

# Union Calendar No. 220

106TH CONGRESS  
1ST SESSION

# H. R. 1987

[Report No. 106-385]

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1999

Mr. GOODLING introduced the following bill; which was referred to the Committee on Education and the Workforce

OCTOBER 14, 1999

Additional sponsors: Mr. BALLENGER, Mr. BOEHNER, Mr. HOEKSTRA, Mr. GREENWOOD, Mr. GRAHAM, Mr. NORWOOD, Mr. SCHAFER, Mr. DEAL of Georgia, Mr. HILLEARY, Mr. SALMON, Mr. TANCREDO, Mr. DEMINT, Mr. GOODE, Mr. WICKER, Mr. COOKSEY, Mr. BARTLETT of Maryland, Mr. GANSKE, Mr. TALENT, Mr. MCINTOSH, Mr. CAMPBELL, Mr. SAM JOHNSON of Texas, Mr. SOUDER, Mr. UPTON, Mr. MCKEON, Mr. BARRETT of Nebraska, Ms. PRYCE of Ohio, Mr. FLETCHER, Mr. NETHERCUTT, Mr. HAYES, Mr. WELDON of Florida, Mr. GARY MILLER of California, Mr. MANZULLO, Mr. VITTER, Mr. WATTS of Oklahoma, Mr. COBLE, Mr. ADERHOLT, Mr. CUNNINGHAM, Mr. BUYER, Mr. BLUNT, Mr. CANNON, Mr. HUTCHINSON, Mr. DREIER, Mr. BONILLA, Mrs. FOWLER, Mr. KUYKENDALL, Mr. CALVERT, Mr. HOBSON, Mr. HAYWORTH, Mr. ISAKSON, Mrs. NORTHUP, Mr. HERGER, Mr. HEFLEY, Mr. ROGAN, Mr. BURTON of Indiana, Mr. PICKERING, Mr. KNOLLENBERG, Mr. PETERSON of Pennsylvania, Mr. LARGENT, Mr. HILL of Montana, Mr. GOSS, Mr. DUNCAN, Mr. DELAY, and Mr. ARMEY

OCTOBER 14, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 27, 1999]

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## A BILL

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by 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.**

4        *This Act may be cited as the “Fair Access to Indem-*  
 5        *nity and Reimbursement Act”.*

6        **SEC. 2. FINDINGS AND PURPOSE.**

7        *(a) FINDINGS.—The Congress makes the following*  
 8        *findings:*

9                *(1) Certain small businesses and labor organiza-*  
 10                *tions are at a great disadvantage in terms of expertise*  
 11                *and resources when facing actions brought by the Na-*  
 12                *tional Labor Relations Board or by the Occupational*  
 13                *Safety and Health Administration.*

14                *(2) The attempt to “level the playing field” for*  
 15                *small businesses and labor organizations by means of*  
 16                *the Equal Access to Justice Act has proven ineffective*  
 17                *and has been underutilized by these small entities in*

1     *their actions before the National Labor Relations*  
2     *Board and before the Occupational Safety and Health*  
3     *Review Commission.*

4             *(3) The greater expertise and resources of the Na-*  
5     *tional Labor Relations Board and the Occupational*  
6     *Safety and Health Administration as compared with*  
7     *those of small businesses and labor organizations ne-*  
8     *cessitate a standard that awards fees and costs to cer-*  
9     *tain small entities when they prevail against the Na-*  
10    *tional Labor Relations Board or against the Occupa-*  
11    *tional Safety and Health Administration.*

12    ***(b) PURPOSE.—It is the purpose of this Act—***

13             *(1) to ensure that certain small businesses and*  
14     *labor organizations will not be deterred from seeking*  
15     *review of, or defending against, actions brought*  
16     *against them by the National Labor Relations Board*  
17     *or by the Occupational Safety and Health Adminis-*  
18     *tration because of the expense involved in securing*  
19     *vindication of their rights;*

20             *(2) to reduce the disparity in resources and ex-*  
21     *pertise between certain small businesses and labor or-*  
22     *ganizations and the National Labor Relations Board*  
23     *and the Occupational Safety and Health Administra-*  
24     *tion; and*

1           (3) to make the National Labor Relations Board  
 2           and the Occupational Safety and Health Administra-  
 3           tion more accountable for their enforcement actions  
 4           against certain small businesses and labor organiza-  
 5           tions by awarding fees and costs to these entities  
 6           when they prevail against the National Labor Rela-  
 7           tions Board or in proceedings before the Occupational  
 8           Safety and Health Review Commission.

9   **SEC. 3. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.**

10       *The National Labor Relations Act (29 U.S.C. 151 and*  
 11 *following) is amended by adding at the end the following*  
 12 *new section:*

13           “AWARDS OF ATTORNEYS’ FEES AND COSTS

14       “SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An  
 15 employer who, or labor organization that—

16           “(1) is the prevailing party in an adversary ad-  
 17 judication conducted by the Board under this or any  
 18 other Act; and

19           “(2) had not more than 100 employees and a net  
 20 worth of not more than \$7,000,000 at the time the ad-  
 21 versary adjudication was initiated,

22 shall be awarded fees and other expenses as a prevailing  
 23 party under section 504 of title 5, United States Code, in  
 24 accordance with the provisions of that section, but without  
 25 regard to whether the position of the Board was substan-  
 26 tially justified or special circumstances make an award un-

1 *just. For purposes of this subsection, the term ‘adversary*  
 2 *adjudication’ has the meaning given that term in section*  
 3 *504(b)(1)(C) of title 5, United States Code.*

4 “(b) *COURT PROCEEDINGS.*—*An employer who, or a*  
 5 *labor organization that—*

6 “(1) *is the prevailing party in a civil action, in-*  
 7 *cluding proceedings for judicial review of agency ac-*  
 8 *tion by the Board, brought by or against the Board,*  
 9 *and*

10 “(2) *had not more than 100 employees and a net*  
 11 *worth of not more than \$7,000,000 at the time the*  
 12 *civil action was filed,*

13 *shall be awarded fees and other expenses as a prevailing*  
 14 *party under section 2412(d) of title 28, United States Code,*  
 15 *in accordance with the provisions of that section, but with-*  
 16 *out regard to whether the position of the United States was*  
 17 *substantially justified or special circumstances make an*  
 18 *award unjust. Any appeal of a determination of fees pursu-*  
 19 *ant to subsection (a) or this subsection shall be determined*  
 20 *without regard to whether the position of the United States*  
 21 *was substantially justified or special circumstances make*  
 22 *an award unjust.”.*

23 **SEC. 4. APPLICABILITY OF NLRA AMENDMENT.**

24 (a) *AGENCY PROCEEDINGS.*—*Subsection (a) of section*  
 25 *20 of the National Labor Relations Act, as added by section*

1 *3 of this Act, applies to agency proceedings commenced on*  
 2 *or after the date of the enactment of this Act.*

3 *(b) COURT PROCEEDINGS.—Subsection (b) of section*  
 4 *20 of the National Labor Relations Act, as added by section*  
 5 *3 of this Act, applies to civil actions commenced on or after*  
 6 *the date of the enactment of this Act.*

7 **SEC. 5. AMENDMENT TO OCCUPATIONAL SAFETY AND**  
 8 **HEALTH ACT.**

9 *The Occupational Safety and Health Act (29 U.S.C.*  
 10 *651 and following) is amended by inserting after section*  
 11 *12 at the end the following new section:*

12 *“AWARDS OF ATTORNEYS’ FEES AND COSTS*

13 *“SEC. 12A. (a) ADMINISTRATIVE PROCEEDINGS.—An*  
 14 *employer who—*

15 *“(1) is the prevailing party in an adversary ad-*  
 16 *judication before the Occupational Safety and Health*  
 17 *Review Commission under this or any other Act, and*

18 *“(2) had not more than 100 employees and a net*  
 19 *worth of not more than \$7,000,000 at the time the ad-*  
 20 *versary adjudication was initiated,*

21 *shall be awarded from the Secretary of Labor fees and other*  
 22 *expenses as a prevailing party under section 504 of title*  
 23 *5, United States Code, in accordance with the provisions*  
 24 *of that section, but without regard to whether the position*  
 25 *of the Secretary of Labor was substantially justified or spe-*  
 26 *cial circumstances make an award unjust. For purposes of*

1 *this subsection, the term ‘adversary adjudication’ has the*  
 2 *meaning given that term in section 504(b)(1)(C) of title 5,*  
 3 *United States Code.*

4 “(b) *COURT PROCEEDINGS.*—*An employer who—*

5 “(1) *is the prevailing party in a civil action, in-*  
 6 *cluding proceedings for judicial review of an action*  
 7 *by the Occupational Safety and Health Review Com-*  
 8 *mission, brought by or against the Secretary or the*  
 9 *Commission, and*

10 “(2) *had not more than 100 employees and a net*  
 11 *worth of not more than \$7,000,000 at the time the*  
 12 *civil action was filed,*

13 *shall be awarded from the Secretary of Labor fees and other*  
 14 *expenses as a prevailing party under section 2412(d) of title*  
 15 *28, United States Code, in accordance with the provisions*  
 16 *of that section, but without regard to whether the position*  
 17 *of the United States was substantially justified or special*  
 18 *circumstances make an award unjust. Any appeal of a de-*  
 19 *termination of fees pursuant to subsection (a) or this sub-*  
 20 *section shall be determined without regard to whether the*  
 21 *position of the United States was substantially justified or*  
 22 *special circumstances make an award unjust.”.*

23 **SEC. 6. APPLICABILITY OF OSHA AMENDMENT.**

24 (a) *AGENCY PROCEEDINGS.*—*Subsection (a) of section*  
 25 *12A of the Occupational Safety and Health Act, as added*

1 *by section 5 of this Act, applies to agency proceedings com-*  
2 *menced on or after the date of the enactment of this Act.*

3       **(b) COURT PROCEEDINGS.**—*Subsection (b) of section*  
4 *12A of the Occupational Safety and Health Act, as added*  
5 *by section 5 of this Act, applies to civil actions commenced*  
6 *on or after the date of the enactment of this Act.*





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