

106TH CONGRESS  
1ST SESSION

# H. R. 1851

To amend the Occupational Safety and Health Act of 1970 to enhance protections for employees reporting workplace hazards to the Occupational Safety and Health Administration.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1999

Mr. OWENS (for himself, Mr. CLAY, Mr. GEORGE MILLER of California, Mr. MARTINEZ, Mr. PAYNE, Mr. KUCINICH, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Occupational Safety and Health Act of 1970 to enhance protections for employees reporting workplace hazards to the Occupational Safety and Health Administration.

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; REFERENCE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Hazard Reporting Protection Act of 1999”.

6       (b) REFERENCE.—Whenever in this Act an amend-  
7       ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
2 shall be considered to be made in a section or other provi-  
3 sion of the Occupational Safety and Health Act of 1970  
4 (29 U.S.C. 651 et seq.)

5 **SEC. 2. EMPLOYEE ACTIONS.**

6 Section 11(c)(1) (29 U.S.C. 660(c)(1) is amended by  
7 adding at the end the following: “including reporting any  
8 injury, illness or unsafe condition.”

9 **SEC. 3. PROHIBITION OF DISCRIMINATION.**

10 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
11 ing out paragraph (2) and inserting in lieu thereof the  
12 following:

13 “(2) No person shall discharge or in any man-  
14 ner discriminate against an employee for refusing to  
15 perform the employee’s duties when the employee  
16 has a reasonable apprehension that performing such  
17 duties would result in serious injury or serious im-  
18 pairment of health to the employee or other employ-  
19 ees. The circumstances causing the employee’s ap-  
20 prehension of serious injury must be of such a na-  
21 ture that a reasonable person would conclude that  
22 there is a danger of serious injury or serious impair-  
23 ment of health. In order to qualify for protection,  
24 where possible, the employee must have commu-  
25 nicated to his employer the danger perceived.”.

1 **SEC. 4. PROCEDURE.**

2 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
3 ing out paragraph (3) and inserting in lieu thereof the  
4 following:

5 “(3) Any employee who believes that he has  
6 been discharged, disciplined, or otherwise discrimi-  
7 nate against in violation of paragraph (1) or (2)  
8 may, within 180 days after such alleged violation oc-  
9 curs, file (or have filed by any person on the employ-  
10 ee’s behalf) a complaint with the Secretary alleging  
11 such discharge, discipline, or discrimination. Upon  
12 receipt of such a complaint, the Secretary shall no-  
13 tify the person named in the complaint of the filing  
14 of the complaint.

15 “(4)(A) Within 90 days of receipt of a com-  
16 plaint filed under paragraph (3), the Secretary shall  
17 conduct an investigation and determine whether  
18 there is reasonable cause to believe that the com-  
19 plaint has merit and notify the complainant and the  
20 person alleged to have committed the violation of  
21 paragraph (1) or (2) of the Secretary’s findings.  
22 Where the Secretary has concluded that there is rea-  
23 sonable cause to believe that a violation has oc-  
24 curred, the Secretary’s findings shall be accom-  
25 panied by a preliminary order providing the relief  
26 prescribed by paragraph (D).

1       “‘Thereafter,

2               “(i) the person alleged to have committed  
3       the violation or the complainant may, within 30  
4       days, file objections to the findings or prelimi-  
5       nary order, or both, and request a hearing on  
6       the record, except that the filing of such objec-  
7       tions shall not operate to stay any reinstatement  
8       remedy contained in the preliminary  
9       order.

10              “(ii) Where a hearing is not timely re-  
11       quested, the preliminary order shall be deemed  
12       a final order which is not subject to judicial re-  
13       view.

14              “(B) If the Secretary has not issued findings  
15       under paragraph (4)(A) within 90 days, and the em-  
16       ployee or representative of the employee files a re-  
17       quest for a hearing with the Secretary, the Secretary  
18       shall afford an opportunity for a hearing on the  
19       record.

20              “(C) When requested, a hearing shall be con-  
21       ducted by an administrative law judge of the De-  
22       partment of Labor and a recommended decision and  
23       order issued expeditiously. The legal burdens of  
24       proof that prevail under section 1221 of title 5,  
25       United States Code, shall govern adjudication of vio-

1       lations under this subsection. The Secretary shall  
2       issue a final order within 120 days of the issuance  
3       of the recommended decision. In the interim, such  
4       proceedings may be terminated at any time on the  
5       basis of a settlement agreement entered into by the  
6       Secretary, the complainant, and the person alleged  
7       to have committed the violation.

8               “(D) If, in response to a complaint filed under  
9       paragraph (3), the Secretary determines that a vio-  
10      lation of paragraphs (1) or (2) has occurred, the  
11      Secretary may order—

12               “(i) the person who committed such viola-  
13      tion to correct the violation,

14               “(ii) such person to reinstate the complain-  
15      ant to the complainant’s former position to-  
16      gether with the compensation (including back  
17      pay), terms, conditions, and privileges of the  
18      position,

19               “(iii) compensatory damages, and

20               “(iv) exemplary damages.

21      Upon issuance of such an order, the Secretary may  
22      assess against the person against whom the order is  
23      issued a sum equal to the aggregate amount of all  
24      costs and expenses (including attorney’s fees and ex-  
25      pert witness fees) reasonably incurred, as deter-

1       mined by the Secretary, by the complainant for, or  
2       in connection with, the bringing of the complaint  
3       upon which the order was issued, including costs and  
4       expenses incurred upon review before a court of ap-  
5       peals.

6               “(E) In conducting an investigation or adju-  
7       dication under this paragraph, the provisions of sec-  
8       tion 8(b) of this act shall apply.

9               “(5)(A) Any person adversely affected or ag-  
10      grieved by a final order issued under paragraph  
11      (4)(C) may obtain review of the order before the  
12      United States court of appeals for the circuit in  
13      which the violation, with respect to which the order  
14      was issued, occurred, or the circuit in which such  
15      person resided on the date of such violation. The pe-  
16      tition for review must be filed within 60 days from  
17      the issuance of the Secretary’s order. Such review  
18      shall be in accordance with the provisions of chapter  
19      7 of title 5, United States Code. An order of the  
20      Secretary subject to review under this subsection is  
21      not subject to judicial review in a criminal or other  
22      civil proceeding. The commencement proceedings  
23      under this subsection shall not, unless ordered by  
24      the court, operate as a stay of the order of the Sec-  
25      retary.

1           “(B) Whenever a person has failed to comply  
2       with a final order or an order of reinstatement  
3       issued under paragraph (4), the Secretary or the  
4       person on behalf of whom the order was issued may  
5       file a civil action in the United States district court  
6       for the district in which the violation was found to  
7       occur in order to enforce such order. In actions  
8       brought under this subparagraph, the district court  
9       shall have jurisdiction to grant additional appro-  
10      priate relief in light of the noncompliance.”.

11 **SEC. 5. EFFECTIVE DATE.**

12       This Act shall take effect ninety days after the date  
13 of enactment of this Act.

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