an entity to which section 703, 704, or  
2 717(a) of the Civil Rights Act of 1964 applies,  
3 sections 4 and 15 of the Age Discrimination in  
4 Employment Act of 1967 (29 U.S.C. 623,  
5 633a), section 102 of the Americans with Dis-  
6 abilities Act of 1990 (42 U.S.C. 12112), or sec-  
7 tions 202, 203, and 204 of the Genetic Infor-  
8 mation Nondiscrimination Act of 2008 (42  
9 U.S.C. 2000ff-1, 2000ff-2, 2000ff-3);

10 (C) an employing authority to which sec-  
11 tion 302(a)(1) of the Government Employee  
12 Rights Act of 1991 applies; or

13 (D) an employing office, as defined in sec-  
14 tion 101 of the Congressional Accountability  
15 Act of 1995 or section 411(c) of title 3, United  
16 States Code.

17 (6) FAIR EMPLOYMENT PRACTICES AGEN-  
18 CIES.—The term “fair employment practices agen-  
19 cies” means State and local agencies with the au-  
20 thority to enforce laws or regulations to prohibit dis-  
21 crimination in employment, to grant or seek relief  
22 from discrimination, or to institute criminal pro-  
23 ceedings.

24 (7) INDEPENDENT CONTRACTOR.—The term  
25 “independent contractor” means an individual who,

1 with respect to an employer, is a contractor based on  
2 the common law of agency.

3 (8) LAW ENFORCEMENT AGENCY.—The term  
4 “law enforcement agency” means a government  
5 agency with criminal or civil law enforcement pow-  
6 ers, which may include a government agency with  
7 regulatory or licensing authority.

8 (9) NONDISCLOSURE CLAUSE.—The term “non-  
9 disclosure clause” means a provision in a contract or  
10 agreement establishing that the parties to the con-  
11 tract or agreement agree not to disclose information  
12 covered by the terms and conditions of the contract  
13 or agreement.

14 (10) NONDISPARAGEMENT CLAUSE.—The term  
15 “nondisparagement clause” means a provision in a  
16 contract or agreement requiring one or more parties  
17 to the contract or agreement not to make negative  
18 statements about the other.

19 (11) OUTSIDE WORKER.—The term “outside  
20 worker” means—

21 (A) a temporary worker hired through an  
22 employment agency (as defined in section 701  
23 of the Civil Rights Act of 1964 (42 U.S.C.  
24 2000e)) to provide services to an employer pur-  
25 suant to an agreement between the employment

1 agency and the employer, section 11 of the Age  
2 Discrimination in Employment Act of 1967 (29  
3 U.S.C. 630), section 101 of the Americans with  
4 Disabilities Act of 1990 (42 U.S.C. 12111), or  
5 section 201 of the Genetic Information Non-  
6 discrimination Act of 2008 (42 U.S.C.  
7 2000ff)’’;

8 (B) an independent contractor for an em-  
9 ployer or a subcontractor thereof; or

10 (C) an intern or volunteer, whether paid or  
11 unpaid, for an employer.

12 (12) SEXUAL ASSAULT.—The term ‘‘sexual as-  
13 sault’’ means any nonconsensual sexual act pro-  
14 scribed by Federal, tribal, or State law, including  
15 such an act that occurs when the victim lacks capac-  
16 ity to consent.

17 (13) SUBCONTRACTOR.—The term ‘‘subcon-  
18 tractor’’ means any employer having a contract with  
19 a prime contractor or another subcontractor calling  
20 for supplies or services required for the performance  
21 of a contract or a government contract.

22 (14) WORKPLACE HARASSMENT.—The term  
23 ‘‘workplace harassment’’ means unwelcome or offen-  
24 sive conduct based on sex (including such conduct  
25 based on sexual orientation, gender identity, and

1 pregnancy), race, color, national origin, disability,  
2 age, religion, or genetic information including con-  
3 duct that occurs in-person or through an electronic  
4 medium (which may include social media), in a work  
5 or work-related context, which affects any term, con-  
6 dition, or privilege of employment.

7 **SEC. 103. PROHIBITING NONDISPARAGEMENT AND NON-**  
8 **DISCLOSURE CLAUSES THAT COVER WORK-**  
9 **PLACE HARASSMENT, INCLUDING SEXUAL**  
10 **HARASSMENT.**

11 (a) UNLAWFUL PRACTICES.—

12 (1) PROHIBITION ON WORKPLACE HARASSMENT  
13 NONDISCLOSURE CLAUSE.—Subject to subsection  
14 (b)(1), it shall be an unlawful practice for an em-  
15 ployer to enter into a contract or agreement with an  
16 employee or applicant, as a condition of employment,  
17 promotion, compensation, benefits, or change in em-  
18 ployment status or contractual relationship, or as a  
19 term, condition, or privilege of employment, if that  
20 contract or agreement contains a nondisparagement  
21 or nondisclosure clause that covers workplace har-  
22 assment, including sexual harassment or retaliation  
23 for reporting, resisting, opposing, or otherwise par-  
24 ticipating in a workplace harassment proceeding.

1           (2) PROHIBITION ON ENFORCEMENT.—Not-  
2           withstanding any other provision of law, it shall be  
3           an unlawful practice and otherwise unlawful for an  
4           employer to enforce or attempt to enforce a non-  
5           disparagement clause or nondisclosure clause de-  
6           scribed in paragraph (1).

7           (b) SETTLEMENT OR SEPARATION AGREEMENTS.—

8           (1) IN GENERAL.—The provisions of subsection  
9           (a) do not apply to a nondisclosure clause or non-  
10          disparagement clause contained in a settlement  
11          agreement or separation agreement that resolves  
12          legal claims or disputes when—

13                 (A) such legal claims accrued or such dis-  
14                 putes arose before the settlement agreement or  
15                 separation agreement was executed; and

16                 (B) such clauses are mutually agreed upon  
17                 and mutually benefit both the employer and em-  
18                 ployee or applicant.

19          (2) UNLAWFUL PRACTICE.—It shall be an un-  
20          lawful practice for an employer to unilaterally in-  
21          clude a nondisclosure clause or a nondisparagement  
22          clause that solely benefits the employer in a separa-  
23          tion or settlement agreement.

24          (c) RIGHT TO REPORT RESERVED.—Notwith-  
25          standing signing (before or after the effective date of this

1 title) any nondisparagement or nondisclosure clause in-  
2 cluding a clause referred to in subsection (a)(1), an em-  
3 ployee or applicant retains any right that person would  
4 otherwise have had to report a concern about workplace  
5 harassment, including sexual harassment or another viola-  
6 tion of the law to the Commission, another Federal agency  
7 (including an office of the legislative or judicial branch),  
8 a State or local fair employment practices agency or any  
9 State or local agency, or a law enforcement agency, and  
10 any right that person would otherwise have had to bring  
11 an action in a court of the United States.

12 (d) ENFORCEMENT.—

13 (1) ENFORCEMENT POWERS.—With respect to  
14 the administration and enforcement of this section  
15 in the case of a claim alleged by an employee or ap-  
16 plicant for a violation of this section—

17 (A) the Commission shall have the same  
18 powers as the Commission has to administer  
19 and enforce—

20 (i) title VII of the Civil Rights Act of  
21 1964 (42 U.S.C. 2000e et seq.);

22 (ii) the Age Discrimination in Em-  
23 ployment Act of 1967 (29 U.S.C. 621 et  
24 seq.);

1 (iii) titles I and V of the Americans  
2 with Disabilities Act of 1990 (42 U.S.C.  
3 12101 et seq.);

4 (iv) title II of the Genetic Information  
5 Nondiscrimination Act of 2008 (42 U.S.C.  
6 2000ff et seq.); or

7 (v) sections 302 and 304 of the Gov-  
8 ernment Employee Rights Act of 1991 (42  
9 U.S.C. 2000e–16b and 2000e–16c),  
10 in the case of a claim alleged by an employee  
11 or applicant for a violation of the law specified  
12 in respective clause of this subparagraph;

13 (B) the Librarian of Congress shall have  
14 the same powers as the Librarian of Congress  
15 has to administer and enforce title VII of the  
16 Civil Rights Act of 1964 (42 U.S.C. 2000e et  
17 seq.) in the case of a claim alleged by an em-  
18 ployee or applicant for a violation of such title;

19 (C) the Board (as defined in section 101 of  
20 the Congressional Accountability Act of 1995 (2  
21 U.S.C. 1301)) shall have the same powers as  
22 the Board has to administer and enforce the  
23 Congressional Accountability Act of 1995 (2  
24 U.S.C. 1301 et seq.) in the case of a claim al-  
25 leged by an employee or applicant for a viola-

1           tion of section 201(a)(1) of such Act (2 U.S.C.  
2           1311(a)(1));

3           (D) the Attorney General shall have the  
4           same powers as the Attorney General has to ad-  
5           minister and enforce—

6                   (i) title VII of the Civil Rights Act of  
7                   1964 (42 U.S.C. 2000e et seq.); or

8                   (ii) sections 302 and 304 of the Gov-  
9                   ernment Employee Rights Act of 1991 (42  
10                  U.S.C. 2000e–16b and 2000e–16c),

11          in the case of a claim alleged by an employee  
12          or applicant for a violation of the law specified  
13          in respective clause of this subparagraph;

14          (E) the President, the Commission, and  
15          the Merit Systems Protection Board shall have  
16          the same powers as the President, the Commis-  
17          sion, and the Board, respectively, have to ad-  
18          minister and enforce chapter 5 of title 3,  
19          United States Code, in the case of a claim al-  
20          leged by an employee or applicant for a viola-  
21          tion of section 411 of such title;

22          (F) the Commission shall have the same  
23          powers as described in subparagraph (A) to ad-  
24          minister and enforce a claim by any employee  
25          or applicant who is not otherwise able to seek

1 remedy for a claim through an enforcement en-  
2 tity described in subparagraph (A) through (E);  
3 and

4 (G) a court of the United States shall have  
5 the same jurisdiction and powers as the court  
6 has to enforce—

7 (i) title VII of the Civil Rights Act of  
8 1964 (42 U.S.C. 2000e et seq.) in the case  
9 of a claim alleged by an employee or appli-  
10 cant for a violation of such title or in the  
11 case of a claim described in subparagraph  
12 (F);

13 (ii) the Age Discrimination in Em-  
14 ployment Act of 1967 (29 U.S.C. 621 et  
15 seq.);

16 (iii) titles I and V of the Americans  
17 with Disabilities Act of 1990 (42 U.S.C.  
18 12101 et seq.);

19 (iv) title II of the Genetic Information  
20 Nondiscrimination Act of 2008 (42 U.S.C.  
21 2000ff et seq.);

22 (v) sections 302 and 304 of the Gov-  
23 ernment Employee Rights Act of 1991 (42  
24 U.S.C. 2000e–16b and 2000e–16c) in the  
25 case of a claim alleged by an employee or

1 applicant for a violation of section  
2 302(a)(1) of such Act (42 U.S.C. 2000e–  
3 16b(a)(1));

4 (vi) the Congressional Accountability  
5 Act of 1995 (2 U.S.C. 1301 et seq.) in the  
6 case of a claim alleged by an employee or  
7 applicant for a violation of section  
8 201(a)(1) of such Act (2 U.S.C.  
9 1311(a)(1)); and

10 (vii) chapter 5 of title 3, United  
11 States Code, in the case of a claim alleged  
12 by an employee or applicant for a violation  
13 of section 411 of such title.

14 (2) PROCEDURES AND REMEDIES.—The proce-  
15 dures and remedies applicable to a claim alleged by  
16 an employee or applicant for a violation of this sec-  
17 tion are—

18 (A) the procedures and remedies applicable  
19 for a violation of title VII of the Civil Rights  
20 Act of 1964 (42 U.S.C. 2000e et seq.) in the  
21 case of a claim alleged by an employee or appli-  
22 cant for a violation of such title or in the case  
23 of a claim described in paragraph (1)(F);

24 (B) the Age Discrimination in Employment  
25 Act of 1967 (29 U.S.C. 621 et seq.);

1 (C) titles I and V of the Americans with  
2 Disabilities Act of 1990 (42 U.S.C. 12101 et  
3 seq.);

4 (D) title II of the Genetic Information  
5 Nondiscrimination Act of 2008 (42 U.S.C.  
6 2000ff et seq.);

7 (E) the procedures and remedies applicable  
8 for a violation of section 302(a)(1) of the Gov-  
9 ernment Employee Rights Act of 1991 (42  
10 U.S.C. 2000e–16b(a)(1)) in the case of a claim  
11 alleged by an employee or applicant for a viola-  
12 tion of such section;

13 (F) the procedures and remedies applicable  
14 for a violation of section 201(a)(1) of the Con-  
15 gressional Accountability Act of 1995 (2 U.S.C.  
16 1311(a)(1)) in the case of a claim alleged by an  
17 employee or applicant for a violation of such  
18 section; and

19 (G) the procedures and remedies applicable  
20 for a violation of section 411 of title 3, United  
21 States Code, in the case of a claim alleged by  
22 an employee or applicant for a violation of such  
23 section.

24 (3) OTHER APPLICABLE PROVISIONS.—With re-  
25 spect to a claim alleged by a covered employee (as

1 defined in section 101 of the Congressional Account-  
2 ability Act of 1995 (2 U.S.C. 1301)) for a violation  
3 of this section, title III of the Congressional Ac-  
4 countability Act of 1995 (2 U.S.C. 1381 et seq.)  
5 shall apply in the same manner as such title applies  
6 with respect to a claim alleged by such a covered  
7 employee for a violation of section 201(a)(1) of such  
8 Act (2 U.S.C. 1311(a)(1)).

9 (e) REGULATIONS.—

10 (1) IN GENERAL.—Except as provided in para-  
11 graphs (2), (3), and (4), the Commission shall have  
12 authority to issue regulations to carry out this sec-  
13 tion.

14 (2) LIBRARIAN OF CONGRESS.—The Librarian  
15 of Congress shall have authority to issue regulations  
16 to carry out this section with respect to employees  
17 or applicants for employment of the Library of Con-  
18 gress.

19 (3) BOARD.—The Board referred to in sub-  
20 section (d)(1)(C) shall have authority to issue regu-  
21 lations to carry out this section, in accordance with  
22 section 304 of the Congressional Accountability Act  
23 of 1995 (2 U.S.C. 1384), with respect to covered  
24 employees, as defined in section 101 of such Act (2  
25 U.S.C. 1301).

1           (4) PRESIDENT.—The President shall have au-  
2           thority to issue regulations to carry out this section  
3           with respect to covered employees, as defined in sec-  
4           tion 411(c) of title 3, United States Code, and appli-  
5           cants for employment as such employees.

6           (f) STATE AND FEDERAL IMMUNITY.—

7           (1) ABROGATION OF STATE IMMUNITY.—A  
8           State shall not be immune under the 11th Amend-  
9           ment to the Constitution from a suit brought in a  
10          Federal court of competent jurisdiction for a viola-  
11          tion of this section.

12          (2) WAIVER OF STATE IMMUNITY.—

13           (A) IN GENERAL.—

14           (i) WAIVER.—A State’s receipt or use  
15           of Federal financial assistance for any pro-  
16           gram or activity of a State shall constitute  
17           a waiver of sovereign immunity, under the  
18           11th Amendment to the Constitution or  
19           otherwise, to a suit brought by an em-  
20           ployee or applicant for employment of that  
21           program or activity under this section for  
22           a remedy authorized under subsection (d).

23           (ii) DEFINITION.—In this paragraph,  
24           the term “program or activity” has the  
25           meaning given the term in section 606 of

1           the Civil Rights Act of 1964 (42 U.S.C.  
2           2000d–4a).

3           (B) EFFECTIVE DATE.—With respect to a  
4           particular program or activity, subparagraph  
5           (A) applies to conduct occurring on or after the  
6           day, after the date of enactment of this Act, on  
7           which a State first receives or uses Federal fi-  
8           nancial assistance for that program or activity.

9           (3) REMEDIES AGAINST STATE OFFICIALS.—An  
10          official of a State may be sued in the official capac-  
11          ity of the official by any employee or applicant for  
12          employment who has complied with the applicable  
13          procedures of subsection (d), for equitable relief that  
14          is authorized under this section. In such a suit the  
15          court may award to the prevailing party those costs  
16          authorized by section 722 of the Revised Statutes  
17          (42 U.S.C. 1988).

18          (4) REMEDIES AGAINST THE UNITED STATES  
19          AND THE STATES.—Notwithstanding any other pro-  
20          vision of this title, in an action or administrative  
21          proceeding against the United States or a State for  
22          a violation of this section, remedies (including rem-  
23          edies at law and in equity, and interest) are avail-  
24          able for the violation to the same extent as the rem-  
25          edies are available for a violation of title VII of the

1 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)  
2 by a private entity, except that—

3 (A) punitive damages are not available;

4 and

5 (B) compensatory damages are available to  
6 the extent specified in section 1977A(b) of the  
7 Revised Statutes (42 U.S.C. 1981a(b)).

8 **SEC. 104. SEC FILINGS AND MATERIAL DISCLOSURES AT**  
9 **PUBLIC COMPANIES.**

10 (a) DEFINITIONS.—In this section—

11 (1) the term “Form 10–K” means the form de-  
12 scribed in section 249.310 of title 17, Code of Fed-  
13 eral Regulations, or any successor regulation; and

14 (2) the term “issuer” has the meaning given  
15 the term in section 3(a) of the Securities Exchange  
16 Act of 1934 (15 U.S.C. 78c(a)).

17 (b) FINDINGS.—Congress finds that—

18 (1) shareholders and the public should know  
19 whether corporations—

20 (A) are expending company funds to re-  
21 solve, settle, or litigate claims of workplace har-  
22 assment, including sexual harassment; and

23 (B) along with the executives and man-  
24 agers of those corporations—

1 (i) are complying with prohibitions  
2 against workplace harassment, including  
3 sexual harassment; and

4 (ii) facilitate a culture of silence, dis-  
5 respect, intimidation, and abuse that nega-  
6 tively impacts the health and safety of the  
7 workers of those corporations and the  
8 value of those corporations; and

9 (2) the requirements of this section will—

10 (A) establish necessary transparency and  
11 accountability; and

12 (B) provide an incentive for corporations  
13 to—

14 (i) promptly address workplace har-  
15 assment, including sexual harassment, as  
16 that misconduct occurs; and

17 (ii) foster a culture in which work-  
18 place harassment is not protected and does  
19 not occur.

20 (c) INFORMATION REQUIRED.—Not later than 1 year  
21 after the date of enactment of this Act, the Securities and  
22 Exchange Commission shall promulgate a regulation that  
23 requires any issuer that is required to submit annually a  
24 report using Form 10-K to include in any such submis-  
25 sion—

1           (1) during the then most recent 5-year period  
2 covered by the submission—

3           (A) with respect to workplace harassment,  
4 including sexual harassment, and retaliation for  
5 reporting, resisting, opposing, assisting, or oth-  
6 erwise participating in a workplace harassment  
7 proceeding—

8           (i) the number of settlements reached  
9 by the issuer as a signatory or when the  
10 issuer is a beneficiary of a release of  
11 claims; and

12           (ii) whether any judgments or awards  
13 (including awards through arbitration or  
14 administrative proceedings) were entered  
15 against the issuer in part or in whole, or  
16 any payments made in connection with a  
17 release of claims; and

18           (B) the total amount paid by the issuer or  
19 another party as a result of—

20           (i) the settlements described in sub-  
21 paragraph (A)(i); and

22           (ii) the judgments described in sub-  
23 paragraph (A)(ii); and

24           (2) information regarding whether, in the ag-  
25 gregate, including the period covered by the submis-

1 sion, there have been three or more settlements  
2 reached by, or judgments against, the issuer with re-  
3 spect to workplace harassment, including sexual har-  
4 assment, or retaliation for reporting, resisting, op-  
5 posing, assisting, or otherwise participating in a  
6 workplace harassment proceeding that relate to a  
7 particular individual employed by the issuer, without  
8 identifying that individual by name.

9 **SEC. 105. PROFESSIONAL TRAINING, INCLUDING BY-**  
10 **STANDER TRAINING, AND PUBLIC EDU-**  
11 **CATION CAMPAIGNS.**

12 (a) COMMISSION AUTHORITY.—The Commission  
13 shall have the authority to—

14 (1) reasonably adjust the fees the Commission  
15 charges for any education, technical assistance, or  
16 training the Commission offers in accordance with  
17 section 705(j)(1) of the Civil Rights Act of 1964 (42  
18 U.S.C. 2000e-4(j)(1));

19 (2) use the materials developed by the Commis-  
20 sion for any education, technical assistance, or train-  
21 ing offered by the Commission in accordance with  
22 section 705(j)(1) of the Civil Rights Act of 1964 in  
23 any education and outreach activities carried out by  
24 the Commission; and

1           (3) use funds from the EEOC Education, Tech-  
2           nical Assistance, and Training Revolving Fund, es-  
3           tablished under section 705(k) of the Civil Rights  
4           Act of 1964, to pay the full salaries of any Commis-  
5           sion employees that develop and administer any edu-  
6           cation, technical assistance, or training programs of-  
7           fered by the Commission.

8           (b) WORKPLACE TRAINING.—

9           (1) IN GENERAL.—The Commission shall pro-  
10          vide for the development and dissemination of work-  
11          place training programs and information regarding  
12          workplace harassment, including sexual harassment.

13          (2) CONTENTS OF TRAINING.—The training  
14          provided by the Commission under this subsection to  
15          managers and nonmanagers shall be consistent with  
16          the findings of the Commission, on matters includ-  
17          ing—

18                 (A) what constitutes workplace harass-  
19                 ment, including sexual harassment;

20                 (B) the rights of individuals with respect  
21                 to workplace harassment and how to report  
22                 workplace harassment;

23                 (C) how individuals, including bystanders,  
24                 who encounter workplace harassment can inter-  
25                 vene or report the harassment; and

1 (D) how employers and managers can pre-  
2 vent workplace harassment, including sexual  
3 harassment, from occurring in the workplace.

4 (3) CONTENTS OF INFORMATION.—In providing  
5 information under this subsection, the Commission  
6 shall—

7 (A) prepare and distribute information  
8 that is consistent with the findings of the Com-  
9 mission; and

10 (B) develop and disseminate a public serv-  
11 ice advertisement campaign that distributes in-  
12 formation with respect to the matters described  
13 in paragraph (2).

14 (c) EFFECTIVE DATE.—This section shall not take  
15 effect in any fiscal year for which less than \$1,500,000  
16 is appropriated to carry out this section.

17 **TITLE II—MODIFICATION OF TAX**  
18 **TREATMENT OF AMOUNTS**  
19 **RELATED TO EMPLOYMENT**  
20 **DISCRIMINATION AND WORK-**  
21 **PLACE HARASSMENT**

22 **SEC. 201. TAX TREATMENT OF AMOUNTS RELATED TO**  
23 **JUDGMENTS.**

24 (a) DENIAL OF DEDUCTION.—

1           (1) IN GENERAL.—Part IX of subchapter B of  
2 chapter 1 of the Internal Revenue Code of 1986 is  
3 amended by adding at the end the following new sec-  
4 tion:

5 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**  
6 **SPECT TO WORKPLACE HARASSMENT, IN-**  
7 **CLUDING SEXUAL HARASSMENT.**

8           “No deduction shall be allowed under this chapter for  
9 amounts paid or incurred by the taxpayer—

10           “(1) pursuant to any judgment or award in liti-  
11 gation related to workplace harassment, including  
12 sexual harassment, or

13           “(2) for expenses and attorney’s fees in connec-  
14 tion with the litigation resulting in the judgment or  
15 award described in paragraph (1) (other than ex-  
16 penses or attorney’s fees paid by the workplace har-  
17 assment plaintiff or claimant), or for any insurance  
18 covering the defense or liability of the underlying  
19 claims with respect to such litigation.”.

20           (2) CLERICAL AMENDMENT.—The table of sec-  
21 tions for part IX of subchapter B of chapter 1 of  
22 such Code is amended by adding at the end the fol-  
23 lowing new item:

“Sec. 280I. Amounts related to judgments with respect to workplace harass-  
ment, including sexual harassment.”.

1           (3) CONFORMING AMENDMENT.—Section 162  
2 of such Code is amended by striking subsection (q).

3           (4) EFFECTIVE DATE.—The amendments made  
4 by this subsection shall apply to amounts paid or in-  
5 curred in taxable years beginning after the date of  
6 the enactment of this Act.

7           (b) EXCLUSION FROM INCOME.—

8           (1) IN GENERAL.—Part III of subchapter B of  
9 chapter 1 of the Internal Revenue Code of 1986 is  
10 amended by inserting after section 139G the fol-  
11 lowing new section:

12 **“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH**  
13 **JUDGMENTS, AWARDS, AND SETTLEMENTS**  
14 **WITH RESPECT TO WORKPLACE HARASS-**  
15 **MENT.**

16           “Gross income shall not include any amount received  
17 in connection with a judgment or award in, or a settlement  
18 of—

19           “(1) a claim related to workplace harassment,  
20 including sexual harassment or other unlawful dis-  
21 crimination, or

22           “(2) any other claim of unlawful discrimination  
23 (as defined by section 62(e)).

1 The preceding sentence shall not include any employment  
 2 discrimination compensation to which section 1302 ap-  
 3 plies.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-  
 5 tions for part III of subchapter B of chapter 1 of  
 6 such Code is amended by inserting after the item re-  
 7 lating to section 139G the following new item:

“Sec. 139H. Amounts received in connection with judgments, awards, and set-  
 tlements with respect to workplace harassment.”.

8 (3) EFFECTIVE DATE.—The amendments made  
 9 by this subsection shall apply to amounts received in  
 10 taxable years beginning after the date of the enact-  
 11 ment of this Act.

12 **SEC. 202. LIMITATION ON TAX BASED ON INCOME AVER-**  
 13 **AGING FOR COMPENSATION RECEIVED ON**  
 14 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**  
 15 **MENT DISCRIMINATION.**

16 (a) IN GENERAL.—Part I of subchapter Q of chapter  
 17 1 of the Internal Revenue Code of 1986 (relating to in-  
 18 come averaging) is amended by adding at the end the fol-  
 19 lowing new section:

20 **“SEC. 1302. INCOME FROM BACKPAY AND FRONTPAY RE-**  
 21 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**  
 22 **FUL EMPLOYMENT DISCRIMINATION.**

23 “(a) GENERAL RULE.—If employment discrimination  
 24 backpay or frontpay is received by a taxpayer during a

1 taxable year, the tax imposed by this chapter for such tax-  
2 able year shall not exceed the sum of—

3 “(1) the tax which would be so imposed if—

4 “(A) no amount of such backpay or  
5 frontpay were included in gross income for such  
6 year, and

7 “(B) no deduction were allowed for such  
8 year for expenses (otherwise allowable as a de-  
9 duction to the taxpayer for such year) in con-  
10 nection with making or prosecuting any claim  
11 of unlawful employment discrimination by or on  
12 behalf of the taxpayer, plus

13 “(2) the product of—

14 “(A) the number of years in the backpay  
15 period and frontpay period, and

16 “(B) the amount by which the tax deter-  
17 mined under paragraph (1) would increase if  
18 the amount on which such tax is determined  
19 were increased by the average annual net back-  
20 pay and frontpay amount.

21 “(b) DEFINITIONS.—For purposes of this section—

22 “(1) EMPLOYMENT DISCRIMINATION BACKPAY  
23 OR FRONTPAY.—The term ‘employment discrimina-  
24 tion backpay or frontpay’ means backpay or  
25 frontpay receivable (whether as lump sums or peri-

1       odic payments) on account of a claim of unlawful  
2       employment discrimination.

3               “(2) UNLAWFUL EMPLOYMENT DISCRIMINA-  
4       TION.—The term ‘unlawful employment discrimina-  
5       tion’ has the meaning provided the term ‘unlawful  
6       discrimination’ in section 62(e).

7               “(3) BACKPAY AND FRONTPAY.—The terms  
8       ‘backpay’ and ‘frontpay’ mean amounts—

9                       “(A) which are includible in gross income  
10       in the taxable year as compensation which is at-  
11       tributable—

12                               “(i) in the case of backpay, to services  
13       performed, or that would have been per-  
14       formed but for a claimed violation of law,  
15       as an employee, former employee, or pro-  
16       spective employee before such taxable year  
17       for the taxpayer’s employer, former em-  
18       ployer, or prospective employer, and

19                               “(ii) in the case of frontpay, to em-  
20       ployment that would have been performed  
21       but for a claimed violation of law, in a tax-  
22       able year or taxable years following the  
23       taxable year, and

1           “(B) which are received on account of a  
2 judgment or settlement resulting from a claim  
3 for a violation of law.

4           “(4) BACKPAY PERIOD.—The term ‘backpay pe-  
5 riod’ means the period during which services are  
6 performed (or would have been performed) to which  
7 backpay is attributable. If such period is not equal  
8 to a whole number of taxable years, such period  
9 shall be increased to the next highest number of  
10 whole taxable years.

11           “(5) FRONTPAY PERIOD.—The term ‘frontpay  
12 period’ means the period of foregone employment to  
13 which frontpay is attributable. If such period is not  
14 equal to a whole number of taxable years, such pe-  
15 riod shall be increased to the next highest number  
16 of whole taxable years.

17           “(6) AVERAGE ANNUAL NET BACKPAY AND  
18 FRONTPAY AMOUNT.—The term ‘average annual net  
19 backpay and frontpay amount’ means the amount  
20 equal to—

21                   “(A) the excess of—

22                           “(i) employment discrimination back-  
23 pay and frontpay, over

1                   “(ii) the amount of deductions that  
2                   would have been allowable but for sub-  
3                   section (a)(1)(B), divided by

4                   “(B) the number of years in the backpay  
5                   period and frontpay period.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7 for part I of subchapter Q of chapter 1 of the Internal  
8 Revenue Code of 1986 is amended by inserting after sec-  
9 tion 1301 the following new item:

          “Sec. 1302. Income from compensation received on account of certain unlawful  
          employment discrimination.”.

10           (c) INCOME AVERAGING NOT TO INCREASE ALTER-  
11 NATIVE MINIMUM TAX LIABILITY.—Section 55(c) of the  
12 Internal Revenue Code of 1986 is amended by redesignig-  
13 nating paragraph (3) as paragraph (4) and by inserting  
14 after paragraph (2) the following new paragraph:

15                   “(3) COORDINATION WITH INCOME AVERAGING  
16                   FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-  
17                   MENT DISCRIMINATION.—Solely for purposes of this  
18                   section, section 1302 shall not apply in computing  
19                   the regular tax liability.”.

20           (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to amounts paid or incurred in tax-  
22 able years beginning after the date of the enactment of  
23 this Act.

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