

109TH CONGRESS
1ST SESSION

H. R. 2004

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. OWENS (for himself, Mr. GEORGE MILLER of California, Mr. ANDREWS, Mr. LYNCH, Ms. DELAURO, and Mr. MICHAUD) 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 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

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 “Protecting America’s
5 Workers Act”.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, wherever in
3 this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion of law, the reference shall be considered to be made
6 to a section or other provision of the Occupational Safety
7 and Health Act of 1970 (29 U.S.C. 651 et seq.).

8 **TITLE I—COVERAGE AND**
9 **APPLICATION OF ACT**

10 **SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.**

11 (a) IN GENERAL.—Section 3(5) (29 U.S.C. 652(5))
12 is amended by striking “but does not include” and all that
13 follows and inserting “including the United States, a
14 State, or a political subdivision of a State.”.

15 (b) CONSTRUCTION.—Nothing in this Act shall be
16 construed to affect the application of section 18 of the Oc-
17 cupational Safety and Health Act of 1970 (29 U.S.C.
18 667).

19 **SEC. 102. APPLICATION OF ACT.**

20 Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

21 (1) by redesignating paragraphs (2), (3), and
22 (4) as paragraphs (5), (6), and (7), respectively; and

23 (2) by striking paragraph (1) and inserting the
24 following:

25 “(1) If a Federal agency has promulgated and
26 is enforcing a standard or regulation affecting occu-

1 pational safety or health of some or all of the em-
2 ployees within that agency’s regulatory jurisdiction,
3 and the Secretary determines that such a standard
4 or regulation as promulgated and the manner in
5 which the standard or regulation is being enforced
6 provides protection to those employees that is at
7 least as effective as the protection provided to those
8 employees by this Act and the Secretary’s enforce-
9 ment of this Act, the Secretary may publish a cer-
10 tification notice in the Federal Register. The notice
11 shall set forth that determination and the reasons
12 for the determination and certify that the Secretary
13 has ceded jurisdiction to that Federal agency with
14 respect to the specified standard or regulation af-
15 fecting occupational safety or health. In determining
16 whether to cede jurisdiction to a Federal agency, the
17 Secretary shall seek to avoid duplication of, and con-
18 flicts between, health and safety requirements. Such
19 certification shall remain in effect unless and until
20 rescinded by the Secretary.

21 “(2) The Secretary shall, by regulation, estab-
22 lish procedures by which any person who may be ad-
23 versely affected by a decision of the Secretary certi-
24 fying that the Secretary has ceded jurisdiction to an-
25 other Federal agency pursuant to paragraph (1)

1 may petition the Secretary to rescind a certification
2 notice under paragraph (1). Upon receipt of such a
3 petition, the Secretary shall investigate the matter
4 involved and shall, within 90 days after receipt of
5 the petition, publish a decision with respect to the
6 petition in the Federal Register.

7 “(3) Any person who may be adversely affected
8 by—

9 “(A) a decision of the Secretary certifying
10 that the Secretary has ceded jurisdiction to an-
11 other Federal agency pursuant to paragraph
12 (1); or

13 “(B) a decision of the Secretary denying a
14 petition to rescind such a certification notice
15 under paragraph (1),

16 may, not later than 60 days after such decision is
17 published in the Federal Register, file a petition
18 challenging such decision with the United States
19 court of appeals for the circuit in which such person
20 resides or such person has a principal place of busi-
21 ness, for judicial review of such decision. A copy of
22 the petition shall be forthwith transmitted by the
23 clerk of the court to the Secretary. The Secretary’s
24 decision shall be set aside if found to be arbitrary,

1 capricious, an abuse of discretion, or otherwise not
2 in accordance with law.

3 “(4) Nothing in this Act shall apply to working
4 conditions covered by the Federal Mine Safety and
5 Health Act of 1977 (30 U.S.C. 801 et seq.).”

6 **TITLE II—INCREASING PROTEC-**
7 **TIONS FOR WHISTLE-**
8 **BLOWERS**

9 **SEC. 201. EMPLOYEE ACTIONS.**

10 Section 11(c)(1) (29 U.S.C. 660(c)(1)) is amended
11 by inserting before the period at the end the following:
12 “, including reporting any injury, illness, or unsafe condi-
13 tion to the employer, agent of the employer, safety and
14 health committee involved, or employee safety and health
15 representative involved”.

16 **SEC. 202. PROHIBITION OF DISCRIMINATION.**

17 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
18 ing paragraph (2) and inserting the following:

19 “(2) No person shall discharge or in any man-
20 ner discriminate against an employee for refusing to
21 perform the employee’s duties if the employee has a
22 reasonable apprehension that performing such duties
23 would result in serious injury to, or serious impair-
24 ment of the health of, the employee or other employ-
25 ees. The circumstances causing the employee’s ap-

1 prehension of serious injury or serious impairment
2 of health shall be of such a nature that a reasonable
3 person, under the circumstances confronting the em-
4 ployee, would conclude that there is a bona fide dan-
5 ger of a serious injury, or serious impairment of
6 health, resulting from the circumstances. In order to
7 qualify for protection under this paragraph, the em-
8 ployee, when practicable, shall have sought from the
9 employee's employer, and have been unable to ob-
10 tain, a correction of the circumstances causing the
11 refusal to perform the employee's duties.".

12 **SEC. 203. PROCEDURE.**

13 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
14 ing paragraph (3) and inserting the following:

15 “(3) Any employee who believes that the em-
16 ployee has been discharged, disciplined, or otherwise
17 discriminated against by any person in violation of
18 paragraph (1) or (2) may, within 180 days after
19 such alleged violation occurs, file (or have filed by
20 any person on the employee's behalf) a complaint
21 with the Secretary alleging that such discharge or
22 discrimination violates paragraph (1) or (2). Upon
23 receipt of such a complaint, the Secretary shall no-
24 tify the person named in the complaint (referred to

1 in this subsection as the ‘respondent’) of the filing
2 of the complaint.

3 “(4)(A)(i) Not later than 60 days after the re-
4 ceipt of a complaint filed under paragraph (3), the
5 Secretary shall conduct an investigation and deter-
6 mine whether there is reasonable cause to believe
7 that the complaint has merit. During the investiga-
8 tion, the Secretary shall notify the respondent of the
9 charges made in the complaint, and shall provide
10 such person with an opportunity to meet with the in-
11 spector conducting the investigation, to submit a re-
12 sponse to such charges, and to present witnesses to
13 rebut such charges. The Secretary shall also con-
14 sider the result of any grievance proceeding provided
15 for in a collective bargaining agreement, that may
16 have been held with respect to such charges. Upon
17 completion of the investigation, the Secretary shall
18 issue findings and notify the complainant and the
19 respondent of the Secretary’s findings. If the Sec-
20 retary has concluded that there is reasonable cause
21 to believe that a violation has occurred, the Sec-
22 retary’s findings shall be accompanied by a prelimi-
23 nary order providing the relief prescribed by sub-
24 paragraph (B).

1 “(ii)(I) Not later than 30 days after the
2 Secretary has issued findings under clause (i),
3 either the respondent or the complainant may
4 file objections to the findings or preliminary
5 order, and request a hearing on the record, ex-
6 cept that the filing of such objections shall not
7 operate to stay any reinstatement remedy con-
8 tained in the preliminary order.

9 “(II) If a hearing described in subclause
10 (I) is not requested in the 30-day period de-
11 scribed in such subclause with respect to a pre-
12 liminary order, the order shall be deemed to be
13 a final order and not subject to judicial review.

14 “(iii) If the Secretary does not issue find-
15 ings under clause (i) with respect to a com-
16 plaint within 90 days after the receipt of the
17 complaint, the complainant may request a hear-
18 ing on the record on the complaint.

19 “(iv) The Secretary shall expeditiously con-
20 duct a hearing requested under clause (ii) or
21 (iii). Upon the conclusion of such hearing, the
22 Secretary shall issue a final order within 120
23 days. Until the issuance of a final order, such
24 hearing may be terminated at any time on the
25 basis of a settlement agreement entered into by

1 the Secretary, the complainant, and the re-
2 spondent.

3 “(B)(i) If, in response to a complaint filed
4 under paragraph (3), the Secretary determines that
5 a violation of paragraph (1) or (2) has occurred, in
6 issuing an order under subparagraph (A)(iv), the
7 Secretary shall require—

8 “(I) the person who committed such viola-
9 tion to correct the violation;

10 “(II) such person to reinstate the com-
11 plainant to the complainant’s former position
12 together with the compensation (including back-
13 pay), terms, conditions, and privileges of the
14 complainant’s employment; and

15 “(III) such person to pay compensatory
16 damages.

17 “(ii) On issuing an order requiring a remedy
18 described in clause (i), the Secretary, at the request
19 of the complainant, may assess against the person
20 against whom the order is issued a sum equal to the
21 aggregate amount of all costs and expenses (includ-
22 ing attorney’s fees) reasonably incurred, as deter-
23 mined by the Secretary, by the complainant for, or
24 in connection with a complaint upon which the order
25 was issued.

1 “(5)(A) Any person adversely affected or ag-
2 grieved by an order issued after a hearing conducted
3 under paragraph (4)(A) may obtain review of the
4 order in the United States Court of Appeals for the
5 circuit in which the violation, with respect to which
6 the order was issued, allegedly occurred, or the cir-
7 cuit in which such person resided on the date of
8 such violation. The petition for review shall be filed
9 within 60 days after the issuance of the Secretary’s
10 order. Such review shall be conducted in accordance
11 with the provisions of chapter 7 of title 5, United
12 States Code. The court shall conduct the review and
13 issue a decision expeditiously.

14 “(B) If a person fails to comply with an order
15 issued under paragraph (4)(A), the Secretary shall
16 file a civil action in the United States district court
17 for the district in which the violation was found to
18 occur in order to enforce such order. In actions
19 brought under this subparagraph, the district court
20 shall have jurisdiction to grant all appropriate relief,
21 including injunctive relief, reinstatement, and com-
22 pensatory damages.

23 “(6) The legal burdens of proof set forth in sec-
24 tion 1221(e) of title 5, United States Code, shall

1 govern adjudication of violations under this sub-
2 section.”.

3 **SEC. 204. RELATION TO ENFORCEMENT.**

4 Section 17(j) (29 U.S.C. 666(j)) is amended by in-
5 serting before the period the following: “, including the
6 history of violations, under section 11(c)”.

7 **TITLE III—INCREASING**
8 **PENALTIES FOR VIOLATORS**

9 **SEC. 301. POSTING OF EMPLOYEE RIGHTS.**

10 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by
11 adding at the end the following new sentence: “Such regu-
12 lations shall include provisions requiring employers to post
13 for employees information on the protections afforded
14 under section 11(c).”.

15 **SEC. 302. INVESTIGATIONS OF FATALITIES AND SERIOUS**
16 **INCIDENTS.**

17 Section 8 (29 U.S.C. 657) is amended by adding at
18 the end the following new subsection:

19 “(i)(1) The Secretary shall investigate any incident
20 resulting in death or serious incident, that occurs in a
21 place of employment covered by this Act.

22 “(2) If an incident resulting in death or serious inci-
23 dent occurs in a place of employment covered by this Act,
24 the employer shall notify the Secretary of the incident in-
25 volved and shall take appropriate measures to prevent the

1 destruction or alteration of any evidence that would assist
2 in investigating the incident. The appropriate measures re-
3 quired by this paragraph do not prevent an employer from
4 taking action on a worksite to prevent injury to employees
5 or substantial damage to property. If an employer takes
6 such action, the employer shall notify the Secretary of the
7 action in a timely fashion.

8 “(3) In this subsection the following definitions apply:

9 “(A) INCIDENT RESULTING IN DEATH.—The
10 term ‘incident resulting in death’ means an incident
11 that results in the death of an employee.

12 “(B) SERIOUS INCIDENT.—The term ‘serious
13 incident’ means an incident that results in the hos-
14 pitalization of 2 or more employees.”.

15 **SEC. 303. PROHIBITION ON UNCLASSIFIED CITATIONS.**

16 Section 9 (29 U.S.C. 658) is amended by adding at
17 the end the following:

18 “(d) The Secretary may not designate a citation
19 issued under this section as an unclassified citation.”.

20 **SEC. 304. VICTIMS’ RIGHTS.**

21 The Act is amended by inserting after section 9 (29
22 U.S.C. 658) the following:

23 **“SEC. 9A. VICTIM’S RIGHTS.**

24 “(a) DEFINITION.—In this section, the term ‘victim’
25 means—

1 “(1) an employee who has sustained a work-re-
2 lated injury or illness that is the subject of an in-
3 spection or investigation conducted under section 8,
4 or

5 “(2) a family member of an employee, if—

6 “(A) the employee is killed as a result of
7 a work-related injury or illness that is the sub-
8 ject of an inspection or investigation conducted
9 under section 8; or

10 “(B) the employee sustains a work-related
11 injury or illness that is the subject of an inspec-
12 tion or investigation conducted under section 8,
13 and the employee cannot reasonably exercise
14 the employee’s rights under this section.

15 “(b) RIGHTS.—On request, a victim shall be afforded
16 the right, with respect to a work-related injury or illness
17 (including a death resulting from a work-related injury or
18 illness) involving an employee, to—

19 “(1) meet with the Secretary, or an authorized
20 representative of the Secretary, regarding the in-
21 spection or investigation conducted under section 8
22 concerning the employee’s injury or illness before the
23 Secretary’s decision to issue a citation or take no ac-
24 tion; and

1 “(2)(A) receive, at no cost, a copy of any cita-
2 tion or report, issued as a result of such inspection
3 or investigation, on the later of the date the citation
4 or report is issued and the date of the request;

5 “(B) be informed of any notice of contest filed
6 under section 10; and

7 “(C) be provided an explanation of the rights of
8 employee and employee representatives to participate
9 in proceedings conducted under section 10.

10 “(c) MODIFICATION OF CITATION.—Before entering
11 into an agreement to withdraw or modify a citation issued
12 as a result of an inspection or investigation of an incident
13 resulting in death or serious incident under section 8, the
14 Secretary, on request, shall provide an opportunity to the
15 victim to appear and make a statement before the parties
16 conducting settlement negotiations.

17 “(d) NOTIFICATION AND REVIEW.—The Secretary
18 shall establish procedures—

19 “(1) to inform victims of their rights under this
20 section; and

21 “(2) for the informal review of any claim of a
22 denial of such a right.”.

23 **SEC. 305. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

24 The first sentence of section 10(c) (29 U.S.C. 659(c))
25 is amended—

1 (1) by inserting after “the issuance of a cita-
2 tion” the following: “(including a modification of a
3 citation issued)”; and

4 (2) by inserting after “files a notice with the
5 Secretary alleging” the following: “that the citation
6 fails properly to designate the violation as serious,
7 willful, or repeated, that the proposed penalty is not
8 adequate, or”.

9 **SEC. 306. OBJECTIONS TO MODIFICATION OF CITATIONS.**

10 Section 10 (29 U.S.C. 659) is amended by adding
11 at the end the following new subsection:

12 “(d)(1) If the Secretary intends to withdraw or to
13 modify a citation issued under section 9(a) as a result of
14 any agreement with the cited employer, the Secretary shall
15 provide (in accordance with rules of procedure prescribed
16 by the Commission) prompt notice to affected employees
17 or representatives of affected employees, and that notice
18 shall include the terms of the proposed agreement.

19 “(2) Not later than 15 working days after the receipt
20 of a notice provided in accordance with paragraph (1), any
21 employee or representative of employees, regardless of
22 whether such employee or representative has previously
23 elected to participate in the proceedings involved, shall
24 have the right to file a notice with the Secretary alleging
25 that the proposed agreement fails to effectuate the pur-

1 poses of this Act and stating the respects in which the
2 agreement fails to effectuate the purposes.

3 “(3) Upon receipt of a notice filed under paragraph
4 (2), the Secretary shall consider the statements presented
5 in the notice, and if the Secretary determines to proceed
6 with the proposed agreement, the Secretary shall respond
7 with particularity to the statements presented in the no-
8 tice.

9 “(4) Not later than 15 working days following the
10 Secretary’s response provided pursuant to paragraph (3),
11 the employee or representative of employees shall, on mak-
12 ing a request to the Commission, be entitled to a hearing
13 before the Commission as to whether adoption of the pro-
14 posed agreement would effectuate the purposes of this Act,
15 including a determination as to whether the proposed
16 agreement would adequately abate the alleged violations
17 alleged in the citation.

18 “(5) If the Commission determines that the proposed
19 agreement fails to effectuate the purposes of this Act, the
20 proposed agreement shall not be entered as an order of
21 the Commission and the citation shall not be withdrawn
22 or modified in accordance with the proposed agreement.”.

23 **SEC. 307. CIVIL PENALTIES.**

24 Section 17 (29 U.S.C. 666) is amended—

25 (1) in subsection (a)—

1 (A) by striking “\$70,000” and inserting
2 “\$100,000”;

3 (B) by striking “\$5,000” and inserting
4 “\$7,000”; and

5 (C) by adding at the end the following: “If
6 such a violation causes the death of an em-
7 ployee, such civil penalty amounts shall be in-
8 creased to not more than \$250,000 for such
9 violation, but not less than \$50,000 for such
10 violation.”;

11 (2) in subsection (b)—

12 (A) by striking “\$7,000” and inserting
13 “\$10,000”; and

14 (B) by adding at the end the following: “If
15 such a violation causes the death of an em-
16 ployee, such civil penalty amounts shall be in-
17 creased to not more than \$50,000 for such vio-
18 lation, but not less than \$20,000 for such viola-
19 tion.”;

20 (3) in subsection (c)—

21 (A) by striking “\$7,000” and inserting
22 “\$10,000”; and

23 (B) by adding at the end the following: “If
24 such a violation causes the death of an em-
25 ployee, such civil penalty amounts shall be in-

1 creased to not more than \$50,000 for such vio-
2 lation, but not less than \$20,000 for such viola-
3 tion.”;

4 (4) in subsection (d)—

5 (A) by striking “\$7,000” and inserting
6 “\$10,000”; and

7 (B) by adding at the end the following: “If
8 such a violation causes the death of an em-
9 ployee, such civil penalty amounts shall be in-
10 creased to not more than \$50,000 for such vio-
11 lation, but not less than \$20,000 for such viola-
12 tion.”; and

13 (5) in subsection (i), by striking “\$7,000” and
14 inserting “\$10,000”.

15 **SEC. 308. OSHA CRIMINAL PENALTIES.**

16 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as
17 amended by section 307) is further amended—

18 (1) in subsection (e)—

19 (A) by striking “fine of not more than
20 \$10,000” and inserting “fine in accordance
21 with section 3571 of title 18, United States
22 Code,”;

23 (B) by striking “six months” and inserting
24 “10 years”;

1 (C) by inserting “under this subsection or
2 subsection (i)” after “first conviction of such
3 person”;

4 (D) by striking “fine of not more than
5 \$20,000” and inserting “fine in accordance
6 with section 3571 of title 18, United States
7 Code,”; and

8 (E) by striking “one year” and inserting
9 “20 years”;

10 (2) in subsection (f), by striking “fine of not
11 more than \$1,000 or by imprisonment for not more
12 than six months,” and inserting “fine in accordance
13 with section 3571 of title 18, United States Code, or
14 by imprisonment for not more than 2 years,”;

15 (3) in subsection (g), by striking “fine of not
16 more than \$10,000, or by imprisonment for not
17 more than six months,” and inserting “fine in ac-
18 cordance with section 3571 of title 18, United States
19 Code, or by imprisonment for not more than 1
20 year,”;

21 (4) by redesignating subsections (i) through (l)
22 as subsections (j) through (m), respectively; and

23 (5) by inserting after subsection (h) the fol-
24 lowing:

1 “(i) Any employer who willfully violates any standard,
2 rule, or order promulgated pursuant to section 6, or any
3 regulation prescribed pursuant to this Act, and that viola-
4 tion causes serious bodily injury to any employee but does
5 not cause death to any employee, shall, upon conviction,
6 be punished by a fine in accordance with section 3571 of
7 title 18, United States Code, or by imprisonment for not
8 more than 5 years, or by both, except that if the conviction
9 is for a violation committed after a first conviction of such
10 person under this subsection or subsection (e), punishment
11 shall be by a fine in accordance with section 3571 of title
12 18, United States Code, or by imprisonment for not more
13 than 10 years, or by both.”.

14 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is
15 amended by adding at the end the following:

16 “(15) The term ‘serious bodily injury’ means
17 bodily injury that involves—

18 “(A) a substantial risk of death;

19 “(B) protracted unconsciousness;

20 “(C) protracted and obvious physical dis-
21 figurement; or

22 “(D) protracted loss or impairment, of the
23 function of a bodily member, organ, or mental
24 faculty.”.

1 (c) JURISDICTION FOR PROSECUTION UNDER STATE
2 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.
3 666) (as amended by subsection (a)) is further amended
4 by adding at the end the following:

5 “(o) Nothing in this Act shall preclude a State or
6 local law enforcement agency from conducting criminal
7 prosecutions in accordance with the laws of such State or
8 locality.”.

9 (d) INFLATION ADJUSTMENT.—Section 17 (29
10 U.S.C. 666) (as amended by subsection (c)) is further
11 amended by adding at the end the following:

12 “(p) Amounts provided under this section for civil
13 penalties shall be adjusted by the Secretary at least once
14 during each 4-year period to account for the percentage
15 increase or decrease in the Consumer Price Index for all
16 urban consumers during such period.”.

17 **TITLE IV—REQUIRING EMPLOY-**
18 **ERS TO PROVIDE PERSONAL**
19 **PROTECTIVE EQUIPMENT**

20 **SEC. 401. REQUIREMENT.**

21 Section 6(b) (29 U.S.C. 655(b)), as amended by sec-
22 tion 102(b), is further amended by adding at the end the
23 following:

24 “(10)(A) In this paragraph, the term ‘personal pro-
25 tective equipment’ means personal protective equipment as

1 such term is defined for purposes of section 1910.132(a)
2 of title 29, Code of Federal Regulations (or any cor-
3 responding similar regulation or ruling).

4 “(B)(i) Not later than 30 days after the date of en-
5 actment of the Protecting America’s Workers Act, the
6 Secretary shall amend section 1910.132(a) of title 29,
7 Code of Federal Regulations, to provide that protective
8 equipment shall be provided at no cost to the employee.

9 “(ii) In promulgating any standard under this section
10 that requires protective equipment, the Secretary shall
11 specify that the protective equipment shall be provided at
12 no cost to the employee.”.

○