

117TH CONGRESS
2D SESSION

H. R. 9403

To provide whistleblower protections to certain workers in the offshore oil and gas industry.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2022

Mr. DESAULNIER introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide whistleblower protections to certain workers in the offshore oil and gas industry.

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 “Offshore Oil and Gas
5 Worker Whistleblower Protection Act”.

6 **SEC. 2. WHISTLEBLOWER PROTECTIONS; EMPLOYEE PRO-**
7 **TECTION FROM OTHER RETALIATION.**

8 (a) PROHIBITION AGAINST RETALIATION.—No em-
9 ployer may discharge or otherwise discriminate against a
10 covered employee because the covered employee, whether

1 at the covered employee's initiative or in the ordinary
2 course of the covered employee's duties—

3 (1) provided, caused to be provided, or is about
4 to provide or cause to be provided to the employer
5 or to a Federal or State Government official, infor-
6 mation relating to any violation of, or any act or
7 omission the covered employee reasonably believes to
8 be a violation of, any provision of the Outer Conti-
9 nental Shelf Lands Act (43 U.S.C. 1301 et seq.), or
10 any order, rule, regulation, standard, or prohibition
11 under that Act, or exercised any rights provided to
12 employees under that Act;

13 (2) testified or is about to testify in a pro-
14 ceeding concerning such violation;

15 (3) assisted or participated or is about to assist
16 or participate in such a proceeding;

17 (4) testified or is about to testify before Con-
18 gress on any matter covered by such Act;

19 (5) objected to, or refused to participate in any
20 activity, policy, practice, or assigned task that the
21 covered employee reasonably believed to be in viola-
22 tion of any provision of such Act, or any order, rule,
23 regulation, standard, or ban under such Act;

24 (6) reported to the employer or a State or Fed-
25 eral Government official an illness, injury, unsafe

1 condition, or information regarding the adequacy of
2 any oil spill response plan required by law related to
3 the employer's activities described in section 3(1); or

4 (7) refused to perform the covered employee's
5 duties, or exercised stop work authority, related to
6 the employer's activities described in section 3(1) if
7 the covered employee had a reasonable belief that
8 performing such duties could result in injury to or
9 impairment of the health of the covered employee or
10 other employees, or cause an oil spill to the environ-
11 ment.

12 (b) PROCESS.—

13 (1) IN GENERAL.—A covered employee who be-
14 lieves that he or she has been discharged or other-
15 wise discriminated against (hereafter referred to as
16 the “complainant”) by any employer in violation of
17 subsection (a)(1) may, not later than 180 days after
18 the date on which such alleged violation occurs or
19 the date on which the covered employee knows or
20 should reasonably have known that such alleged vio-
21 lation occurred, file (or have any person file on his
22 or her behalf) a complaint with the Secretary of
23 Labor (referred to in this section as the “Sec-
24 retary”) alleging such discharge or discrimination
25 and identifying employer or employers responsible

1 for such act. Upon receipt of such a complaint, the
2 Secretary shall notify, in writing, the employer or
3 employers named in the complaint of the filing of
4 the complaint, of the allegations contained in the
5 complaint, of the substance of evidence supporting
6 the complaint, and of the opportunities that will be
7 afforded to such person under paragraph (2).

8 (2) INVESTIGATION.—

9 (A) IN GENERAL.—Not later than 90 days
10 after the date of receipt of a complaint filed
11 under paragraph (1) the Secretary shall initiate
12 an investigation and determine whether there is
13 reasonable cause to believe that the complaint
14 has merit and notify, in writing, the complain-
15 ant and the employer or employers alleged to
16 have committed a violation of subsection (a)(1)
17 of the Secretary's findings. The Secretary shall,
18 during such investigation afford the complain-
19 ant and the employer or employers named in
20 the complaint an opportunity to submit to the
21 Secretary a written response to the complaint
22 and an opportunity to meet with a representa-
23 tive of the Secretary to present statements from
24 witnesses. The complainant shall be provided
25 with an opportunity to review the information

1 and evidence provided by employer or employers
2 to the Secretary, and to review any response or
3 rebuttal by such the complaint, as part of such
4 investigation.

5 (B) REASONABLE CAUSE FOUND; PRELIMI-
6 NARY ORDER.—If the Secretary concludes that
7 there is reasonable cause to believe that a viola-
8 tion of subsection (a)(1) has occurred, the Sec-
9 retary shall accompany the Secretary’s findings
10 with a preliminary order providing the relief
11 prescribed by paragraph (3)(B).

12 (C) RIGHT OF PARTIES TO APPEAL.—Not
13 later than 30 days after the date of notification
14 of findings under this paragraph, the employer
15 or employers alleged to have committed the vio-
16 lation or the complainant may file objections to
17 the findings or preliminary order, or both, in-
18 cluding the dismissal of the complaint, in whole
19 or in part, and request a hearing on the record
20 before an administrative law judge of the De-
21 partment of Labor. Any such hearing shall be
22 conducted expeditiously. If a hearing is not re-
23 quested in such 30-day period, the preliminary
24 order shall be deemed a final order that is not
25 subject to judicial review. The filing of such ob-

1 jections shall not operate to stay any reinstatement
2 remedy contained in the preliminary order
3 issued under subparagraph (B). The Secretary
4 of Labor is authorized to enforce preliminary
5 reinstatement orders in the United States district
6 court for the district in which the violation
7 was found to occur, or in the United States district
8 court for the District of Columbia.

9 (D) DISMISSAL OF COMPLAINT.—

10 (i) STANDARD FOR COMPLAINANT.—

11 The Secretary shall dismiss a complaint
12 filed under this subsection and shall not
13 conduct an investigation otherwise required
14 under subparagraph (A) unless the complainant makes a prima facie showing that
15 any behavior described in subparagraphs
16 (A) through (G) of subsection (a)(1) was a
17 contributing factor in the adverse action
18 alleged in the complaint.

19 (ii) STANDARD FOR EMPLOYER.—Not-

20 withstanding a finding by the Secretary
21 that the complainant has made the showing
22 required under clause (i), no investigation
23 otherwise required under subparagraph
24 (A) shall be conducted if the em-

1 employer demonstrates, by clear and con-
2 vincing evidence, that the employer would
3 have taken the same adverse action in the
4 absence of that behavior.

5 (iii) VIOLATION STANDARD.—The
6 Secretary may determine that a violation
7 of subsection (a)(1) has occurred only if
8 the complainant demonstrates that any be-
9 havior described in subparagraphs (A)
10 through (G) of such subsection was a con-
11 tributing factor in the adverse action al-
12 leged in the complaint.

13 (iv) RELIEF STANDARD.—Relief may
14 not be ordered under subparagraph (A) if
15 the employer demonstrates by clear and
16 convincing evidence that the employer
17 would have taken the same adverse action
18 in the absence of that behavior.

19 (3) ORDERS.—

20 (A) IN GENERAL.—Not later than 90 days
21 after the receipt of a request for a hearing
22 under subsection (b)(2)(B), the administrative
23 law judge shall issue findings of fact and order
24 the relief provided under this paragraph or
25 deny the complaint. At any time before issuance

1 of an order, a proceeding under this subsection
2 may be terminated on the basis of a settlement
3 agreement entered into by the Secretary, the
4 complainant, and the person alleged to have
5 committed the violation. Such a settlement may
6 not be agreed by such parties if it contains con-
7 ditions which conflict with rights protected
8 under this Act, are contrary to public policy, or
9 include a restriction on a complainant's right to
10 future employment with employers other than
11 the specific employers named in the complaint.

12 (B) CONTENT OF ORDER.—If, in response
13 to a complaint filed under paragraph (1), the
14 administrative law judge determines that a vio-
15 lation of subsection (a)(1) has occurred, the ad-
16 ministrative law judge shall order the employer
17 or employers who committed such violation to—

18 (i) take affirmative action to abate the
19 violation;

20 (ii) reinstate the complainant to his or
21 her former position together with com-
22 pensation (including double back pay and
23 prejudgment interest) and restore the
24 terms, conditions, and privileges associated
25 with his or her employment;

1 (iii) expunge of all warnings, rep-
2 rimands, or derogatory references that
3 have been placed in paper or electronic
4 records or databases of any type relating
5 to the actions by the complainant that
6 gave rise to the unfavorable personnel ac-
7 tion, and, at the complainant's direction,
8 transmit a copy of the decision on the com-
9 plaint to any person whom the complainant
10 reasonably believes may have received such
11 unfavorable information; and

12 (iv) provide compensatory and con-
13 sequential damages, and, as appropriate,
14 exemplary damages to the complainant.

15 (C) ATTORNEY FEES.—If such an order is
16 issued under this paragraph, the Secretary, at
17 the request of the complainant, shall assess
18 against the employer or employers a sum equal
19 to the aggregate amount of all costs and ex-
20 penses (including attorneys' and expert witness
21 fees) reasonably incurred by the complainant
22 for, or in connection with, the bringing of the
23 complaint upon which the order was issued at
24 the conclusion of any stage of the proceeding.

1 (D) ADMINISTRATIVE APPEAL.—Not later
2 than 30 days after the receipt of findings of
3 fact or an order under subparagraph (B), the
4 employer or employers alleged to have com-
5 mitted the violation or the complainant may
6 file, with objections, an administrative appeal
7 with the Secretary, who may designate such ap-
8 peal to a review board. In reviewing a decision
9 and order of the administrative law judge, the
10 Secretary shall affirm the decision and order if
11 it is determined that the factual findings set
12 forth therein are supported by substantial evi-
13 dence and the decision and order are made in
14 accordance with applicable law. The Secretary
15 shall issue a final decision and order affirming,
16 or reversing, in whole or in part, the decision
17 under review within 90 days after receipt of the
18 administrative appeal under this subparagraph.
19 If it is determined that a violation of subsection
20 (a)(1) has occurred, the Secretary shall order
21 relief provided under subparagraphs (B) and
22 (C). Such decision shall constitute a final agen-
23 cy action with respect to the matter appealed.
24 (4) ACTION IN COURT.—

1 (A) IN GENERAL.—If the Secretary has
2 not issued a final decision within 330 days after
3 the filing of the complaint, the complainant
4 may bring an action at law or equity for de
5 novo review in the appropriate district court of
6 the United States, which action shall, at the re-
7 quest of either party to such action, be tried by
8 the court with a jury. The proceedings shall be
9 governed by the same legal burdens of proof
10 specified in paragraph (2)(C).

11 (B) RELIEF.—The court may award all
12 appropriate relief including injunctive relief,
13 compensatory and consequential damages, in-
14 cluding—

15 (i) reinstatement with the same se-
16 niority status that the covered employee
17 would have had, but for the discharge or
18 discrimination;

19 (ii) the amount of double back pay
20 sufficient to make the covered employee
21 whole, with prejudgment interest;

22 (iii) expungement of all warnings, rep-
23 rimands, or derogatory references that
24 have been placed in paper or electronic
25 records or databases of any type relating

1 to the actions by the complainant that
2 gave rise to the unfavorable personnel ac-
3 tion, and, at the complainant's direction,
4 transmission of a copy of the decision on
5 the complaint to any person whom the
6 complainant reasonably believes may have
7 received such unfavorable information;

8 (iv) exemplary damages, as appro-
9 priate; and

10 (v) litigation costs, including reason-
11 able attorney fees and expert witness fees.

12 (5) REVIEW.—

13 (A) IN GENERAL.—Any person aggrieved
14 by a final order issued under paragraph (3) or
15 a judgment or order under paragraph (4) may
16 obtain review of the order in the appropriate
17 United States Court of Appeals. The petition
18 for review must be filed not later than 60 days
19 after the date of the issuance of the final order
20 of the Secretary. Review shall be in accordance
21 with chapter 7 of title 5, United States Code.
22 The commencement of proceedings under this
23 subparagraph shall not, unless ordered by the
24 court, operate as a stay of the order.

1 (B) NO OTHER JUDICIAL REVIEW.—An
2 order of the Secretary with respect to which re-
3 view could have been obtained under subpara-
4 graph (A) shall not be subject to judicial review
5 in any other proceeding.

6 (6) FAILURE TO COMPLY WITH ORDER.—When-
7 ever any employer has failed to comply with an order
8 issued under paragraph (3), the Secretary may ob-
9 tain in a civil action in the United States district
10 court for the district in which the violation was
11 found to occur, or in the United States district court
12 for the District of Columbia, all appropriate relief
13 including, but not limited to, injunctive relief and
14 compensatory damages.

15 (7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

16 (A) IN GENERAL.—Whenever an employer
17 has failed to comply with an order issued under
18 paragraph (3), the complainant on whose behalf
19 the order was issued may obtain in a civil ac-
20 tion in an appropriate United States district
21 court against the employer to whom the order
22 was issued, all appropriate relief.

23 (B) AWARD.—The court, in issuing any
24 final order under this paragraph, may award
25 costs of litigation (including reasonable attor-

1 neys' and expert witness fees) to any party
2 whenever the court determines such award is
3 appropriate.

4 (c) CONSTRUCTION.—

5 (1) EFFECT ON OTHER LAWS.—Nothing in this
6 section preempts or diminishes any other safeguards
7 against discrimination, demotion, discharge, suspen-
8 sion, threats, harassment, reprimand, retaliation, or
9 any other manner of discrimination provided by Fed-
10 eral or State law.

11 (2) RIGHTS OF EMPLOYEES.—Nothing in this
12 section shall be construed to diminish the rights,
13 privileges, or remedies of any employee under any
14 Federal or State law or under any collective bar-
15 gaining agreement. The rights and remedies in this
16 section may not be waived by any agreement (includ-
17 ing an arbitration agreement), policy, form, or con-
18 dition of employment.

19 (d) ENFORCEMENT OF NONDISCRETIONARY DU-
20 TIES.—Any nondiscretionary duty imposed by this section
21 shall be enforceable in a mandamus proceeding brought
22 under section 1361 of title 28, United States Code.

23 (e) POSTING OF NOTICE AND TRAINING.—All em-
24 ployers shall post a notice which has been approved as to
25 form and content by the Secretary of Labor in a con-

1 spicuous location in the place of employment where cov-
2 ered employees frequent which explains employee rights
3 and remedies under this section. Each employer shall pro-
4 vide training to covered employees of their rights under
5 this section within 30 days of employment, and at not less
6 than once every 12 months thereafter, and provide covered
7 employees with a card which contains a toll free telephone
8 number at the Department of Labor which covered em-
9 ployees can call to get information or file a complaint
10 under this section.

11 (f) DESIGNATION BY THE SECRETARY.—The Sec-
12 retary of Labor shall, within 30 days of the date of enact-
13 ment of this Act, designate by order the appropriate agen-
14 cy officials to receive, investigate, and adjudicate com-
15 plaints of violations of subsection (a)(1).

16 **SEC. 3. DEFINITIONS.**

17 As used in this Act, the following definitions apply:

18 (1) The term “covered employee”—

19 (A) means an individual performing serv-
20 ices on behalf of an employer that is engaged
21 in activities on or in waters above the Outer
22 Continental Shelf related to—

23 (i) supporting or carrying out explo-
24 ration, development, production, proc-
25 essing, or transportation of oil or gas; or

1 (ii) oil spill cleanup, emergency re-
2 sponse, environmental surveillance, protec-
3 tion, or restoration, or other oil spill activi-
4 ties related to occupational safety and
5 health; and

6 (B) includes an applicant for such employ-
7 ment.

8 (2) The term “employer” means one or more
9 individuals, partnerships, associations, corporations,
10 trusts, unincorporated organizations, nongovern-
11 mental organizations, or trustees, and includes any
12 agent, contractor, subcontractor, grantee, or consult-
13 ant of such employer.

14 (3) The term “Outer Continental Shelf” has
15 the meaning that the term “outer Continental Shelf”
16 has in the Outer Continental Shelf Lands Act (43
17 U.S.C. 1331 et seq.).

○