

106TH CONGRESS
1ST SESSION

H. R. 1439

To amend the Occupational Safety and Health Act of 1970.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1999

Mr. BALLENGER (for himself, Mr. HALL of Texas, and Mr. STENHOLM) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Occupational Safety and Health Act of 1970.

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 “Safety and Health
5 Audit Promotion and Whistleblower Improvement Act of
6 1999”.

7 **SEC. 2. SAFETY AND HEALTH AUDIT REPORT.**

8 Section 8(c) of the Occupational Safety and Health
9 Act of 1970 (29 U.S.C. 657(c)) is amended by adding at
10 the end the following:

1 “(4)(A)(i) Records, reports, or other information ob-
2 tained or prepared in connection with safety and health
3 audits conducted by or for the employer shall not be re-
4 quired to be disclosed in any inspection, investigation, or
5 enforcement proceeding pursuant to this Act except as
6 provided in clause (ii). Such records, reports, or other in-
7 formation may be disclosed in the course of an inspection,
8 investigation, or enforcement proceeding to the extent that
9 the employer expressly authorizes the disclosure.

10 “(ii) Such records, reports, or other information may
11 be required to be disclosed to the extent that—

12 “(I) the record, report, or other information is
13 sought as part of a criminal proceeding or fatality
14 investigation; or

15 “(II) the record, report, or other information is
16 sought for purposes of establishing the cause of a
17 particular alleged violation, but only if the Secretary
18 establishes, on evidence independent of such records,
19 reports, or other information, that the condition or
20 practice of the employer is not in compliance with
21 the requirements of this Act for which such record,
22 report, or other information was prepared or ob-
23 tained.

24 “(iii) Any record, report, or other information dis-
25 closed pursuant to subclause (II) of clause (ii) shall be

1 admissible as evidence in any civil or administrative pro-
2 ceeding only to the extent that the Secretary establishes
3 that the employer has not acted in good faith with respect
4 to the audit for which such record, report, or other infor-
5 mation was prepared or obtained.

6 “(B) As used in subparagraph (A)—

7 “(i) the term “safety and health audit” means
8 an evaluation of one or more conditions, practices,
9 processes, operations, or facilities or management
10 systems related to such conditions, practices, proc-
11 esses, operations, or facilities that is designed to
12 identify and prevent noncompliance with this Act or
13 hazards or potential hazards to workers. Such term
14 does not include medical records or records of em-
15 ployee exposure to potentially toxic materials or
16 records of work-related death, injuries, or illnesses
17 required to be maintained under this subsection;

18 “(ii) the term “good faith” means that the em-
19 ployer has undertaken an appropriate process of
20 abating noncompliance, hazards, or potential haz-
21 ards identified by the audit which may include a
22 phased schedule of actions.”.

23 **SEC. 3. DISCRIMINATION.**

24 Section 11(c) of the Occupational Safety and Health
25 Act of 1970 (29 U.S.C. 660(c)) is amended—

1 (1) by striking “thirty” and inserting “60”; and

2 (2) by striking the last 2 sentences of para-

3 graph (2) and striking paragraph (3) and inserting:

4 “(3) If upon such investigation, the Secretary deter-

5 mines that provisions of this subsection have been violated,

6 the Secretary may file a complaint with the Commission.

7 If within 20 days of the Secretary’s receipt of the com-

8 plaint the Secretary does not file a complaint on behalf

9 of the complainant with the Commission, the complainant

10 may file the complaint with the Commission. If either the

11 Secretary or the complainant files a complaint with the

12 Commission, the Commission shall provide an opportunity

13 for a hearing in accordance with section 554 of title 5,

14 United States Code but without regard to subsection

15 (d)(3) of such section. The Commission shall thereafter

16 issue an order, based upon findings of fact. Such order

17 shall become final 30 days after its issuance.

18 “(4) The Commission shall have authority in pro-

19 ceedings under paragraph (3) to order such relief as may

20 be appropriate, including rehiring or reinstatement of the

21 employee to the employee’s former position with back pay

22 and interest.

23 “(5) Any person adversely affected by an order of the

24 Commission under paragraph (3) (or the Secretary in a

25 case arising from a complaint brought by the Secretary)

1 may obtain review of the Commission's order in accord-
2 ance with subsection (a) or (b), as appropriate.”.

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