

116TH CONGRESS
1ST SESSION

H. R. 2190

To improve accountability of senior officials and other supervisory employees
of the Department of Labor.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2019

Mr. SMUCKER (for himself and Mr. ROONEY of Florida) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve accountability of senior officials and other
supervisory employees of the Department of Labor.

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 (a) SHORT TITLE.—This Act may be cited as the
5 “Department of Labor Accountability Act of 2019”.

1 **SEC. 2. SENIOR EXECUTIVES: REMOVAL, DEMOTION, OR**
2 **SUSPENSION BASED ON PERFORMANCE OR**
3 **MISCONDUCT.**

4 (a) **AUTHORITY.**—The Secretary may, as provided in
5 this section, reprimand or suspend, involuntarily reassign,
6 demote, or remove a covered employee from a senior execu-
7 tive position at the Department if the Secretary deter-
8 mines that the misconduct or performance of the covered
9 employee warrants such action. If the Secretary so re-
10 moves such an individual, the Secretary may remove the
11 individual from the civil service (as defined in section 2101
12 of title 5, United States Code).

13 (b) **RIGHTS AND PROCEDURES.**—

14 (1) **RIGHTS.**—A covered employee who is the
15 subject of an action under subsection (a) is entitled
16 to—

17 (A) advance notice of the action and a file
18 containing all evidence in support of the pro-
19 posed action;

20 (B) be represented by an attorney or other
21 representative of the covered employee's choice;
22 and

23 (C) grieve the action in accordance with an
24 internal grievance process that the Secretary, in
25 consultation with the Whistleblower Protection

1 Ombudsman, shall establish for purposes of this
2 subsection.

3 (2) TIMING.—

4 (A) The aggregate period for notice, re-
5 sponse, and decision on an action under sub-
6 section (a) may not exceed 15 business days.

7 (B) The period for the response of a cov-
8 ered employee to a notice under paragraph
9 (1)(A) of an action under subsection (a) shall
10 be 7 business days.

11 (C) A decision under this paragraph on an
12 action under subsection (a) shall be issued not
13 later than 15 business days after notice of the
14 action is provided to the covered individual
15 under paragraph (1)(A). The decision shall be
16 in writing, and shall include the specific reasons
17 therefor.

18 (D) The Secretary shall ensure that the
19 grievance process established under paragraph
20 (1)(C) takes fewer than 21 days.

21 (3) FINALITY.—A decision under this sub-
22 section (a) that is not grieved, and a grievance deci-
23 sion under paragraph (2)(D), shall be final and con-
24 clusive.

1 (4) JUDICIAL REVIEW.—A covered employee ad-
 2 versely affected by a decision under subsection (a)
 3 that is not grieved, or by a grievance decision under
 4 paragraph (2)(D), may obtain judicial review of such
 5 decision.

6 (5) ACTION OF THE COURT.—In any case in
 7 which judicial review is sought under paragraph (4),
 8 the court shall review the record and may set aside
 9 any Department action found to be—

10 (A) arbitrary, capricious, an abuse of dis-
 11 cretion, or otherwise not in accordance with a
 12 provision of law;

13 (B) obtained without procedures required
 14 by a provision of law having been followed; or

15 (C) unsupported by substantial evidence.

16 (c) RELATION TO OTHER PROVISIONS OF LAW.—
 17 Section 3592(b)(1) of title 5, United States Code, and the
 18 procedures under section 7543(b) of such title do not
 19 apply to an action under subsection (a).

20 **SEC. 3. EMPLOYEES: REMOVAL, DEMOTION, OR SUSPEN-**
 21 **SION BASED ON PERFORMANCE OR MIS-**
 22 **CONDUCT.**

23 (a) AUTHORITY.—The Secretary may remove, de-
 24 mote, or suspend a covered individual who is an employee
 25 of the Department if the Secretary determines the per-

1 formance or misconduct of the covered individual warrants
2 such removal, demotion, or suspension. If the Secretary
3 so removes, demotes, or suspends such a covered indi-
4 vidual, the Secretary may—

5 (1) remove the covered individual from the civil
6 service (as defined in section 2101 of title 5, United
7 States Code);

8 (2) demote the covered individual by means of
9 a reduction in grade for which the covered individual
10 is qualified, that the Secretary determines is appro-
11 priate, and that reduces the annual rate of pay of
12 the covered individual; or

13 (3) suspend the covered individual.

14 (b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—

15 (1) Notwithstanding any other provision of law,
16 any covered individual subject to a demotion under
17 subsection (a) shall, beginning on the date of such
18 demotion, receive the annual rate of pay applicable
19 to such grade.

20 (2)(A) A covered individual so demoted may not
21 be placed on administrative leave during the period
22 during which an appeal (if any) under this section
23 is ongoing, and may only receive pay if the covered
24 individual reports for duty or is approved to use ac-

1 accrued unused annual, sick, family medical, military,
2 or court leave.

3 (B) If a covered individual so demoted does not
4 report for duty or receive approval to use accrued
5 unused leave, such covered individual shall not re-
6 ceive pay or other benefits pursuant to subsection
7 (d)(5).

8 (c) PROCEDURES.—

9 (1) IN GENERAL.—(A) The aggregate period
10 for notice, response, and final decision in a removal,
11 demotion, or suspension under this section may not
12 exceed 15 business days.

13 (B) The period for the response of a covered in-
14 dividual to a notice of a proposed removal, demotion,
15 or suspension under this section shall be 7 business
16 days.

17 (C) Chapter 43 and paragraph (3) of subsection
18 (b) of section 7513 of title 5, United States Code,
19 shall apply with respect to a removal, demotion, or
20 suspension under this section.

21 (D) The procedures in this subsection shall su-
22 persede any collective bargaining agreement to the
23 extent that such agreement is inconsistent with such
24 procedures.

1 (2) DEADLINE FOR FINAL DECISION.—The Sec-
2 retary shall issue a final decision with respect to a
3 removal, demotion, or suspension under this section
4 not later than 15 business days after the Secretary
5 provides notice, including a file containing all the
6 evidence in support of the proposed action, to the
7 covered individual of the removal, demotion, or sus-
8 pension. The decision shall be in writing and shall
9 include the specific reasons therefor.

10 (3) APPEAL TO MERIT SYSTEMS PROTECTION
11 BOARD.—

12 (A) Subject to subparagraph (B) and sub-
13 section (d), any removal or demotion under this
14 section, and any suspension of more than 14
15 days under this section, may be appealed to the
16 Merit Systems Protection Board, which shall
17 refer such appeal to an administrative judge
18 pursuant to section 7701(b)(1) of title 5.

19 (B) An appeal under subparagraph (A) of
20 a removal, demotion, or suspension may only be
21 made if such appeal is made not later than 10
22 business days after the date of such removal,
23 demotion, or suspension.

24 (d) EXPEDITED REVIEW.—

1 (1) Upon receipt of an appeal under subsection
2 (c)(3)(A), the administrative judge shall expedite
3 any such appeal under section 7701(b)(1) of title 5,
4 United States Code, and, in any such case, shall
5 issue a final and complete decision not later than
6 180 days after the date of the appeal.

7 (2)(A) Notwithstanding section 7701(c)(1)(B)
8 of title 5, United States Code, the administrative
9 judge shall uphold the decision of the Secretary to
10 remove, demote, or suspend an employee under sub-
11 section (a) if the decision is supported by substantial
12 evidence.

13 (B) Notwithstanding title 5, United States
14 Code, or any other provision of law, if the decision
15 of the Secretary is supported by substantial evi-
16 dence, the administrative judge shall not mitigate
17 the penalty prescribed by the Secretary.

18 (3)(A) The decision of the administrative judge
19 under paragraph (1) may be appealed to the Merit
20 Systems Protection Board.

21 (B) Notwithstanding section 7701(c)(1)(B) of
22 title 5, United States Code, the Merit Systems Pro-
23 tection Board shall uphold the decision of the Sec-
24 retary to remove, demote, or suspend an employee

1 under subsection (a) if the decision is supported by
2 substantial evidence.

3 (C) Notwithstanding title 5, United States
4 Code, or any other provision of law, if the decision
5 of the Secretary is supported by substantial evi-
6 dence, the Merit Systems Protection Board shall not
7 mitigate the penalty prescribed by the Secretary.

8 (4) In any case in which the administrative
9 judge cannot issue a decision in accordance with the
10 180-day requirement under paragraph (1), the Merit
11 Systems Protection Board shall, not later than 14
12 business days after the expiration of the 180-day pe-
13 riod, submit to Congress a report that explains the
14 reasons why a decision was not issued in accordance
15 with such requirement.

16 (5) A decision of the Merit Systems Protection
17 Board under paragraph (3) may be appealed to the
18 United States Court of Appeals for the Federal Cir-
19 cuit pursuant to section 7703 of title 5, United
20 States Code, or to any court of appeals of competent
21 jurisdiction pursuant to subsection (b)(1)(B) of such
22 section.

23 (6) The Merit Systems Protection Board may
24 not stay any removal or demotion under this section,
25 except as provided in section 1214(b) of title 5.

1 (7) During the period beginning on the date on
2 which a covered individual appeals a removal from
3 the civil service under subsection (c) and ending on
4 the date that the United States Court of Appeals for
5 the Federal Circuit issues a final decision on such
6 appeal, such covered individual may not receive any
7 pay, awards, bonuses, incentives, allowances, dif-
8 ferentials, student loan repayments, special pay-
9 ments, or benefits related to the employment of the
10 individual by the Department.

11 (8) To the maximum extent practicable, the
12 Secretary shall provide to the Merit Systems Protec-
13 tion Board such information and assistance as may
14 be necessary to ensure an appeal under this sub-
15 section is expedited.

16 (9) If an employee prevails on appeal under this
17 section, the employee shall be entitled to backpay (as
18 provided in section 5596 of title 5, United States
19 Code).

20 (10) If an employee who is subject to a collec-
21 tive bargaining agreement chooses to grieve an ac-
22 tion taken under this section through a grievance
23 procedure provided under the collective bargaining
24 agreement, the timelines and procedures set forth in
25 subsection (c) and this subsection shall apply.

1 (e) WHISTLEBLOWER PROTECTION.—

2 (1) In the case of a covered individual seeking
3 corrective action (or on behalf of whom corrective
4 action is sought) from the Office of Special Counsel
5 based on an alleged prohibited personnel practice de-
6 scribed in section 2302(b) of title 5, United States
7 Code, the Secretary may not remove, demote, or sus-
8 pend such covered individual under subsection (a)
9 without the approval of the Special Counsel under
10 section 1214(f) of title 5.

11 (2) In the case of a covered individual who has
12 made a whistleblower disclosure to the Whistleblower
13 Protection Ombudsman, the Secretary may not re-
14 move, demote, or suspend such covered individual
15 under subsection (a) until—

16 (A) in the case in which the Assistant Sec-
17 retary determines to refer the whistleblower dis-
18 closure under subsection (e) to an office or
19 other investigative entity, a final decision with
20 respect to the whistleblower disclosure has been
21 made by such office or other investigative enti-
22 ty; or

23 (B) in the case in which the Assistant Sec-
24 retary determines not to refer the whistle-

1 blower disclosure under such section, the Assist-
2 ant Secretary makes such determination.

3 (f) TERMINATION OF INVESTIGATIONS BY OFFICE OF
4 SPECIAL COUNSEL.—

5 (1) Notwithstanding any other provision of law,
6 the Special Counsel (established by section 1211 of
7 title 5, United States Code) may terminate an inves-
8 tigation of a prohibited personnel practice alleged by
9 an employee or former employee of the Department
10 after the Special Counsel provides to the employee
11 or former employee a written statement of the rea-
12 sons for the termination of the investigation.

13 (2) Such statement may not be admissible as
14 evidence in any judicial or administrative proceeding
15 without the consent of such employee or former em-
16 ployee.

17 (g) VACANCIES.—In the case of a covered individual
18 who is removed or demoted under subsection (a), to the
19 maximum extent feasible, the Secretary shall fill the va-
20 cancy arising as a result of such removal or demotion.

21 **SEC. 4. REDUCTION OF BENEFITS OF EMPLOYEES CON-**
22 **VICTED OF CERTAIN CRIMES.**

23 (a) REDUCTION OF ANNUITY FOR REMOVED EM-
24 PLOYEE.—

1 (1) IN GENERAL.—The Secretary shall order
2 that the covered service of an employee of the De-
3 partment removed from a position for performance
4 or misconduct under section 2 or any other provision
5 of law shall not be taken into account for purposes
6 of calculating an annuity with respect to such indi-
7 vidual under chapter 83 or chapter 84 of title 5,
8 United States Code, if—

9 (A) the Secretary determines that the indi-
10 vidual is convicted of a felony (and the convic-
11 tion is final) that influenced the individual's
12 performance while employed in the position;

13 (B) before such order is made, the indi-
14 vidual is afforded—

15 (i) notice of the proposed order; and

16 (ii) an opportunity to respond to the
17 proposed order by not later than ten busi-
18 ness days following receipt of such notice;
19 and

20 (C) the Secretary issues the order—

21 (i) in the case of a proposed order to
22 which an individual responds under sub-
23 paragraph (B)(ii), not later than five busi-
24 ness days after receiving the response of
25 the individual; or

1 (ii) in the case of a proposed order to
2 which an individual does not respond, not
3 later than 15 business days after the Sec-
4 retary provides notice to the individual
5 under subparagraph (B)(i).

6 (2) APPEAL.—Any individual with respect to
7 whom an annuity is reduced under this subsection
8 may appeal the reduction to the Director of the Of-
9 fice of Personnel Management pursuant to such reg-
10 ulations as the Director may prescribe for purposes
11 of this subsection.

12 (b) REDUCTION OF ANNUITY FOR RETIRED EM-
13 PLOYEE.—

14 (1) IN GENERAL.—The Secretary may order
15 that the covered service of an individual who the
16 Secretary proposes to remove for performance or
17 misconduct under section 2 or any other provision of
18 law but who leaves employment at the Department
19 prior to the issuance of a final decision with respect
20 to such action shall not be taken into account for
21 purposes of calculating an annuity with respect to
22 such individual under chapter 83 or chapter 84 of
23 title 5, United States Code, if—

24 (A) the Secretary determines that indi-
25 vidual is convicted of a felony (and the convic-

tion is final) that influenced the individual's performance while employed in the position;

(B) before such order is made, the individual is afforded—

(i) notice of the proposed order; and

(ii) an opportunity to respond to the proposed order by not later than ten business days following receipt of such notice; and

(C) the Secretary issues the order—

(i) in the case of a proposed order to which an individual responds under subparagraph (B)(ii), not later than five business days after receiving the response of the individual; or

(ii) in the case of a proposed order to which an individual does not respond, not later than 15 business days after the Secretary provides notice to the individual under subparagraph (B)(i).

(2) APPEAL.—Upon the issuance of an order by the Secretary under paragraph (1), the individual shall have an opportunity to appeal the order to the Director of the Office of Personnel Management be-

1 fore the date that is seven business days after the
2 date of such issuance.

3 (3) FINAL DECISION.—The Director of the Of-
4 fice of Personnel Management shall make a final de-
5 cision with respect to an appeal under paragraph (2)
6 within 30 business days of receiving the appeal.

7 (c) ADMINISTRATIVE REQUIREMENTS.—Not later
8 than 37 business days after the Secretary issues a final
9 order under subsection (a) or (b) with respect to an indi-
10 vidual, the Director of the Office of Personnel Manage-
11 ment shall recalculate the annuity of the individual.

12 (d) LUMP-SUM ANNUITY CREDIT.—Any individual
13 with respect to whom an annuity is reduced under sub-
14 section (a) or (b) shall be entitled to be paid so much of
15 such individual's lump-sum credit as is attributable to the
16 period of covered service.

17 (e) SPOUSE OR CHILDREN EXCEPTION.—

18 (1) The Secretary, in consultation with the Di-
19 rector of the Office of Personnel Management, shall
20 prescribe regulations that may provide for the pay-
21 ment to the spouse or children of any individual re-
22 ferred to in subsection (a) or (b) of any amounts
23 which (but for this subsection) would otherwise have
24 been nonpayable by reason of such subsections.

1 (2) Regulations prescribed under paragraph (1)
2 shall be consistent with the requirements of sections
3 8332(o)(5) and 8411(l)(5) of title 5, United States
4 Code, as the case may be.

5 **SEC. 5. RECOUPMENT OF BONUSES OR AWARDS PAID TO**
6 **EMPLOYEES OF DEPARTMENT.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, the Secretary may issue an order directing
9 an employee of the Department to repay the amount, or
10 a portion of the amount, of any award or bonus paid to
11 the employee under title 5, United States Code, including
12 under chapter 45 or 53 of such title, if—

13 (1) the Secretary determines that the individual
14 engaged in misconduct or poor performance prior to
15 payment of the award or bonus, and that such
16 award or bonus would not have been paid, in whole
17 or in part, had the misconduct or poor performance
18 been known prior to payment;

19 (2) before such repayment, the employee is af-
20 forded—

21 (A) notice of the proposed order; and

22 (B) an opportunity to respond to the pro-
23 posed order by not later than 10 business days
24 after the receipt of such notice; and

25 (3) the Secretary issues the order—

1 (A) in the case of a proposed order to
2 which an individual responds under paragraph
3 (2)(B), not later than five business days after
4 receiving the response of the individual; or

5 (B) in the case of a proposed order to
6 which an individual does not respond, not later
7 than 15 business days after the Secretary pro-
8 vides notice to the individual under paragraph
9 (2)(A).

10 (b) APPEAL OF ORDER OF SECRETARY.—

11 (1) Upon the issuance of an order by the Sec-
12 retary under subsection (a) with respect to an indi-
13 vidual, the individual shall have an opportunity to
14 appeal the order to the Director of the Office of Per-
15 sonnel Management before the date that is seven
16 business days after the date of such issuance.

17 (2) The Director shall make a final decision
18 with respect to an appeal under paragraph (1) with-
19 in 30 business days after receiving such appeal.

20 (c) EFFECTIVE DATE.—Chapter 45 or 53 of title 5,
21 United States Code, shall apply with respect to an award
22 or bonus paid by the Secretary to any employee of the
23 Department on or after the date of the enactment of this
24 Act.

1 (d) CONSTRUCTION.—Nothing in this Act or the
2 amendments made by this Act may be construed to modify
3 the certification issued by the Office of Personnel Manage-
4 ment and the Office of Management and Budget regarding
5 the performance appraisal system of the Senior Executive
6 Service of the Department.

7 **SEC. 6. RECOUPMENT OF RELOCATION EXPENSES PAID ON**
8 **BEHALF OF EMPLOYEES OF DEPARTMENT.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law, the Secretary may issue an order directing
11 an employee of the Department to repay the amount, or
12 a portion of the amount, paid to or on behalf of the em-
13 ployee under title 5, United States Code, for relocation
14 expenses, including any expenses under section 5724 or
15 5724a of such title, or if—

16 (1) the Secretary determines that relocation ex-
17 penses were paid following an act of fraud or mal-
18 feasance that influenced the authorization of the re-
19 location expenses;

20 (2) before such repayment, the employee is af-
21 forced—

22 (A) notice of the proposed order; and

23 (B) an opportunity to respond to the pro-
24 posed order not later than ten business days
25 following the receipt of such notice; and

1 (3) the Secretary issues the order—

2 (A) in the case of a proposed order to
3 which an individual responds under paragraph
4 (2)(B), not later than five business days after
5 receiving the response of the individual; or

6 (B) in the case of a proposed order to
7 which an individual does not respond, not later
8 than 15 business days after the Secretary pro-
9 vides notice to the individual under paragraph
10 (2)(A).

11 (b) APPEAL OF ORDER OF SECRETARY.—

12 (1) Upon the issuance of an order by the Sec-
13 retary under subsection (a) with respect to an indi-
14 vidual, the individual shall have an opportunity to
15 appeal the order to the Director of the Office of Per-
16 sonnel Management before the date that is seven
17 business days after the date of such issuance.

18 (2) The Director shall make a final decision
19 with respect to an appeal under paragraph (1) with-
20 in 30 days after receiving such appeal.

21 (c) EFFECTIVE DATE.—Chapter 45 or 53 of title 5,
22 United States Code, shall apply with respect to an amount
23 paid by the Secretary to or on behalf of an employee of
24 the Department for relocation expenses on or after the
25 date of the enactment of this Act.

1 **SEC. 7. MAJOR ADVERSE ACTIONS INVOLVING PROFES-**
2 **SIONAL CONDUCT OR COMPETENCE.**

3 (a) ESTABLISHMENT OF DISCIPLINARY APPEALS
4 BOARD.—

5 (1) APPOINTMENT.—The Secretary shall ap-
6 point 3 employees of the Department who are senior
7 executives or career senior executives to serve on a
8 Disciplinary Appeals Board (hereafter referred to as
9 the “Board”) which shall have the exclusive author-
10 ity to review any disciplinary action taken against a
11 covered employee of the Department which arises
12 out of or includes a question of professional mis-
13 conduct or competence.

14 (2) POLITICAL MAKEUP OF THE BOARD.—At
15 least one member of the Board shall be of a dif-
16 ferent political party than the other two members.

17 (b) INITIAL PROCEDURES.—

18 (1) RIGHTS OF COVERED EMPLOYEES.—

19 (A) STATEMENT OF CHARGES AND EVI-
20 DENCE.—In any case in which charges are
21 brought against a covered employee which
22 arises out of, or includes, a question of profes-
23 sional conduct or competence which could result
24 in a major adverse action, the covered employee
25 is entitled, within the aggregate time period
26 specified in paragraph (4), to the following:

1 (i) Advance written notice from the
2 deciding official specifically stating the
3 basis for each charge, the adverse actions
4 that could be taken if the charges are sus-
5 tained, a statement of any specific law,
6 regulation, policy, procedure, practice, or
7 other specific instruction that has been vio-
8 lated with respect to each charge, and a
9 file containing all the evidence in support
10 of each charge, except that the require-
11 ment for notification in advance may be
12 waived if there is reasonable cause to be-
13 lieve that the employee has committed a
14 crime for which the employee may be im-
15 prisoned.

16 (ii) The opportunity, within the time
17 period provided for in paragraph (4), to
18 present an answer orally and in writing to
19 the deciding official, who shall be an offi-
20 cial higher in rank than the charging offi-
21 cial, and to submit affidavits and other
22 documentary evidence in support of the an-
23 swer. The period for the response of a cov-
24 ered employee shall be seven business days.

1 (B) RIGHT TO REPRESENTATION.—In any
2 case described in paragraph (1), the employee is
3 entitled to be represented by an attorney or
4 other representative of the employee's choice at
5 all stages of the case.

6 (2) FINAL DECISION BY DECIDING OFFICER.—
7 After considering the employee's answer, if any, and
8 within the time period provided for in paragraph
9 (5)(B), the deciding official shall render a decision
10 on the charges. The decision shall be in writing and
11 shall include the deciding official provides notice on
12 the charges for purposes of paragraph (1)(A)(i).

13 (3) APPEALS TO THE BOARD.—The Secretary shall
14 require that any appeal to a Board from a decision to im-
15 pose a major adverse action shall be received within seven
16 business days after the date of service of the written deci-
17 sion on the covered employee.

18 (4) TIMING.—The aggregate period for the resolution
19 of charges against an employee under this subsection may
20 not exceed 15 business days.

21 (5) SUPERCESSION OF ANY COLLECTIVE BAR-
22 GAINING AGREEMENT.—The procedures in this subsection
23 shall supersede any collective bargaining agreement to the
24 extent that such agreement is inconsistent with such pro-
25 cedures.

1 (c) PROCEDURES OF APPEALS BEFORE THE
2 BOARD.—

3 (1) INITIAL DETERMINATION.—When the
4 Board convenes to consider an appeal in a case
5 under this section, the Board, before proceeding to
6 consider the merits of the appeal, shall determine
7 whether the case is properly before it.

8 (2) DECISIONS BY THE BOARD.—Upon hearing
9 such an appeal, the Board shall, with respect to each
10 charge appealed to the Board, sustain the charge,
11 dismiss the charge, or sustain the charge in part and
12 dismiss the charge in part. If the deciding official is
13 sustained (in whole or in part) with respect to any
14 such charge, the Board shall—

15 (A) approve the action as imposed;

16 (B) approve the action with modification,
17 reduction, or exception; or

18 (C) reverse the action.

19 (3) RIGHT TO ORAL HEARING.—A Board shall
20 afford an employee appealing an adverse action
21 under this section an opportunity for an oral hear-
22 ing. If such a hearing is held, the Board shall pro-
23 vide the employee with a transcript of the hearing.

24 (4) REPRESENTATION OF MANAGEMENT.—The
25 Secretary may designate an employee of the Depart-

1 ment to represent management in any case before a
2 Board.

3 (5) DEADLINE FOR DECISION.—The Board
4 shall render a decision in any case within 45 days
5 of completion of the hearing, if there is a hearing,
6 and in any event no later than 120 days after the
7 appeal commenced.

8 (d) ACTIONS BY THE SECRETARY.—

9 (1) IF THE SECRETARY AGREES WITH THE DE-
10 CISION OF THE BOARD.—After resolving any ques-
11 tion as to whether a matter involves professional
12 conduct or competence, the Secretary shall cause to
13 be executed the decision of the Board in a timely
14 manner and in any event in not more than 90 days
15 after the decision of the Board is received by the
16 Secretary. Pursuant to the Board's decision, the
17 Secretary may order reinstatement, award back pay,
18 and provide such other remedies as the Board found
19 appropriate relating directly to the proposed action,
20 including expungement of records relating to the ac-
21 tion.

22 (2) IF THE SECRETARY DISAGREES WITH A DE-
23 CISION BY THE BOARD.—

24 (A) CONTRARY TO EVIDENCE OR UNLAW-
25 FUL.—If the Secretary finds a decision of the

Board to be clearly contrary to the evidence or unlawful, the Secretary may—

(i) reverse the decision of the Board;

or

(ii) vacate the decision of the Board and remand the matter to the Board for further consideration.

(B) NOT JUSTIFIED BY THE NATURE OF THE CHARGES.—If the Secretary finds the decision of the Board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(3) SECRETARY'S ACTION FINAL.—The Secretary's execution of a Board's decision shall be the final administrative action in the case.

(e) JUDICIAL REVIEW.—

(1) IN GENERAL.—A covered employee adversely affected by a final order or decision of a Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) ACTIONS BY THE COURT.—In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful

1 and set aside any agency action, finding, or conclu-
 2 sion found to be—

3 (A) arbitrary, capricious, an abuse of dis-
 4 cretion, or otherwise not in accordance with
 5 law;

6 (B) obtained without procedures required
 7 by law, rule, or regulation having been followed;
 8 or

9 (C) unsupported by substantial evidence.

10 **SEC. 8. PROCEDURES FOR OTHER ADVERSE ACTIONS NOT**
 11 **RELATING TO MISCONDUCT OR COM-**
 12 **PETENCE.**

13 (a) PROCEDURES PRESCRIBED BY THE SEC-
 14 RETARY.—

15 (1) AUTHORITY.—The Secretary shall prescribe
 16 by regulation grievance procedures for the consider-
 17 ation of grievances of a covered employee arising
 18 from adverse personnel actions in which each action
 19 taken either—

20 (A) is not a major adverse action; or

21 (B) does not arise out of a question of pro-
 22 fessional misconduct or competence.

23 (2) REQUIREMENTS.—Grievance procedures
 24 prescribed under subsection (a) shall include the fol-
 25 lowing:

1 (A) A right to formal review by an impar-
2 tial examiner within the Department, who, in
3 the case of an adverse action arising from a
4 question of professional conduct or competence,
5 shall be selected from the Disciplinary Appeals
6 Board established under section 7.

7 (B) A right to a prompt report of the find-
8 ings and recommendations by the impartial ex-
9 aminer.

10 (C) A right to a prompt review of the ex-
11 aminer's findings and recommendations by an
12 official of a higher level than the official who
13 decided upon the action. That official may ac-
14 cept, modify, or reject the examiner's rec-
15 ommendations.

16 (b) OPTION OF EMPLOYEE COVERED BY COLLEC-
17 TIVE BARGAINING AGREEMENT.—In the case of an em-
18 ployee who is a member of a collective bargaining unit
19 under chapter 71 of title 5, the employee may seek review
20 of an adverse action described in subsection (a) either
21 under the grievance procedures provided through regula-
22 tions prescribed under subsection (a) or through grievance
23 procedures determined through collective bargaining, but
24 not under both. The employee shall elect which grievance
25 procedure to follow. Any such election may not be revoked.

1 (c) RIGHTS OF EMPLOYEES.—A covered employee fil-
2 ing a grievance under this section shall be entitled to the
3 following:

4 (1) In any case in which charges are brought
5 against covered employee which could result in a
6 major adverse action and which do not involve pro-
7 fessional conduct or competence, the employee is en-
8 titled to notice and an opportunity to answer with
9 respect to those charges.

10 (2) In any other case in which charges are
11 brought against a covered employee the employee is
12 entitled, within the aggregate time period specified
13 in paragraph (3)(A), to—

14 (A) written notice stating the specific rea-
15 son for the proposed action; and

16 (B) time to answer orally and in writing
17 and to furnish affidavits and other documentary
18 evidence in support of the answer.

19 (3)(A) The aggregate period for the resolution
20 of charges against an employee under paragraph (1)
21 or (2) may not exceed 15 business days.

22 (B) The period for the response of an employee
23 under paragraph (1) or (2)(B) to written notice of
24 charges under paragraph (1) or (2)(A), as applica-
25 ble, shall be seven business days.

1 (C) The deciding official shall render a decision
2 on charges under paragraph (1) or (2) not later
3 than 15 business days after notice is provided on the
4 charges for purposes of paragraph (1) or (2)(A), as
5 applicable.

6 (d) RIGHT TO REPRESENTATION.—In any review of
7 an adverse action under the grievance procedures pre-
8 scribed under subsection (a), the employee is entitled to
9 be represented by an attorney or other representative of
10 the employee's choice at all stages of the case.

11 **SEC. 9. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

12 The Secretary shall provide to each employee of the
13 Department who is employed as a supervisor periodic
14 training on the following:

15 (1) The rights of whistleblowers and how to ad-
16 dress a report by an employee of a hostile work envi-
17 ronment, reprisal, or harassment.

18 (2) How to effectively motivate, manage, and
19 reward the employees who report to the supervisor.

20 (3) How to effectively manage employees who
21 are performing at an unacceptable level and access
22 assistance from the human resources office of the
23 Department and the Office of the General Counsel
24 of the Department with respect to those employees.

1 **SEC. 10. ASSESSMENT AND REPORT ON EFFECT ON SENIOR**
2 **EXECUTIVES AT THE DEPARTMENT OF**
3 **LABOR.**

4 (a) IN GENERAL.—Not later than two years after the
5 date of the enactment of this Act, the Secretary shall—

6 (1) measure and assess the effect of the enact-
7 ment of this Act on the morale, engagement, hiring,
8 promotion, retention, discipline, and productivity of
9 individuals in senior executive positions at the De-
10 partment; and

11 (2) submit to Congress a report on the findings
12 of the Secretary with respect to the measurement
13 and assessment carried out under paragraph (1).

14 (b) ELEMENTS.—The assessment required by sub-
15 section (a)(1) shall include the following:

16 (1) With respect to engagement, trends in mo-
17 rale of individuals in senior executive positions and
18 individuals aspiring to senior executive positions.

19 (2) With respect to promotions—

20 (A) whether the Department is experi-
21 encing an increase or decrease in the number of
22 employees participating in leadership develop-
23 ment and candidate development programs with
24 the intention of becoming candidates for senior
25 executive positions; and

1 (B) trends in applications to senior execu-
2 tive positions within the Department.

3 (3) With respect to retention—

4 (A) trends in retirement rates of individ-
5 uals in senior executive positions at the Depart-
6 ment;

7 (B) trends in quit rates of individuals in
8 senior executive positions at the Department;

9 (C) rates of transfer of—

10 (i) individuals from other Federal
11 agencies into senior executive positions at
12 the Department; and

13 (ii) individuals from senior executive
14 positions at the Department to other Fed-
15 eral agencies; and

16 (D) trends in total loss rates by job func-
17 tion.

18 (4) With respect to disciplinary processes—

19 (A) regarding individuals in senior execu-
20 tive positions at the Department who are the
21 subject of disciplinary action—

22 (i) the length of the disciplinary proc-
23 ess in days for such individuals both before
24 the date of the enactment of this Act and

1 under the provisions of this Act described
2 in subsection (a)(1); and

3 (ii) the extent to which appeals by
4 such individuals are upheld under such
5 provisions as compared to before the date
6 of the enactment of this Act;

7 (B) the components or offices of the De-
8 partment which experience the greatest number
9 of proposed adverse actions against individuals
10 in senior executive positions and components
11 and offices which experience the least relative to
12 the size of the components or offices' total
13 number of senior executive positions;

14 (C) the tenure of individuals in senior ex-
15 ecutive positions who are the subject of discipli-
16 nary action;

17 (D) whether the individuals in senior exec-
18 utive positions who are the subject of discipli-
19 nary action have previously been disciplined;
20 and

21 (E) the number of instances of disciplinary
22 action taken by the Secretary against individ-
23 uals in senior executive positions at the Depart-
24 ment as compared to governmentwide discipline
25 against individuals in Senior Executive Service

positions (as defined in section 3132(a) of title 5, United States Code) as a percentage of the total number of individuals in senior executive positions at the Department and Senior Executive Service positions (as so defined).

(5) With respect to hiring—

(A) the degree to which the skills of newly hired individuals in senior executive positions at the Department are appropriate with respect to the needs of the Department;

(B) the types of senior executive positions at the Department most commonly filled under the authorities in the provisions described in subsection (a)(1);

(C) the number of senior executive positions at the Department filled by hires outside of the Department compared to hires from within the Department;

(D) the length of time to fill a senior executive position at the Department and for a new hire to begin working in a new senior executive position;

(E) the mission-critical deficiencies filled by newly hired individuals in senior executive positions and the connection between mission-

critical deficiencies filled under the provisions described in subsection (a) and annual performance of the Department;

(F) the satisfaction of applicants for senior executive positions at the Department with the hiring process, including the clarity of job announcements, reasons for withdrawal of applications, communication regarding status of applications, and timeliness of hiring decision; and

(G) the satisfaction of newly hired individuals in senior executive positions at the Department with the hiring process and the process of joining and becoming oriented with the Department.

SEC. 11. MEASUREMENT OF DEPARTMENT OF LABOR DISCIPLINARY PROCESS OUTCOMES AND EFFECTIVENESS.

(a) MEASURING AND COLLECTING.—

(1) IN GENERAL.—The Secretary shall measure and collect information on the outcomes of disciplinary actions carried out by the Department during the three-year period ending on the date of the enactment of this Act and the effectiveness of such actions.

1 (2) ELEMENTS.—In measuring and collecting
2 pursuant to paragraph (1), the Secretary shall meas-
3 ure and collect information regarding the following:

4 (A) The average time from the initiation of
5 an adverse action against an employee at the
6 Department to the final resolution of that ac-
7 tion.

8 (B) The number of distinct steps and lev-
9 els of review within the Department involved in
10 the disciplinary process and the average length
11 of time required to complete these steps.

12 (C) The rate of use of alternate discipli-
13 nary procedures compared to traditional dis-
14 ciplinary procedures and the frequency with
15 which employees who are subject to alternative
16 disciplinary procedures commit additional of-
17 fenses.

18 (D) The number of appeals from adverse
19 actions filed against employees of the Depart-
20 ment, the number of appeals upheld, and the
21 reasons for which the appeals were upheld.

22 (E) The use of paid administrative leave
23 during the disciplinary process and the length
24 of such leave.

25 (b) REPORT.—

1 (1) IN GENERAL.—Not later than December 31,
2 2020, the Secretary shall submit to Congress a re-
3 port on the disciplinary procedures and actions of
4 the Department.

5 (2) CONTENTS.—The report submitted under
6 paragraph (1) shall include the following:

7 (A) The information collected under sub-
8 section (a).

9 (B) The findings of the Secretary with re-
10 spect to the measurement and collection carried
11 out under subsection (a).

12 (C) An analysis of the disciplinary proce-
13 dures and actions of the Department.

14 (D) Suggestions for improving the discipli-
15 nary procedures and actions of the Department.

16 (E) Such other matters as the Secretary
17 considers appropriate.

18 **SEC. 12. DEFINITIONS.**

19 In this Act the following definitions apply:

20 (1) COVERED EMPLOYEE.—The term “covered
21 employee” means—

22 (A) a career appointee (as that term is de-
23 fined in section 3132(a)(4) of title 5, United
24 States Code);

1 (B) any individual who occupies an admin-
2 istrative or executive position; or

3 (C) an individual occupying a senior execu-
4 tive position.

5 (2) COVERED INDIVIDUAL.—The term “covered
6 individual”, for purposes of section 3, means an in-
7 dividual occupying a position at the Department, but
8 does not include—

9 (A) an individual occupying a senior execu-
10 tive position;

11 (B) an individual who has not completed a
12 probationary or trial period; or

13 (C) a political appointee.

14 (3) COVERED SERVICE.—The term “covered
15 service” means, with respect to an individual subject
16 to a removal for performance or misconduct, the pe-
17 riod of service beginning on the date that the Sec-
18 retary determines under such applicable provision
19 that the individual engaged in activity that gave rise
20 to such action and ending on the date that the indi-
21 vidual is removed from or leaves a position of em-
22 ployment at the Department prior to the issuance of
23 a final decision with respect to such action.

24 (4) DEPARTMENT.—The term “Department”
25 means the Department of Labor.

1 (5) GRADE.—The term “grade” has the mean-
2 ing given such term in section 7511(a) of title 5.

3 (6) LUMP-SUM CREDIT.—The term “lump-sum
4 credit” has the meaning given such term in section
5 8331(8) or section 8401(19) of title 5, United States
6 Code, as the case may be.

7 (7) MISCONDUCT.—The term “misconduct” in-
8 cludes neglect of duty, malfeasance, or failure to ac-
9 cept a directed reassignment or to accompany a po-
10 sition in a transfer of function.

11 (8) POLITICAL APPOINTEE.—The term “polit-
12 ical appointee” means an individual who is—

13 (A) employed in a position described under
14 sections 5312 through 5316 of title 5, United
15 States Code (relating to the Executive Sched-
16 ule);

17 (B) a limited term appointee, limited emer-
18 gency appointee, or noncareer appointee in the
19 Senior Executive Service, as defined under
20 paragraphs (5), (6), and (7), respectively, of
21 section 3132(a) of title 5, United States Code;
22 or

23 (C) employed in a position of a confidential
24 or policy-determining character under schedule

1 C of subpart C of part 213 of title 5, Code of
2 Federal Regulations, or successor regulation.

3 (9) SECRETARY.—The term “Secretary” means
4 the Secretary of Labor.

5 (10) SENIOR EXECUTIVE POSITION.—The term
6 “senior executive position” means—

7 (A) with respect to a career appointee (as
8 that term is defined in section 3132(a) of title
9 5, United States Code), a Senior Executive
10 Service position (as such term is defined in
11 such section); and

12 (B) with respect to a covered employee or
13 covered individual, has the meaning given such
14 term in section 3132(a) of title 5, United States
15 Code.

16 (11) SUPERVISOR.—The term “supervisor” has
17 the meaning given such term in section 7103(a) of
18 title 5, United States Code.

19 (12) SERVICE.—The term “service” has the
20 meaning given such term in section 8331(12) or sec-
21 tion 8401(26) of title 5, United States Code, as the
22 case may be.

23 (13) SUSPEND.—The term “suspend” means
24 the placing of an employee, for disciplinary reasons,

1 in a temporary status without duties and pay for a
2 period in excess of 14 days.

3 (14) WHISTLEBLOWER.—The term “whistle-
4 blower” means one who makes a whistleblower dis-
5 closure.

6 (15) WHISTLEBLOWER DISCLOSURE.—The
7 term “whistleblower disclosure” means any disclo-
8 sure of information by an employee of the Depart-
9 ment or individual applying to become an employee
10 of the Department which the employee or individual
11 reasonably believes evidences—

12 (A) a violation of a law, rule, or regulation;

13 or

14 (B) gross mismanagement, a gross waste
15 of funds, an abuse of authority, or a substantial
16 and specific danger to public health or safety.

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