

115TH CONGRESS
2D SESSION

S. 2988

To amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2018

Ms. HARRIS (for herself and Ms. MURKOWSKI) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to modify the tax treatment of amounts related to employment discrimination and harassment in the workplace, including sexual harassment, sexual assault, and harassment based on protected categories.

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 “Ending the Monopoly
5 of Power Over Workplace Harassment through Education
6 and Reporting Act – Part 2” or the “EMPOWER Act
7 – Part 2”.

1 **SEC. 2. TAX TREATMENT OF AMOUNTS RELATED TO JUDG-**
 2 **MENTS.**

3 (a) DENIAL OF DEDUCTION.—

4 (1) IN GENERAL.—Part IX of subchapter B of
 5 chapter 1 of the Internal Revenue Code of 1986 is
 6 amended by adding at the end the following new sec-
 7 tion:

8 **“SEC. 280I. AMOUNTS RELATED TO JUDGMENTS WITH RE-**
 9 **SPECT TO WORKPLACE HARASSMENT, IN-**
 10 **CLUDING SEXUAL HARASSMENT.**

11 “No deduction shall be allowed under this chapter for
 12 amounts paid or incurred by the taxpayer—

13 “(1) pursuant to any judgment or award in liti-
 14 gation related to workplace harassment, including
 15 sexual harassment, or

16 “(2) for expenses and attorney’s fees in connec-
 17 tion with the litigation resulting in the judgment or
 18 award described in paragraph (1) (other than ex-
 19 penses or attorney’s fees paid by the workplace har-
 20 assment plaintiff or claimant), or for any insurance
 21 covering the defense or liability of the underlying
 22 claims with respect to such litigation.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
 24 tions for part IX of subchapter B of chapter 1 of
 25 such Code is amended by adding at the end the fol-
 26 lowing new item:

“Sec. 280I. Amounts related to judgments with respect to workplace harassment, including sexual harassment.”.

1 (3) CONFORMING AMENDMENT.—Section 162
2 of such Code is amended by striking subsection (q).

3 (4) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to amounts paid or in-
5 curred in taxable years beginning after the date of
6 the enactment of this Act.

7 (b) EXCLUSION FROM INCOME.—

8 (1) IN GENERAL.—Part III of subchapter B of
9 chapter 1 of the Internal Revenue Code of 1986 is
10 amended by inserting after section 139G the fol-
11 lowing new section:

12 **“SEC. 139H. AMOUNTS RECEIVED IN CONNECTION WITH**
13 **JUDGMENTS, AWARDS, AND SETTLEMENTS**
14 **WITH RESPECT TO WORKPLACE HARASS-**
15 **MENT.**

16 “Gross income shall not include any amount received
17 in connection with a judgment or award in, or a settlement
18 of—

19 “(1) a claim related to workplace harassment,
20 including sexual harassment or other unlawful dis-
21 crimination, or

22 “(2) any other claim of unlawful discrimination
23 (as defined by section 62(e)).

1 The preceding sentence shall not include any employment
 2 discrimination compensation to which section 1302 ap-
 3 plies.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
 5 tions for part III of subchapter B of chapter 1 of
 6 such Code is amended by inserting after the item re-
 7 lating to section 139G the following new item:

“Sec. 139H. Amounts received in connection with judgments, awards, or settle-
 ments with respect to workplace harassment.”.

8 (3) EFFECTIVE DATE.—The amendments made
 9 by this subsection shall apply to amounts received in
 10 taxable years beginning after the date of the enact-
 11 ment of this Act.

12 **SEC. 3. LIMITATION ON TAX BASED ON INCOME AVER-**
 13 **AGING FOR COMPENSATION RECEIVED ON**
 14 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
 15 **MENT DISCRIMINATION.**

16 (a) IN GENERAL.—Part I of subchapter Q of chapter
 17 1 of the Internal Revenue Code of 1986 (relating to in-
 18 come averaging) is amended by adding at the end the fol-
 19 lowing new section:

20 **“SEC. 1302. INCOME FROM COMPENSATION RECEIVED ON**
 21 **ACCOUNT OF CERTAIN UNLAWFUL EMPLOY-**
 22 **MENT DISCRIMINATION.**

23 “(a) GENERAL RULE.—In the case of any employ-
 24 ment discrimination compensation received during any

1 taxable year, the tax imposed by this chapter for such tax-
2 able year with respect to such compensation shall not ex-
3 ceed the sum of—

4 “(1) the tax which would be so imposed if—

5 “(A) no amount of such compensation
6 were included in gross income for such year,
7 and

8 “(B) no deduction were allowed for such
9 year for expenses otherwise allowable as a de-
10 duction to the taxpayer for such year in connec-
11 tion with making or prosecuting any claim of
12 unlawful employment discrimination by or on
13 behalf of the taxpayer, plus

14 “(2) the product of—

15 “(A) the combined number of years in the
16 backpay period and the foregone compensation
17 period, and

18 “(B) the amount by which the tax deter-
19 mined under paragraph (1) would increase if
20 the sum of—

21 “(i) the average of the average annual
22 net employment discrimination compensa-
23 tion in the backpay period, and

24 “(ii) the average of the average an-
25 nual net employment discrimination com-

1 pensation in the foregone compensation pe-
 2 riod,

3 were included in gross income for such year.

4 “(b) DEFINITIONS.—For purposes of this section—

5 “(1) EMPLOYMENT DISCRIMINATION COM-
 6 PENSATION.—The term ‘employment discrimination
 7 compensation’ means any backpay or foregone com-
 8 pensation receivable (whether as lump sums or peri-
 9 odic payments) on account of a judgment or settle-
 10 ment resulting from a claim of unlawful discrimina-
 11 tion (as defined in section 62(e)) in violation of law
 12 which relates to employment.

13 “(2) BACKPAY.—The term ‘backpay’ means
 14 amounts which are includible in gross income for the
 15 taxable year as compensation which is attributable
 16 to services performed (or which would have been
 17 performed but for the violation of law described in
 18 paragraph (1)) as an employee, former employee, or
 19 prospective employee in years before such taxable
 20 year for the taxpayer’s employer, former employer,
 21 or prospective employer.

22 “(3) FOREGONE COMPENSATION.—The term
 23 ‘foregone compensation’ means amounts which are
 24 includible in gross income for the taxable year as
 25 compensation which is attributable to services which

1 would have been performed in years after such tax-
 2 able year but for the violation of law described in
 3 paragraph (1).

4 “(4) BACKPAY PERIOD.—The term ‘backpay pe-
 5 riod’ means the period during which services de-
 6 scribed in paragraph (2) were performed or would
 7 have been performed but for the violation of law de-
 8 scribed in paragraph (1). If such period is not equal
 9 to a whole number of taxable years, such period
 10 shall be increased to the next highest number of
 11 whole taxable years.

12 “(5) FOREGONE COMPENSATION PERIOD.—The
 13 term ‘foregone compensation period’ means the pe-
 14 riod during which services described in paragraph
 15 (3) would have been performed but for the violation
 16 of law described in paragraph (1). If such period is
 17 not equal to a whole number of taxable years, such
 18 period shall be increased to the next highest number
 19 of whole taxable years.

20 “(6) AVERAGE ANNUAL NET EMPLOYMENT DIS-
 21 CRIMINATION COMPENSATION.—The term ‘average
 22 annual net employment discrimination compensation’
 23 with respect to any period means the amount equal
 24 to—

25 “(A) the excess of—

1 “(i) employment discrimination com-
 2 pensation attributable to such period, over
 3 “(ii) the amount of the deductions de-
 4 scribed in subsection (a)(1)(B), divided by
 5 “(B) the total number of years in the
 6 backpay period and the foregone compensation
 7 period.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
 9 for part I of subchapter Q of chapter 1 of the Internal
 10 Revenue Code of 1986 is amended by inserting after sec-
 11 tion 1301 the following new item:

“Sec. 1302. Income from compensation received on account of certain unlawful
 employment discrimination.”.

12 (c) INCOME AVERAGING NOT TO INCREASE ALTER-
 13 NATIVE MINIMUM TAX LIABILITY.—Section 55(c) of the
 14 Internal Revenue Code of 1986 is amended by redesignig-
 15 nating paragraph (3) as paragraph (4) and by inserting
 16 after paragraph (2) the following new paragraph:

17 “(3) COORDINATION WITH INCOME AVERAGING
 18 FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-
 19 MENT DISCRIMINATION.—Solely for purposes of this
 20 section, section 1302 shall not apply in computing
 21 the regular tax liability.”.

22 (d) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to amounts paid or incurred in tax-

1 able years beginning after the date of the enactment of
2 this Act.

