

116TH CONGRESS
1ST SESSION

S. 1082

To prevent discrimination and harassment in employment.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2019

Mrs. MURRAY (for herself, Ms. HARRIS, Mr. MERKLEY, Ms. WARREN, Mrs. GILLIBRAND, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. CASEY, Mr. SANDERS, Mr. KAINE, Mr. BROWN, Mr. MARKEY, Ms. ROSEN, Ms. KLOBUCHAR, Mr. CARDIN, Mr. VAN HOLLEN, Mr. BOOKER, Mr. DURBIN, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prevent discrimination and harassment in employment.

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 “Bringing an End to
5 Harassment by Enhancing Accountability and Rejecting
6 Discrimination in the Workplace Act” or the “BE
7 HEARD in the Workplace Act”.

8 **SEC. 2. TABLE OF CONTENTS.**

9 The table of contents of this Act is as follows:

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- Sec. 102. Nondiscrimination training.
- Sec. 103. Resource materials on policies and trainings for small businesses.
- Sec. 104. Education, training, and technical assistance to employers.
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Subtitle C—Preventing Harassment of Tipped Employees

- Sec. 121. Tipped employees.

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- Sec. 201. Clarifying sexual orientation discrimination and gender identity discrimination are unlawful sex discrimination.
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TITLE III—BROADENING PROTECTIONS AND ENSURING TRANSPARENCY

- Sec. 301. Independent contractors, interns, fellows, volunteers, and trainees.
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- Sec. 303. Prohibition on mandatory arbitration and protection of concerted legal action.
- Sec. 304. Federal contractor compliance with civil rights laws.

TITLE IV—NATIONWIDE GRANTS TO PREVENT AND RESPOND TO WORKPLACE HARASSMENT

- Sec. 401. Definitions.

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- Sec. 411. Definitions.
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- Sec. 421. Definitions.
Sec. 422. Grants for civil legal needs related to employment discrimination.
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- Sec. 431. Purpose.
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Sec. 434. System required.
Sec. 435. Administration.
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TITLE V—GENERAL PROVISIONS

- Sec. 501. Severability.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are—

3 (1) to prevent and reduce prohibited discrimina-
4 tion and harassment in employment;

5 (2) to prevent and reduce discriminatory and
6 harassing conduct in the workplace;

7 (3) to identify and implement best practices in
8 creating a workplace free from discrimination and
9 harassment;

10 (4) to update and clarify certain employment
11 nondiscrimination laws; and

12 (5) to expand workers' access to counsel and
13 advocacy services to protect the legal and human
14 rights of workers by preventing and reducing dis-

1 crimination and harassment and responding to viola-
 2 tions of worker’s rights.

3 **TITLE I—RESEARCHING AND**
 4 **PREVENTING WORKPLACE**
 5 **HARASSMENT; TIPPED EM-**
 6 **PLOYEES**

7 **SEC. 100. DEFINITIONS.**

8 In this title:

9 (1) COMMISSION.—The term “Commission”
 10 means the Equal Employment Opportunity Commis-
 11 sion.

12 (2) EMPLOYER.—The term “employer” has the
 13 meaning given the term in section 701 of the Civil
 14 Rights Act of 1964 (42 U.S.C. 2000e), as amended
 15 by section 202 of this Act.

16 **Subtitle A—Preventing Workplace**
 17 **Harassment**

18 **SEC. 101. MANDATORY NONDISCRIMINATION POLICIES.**

19 (a) POLICIES.—

20 (1) IN GENERAL.—Beginning not later than 1
 21 year after the date of enactment of this Act, each
 22 employer who has 15 or more employees shall adopt,
 23 maintain, and periodically review a comprehensive
 24 nondiscrimination policy, which shall establish poli-

1 cies and procedures concerning prohibited discrimi-
2 nation and harassment in employment.

3 (2) DISSEMINATION AND POSTING.—The em-
4 ployer shall disseminate the comprehensive non-
5 discrimination policy to each employee at the begin-
6 ning of employment, annually, and on the issuance
7 of any update to the comprehensive nondiscrimina-
8 tion policy. The employer shall post the comprehen-
9 sive nondiscrimination policy in prominent locations,
10 including in a prominent location on the employer’s
11 website.

12 (b) CONTENTS.—At a minimum, the comprehensive
13 nondiscrimination policy shall include—

14 (1) a definition of prohibited discrimination and
15 prohibited harassment in employment;

16 (2) a description of the types of behaviors pro-
17 hibited by the policy;

18 (3) the identification of multiple persons to
19 whom an employee may report such discrimination
20 or harassment;

21 (4) a description of multiple methods for re-
22 porting such discrimination or harassment;

23 (5) a general description of how the employer
24 will conduct prompt, thorough, and impartial inves-

1 tigungen and respond to complaints regarding such
2 discrimination or harassment;

3 (6) a prohibition against retaliation related to
4 such discrimination or harassment, including dis-
5 closing, reporting, or challenging such discrimination
6 or harassment;

7 (7) a description of potential consequences for
8 violating the policy; and

9 (8) any additional components required by the
10 Commission for the purpose of preventing unlawful
11 discrimination and harassment.

12 (c) ACCESSIBILITY.—The comprehensive non-
13 discrimination policy shall be made available in plain
14 English and in an accessible manner for individuals with
15 disabilities and for individuals who primarily speak a lan-
16 guage other than English.

17 (d) ENFORCEMENT.—

18 (1) Subject to paragraph (2), an employer who
19 fails to comply with this section shall be fined not
20 more than \$1,000 for each separate offense.

21 (2) An employer who repeatedly or willfully fails
22 to comply with this section shall be fined not less
23 than \$5,000 for each separate offense.

24 (e) REGULATIONS.—The Commission shall have au-
25 thority to promulgate regulations to carry out this section.

1 **SEC. 102. NONDISCRIMINATION TRAINING.**

2 (a) IN GENERAL.—The Commission shall promulgate
3 regulations to require appropriate employers, as deter-
4 mined by the Commission, to provide—

5 (1) in-person or other interactive training for
6 each employee regarding discriminatory and harass-
7 sing behaviors in employment; and

8 (2) training specifically designed for supervisors
9 regarding the prevention of and response to dis-
10 crimination and harassment in employment, includ-
11 ing retaliation.

12 (b) REQUIRED TRAINING.—The requirements de-
13 scribed in subsection (a) shall—

14 (1) be based on research on effective training;
15 and

16 (2) identify specific elements of such training.

17 (c) ENFORCEMENT.—The Commission shall issue
18 remedies for noncompliance by regulation.

19 **SEC. 103. RESOURCE MATERIALS ON POLICIES AND**
20 **TRAININGS FOR SMALL BUSINESSES.**

21 (a) IN GENERAL.—Not later than 1 year after the
22 date of enactment of this Act, the Commission shall make
23 publicly available resource materials on comprehensive
24 nondiscrimination policies and trainings on such policies
25 for employers with fewer than 15 employees.

1 (b) CONTENTS.—Such resource materials shall in-
2 clude, at a minimum—

3 (1) model comprehensive nondiscrimination
4 policies concerning prohibited discrimination and
5 harassment in employment, as described in section
6 101, for use by employers with fewer than 15 em-
7 ployees, which shall—

8 (A) be designed to be easily distributed by
9 such employers to employees;

10 (B) take into account the resources avail-
11 able to such employers;

12 (C) take into account the particular needs
13 of employees of such employers;

14 (D) be made available in plain English and
15 in accessible formats for individuals with dis-
16 abilities and for individuals who primarily speak
17 a language other than English;

18 (E) include a definition of prohibited dis-
19 crimination and harassment in employment;

20 (F) include examples of prohibited dis-
21 criminatory and harassing behaviors;

22 (G) describe how the employer may con-
23 duct prompt, thorough, and impartial investiga-
24 tions and respond to complaints regarding such
25 prohibited discrimination and harassment;

1 (H) include a prohibition against retaliation
2 related to such discrimination or harassment;
3

4 (I) include policies that reflect the needs of
5 a variety of different types of workplaces, including
6 those with differing work structures, facilities,
7 or tasks;

8 (J) describe behaviors that would constitute
9 retaliation; and

10 (K) include a description of potential consequences
11 for violating the comprehensive non-discrimination
12 policy; and

13 (2) model trainings regarding prohibited discrimination
14 and harassment in employment, as described in
15 section 102, for use by employers with
16 fewer than 15 employees, which shall—

17 (A) take into account the resources available
18 to such employers;

19 (B) take into account the particular needs
20 of employees of such employers;

21 (C) be made available in plain English and
22 in accessible formats for individuals with disabilities
23 and for individuals who primarily speak a language
24 other than English;

1 (D) be made available in an online format
2 that is widely available to such employers and
3 employees of such employers;

4 (E) include an explanation of prohibited
5 discrimination and harassment in employment,
6 including retaliation related to such discrimina-
7 tion and harassment;

8 (F) describe the affirmative behaviors that
9 contribute to preventing and reducing harass-
10 ment and discrimination in employment;

11 (G) include trainings designed to address
12 the needs of a variety of workplaces, including
13 those with differing work structures, facilities,
14 and tasks;

15 (H) include best practices for preventing
16 prohibited discrimination and harassment spe-
17 cific to industries in which the Commission de-
18 termines that harassment is particularly preva-
19 lent or severe; and

20 (I) include any additional information the
21 Commission determines may prevent discrimi-
22 nation and harassment of employees.

23 (c) INDIVIDUALIZATION.—The Commission shall en-
24 sure that resource materials under this section are de-
25 signed to facilitate individual employers to customize

1 training to address the needs of their workplaces, includ-
2 ing differing work structures, facilities, and tasks.

3 **SEC. 104. EDUCATION, TRAINING, AND TECHNICAL ASSIST-**
4 **ANCE TO EMPLOYERS.**

5 The Commission shall have the authority to—

6 (1) reasonably adjust the fees the Commission
7 charges for any education, technical assistance, or
8 training the Commission offers in accordance with
9 section 705(j)(1) of the Civil Rights Act of 1964 (42
10 U.S.C. 2000e–4(j)(1));

11 (2) use the materials developed by the Commis-
12 sion for any education, technical assistance, or train-
13 ing offered by the Commission in accordance with
14 that section in any education and outreach activities
15 carried out by the Commission; and

16 (3) use funds from the Commission’s EEOC
17 Education, Technical Assistance, and Training Re-
18 volving Fund, established under section 705(k) of
19 the Civil Rights Act of 1964 (42 U.S.C. 2000e–
20 4(k)), to pay the full salaries of any Commission em-
21 ployees that develop and administer any education,
22 technical assistance, or training programs offered by
23 the Commission.

1 **SEC. 105. TASK FORCE REGARDING HARASSMENT.**

2 (a) IN GENERAL.—The Commission shall establish
3 and periodically convene a harassment prevention task
4 force (referred to in this subsection as the “Task Force”)
5 to study prohibited harassment in employment.

6 (b) MEMBERSHIP.—The Task Force established
7 under paragraph (1) shall include membership that re-
8 flects a broad diversity of experience and expertise relating
9 to prohibited harassment, including—

10 (1) employee advocates;

11 (2) researchers with expertise in organizational
12 culture change or reducing behavior related to har-
13 assment and discrimination;

14 (3) legal practitioners with professional exper-
15 tise related to harassment litigation on behalf of em-
16 ployees;

17 (4) legal practitioners with experience serving
18 as a chief legal officer or human resource officer in
19 a corporate legal department;

20 (5) individuals with expertise in diversity and
21 inclusion initiatives;

22 (6) individuals who have experienced prohibited
23 harassment in employment; and

24 (7) union leaders.

25 (c) DUTIES.—The Task Force shall—

1 (1) identify strategies and recommend proposals
2 to prevent prohibited harassment in employment;
3 and

4 (2) provide guidance on effective strategies to
5 prevent prohibited harassment that are specific to
6 industries in which the Task Force determines that
7 harassment is particularly prevalent or severe.

8 (d) REPORT.—Not less than once every 5 years, the
9 Commission shall prepare and publish a report on the
10 Commission’s website, which shall be based on the work
11 of the Task Force and shall include—

12 (1) a review of the prevalence of prohibited har-
13 assment in employment, including the results of the
14 national prevalence survey described in section 112;

15 (2) recommendations for Federal, State, and
16 local initiatives, reforms, and legislation to prevent
17 prohibited harassment in employment;

18 (3) assessments of the effectiveness of employ-
19 ment policies designed to prevent prohibited harass-
20 ment in employment by changing behavior and cul-
21 ture;

22 (4) assessments of the effectiveness of processes
23 for investigations into prohibited harassment in em-
24 ployment;

1 (5) assessments of the effectiveness of different
2 types of training to reduce and prevent harassment
3 in employment; and

4 (6) assessments of the effectiveness of other
5 proactive initiatives and interventions to reduce and
6 prevent harassment in employment.

7 **SEC. 106. RESOURCE MATERIALS ON EMPLOYMENT CLI-**
8 **MATE ASSESSMENTS.**

9 (a) IN GENERAL.—Not later than 1 year after the
10 date of enactment of this Act, the Commission shall de-
11 velop and make publicly available resource materials for
12 employers on assessing the employment climate, including
13 the occurrence of prohibited harassment in employment,
14 in order to assist such employers in determining the effec-
15 tiveness of measures the employer takes to prevent and
16 address prohibited harassment in employment.

17 (b) EMPLOYMENT CLIMATE SURVEY.—Such resource
18 materials shall include a model survey regarding prohib-
19 ited harassment in employment, which shall be available
20 for an employer to use (at the employer’s discretion and
21 employer’s expense) in order to assess the employment cli-
22 mate. The model survey shall be—

23 (1) designed to assess employees’ experiences
24 related to prohibited harassment in employment;

1 (2) fair, unbiased, and scientifically valid to the
2 greatest extent practicable;

3 (3) designed to solicit confidential submissions
4 and to provide data without revealing personally
5 identifiable information; and

6 (4) inclusive of individuals required to be af-
7 forded protection under section 301.

8 (c) CONTENTS.—The model survey may include—

9 (1) questions designed to assess the prevalence
10 of prohibited harassment in employment;

11 (2) questions designed to understand whether
12 employees have access to and are familiar with the
13 employer's nondiscrimination and anti-harassment
14 policies and procedures;

15 (3) questions to assess the employment climate;
16 and

17 (4) any additional questions the Commission
18 determines are consistent with the purposes of this
19 section.

20 (d) MANDATORY EMPLOYEE PARTICIPATION PRO-
21 HIBITED.—An employer may not compel or require em-
22 ployees to participate in a survey regarding prohibited
23 harassment or discrimination in employment.

24 (e) REVIEW AND REVISION.—The Commission shall
25 periodically review and revise the resource materials de-

1 scribed in subsection (a) and the model survey developed
 2 under subsection (b).

3 **SEC. 107. ESTABLISHING AN OFFICE OF EDUCATION AND**
 4 **OUTREACH WITHIN THE EQUAL EMPLOY-**
 5 **MENT OPPORTUNITY COMMISSION.**

6 (a) IN GENERAL.—The Commission shall establish
 7 and maintain an Office of Education and Outreach to—

8 (1) conduct outreach and education concerning
 9 prohibited discrimination and harassment in employ-
 10 ment under Federal civil rights laws and available
 11 resources and remedies relating to those laws; and

12 (2) conduct a multi-year public awareness cam-
 13 paign to improve public awareness of the Commis-
 14 sion, which shall include disseminating information
 15 about—

16 (A) the purpose of the Commission;

17 (B) the resources available through the
 18 Commission to prevent prohibited discrimina-
 19 tion and harassment in employment;

20 (C) the ways in which an individual can
 21 file a complaint with the Commission; and

22 (D) the process by which the Commission
 23 investigates charges of discrimination.

24 (b) INFORMATION DISSEMINATED.—The information
 25 disseminated in accordance with subsection (a)(2) shall be

1 made available in plain English and in an accessible man-
 2 ner for individuals with disabilities and for individuals who
 3 primarily speak a language other than English.

4 **SEC. 108. RELATIONSHIP TO OTHER LAWS.**

5 Compliance with section 101 or 102, or use of mate-
 6 rials provided under subtitle A, is not an affirmative de-
 7 fense under applicable employment nondiscrimination
 8 laws.

9 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated to the Com-
 11 mission such sums as may be necessary to carry out the
 12 Commission's duties and activities, including such duties
 13 and activities authorized under this subtitle.

14 **Subtitle B—Research and Addi-**
 15 **tional Resources for Harass-**
 16 **ment Prevention**

17 **SEC. 111. NATIONAL PREVALENCE SURVEY ON HARASS-**
 18 **MENT IN EMPLOYMENT.**

19 (a) SURVEY.—The Bureau of the Census, the Com-
 20 mission, and the Bureau of Labor Statistics shall jointly
 21 develop a national prevalence survey on the prevalence of
 22 prohibited harassment in employment (referred to in this
 23 section as the “national prevalence survey”). Such survey
 24 shall be administered by the Bureau of the Census not

1 later than 1 year after the date of enactment of this Act,
2 and every 3 years thereafter.

3 (b) CONTENTS.—The national prevalence survey
4 shall include questions designed to collect such informa-
5 tion from individuals as may be necessary to examine ex-
6 isting beliefs, attitudes, and understanding of prohibited
7 harassment in employment, and the extent to which such
8 harassment is experienced or observed by individuals, su-
9 pervisors, and employers, including the information nec-
10 essary for the report described in subsection (c).

11 (c) REPORT.—

12 (1) IN GENERAL.—Not later than 6 months
13 after each national prevalence survey has been ad-
14 ministered, the Bureau of the Census, the Commis-
15 sion, and the Bureau of Labor Statistics shall jointly
16 prepare and submit to the Committee on Health,
17 Education, Labor, and Pensions of the Senate and
18 the Committee on Education and Labor of the
19 House of Representatives a report on the results of
20 that survey.

21 (2) REQUIRED INFORMATION.—The report
22 under this subsection shall include, at minimum—

23 (A) information about the extent to which
24 individuals experience prohibited harassment in
25 employment on the basis of sex (including sex-

ual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype), race, color, religion, national origin, age, disability, genetic information, and uniformed service status, and information about the interaction of different characteristics that may be the basis of harassment in employment;

(B) information about the prevalence of each such form of prohibited harassment in employment, disaggregated by industry and salary level, including across all wage bands; and

(C) an analysis of the economic impacts of prohibited harassment.

(3) DISAGGREGATION OF SEX BASED HARASSMENT.—The report under this subsection shall separately, and in the aggregate, report each of the following bases of sex harassment:

(A) Sexual orientation.

(B) Gender identity.

(C) Pregnancy.

(D) Childbirth.

(E) A medical condition related to pregnancy or childbirth.

(F) A sex stereotype.

1 (G) Sexual in nature.

2 (4) PUBLIC AVAILABILITY.—The report shall be
3 made publicly available on the websites of the Bu-
4 reau of the Census, the Commission, and Bureau of
5 Labor Statistics.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated for the Bureau of the
8 Census to carry out this section \$1,200,000 for fiscal year
9 2019 and such sums as may be necessary for each fiscal
10 year the national prevalence survey is to be administered
11 under subsection (a) or the report is to be submitted under
12 subsection (c).

13 **SEC. 112. STUDY AND REPORT ON HARASSMENT IN THE**
14 **FEDERAL GOVERNMENT.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of enactment of this Act, and not less than once every
17 3 years thereafter, the Merit Systems Protection Board
18 shall prepare and submit to the Committee on Health,
19 Education, Labor, and Pensions of the Senate and the
20 Committee on Education and Labor of the House of Rep-
21 resentatives a report containing the following information:

22 (1) The prevalence of specific behaviors associ-
23 ated with prohibited harassment in employment
24 among Federal employees, including information

1 about such behaviors disaggregated by each wage
2 band.

3 (2) The impact of prohibited harassment in em-
4 ployment and violations of Federal civil rights laws
5 on the Federal Government, in terms of monetary
6 costs, attrition, and morale.

7 (3) The particular impact of prohibited harass-
8 ment in employment on the experience of Federal
9 employees with disabilities.

10 (4) Working in coordination with the Commis-
11 sion's Office of Federal Operations, a description of
12 the differences in Federal agency policies, strategies,
13 reporting mechanisms, training programs, and other
14 practices regarding preventing and addressing pro-
15 hibited harassment in employment.

16 (5) A description of which policies, strategies,
17 reporting mechanisms, training programs, and other
18 practices described in paragraph (4) have prevented,
19 addressed, or reduced prohibited harassment in em-
20 ployment.

21 (6) Working in coordination with the Commis-
22 sion's Office of Federal Operations, joint rec-
23 ommendations from such Office and the Merit Sys-
24 tems Protection Board to Federal agencies on how

1 to prevent and address prohibited harassment in em-
2 ployment.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Merit Systems
5 Protection Board such sums as may be necessary to carry
6 out this section.

7 **SEC. 113. STUDIES, REPORTS, AND FURTHER RESEARCH.**

8 (a) STUDY AND REPORT ON ENFORCEMENT OF NON-
9 DISCRIMINATION LAWS PROHIBITING HARASSMENT
10 LAWS.—Not later than 1 year after the date of enactment
11 of this Act, the United States Commission on Civil Rights
12 shall prepare and submit to the Committee on Health,
13 Education, Labor, and Pensions of the Senate and the
14 Committee on Education and Labor of the House of Rep-
15 resentatives a report that shall examine enforcement of
16 the nondiscrimination laws prohibiting harassment includ-
17 ing—

- 18 (1) trends in enforcement of such laws;
19 (2) barriers to effective enforcement of such
20 laws;
21 (3) best practices in enforcement of such laws;
22 (4) recommendations about how to improve en-
23 forcement of such laws, including whether estab-
24 lishing individual liability for discrimination and har-

1 assessment in employment would improve enforcement
2 of such laws; and

3 (5) how the experience of harassment for em-
4 ployees and individuals required to be afforded pro-
5 tections under section 301 has changed over time
6 since the passage of such laws.

7 (b) STUDY AND REPORT ON PREVENTION OF HAR-
8 ASSMENT IN EMPLOYMENT.—

9 (1) IN GENERAL.—Not later than 60 days after
10 the date of enactment of this Act, the Director of
11 the National Institutes of Health shall enter into an
12 agreement with the National Academies of Sciences,
13 Engineering, and Medicine, through which the Na-
14 tional Academies of Science, Engineering, and Medi-
15 cine shall conduct a study on preventing and ad-
16 dressing prohibited harassment in employment.

17 (2) CONTENTS.—Such study shall include—

18 (A) an evaluation of the existing research
19 of the causes of prohibited harassment in em-
20 ployment, including retaliation related to such
21 harassment, and gaps in such research;

22 (B) a review of the existing research re-
23 garding how prohibited harassment in employ-
24 ment impacts individuals;

1 (C) an evaluation of the existing research
2 on training to prevent prohibited harassment in
3 employment, including essential components of
4 effective training to prevent such prohibited
5 harassment and retaliation, and gaps in such
6 research;

7 (D) an assessment of the efficacy and
8 availability of training models and programs to
9 prevent prohibited harassment in employment;

10 (E) the identification of employment or so-
11 cietal factors that increase the likelihood of pro-
12 hibited harassment in employment, particularly
13 across industries with a high number of individ-
14 uals who are vulnerable to experiencing such
15 prohibited harassment, including whether diver-
16 sity in leadership positions within an organiza-
17 tion reduces the likelihood of such prohibited
18 harassment;

19 (F) an examination of methods of induc-
20 ing, scaling, and sustaining institutional or or-
21 ganizational change to prevent prohibited har-
22 assment in employment;

23 (G) an analysis of policies, strategies, and
24 practices that have been the most successful in

1 preventing and addressing prohibited harass-
2 ment in employment; and

3 (H) any other information or analysis nec-
4 essary to identify the gaps in research and
5 other measures described in subsection (c).

6 (3) REPORT.—Not later than 1 year after the
7 date of enactment of this Act, the National Acad-
8 emies of Sciences, Engineering, and Medicine shall
9 prepare and submit to the Committee on Health,
10 Education, Labor, and Pensions of the Senate, the
11 Committee on Education and Labor of the House of
12 Representatives, and the Director of the National
13 Institutes of Health, a report containing the results
14 of the study conducted under this subsection and
15 make recommendations to Congress, executive
16 branch agencies, private employers, and researchers.
17 Such recommendations shall include ways that such
18 training could be improved to result in behavioral
19 and cultural changes that prevent and reduce behav-
20 iors associated with prohibited harassment in em-
21 ployment. The report and recommendations shall be
22 made publicly available.

23 (c) SUPPORTING FURTHER RESEARCH ON PRE-
24 VENTING AND UNDERSTANDING HARASSMENT IN EM-
25 PLOYMENT.—

1 (1) IN GENERAL.—Not later than 6 months
2 after the submission required under subsection
3 (b)(3), the Director of the National Institutes of
4 Health, in consultation with the Commission and the
5 Secretary of Labor, shall enter into agreements (in-
6 cluding through the use of grants, contracts, cooper-
7 ative agreements, or other transactions) to support
8 research regarding—

9 (A) the gaps identified in the report re-
10 quired under subsection (b)(3) in research on
11 the causes of prohibited harassment in employ-
12 ment, including retaliation related to such har-
13 assment;

14 (B) the gaps identified in the report re-
15 quired under subsection (b)(3) in research on
16 the psychological sequelae of prohibited harass-
17 ment in employment, including retaliation re-
18 lated to such harassment;

19 (C) gaps identified in the report required
20 under subsection (b)(3) in research on special
21 populations and their risk for prohibited harass-
22 ment in employment, including adolescents,
23 older individuals, racial and ethnic minorities,
24 individuals with disabilities, women, and other

1 populations that could be disproportionately af-
2 fected by prohibited harassment in employment;

3 (D) gaps identified in the report required
4 under subsection (b)(3) in research on prohib-
5 ited harassment in employment, including retal-
6 iation related to such harassment, as a risk fac-
7 tor for various mental health problems;

8 (E) gaps identified in the report required
9 under subsection (b)(3) in research on
10 sociocultural correlations within prohibited har-
11 assment in employment, including retaliation
12 related to such harassment; and

13 (F) systematic and quantifiable measures
14 to evaluate prevention strategies for victims and
15 perpetrators of prohibited harassment in em-
16 ployment, including retaliation related to such
17 harassment.

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There are authorized to be appropriated to the Na-
20 tional Institutes of Health to carry out this sub-
21 section such sums as may be necessary.

1 **Subtitle C—Preventing Harassment** 2 **of Tipped Employees**

3 **SEC. 121. TIPPED EMPLOYEES.**

4 (a) BASE MINIMUM WAGE FOR TIPPED EMPLOYEES
5 AND TIPS RETAINED BY EMPLOYEES.—Section
6 3(m)(2)(A)(i) of the Fair Labor Standards Act of 1938
7 (29 U.S.C. 203(m)(2)(A)(i)) is amended to read as fol-
8 lows:

9 “(i) the cash wage paid such em-
10 ployee, which for purposes of such deter-
11 mination shall be not less than—

12 “(I) for the 1-year period begin-
13 ning on the effective date under sub-
14 section (e), \$3.60 an hour;

15 “(II) for each succeeding 1-year
16 period until the hourly wage under
17 this clause equals the wage in effect
18 under section 6(a)(1) for such period,
19 an hourly wage equal to the amount
20 determined under this clause for the
21 preceding year, increased by the lesser
22 of—

23 “(aa) \$1.50; or

24 “(bb) the amount necessary
25 for the wage in effect under this

1 clause to equal the wage in effect
 2 under section 6(a)(1) for such
 3 period, rounded up to the nearest
 4 multiple of \$0.05; and
 5 “(III) for each succeeding 1-year
 6 period after the increase made pursu-
 7 ant to subclause (II), the minimum
 8 wage in effect under section 6(a)(1);
 9 and”.

10 (b) TIPS RETAINED BY EMPLOYEES.—Section
 11 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29
 12 U.S.C. 203(m)(2)(A)) is amended—

13 (1) in the second sentence of the matter fol-
 14 lowing clause (ii), by striking “of this subsection,
 15 and all tips received by such employee have been re-
 16 tained by the employee” and inserting “of this sub-
 17 section. Any employee shall have the right to retain
 18 any tips received by such employee”; and

19 (2) by adding at the end the following: “An em-
 20 ployer shall inform each employee of the right and
 21 exception provided under the preceding sentence.”.

22 (c) PUBLICATION OF NOTICE.—Section 6 of the Fair
 23 Labor Standards Act of 1938 (29 U.S.C. 206) is amended
 24 by adding at the end the following:

1 “(h) Not later than 60 days prior to the effective date
 2 of any increase in the required wage determined in accord-
 3 ance with subclause (II) or (III) of section 3(m)(2)(A)(i),
 4 the Secretary shall publish in the Federal Register and
 5 on the website of the Department of Labor a notice an-
 6 nouncing each increase in such required wage.”.

7 (d) SCHEDULED REPEAL OF SEPARATE MINIMUM
 8 WAGE FOR TIPPED EMPLOYEES.—

9 (1) TIPPED EMPLOYEES.—Section 3(m)(2)(A)
 10 of the Fair Labor Standards Act of 1938 (29 U.S.C.
 11 203(m)(2)(A)), as amended by subsections (a) and
 12 (b), is further amended by striking the sentence be-
 13 ginning with “In determining the wage an employer
 14 is required to pay a tipped employee,” and all that
 15 follows through “of this subsection.” and inserting
 16 “The wage required to be paid to a tipped employee
 17 shall be the wage set forth in section 6(a)(1).”.

18 (2) PUBLICATION OF NOTICE.—Section 6 of the
 19 Fair Labor Standards Act of 1938 (29 U.S.C. 206),
 20 as amended by subsection (c), is further amended by
 21 striking subsection (h).

22 (3) EFFECTIVE DATE.—The amendments made
 23 by paragraphs (1) and (2) shall take effect on the
 24 date that is one day after the date on which the
 25 hourly wage under subclause (III) of section

1 3(m)(2)(A)(i) of the Fair Labor Standards Act of
 2 1938 (29 U.S.C. 203(m)(2)(A)(i)), as amended by
 3 subsection (a), takes effect.

4 (e) EFFECTIVE DATE.—Except as provided in sub-
 5 section (d)(3), this section and the amendments made by
 6 this section shall take effect on the first day of the third
 7 month that begins after the date of enactment of this Act.

8 **TITLE II—STRENGTHENING** 9 **WORKPLACE RIGHTS**

10 **SEC. 201. CLARIFYING SEXUAL ORIENTATION DISCRIMINA-** 11 **TION AND GENDER IDENTITY DISCRIMINA-** 12 **TION ARE UNLAWFUL SEX DISCRIMINATION.**

13 (a) EMPLOYMENT.—

14 (1) RULES OF CONSTRUCTION.—Title VII of
 15 the Civil Rights Act of 1964 is amended by inserting
 16 after section 701 (42 U.S.C. 2000e) the following:

17 **“SEC. 701A. RULES OF CONSTRUCTION.**

18 “Section 1106 shall apply to this title except that for
 19 purposes of that application, a reference in that section
 20 to an ‘unlawful practice’ shall be considered to be a ref-
 21 erence to an ‘unlawful employment practice’.”.

22 (2) UNLAWFUL EMPLOYMENT PRACTICES.—

23 Section 703 of the Civil Rights Act of 1964 (42
 24 U.S.C. 2000e–2) is amended—

1 (A) in the section header, by striking
 2 “**SEX**,” and inserting “**SEX (INCLUDING SEX-**
 3 **UAL ORIENTATION, GENDER IDENTITY,**
 4 **PREGNANCY, CHILDBIRTH, A MEDICAL**
 5 **CONDITION RELATED TO PREGNANCY OR**
 6 **CHILDBIRTH, AND A SEX STEREOTYPE),”;**

7 (B) except in subsections (e), (j) and (m),
 8 by striking “sex,” each place it appears and in-
 9 serting “sex (including sexual orientation, gen-
 10 der identity, pregnancy, childbirth, a medical
 11 condition related to pregnancy or childbirth,
 12 and a sex stereotype),”;

13 (C) in subsection (e)(1), by striking “en-
 14 terprise,” and inserting “enterprise, if, in a sit-
 15 uation in which sex is a bona fide occupational
 16 qualification, individuals are recognized as
 17 qualified in accordance with their gender iden-
 18 tity,”;

19 (D) in subsection (h), by striking “sex”
 20 the second place it appears and inserting “sex
 21 (including sexual orientation, gender identity,
 22 pregnancy, childbirth, a medical condition re-
 23 lated to pregnancy or childbirth, and a sex
 24 stereotype),”;

25 (E) in subsection (j)—

(i) by striking “sex,” the first place it appears and inserting “sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),”; and

(ii) by striking “sex,” the second and third places it appears and inserting “sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),”; and

(F) in subsection (m), by striking “sex,” and inserting “sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),”.

(3) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—

(A) by striking “sex,” the first place it appears and inserting “sex (including sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype),”; and

1 (B) by striking “employment.” and insert-
 2 ing “employment, if, in a situation in which sex
 3 is a bona fide occupational qualification, indi-
 4 viduals are recognized as qualified in accord-
 5 ance with their gender identity.”.

6 (4) CLAIMS.—Section 706(g)(2)(A) of the Civil
 7 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended
 8 by striking “sex,” and inserting “sex (including sex-
 9 ual orientation, gender identity, pregnancy, child-
 10 birth, a medical condition related to pregnancy or
 11 childbirth, and a sex stereotype),”.

12 (5) EMPLOYMENT BY FEDERAL GOVERN-
 13 MENT.—Section 717 of the Civil Rights Act of 1964
 14 (42 U.S.C. 2000e–16) is amended—

15 (A) in subsection (a), by striking “sex,”
 16 and inserting “sex (including sexual orientation,
 17 gender identity, pregnancy, childbirth, a med-
 18 ical condition related to pregnancy or childbirth,
 19 and a sex stereotype),”; and

20 (B) in subsection (c), by striking “sex”
 21 and inserting “sex (including sexual orientation,
 22 gender identity, pregnancy, childbirth, a med-
 23 ical condition related to pregnancy or childbirth,
 24 and a sex stereotype),”.

1 (6) GOVERNMENT EMPLOYEE RIGHTS ACT OF
 2 1991.—The Government Employee Rights Act of
 3 1991 (42 U.S.C. 2000e–16a et seq.) is amended—

4 (A) in section 301(b), by striking “sex,”
 5 and inserting “sex (including sexual orientation,
 6 gender identity, pregnancy, childbirth, a med-
 7 ical condition related to pregnancy or childbirth,
 8 and a sex stereotype),”;

9 (B) in section 302(a)(1), by striking “sex,”
 10 and inserting “sex (including sexual orientation,
 11 gender identity, pregnancy, childbirth, a med-
 12 ical condition related to pregnancy or childbirth,
 13 and a sex stereotype),”; and

14 (C) by adding at the end the following:

15 **“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

16 “Sections 1101(b), 1106, and 1107 of the Civil
 17 Rights Act of 1964 shall apply to this title except that
 18 for purposes of that application, a reference in that section
 19 1106 to ‘race, color, religion, sex (including sexual orienta-
 20 tion, gender identity, pregnancy, childbirth, a medical con-
 21 dition related to pregnancy or childbirth, and a sex stereo-
 22 type), or national origin’ shall be considered to be a ref-
 23 erence to ‘race, color, religion, sex (including sexual ori-
 24 entation, gender identity, pregnancy, childbirth, a medical

1 condition related to pregnancy or childbirth, and a sex
 2 stereotype), national origin, age, or disability’.”.

3 (7) CONGRESSIONAL ACCOUNTABILITY ACT OF
 4 1995.—The Congressional Accountability Act of 1995
 5 (2 U.S.C. 1301 et seq.) is amended—

6 (A) in section 201(a)(1) (2 U.S.C.
 7 1311(a)(1)) by striking “sex,” and inserting
 8 “sex (including sexual orientation, gender iden-
 9 tity, pregnancy, childbirth, a medical condition
 10 related to pregnancy or childbirth, and a sex
 11 stereotype),”; and

12 (B) by adding at the end of title II (42
 13 U.S.C. 1311 et seq.) the following:

14 **“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

15 “Sections 1101(b), 1106, and 1107 of the Civil
 16 Rights Act of 1964 shall apply to section 201 (and reme-
 17 dial provisions of this Act related to section 201) except
 18 that for purposes of that application, a reference in that
 19 section 1106 to ‘race, color, religion, sex (including sexual
 20 orientation, gender identity, pregnancy, childbirth, a med-
 21 ical condition related to pregnancy or childbirth, and a sex
 22 stereotype), or national origin’ shall be considered to be
 23 a reference to ‘race, color, religion, sex (including sexual
 24 orientation, gender identity, pregnancy, childbirth, a med-

1 ical condition related to pregnancy or childbirth, and a sex
 2 stereotype), national origin, age, or disability’.”.

3 (8) CIVIL SERVICE REFORM ACT OF 1978.—
 4 Chapter 23 of title 5, United States Code, is amend-
 5 ed—

6 (A) in section 2301(b)(2), by striking
 7 “sex,” and inserting “sex (including sexual ori-
 8 entation, gender identity, pregnancy, childbirth,
 9 a medical condition related to pregnancy or
 10 childbirth, and a sex stereotype),”;

11 (B) in section 2302—

12 (i) in subsection (b)(1)(A), by striking
 13 “sex,” and inserting “sex (including sexual
 14 orientation, gender identity, pregnancy,
 15 childbirth, a medical condition related to
 16 pregnancy or childbirth, and a sex stereo-
 17 type),”; and

18 (ii) in subsection (d)(1), by striking
 19 “sex,” and inserting “sex (including sexual
 20 orientation, gender identity, pregnancy,
 21 childbirth, a medical condition related to
 22 pregnancy or childbirth, and a sex stereo-
 23 type),”; and

24 (C) by adding at the end the following:

1 **“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

2 “Sections 1101(b), 1106, and 1107 of the Civil
3 Rights Act of 1964 shall apply to this chapter (and reme-
4 dial provisions of this title related to this chapter) except
5 that for purposes of that application, a reference in that
6 section 1106 to ‘race, color, religion, sex (including sexual
7 orientation, gender identity, pregnancy, childbirth, a med-
8 ical condition related to pregnancy or childbirth, and a sex
9 stereotype), or national origin’ shall be considered to be
10 a reference to ‘race, color, religion, sex (including sexual
11 orientation, gender identity, pregnancy, childbirth, a med-
12 ical condition related to pregnancy or childbirth, and a sex
13 stereotype), national origin, age, disability, marital status,
14 or political affiliation’.”.

15 (b) MISCELLANEOUS.—Title XI of the Civil Rights
16 Act of 1964 is amended—

17 (1) by redesignating sections 1101 through
18 1104 (42 U.S.C. 2000h et seq.) and sections 1105
19 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections
20 1102 through 1105 and sections 1108 and 1109, re-
21 spectively;

22 (2) by inserting after the title heading the fol-
23 lowing:

24 **“SEC. 1101. DEFINITIONS AND RULES.**

25 “(a) DEFINITIONS.—In title VII:

1 “(1) RACE; COLOR; RELIGION; SEX; SEXUAL
2 ORIENTATION; GENDER IDENTITY; NATIONAL ORI-
3 GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, or
4 ‘national origin’, used with respect to an individual,
5 includes—

6 “(A) the race, color, religion, sex (includ-
7 ing sexual orientation, gender identity, preg-
8 nancy, childbirth, a medical condition related to
9 pregnancy or childbirth, and a sex stereotype),
10 or national origin, respectively, of another per-
11 son with whom the individual is associated or
12 has been associated; and

13 “(B) a perception or belief, even if inac-
14 curate, concerning the race, color, religion, sex
15 (including sexual orientation, gender identity,
16 pregnancy, childbirth, a medical condition re-
17 lated to pregnancy or childbirth, and a sex
18 stereotype), or national origin, respectively, of
19 the individual.

20 “(2) GENDER IDENTITY.—The term ‘gender
21 identity’ means the gender-related identity, appear-
22 ance, mannerisms, or other gender-related character-
23 istics of an individual, regardless of the individual’s
24 designated sex at birth.

1 “(3) INCLUDING.—The term ‘including’ means
2 including, but not limited to, consistent with the
3 term’s standard meaning in Federal law.

4 “(4) SEXUAL ORIENTATION.—The term ‘sexual
5 orientation’ means homosexuality, heterosexuality, or
6 bisexuality.

7 “(b) RULES.—In title VII—

8 “(1) with respect to sex, an individual’s preg-
9 nancy, childbirth, or related medical condition shall
10 not receive less favorable treatment than other phys-
11 ical conditions; and

12 “(2) with respect to gender identity, an indi-
13 vidual shall not be denied access to a shared facility,
14 including a restroom, a locker room, and a dressing
15 room, that is in accordance with the individual’s
16 gender identity.”; and

17 (3) by inserting after section 1105 the fol-
18 lowing:

19 **“SEC. 1106. RULES OF CONSTRUCTION.**

20 “(a) SEX.—Nothing in section 1101 or the provisions
21 of title VII incorporating a term defined or a rule specified
22 in that section shall be construed—

23 “(1) to limit the protection against an unlawful
24 practice on the basis of pregnancy, childbirth, a

1 medical condition related to pregnancy or childbirth
2 provided by section 701(k); or

3 “(2) to limit the protection against an unlawful
4 practice on the basis of sex available under any pro-
5 vision of Federal law other than title VII, prohib-
6 iting a practice on the basis of sex.

7 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—
8 Nothing in section 1101 or title VII shall be construed
9 to limit the claims or remedies available to any individual
10 for an unlawful practice on the basis of race, color, reli-
11 gion, sex (including sexual orientation, gender identity,
12 pregnancy, childbirth, a medical condition related to preg-
13 nancy or childbirth, and a sex stereotype), or national ori-
14 gin including claims brought pursuant to section 1979 or
15 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or
16 any other law, including a Federal law amended by the
17 BE HEARD in the Workplace Act, regulation, or policy.

18 “(c) NO NEGATIVE INFERENCE.—Nothing in section
19 1101 or title VII shall be construed to support any infer-
20 ence that any Federal law prohibiting a practice on the
21 basis of sex does not prohibit discrimination on the basis
22 of pregnancy, childbirth, a medical condition related to
23 pregnancy or childbirth, sexual orientation, gender iden-
24 tity, or a sex stereotype.

1 **“SEC. 1107. CLAIMS.**

2 “The Religious Freedom Restoration Act of 1993 (42
3 U.S.C. 2000bb et seq.) shall not provide a claim con-
4 cerning, or a defense to a claim under, title VII, or provide
5 a basis for challenging the application or enforcement of
6 title VII.”.

7 **SEC. 202. COVERED EMPLOYERS.**

8 Section 701(b) of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e(b)) is amended by striking “fifteen” and in-
10 serting “one”.

11 **SEC. 203. COMPENSATORY AND PUNITIVE DAMAGES AVAIL-**
12 **ABLE.**

13 (a) CIVIL RIGHTS; DISABILITY.—

14 (1) IN GENERAL.—Section 1977A(b) of the Re-
15 vised Statutes (42 U.S.C. 1981a(b)) is amended by
16 striking paragraph (3) and inserting the following:

17 “(3) LOSSES.—Compensatory damages are
18 available under this section for future pecuniary
19 losses, emotional pain, suffering, inconvenience,
20 mental anguish, loss of enjoyment of life, and other
21 nonpecuniary losses.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 201(b) of the Congressional
24 Accountability Act of 1995 (2 U.S.C. 1311(b))
25 is amended, in paragraphs (1)(B) and (3)(B)—

1 (i) by striking “and, irrespective of
 2 the size of the employing office,
 3 1977A(b)(3)(D)” and inserting “and
 4 1977A(b)(3)”; and

5 (ii) by striking “and 1981a(b)(3)(D)”
 6 and inserting “and 1981a(b)(3)”.

7 (B) Section 411(b) of title 3, United
 8 States Code, is amended, in paragraphs (1)(B)
 9 and (3)(B), by striking “and, irrespective of the
 10 size of the employing office, 1977A(b)(3)(D)”
 11 and inserting “and 1977A(b)(3)”.

12 (C) Section 207 of the Genetic Information
 13 Nondiscrimination Act of 2008 (42 U.S.C.
 14 2000ff–16) is amended, in paragraph (3) of
 15 each of subsections (a) through (e), by striking
 16 “, including the limitations contained in sub-
 17 section (b)(3) of such section 1977A,”.

18 (b) AGE.—Section 7(b) of the Age Discrimination in
 19 Employment Act of 1967 (29 U.S.C. 626(b)) is amend-
 20 ed—

21 (1) by striking “(b) The” and all that follows
 22 through the third sentence and inserting the fol-
 23 lowing:

24 “(b)(1) Except as otherwise provided in another sub-
 25 section of this section, or section 9, the powers, remedies,

1 and procedures set forth in sections 705, 706, 707, 709,
 2 and 710 of the Civil Rights Act of 1964 (42 U.S.C.
 3 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9)
 4 shall be the powers, remedies, and procedures this Act
 5 provides to the Commission, to the Attorney General, or
 6 to any person alleging discrimination on the basis of age
 7 in violation of section 4, or regulations promulgated under
 8 section 9.”; and

9 (2) in the second sentence of that subsection
 10 (b), as amended by paragraph (1), by striking “or
 11 enforcing the liability for amounts deemed to be un-
 12 paid minimum wages or unpaid overtime compensa-
 13 tion under this section” and inserting “and includ-
 14 ing any type of legal or equitable relief available
 15 under title VII of the Civil Rights Act of 1964 (42
 16 U.S.C. 2000e et seq.)”.

17 **SEC. 204. HARASSMENT AND DISCRIMINATION; STANDARDS**
 18 **OF PROOF.**

19 (a) FINDINGS.—Congress finds that—

20 (1) harassment is a persistent and significant
 21 problem in the workplace in the United States;

22 (2) workers are harassed because of their sex
 23 (including sexual orientation, gender identity, preg-
 24 nancy, childbirth, or a medical condition related to
 25 pregnancy or childbirth, and a sex stereotype), race,

1 color, religion, national origin, age, disability, genetic
2 information, and uniformed services status;

3 (3) Congress enacted title VII of the Civil
4 Rights Act of 1964 intending to provide broad pro-
5 tection from many forms of bias in the workplace;

6 (4) the Supreme Court has recognized in *City*
7 *of Los Angeles Department of Water and Power v.*
8 *Manhart*, 435 U.S. 702 (1978), that the protection
9 against sex discrimination in the terms, conditions,
10 or privileges of employment under title VII of the
11 Civil Rights Act of 1964 reflects Congress' intent to
12 "strike at the entire spectrum" of sex-based dis-
13 crimination in employment;

14 (5) in 1980, the Equal Employment Oppor-
15 tunity Commission (referred to in this section as
16 "the Commission") amended its Guidelines on Dis-
17 crimination Because of Sex (referred to in this sec-
18 tion as "the Guidelines") to specify that sexual har-
19 assment is a form of sex discrimination prohibited
20 by title VII of the Civil Rights Act of 1964;

21 (6) in the Guidelines, the Commission explained
22 that harassing conduct is unlawful where—

23 (A) "submission to such conduct is made
24 either explicitly or implicitly a term or condition
25 of an individual's employment";

1 (B) “submission to or rejection of such
2 conduct by an individual is used as the basis for
3 employment decisions”; or

4 (C) the conduct “has the purpose or effect
5 of unreasonably interfering with an individual’s
6 work performance or creating an intimidating,
7 hostile, or offensive working environment”;

8 (7) the Commission further explained that, with
9 respect to the evidence required to support a finding
10 of unlawful harassment, it “will look at the record
11 as a whole and at the totality of the circumstances,
12 such as the nature of the sexual advances and the
13 context in which the alleged incidents occurred” and
14 emphasized that the “determination of the legality of
15 a particular action will be made from the facts, on
16 a case by case basis”;

17 (8) six years later, the Supreme Court in
18 *Meritor Savings Bank v. Vinson*, 477 U.S. 57
19 (1986), recognized that the protections under title
20 VII of the Civil Rights Act of 1964 are not limited
21 to discrimination that causes “economic” or “tan-
22 gible” loss, and held that the phrase “terms, condi-
23 tions, or privileges of employment” in title VII of
24 such Act is an “expansive concept that sweeps with-
25 in its protective ambit” the practice of creating a

1 hostile work environment based on discrimination in
2 the form of harassment;

3 (9) in reaching this conclusion in the Meritor
4 decision, the Supreme Court cited and approved the
5 Guidelines;

6 (10) in the Meritor decision, the Supreme Court
7 cited with approval lower court decisions that con-
8 cluded that a hostile work environment based on
9 race, religion, or national origin violates the prohibi-
10 tion of discrimination in the terms, conditions, or
11 privileges of employment under title VII of the Civil
12 Rights Act of 1964, which decisions included—

13 (A) *Rogers v. EEOC*, 454 F.2d 234 (5th
14 Cir. 1971);

15 (B) *Firefighters Institute for Racial*
16 *Equality v. City of St. Louis*, 549 F.2d 506
17 (8th Cir. 1977);

18 (C) *Gray v. Greyhound Lines*, 545 F.2d
19 169 (D.C. Cir. 1976);

20 (D) *Compston v. Borden, Inc.*, 424 F.
21 Supp. 157 (S.D. Ohio 1976); and

22 (E) *Cariddi v. Kansas City Chiefs Football*
23 *Club, Inc.*, 568 F.2d 87 (8th Cir. 1977);

24 (11) in defining the evidence required to prove
25 a violation of title VII of the Civil Rights Act of

1 1964, in the Meritor decision, the Supreme Court
2 noted that harassment would be actionable when it
3 is “sufficiently severe or pervasive ‘to alter the con-
4 ditions of [the victim’s] employment and create an
5 abusive working environment’” (quoting *Rogers v.*
6 *EEOC*, 454 F.2d 234 (5th Cir. 1971));

7 (12) in *Harris v. Forklift Systems, Inc.*, 510
8 U.S. 17 (1993), the Supreme Court clarified that
9 harassment need not seriously affect an employee’s
10 psychological well-being or lead the employee to suf-
11 fer injury in order to be unlawful, but rather, need
12 merely create a work environment that a reasonable
13 person in the protected class would find hostile or
14 abusive;

15 (13) in *Harris v. Forklift Systems, Inc.*, the Su-
16 preme Court held that whether a work environment
17 is unlawfully hostile or abusive does not depend on
18 any mathematically precise test, but rather, is to be
19 determined by looking at all of the circumstances,
20 with no single factor required;

21 (14) in *National Railroad Passenger Corp. v.*
22 *Morgan*, 536 U.S. 101 (2002), the Supreme Court
23 reaffirmed the *Harris* decision and further held that
24 the hostility or abusiveness of each harassing act
25 should be considered in the aggregate, not in isola-

1 tion, regardless of whether such acts occur over days
2 or even years;

3 (15) notwithstanding the rulings of the Su-
4 preme Court specified in this subsection, some lower
5 court decisions have treated harassing conduct’s se-
6 verity or pervasiveness as the only 2 relevant factors
7 in evaluating whether such conduct violates title VII
8 of the Civil Rights Act of 1964;

9 (16) some lower court decisions have treated
10 “severe or pervasive” as a threshold for liability,
11 when the relevant inquiry is whether the harassing
12 conduct actually altered the terms, conditions, or
13 privileges of employment;

14 (17) some lower court decisions further have in-
15 terpreted the “severe or pervasive” language in the
16 Meritor decision so narrowly as to recognize only the
17 most egregious conduct as unlawful, despite Con-
18 gress’ intent that title VII of the Civil Rights Act of
19 1964 afford a broad scope of protection from dis-
20 crimination;

21 (18) examples of decisions that use the erro-
22 neous analysis described in paragraphs (15) through
23 (17) in the context of harassment on the basis of sex
24 include—

1 (A) Singleton v. Department of Correc-
2 tional Education, 115 Fed. Appx. 119 (4th Cir.
3 2004);

4 (B) Black v. Zaring Homes, Inc., 104 F.3d
5 822 (6th Cir. 1997);

6 (C) Weiss v. Coca-Cola Bottling Co., 990
7 F.2d 333 (7th Cir. 1993);

8 (D) Rickard v. Swedish Match North
9 America, Inc., 773 F.3d 181 (8th Cir. 2014);

10 (E) Mitchell v. Pope, 189 F. Appx. 911
11 (11th Cir. 2006); and

12 (F) Brooks v. City of San Mateo, 229
13 F.3d 917 (9th Cir. 2000);

14 (19) lower courts have made similar erroneous
15 decisions in the context of harassment on the basis
16 of race, national origin, age, and disability such as
17 in Crawford v. Medina General Hospital, 96 F.3d
18 830 (6th Cir. 1996), Shaver v. Independent Stave
19 Co., 350 F.3d 716 (8th Cir. 2003), and Motley v.
20 Parker-Hannifan Corp., No. 1: 94–CV–639 (W.D.
21 Mich. 1995);

22 (20) in contrast, other lower court decisions ap-
23 plying the Meritor case and its progeny have appro-
24 priately recognized that a wide range of harassing
25 behavior may alter the terms, conditions, or privi-

1 leges of employment, with no single type, frequency,
2 or duration of conduct required to make a showing
3 of severe or pervasive harassment;

4 (21) for example, in the context of harassment
5 based on sex, those decisions have held that—

6 (A) conduct need not be physical to create
7 a hostile or abusive work environment, as in
8 *Billings v. Town of Grafton*, 515 F.3d 39 (1st
9 Cir. 2008);

10 (B) an individual need not be the target of
11 sexually demeaning conduct in order to experi-
12 ence unlawful harassment, as in *Petrosino v.*
13 *Bell Atlantic*, 385 F.3d 210 (2d Cir. 2004);

14 (C) power disparities, such as the young
15 age of the individual harassed, compound the
16 conduct’s harmful effects, as in *EEOC v. R&R*
17 *Ventures*, 244 F.3d 334 (4th Cir. 2001);

18 (D) gender-based epithets are equally as
19 unlawful as overtly sexual conduct, as in *Galla-*
20 *gher v. C.H. Robinson Worldwide, Inc.*, 567
21 F.3d 263 (6th Cir. 2009); and

22 (E) a single incident can alter the terms,
23 conditions, or privileges of employment, as in
24 *Howley v. Town of Stratford*, 217 F.3d 141 (2d
25 Cir. 2000);

1 (22) similarly, in the context of harassment
2 based on other protected characteristics, other
3 courts have appropriately held that—

4 (A) calling an individual an “old man” and
5 “pops” could create an actionably hostile work
6 environment based on age, as in *Dediol v. Best*
7 *Chevrolet, Inc.*, 655 F.3d 435 (5th Cir. 2011);

8 (B) repeatedly calling an individual with
9 mental illness “crazy” and stating that the indi-
10 vidual is a threat to security is sufficient to
11 support a finding of a hostile work environment
12 based on disability, as in *Quiles-Quiles v. Hen-*
13 *derson*, 439 F.3d 1 (1st Cir. 2006); and

14 (C) a single incident of calling an African-
15 American individual the “n word” is sufficient
16 to support a finding of a hostile work environ-
17 ment based on race, as in *Rodgers v. Western-*
18 *Southern Life Insurance Co.*, 12 F.3d 668 (7th
19 Cir. 1993); and

20 (23) similar erroneous decisions have been ren-
21 dered in the context of harassment on the basis of
22 sex in employment under title IX of the Education
23 Amendments of 1972 (20 U.S.C. 1681 et seq.), as
24 in *Farmer v. Troy University*, No. 5:17–CV–70–B0
25 (E.D.N.C. 2017).

1 (b) PURPOSES.—The purposes of this section are
2 to—

3 (1) enact into statutory law provisions that es-
4 tablish that workplace harassment is a violation of
5 the—

6 (A) protections from discrimination in the
7 “terms, conditions, or privileges of employ-
8 ment” found in title VII of the Civil Rights Act
9 of 1964 (42 U.S.C. 2000e et seq.);

10 (B) protections from disability discrimina-
11 tion found in title I of the Americans with Dis-
12 abilities Act of 1990 (42 U.S.C. 12111 et seq.)
13 and sections 501 and 505 of the Rehabilitation
14 Act of 1973 (29 U.S.C. 791, 794a);

15 (C) protections from age discrimination
16 found in the Age Discrimination in Employ-
17 ment Act of 1967 (29 U.S.C. 621 et seq.);

18 (D) protections from genetic information
19 discrimination found in title II of the Genetic
20 Information Nondiscrimination Act of 2008 (42
21 U.S.C. 2000ff et seq.); and

22 (E) protections from uniformed services
23 status discrimination found in section 4311 of
24 title 38, United States Code; and

1 (2) establish a liability standard for workplace
 2 harassment that fulfills Congress’ intent of providing
 3 broad protection from discrimination in employment
 4 on the basis of race, color, religion, sex (including
 5 sexual orientation, gender identity, pregnancy, child-
 6 birth, a medical condition related to pregnancy or
 7 childbirth, and a sex stereotype), national origin,
 8 age, disability, genetic information, and uniformed
 9 services status.

10 (c) ENACTING INTO STATUTORY LAW PROVISIONS
 11 ESTABLISHING WORKPLACE HARASSMENT AS AN UNLAW-
 12 FUL EMPLOYMENT PRACTICE.—

13 (1) CIVIL RIGHTS ACT OF 1964.—Section 703 of
 14 the Civil Rights Act of 1964 (42 U.S.C. 2000e–2)
 15 is amended by adding at the end the following:

16 “(o)(1)(A) In this subsection, the term ‘workplace
 17 harassment’ means conduct based on race, color, religion,
 18 sex (including sexual orientation, gender identity, preg-
 19 nancy, childbirth, a medical condition related to pregnancy
 20 or childbirth, and a sex stereotype), or national origin, re-
 21 gardless of whether it is direct or indirect, or verbal or
 22 nonverbal, that unreasonably alters an individual’s terms,
 23 conditions, or privileges of employment, including by cre-
 24 ating an intimidating, hostile, or offensive work environ-
 25 ment.

1 “(B)(i) In this subsection, the term includes sexual
2 harassment, which is conduct that takes place in a cir-
3 cumstance described in clause (ii) and that takes the form
4 of—

5 “(I) a sexual advance;

6 “(II) a request for sexual favors; or

7 “(III) any other conduct of a sexual nature.

8 “(ii) A circumstance described in this clause is a situ-
9 ation in which—

10 “(I) submission to the conduct involved is made
11 either explicitly or implicitly a term or condition of
12 employment;

13 “(II) submission to or rejection of such conduct
14 is used as the basis for an employment decision af-
15 fecting an individual’s employment; or

16 “(III) such conduct unreasonably alters an indi-
17 vidual’s terms, conditions, or privileges of employ-
18 ment, including by creating an intimidating hostile,
19 or offensive work environment.

20 “(2) It shall be an unlawful employment practice
21 under subsection (a) to engage in workplace harassment.

22 “(3) In determining, for purposes of this subsection,
23 whether conduct constitutes workplace harassment be-
24 cause the conduct unreasonably alters an individual’s
25 terms, conditions, or privileges of employment, including

1 by creating an intimidating, hostile, or offensive work en-
2 vironment, the following rules shall apply:

3 “(A) That determination shall be made on the
4 basis of the record as a whole, according to the to-
5 tality of the circumstances. A single incident may
6 constitute workplace harassment.

7 “(B) Incidents that may be workplace harass-
8 ment shall be considered in the aggregate, with—

9 “(i) conduct of varying types (such as ex-
10 pressions of sex-based hostility, requests for
11 sexual favors, and denial of employment oppor-
12 tunities due to sexual orientation) viewed in to-
13 tality, rather than in isolation; and

14 “(ii) conduct based on multiple protected
15 characteristics (such as sex and race) viewed in
16 totality, rather than in isolation.

17 “(C) The factors specified in this subparagraph
18 are among the factors to be considered in deter-
19 mining whether conduct constitutes workplace har-
20 assment and are not meant to be exhaustive. No one
21 of those factors shall be considered to be determina-
22 tive in establishing whether conduct constitutes
23 workplace harassment. Such factors are each of the
24 following:

25 “(i) The frequency of the conduct.

1 “(ii) The duration of the conduct.

2 “(iii) The location where the conduct oc-
3 curred.

4 “(iv) The number of individuals engaged in
5 the conduct.

6 “(v) The nature of the conduct, which may
7 include physical, verbal, pictorial, or visual con-
8 duct, and conduct that occurs in person or is
9 transmitted, such as electronically.

10 “(vi) Whether the conduct is threatening.

11 “(vii) Any power differential between the
12 alleged harasser and the person allegedly har-
13 assed.

14 “(viii) Any use of epithets, slurs, or other
15 conduct that is humiliating or degrading.

16 “(ix) Whether the conduct reflects stereo-
17 types about individuals in the protected class
18 involved.

19 “(4) In determining, for purposes of this subsection,
20 whether conduct constitutes workplace harassment, con-
21 duct may be workplace harassment regardless of whether,
22 for example—

23 “(A) the complaining party is not the individual
24 being harassed;

1 “(B) the complaining party acquiesced or other-
2 wise submitted to, or participated in, the conduct;

3 “(C) the conduct is also experienced by others
4 outside the protected class involved;

5 “(D) the complaining party was able to con-
6 tinue carrying out duties and responsibilities of the
7 party’s job despite the conduct;

8 “(E) the conduct did not cause a tangible in-
9 jury or psychological injury; or

10 “(F) the conduct occurred outside of the work-
11 place.”.

12 (2) AMERICANS WITH DISABILITIES ACT OF
13 1990.—Section 102(b) of the Americans with Disabil-
14 ities Act (42 U.S.C. 12112(b)) is amended—

15 (A) in paragraph (6), by striking “and” at
16 the end;

17 (B) in paragraph (7), by striking the pe-
18 riod and inserting “; and”; and

19 (C) by adding at the end the following:

20 “(8) engaging in workplace harassment, which
21 is conduct based on disability, regardless of whether
22 it is direct or indirect, or verbal or nonverbal, that—

23 “(A) unreasonably alters an individual’s
24 terms, conditions, or privileges of employment,

1 including by creating an intimidating, hostile,
2 or offensive work environment; and

3 “(B) is determined to be such harassment
4 in accordance with paragraphs (3) and (4) of
5 section 703(o) of the Civil Rights Act of 1964
6 (42 U.S.C. 2000e-2(o)).”.

7 (3) REHABILITATION ACT OF 1973.—Section
8 501(f) of the Rehabilitation Act of 1973 (29 U.S.C.
9 791(f)) is amended by inserting “, including section
10 102(b) of that Act (42 U.S.C. 12112(b))”, before
11 “and the provisions”.

12 (4) AGE DISCRIMINATION IN EMPLOYMENT
13 ACT.—Section 4 of the Age Discrimination in Em-
14 ployment Act of 1967 (29 U.S.C. 623) is amended
15 by adding at the end the following:

16 “(n) It shall be unlawful under subsection (a) to en-
17 gage in workplace harassment, which is conduct based on
18 age, regardless of whether it is direct or indirect, or verbal
19 or nonverbal, that—

20 “(1) unreasonably alters an individual’s terms,
21 conditions, or privileges of employment, including by
22 creating an intimidating, hostile, or offensive work
23 environment; and

24 “(2) is determined to be such harassment in ac-
25 cordance with paragraphs (3) and (4) of section

1 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
2 2000e-2(o)).”.

3 (5) GENETIC INFORMATION NONDISCRIMINA-
4 TION ACT OF 2008.—Section 202 of the Genetic In-
5 formation Nondiscrimination Act of 2008 (42 U.S.C.
6 2000ff-1) is amended by adding at the end the fol-
7 lowing:

8 “(d) WORKPLACE HARASSMENT.—It shall be an un-
9 lawful employment practice under subsection (a) to engage
10 in workplace harassment, which is conduct based on ge-
11 netic information, regardless of whether it is direct or indi-
12 rect, or verbal or nonverbal, that—

13 “(1) unreasonably alters an individual’s terms,
14 conditions, or privileges of employment, including by
15 creating an intimidating, hostile, or offensive work
16 environment; and

17 “(2) is determined to be such harassment in ac-
18 cordance with paragraphs (3) and (4) of section
19 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
20 2000e-2(o)).”.

21 (6) CHAPTER 43 OF TITLE 38, UNITED STATES
22 CODE.—Section 4311 of title 38, United States
23 Code, is amended by adding at the end the fol-
24 lowing:

1 “(e) It shall be an unlawful employment practice
 2 under subsection (a) to engage in workplace harassment,
 3 which is conduct based on uniformed services status
 4 (meaning the membership, application for membership,
 5 performance of service, application for service, or obliga-
 6 tion, described in subsection (a)), regardless of whether
 7 it is direct or indirect, or verbal or nonverbal, that—

8 “(1) unreasonably alters an individual’s benefits
 9 of employment, including by creating an intimi-
 10 dating, hostile, or offensive work environment; and

11 “(2) is determined to be such harassment in ac-
 12 cordance with paragraphs (3) and (4) of section
 13 703(o) of the Civil Rights Act of 1964 (42 U.S.C.
 14 2000e-2(o)).”.

15 **SEC. 205. CLARIFYING OTHER STANDARDS OF PROOF.**

16 (a) AMENDMENTS TO DEFINITIONS.—

17 (1) AMERICANS WITH DISABILITIES ACT OF
 18 1990.—Section 101 of the Americans with Disabil-
 19 ities Act of 1990 (42 U.S.C. 12111) is amended by
 20 adding at the end the following:

21 “(11) DEMONSTRATES.—The term ‘dem-
 22 onstrates’ means meets the burdens of production
 23 and persuasion.”.

24 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT
 25 OF 1967.—Section 11 of the Age Discrimination in

1 Employment Act of 1967 (29 U.S.C. 630) is amend-
2 ed by adding at the end the following:

3 “(m) The term ‘demonstrates’ means meets the bur-
4 dens of production and persuasion.”.

5 (3) GENETIC INFORMATION NONDISCRIMINA-
6 TION ACT OF 2008.—Section 201 of the Genetic In-
7 formation Nondiscrimination Act of 2008 (42 U.S.C.
8 2000ff) is amended by adding at the end the fol-
9 lowing:

10 “(8) DEMONSTRATES.—The term ‘dem-
11 onstrates’ means meets the burdens of production
12 and persuasion.”.

13 (b) CLARIFYING PROHIBITION AGAINST IMPERMIS-
14 SIBLE CONSIDERATION IN EMPLOYMENT PRACTICES.—

15 (1) RACE, COLOR, RELIGION, SEX, OR NA-
16 TIONAL ORIGIN.—Section 703 of the Civil Rights
17 Act of 1964 (42 U.S.C. 2000e–2) is amended by
18 striking subsection (m) and inserting the following:

19 “(m) Except as otherwise provided in this title, an
20 unlawful employment practice is established under this
21 title when the complaining party demonstrates that race,
22 color, religion, sex, or national origin or an activity pro-
23 tected by section 704(a) was a motivating factor for any
24 employment practice, even though other factors also moti-
25 vated the practice.”.

1 (2) DISABILITY.—Section 102 of the Americans
2 with Disabilities Act of 1990 (42 U.S.C. 12112) is
3 amended by adding at the end the following:

4 “(e) PROOF.—

5 “(1) ESTABLISHMENT.—Except as otherwise
6 provided in this Act, a discriminatory practice is es-
7 tablished under this Act when the complaining party
8 demonstrates that disability or an activity protected
9 by subsection (a) or (b) of section 503 was a moti-
10 vating factor for any employment practice, even
11 though other factors also motivated the practice.

12 “(2) DEMONSTRATION.—In establishing a dis-
13 crimatory practice under paragraph (1) or by any
14 other method of proof, a complaining party—

15 “(A) may rely on any type or form of ad-
16 missible evidence and need only produce evi-
17 dence sufficient for a reasonable trier of fact to
18 find that a discriminatory practice occurred
19 under this Act; and

20 “(B) shall not be required to demonstrate
21 that disability or an activity protected by sub-
22 section (a) or (b) of section 503 was the sole
23 cause of an employment practice.”.

24 (3) AGE.—Section 4 of the Age Discrimination
25 in Employment Act of 1967 (29 U.S.C. 623) is

1 amended by inserting after subsection (f) the fol-
2 lowing:

3 “(g)(1) Except as otherwise provided in this Act, an
4 unlawful practice is established under this Act when the
5 complaining party demonstrates that age or an activity
6 protected by subsection (d) was a motivating factor for
7 any practice, even though other factors also motivated the
8 practice.

9 “(2) In establishing an unlawful practice under this
10 Act, including under paragraph (1) or by any other meth-
11 od of proof, a complaining party—

12 “(A) may rely on any type or form of admis-
13 sible evidence and need only produce evidence suffi-
14 cient for a reasonable trier of fact to find that an
15 unlawful practice occurred under this Act; and

16 “(B) shall not be required to demonstrate that
17 age or an activity protected by subsection (d) was
18 the sole cause of a practice.”.

19 (4) GENETIC INFORMATION.—Section 202 of
20 the Genetic Information Nondiscrimination Act of
21 2008 (42 U.S.C. 2000ff–1), as amended by section
22 204(c)(5), is further amended by adding at the end
23 the following:

24 “(e) PROOF.—

1 “(1) ESTABLISHMENT.—Except as otherwise
 2 provided in this title, an unlawful employment prac-
 3 tice is established under this title when the com-
 4 plaining party demonstrates that genetic information
 5 or an activity protected by section 207(f) was a mo-
 6 tivating factor for any employment practice, even
 7 though other factors also motivated the practice.

8 “(2) DEMONSTRATION.—In establishing an un-
 9 lawful employment practice under paragraph (1) or
 10 by any other method of proof, a complaining party—

11 “(A) may rely on any type or form of ad-
 12 missible evidence and need only produce evi-
 13 dence sufficient for a reasonable trier of fact to
 14 find that an unlawful employment practice oc-
 15 curred under this title; and

16 “(B) shall not be required to demonstrate
 17 that genetic information or an activity protected
 18 by section 207(f) was the sole cause of an em-
 19 ployment practice.”.

20 (c) CERTAIN RETALIATION CLAIMS.—

21 (1) AMERICANS WITH DISABILITIES ACT OF
 22 1990.—Section 503(c) of the Americans with Disabil-
 23 ities Act of 1990 (42 U.S.C. 12203(c)) is amend-
 24 ed—

1 (A) by striking “The remedies” and insert-
 2 ing the following:

3 “(1) IN GENERAL.—Except as provided in para-
 4 graph (2), the remedies”; and

5 (B) by adding at the end the following:

6 “(2) CERTAIN ANTIRETALIATION CLAIMS.—Sec-
 7 tion 107(c) shall apply to claims under section
 8 102(e)(1) with respect to title I.”.

9 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT
 10 OF 1967.—Section 4(d) of the Age Discrimination in
 11 Employment Act of 1967 (29 U.S.C. 623(d)) is
 12 amended—

13 (A) by striking “(d) It shall be” and in-
 14 serting “(d)(1) It shall be”; and

15 (B) by adding at the end the following:

16 “(2) Section 7(b)(2) shall apply to claims under sec-
 17 tion 4(g)(1).”.

18 (3) GENETIC INFORMATION NONDISCRIMINA-
 19 TION ACT OF 2008.—Section 207(f) of the Genetic
 20 Information Nondiscrimination Act of 2008 (42
 21 U.S.C. 2000ff–6(f)) is amended—

22 (A) by striking “No” and inserting the fol-
 23 lowing:

24 “(1) IN GENERAL.—No”;

1 (B) in the second sentence, by striking
 2 “The remedies” and inserting “Except as pro-
 3 vided in paragraph (2), the remedies”; and

4 (C) by adding at the end the following:

5 “(2) CERTAIN RETALIATION CLAIMS.—Sub-
 6 section (g) shall apply to claims under section
 7 202(d)(1).”.

8 (d) REMEDIES.—

9 (1) AMERICANS WITH DISABILITIES ACT OF
 10 1990.—Section 107 of the Americans with Disabil-
 11 ities Act of 1990 (42 U.S.C. 12117) is amended by
 12 adding at the end the following:

13 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a
 14 claim in which an individual demonstrates that disability
 15 was a motivating factor for any employment practice,
 16 under section 102(e)(1), and a respondent demonstrates
 17 that the respondent would have taken the same action in
 18 the absence of the impermissible motivating factor, the
 19 court—

20 “(1) may grant declaratory relief, injunctive re-
 21 lief (except as provided in paragraph (2)), and attor-
 22 ney’s fees and costs demonstrated to be directly at-
 23 tributable only to the pursuit of a claim under sec-
 24 tion 102(e)(1); and

1 “(2) shall not award damages or issue an order
2 requiring any admission, reinstatement, hiring, pro-
3 motion, or payment.”.

4 (2) AGE DISCRIMINATION IN EMPLOYMENT ACT
5 OF 1967.—Section 7 of the Age Discrimination in
6 Employment Act of 1967 (29 U.S.C. 626) is amend-
7 ed—

8 (A) in subsection (b), as amended by sec-
9 tion 203(b)—

10 (i) in the second sentence, by striking
11 “In” and inserting “Subject to paragraph
12 (2), in”;

13 (ii) in the third sentence, by striking
14 “Before” and inserting the following:

15 “(3) Before”; and

16 (iii) by inserting before paragraph (3),
17 as designated by clause (ii), the following:

18 “(2) On a claim in which an individual demonstrates
19 that age was a motivating factor for any employment prac-
20 tice, under section 4(g)(1), and a respondent demonstrates
21 that the respondent would have taken the same action in
22 the absence of the impermissible motivating factor, the
23 court—

24 “(A) may grant declaratory relief, injunctive re-
25 lief (except as provided in subparagraph (B)), and

1 attorney’s fees and costs demonstrated to be directly
 2 attributable only to the pursuit of a claim under sec-
 3 tion 4(g)(1); and

4 “(B) shall not award damages or issue an order
 5 requiring any admission, reinstatement, hiring, pro-
 6 motion, or payment.”; and

7 (B) in subsection (c)—

8 (i) in paragraph (1), by striking
 9 “Any” and inserting “Subject to sub-
 10 section (b)(2), any”; and

11 (ii) in paragraph (2), by striking “of
 12 any issue of fact” and all that follows
 13 through the period and inserting “under
 14 the same circumstances as a trial by jury
 15 is available under title VII of the Civil
 16 Rights Act of 1964 (42 U.S.C. 2000e et
 17 seq.).”.

18 (3) GENETIC INFORMATION NONDISCRIMINA-
 19 TION ACT OF 2008.—Section 207 of the Genetic In-
 20 formation Nondiscrimination Act of 2008 (42 U.S.C.
 21 2000ff–6) is amended—

22 (A) by redesignating subsection (g) as sub-
 23 section (h); and

24 (B) by inserting after subsection (f) the
 25 following:

1 “(g) MOTIVATING FACTOR.—On a claim in which an
 2 individual demonstrates that genetic information was a
 3 motivating factor for any employment practice, under sec-
 4 tion 202(e)(1), including a claim involving an employee or
 5 applicant described in any of subsections (a) through (e),
 6 and a respondent demonstrates that the respondent would
 7 have taken the same action in the absence of the imper-
 8 missible motivating factor, the court or the corresponding
 9 decisionmaker specified in subsections (a) through (e)—

10 “(1) may grant declaratory relief, injunctive re-
 11 lief (except as provided in paragraph (2)), and attor-
 12 ney’s fees and costs demonstrated to be directly at-
 13 tributable only to the pursuit of a claim under sec-
 14 tion 202(d)(1); and

15 “(2) shall not award damages or issue an order
 16 requiring any admission, reinstatement, hiring, pro-
 17 motion, or payment.”.

18 (e) FEDERAL EMPLOYEES.—

19 (1) TITLE VII OF THE CIVIL RIGHTS ACT OF
 20 1964.—Section 717 of the Civil Rights Act of 1964
 21 (42 U.S.C. 2000e–16) is amended by adding at the
 22 end the following:

23 “(g) Sections 703(m) and 706(g)(2)(B) shall apply
 24 to mixed motive cases (involving practices described in sec-
 25 tion 703(m)) under this section.”.

1 (2) REHABILITATION ACT OF 1973.—The
2 amendment made by subsection (f) to section 501(f)
3 of the Rehabilitation Act of 1973 (29 U.S.C. 791(f))
4 shall be construed to apply to all employees covered
5 by section 501 of that Act (29 U.S.C. 791).

6 (3) AGE DISCRIMINATION IN EMPLOYMENT ACT
7 OF 1967.—Section 15 of the Age Discrimination in
8 Employment Act of 1967 (29 U.S.C. 633a) is
9 amended—

10 (A) in subsection (a)—

11 (i) by striking “States) in” and insert-
12 ing “States) shall be made free from any
13 discrimination based on age, in—”;

14 (ii) by striking “military depart-
15 ments” and inserting the following:

16 “(1) military departments”;

17 (iii) by striking “Code, in executive
18 agencies” and inserting the following:

19 “Code;

20 “(2) executive agencies”;

21 (iv) by striking “funds), in the United
22 States Postal” and inserting the following:

23 “funds);

24 “(3) the United States Postal”;

1 (v) by striking “Commission, in those
2 units” and inserting the following: “Com-
3 mission;

4 “(4) those units”;

5 (vi) by striking “competitive service,
6 and in those units” and inserting the fol-
7 lowing: “competitive service;

8 “(5) those units”;

9 (vii) by striking “competitive service,
10 in the Smithsonian” and inserting “com-
11 petitive service;

12 “(6) the Smithsonian”;

13 (viii) by striking “Institution, and in
14 the Government” and inserting “Institu-
15 tion;

16 “(7) the Government”;

17 (ix) by striking “Printing Office, the
18 General” and inserting “Printing Office;

19 “(8) the General”;

20 (x) by striking “Office, and the Li-
21 brary” and inserting “Office; and

22 “(9) the Library”; and

23 (xi) by striking “of Congress” and all
24 that follows and inserting “of Congress.”;

1 (B) in subsection (b), by striking the first,
 2 second, third, fourth, and sixth sentences;

3 (C) in subsection (c), by striking “Any per-
 4 son” and inserting “Notwithstanding any other
 5 provision of this Act, any person”;

6 (D) by striking subsection (g) and insert-
 7 ing the following:

8 “(g) Except as otherwise provided in another sub-
 9 section of this section, section 7, or section 9, the powers,
 10 remedies, and procedures provided in section 717 of the
 11 Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the
 12 Commission, the Attorney General, the Librarian of Con-
 13 gress, or any person, alleging a violation of that section
 14 shall be the powers, remedies, and procedures this Act
 15 provides to the Commission, the Attorney General, the Li-
 16 brarian of Congress, or any person, respectively, alleging
 17 an unlawful employment practice in violation of subsection
 18 (a) against an employee or applicant for employment de-
 19 scribed in subsection (a).”; and

20 (E) by adding at the end the following:

21 “(h) Section 4(g) shall apply to mixed motive claims
 22 (involving practices described in section 4(g)(1)) under
 23 this section.”.

24 (f) ADDITIONAL AMENDMENTS TO THE REHABILITA-
 25 TION ACT OF 1973.—Sections 501(f), 503(d), and 504(d)

1 of the Rehabilitation Act of 1973 (29 U.S.C. 791(f),
 2 793(d), and 794(d)), are each amended by adding after
 3 the words “title I of the Americans with Disabilities Act
 4 of 1990 (42 U.S.C. 12111 et seq.)” the following: “, in-
 5 cluding the standards of causation and methods of proof
 6 applied under section 102(e) of that Act (42 U.S.C.
 7 12112(e)),”.

8 (g) OTHER GOVERNMENT EMPLOYEES.—

9 (1) CONGRESSIONAL ACCOUNTABILITY ACT OF
 10 1995.—Section 201 of the Congressional Account-
 11 ability Act of 1995 (2 U.S.C. 1311) is amended—

12 (A) in subsection (a)(2), by striking “sec-
 13 tion 15 of the Age Discrimination in Employ-
 14 ment Act of 1967 (29 U.S.C. 633a)” and in-
 15 serting “sections 4(g) and 15 of the Age Dis-
 16 crimination in Employment Act of 1967 (29
 17 U.S.C. 623(g), 633a)”;

18 (B) in subsection (b)—

19 (i) in paragraph (2)(A), by striking
 20 “section 15(c) of the Age Discrimination in
 21 Employment Act of 1967 (29 U.S.C.
 22 633a(c))” and inserting “section 4(d)(2),
 23 paragraphs (1) and (2) of section 7(b),
 24 and section 15(c) of the Age Discrimina-

tion in Employment Act of 1967 (29 U.S.C. 623(d)(2), 626(b), 633a(c))”; and

(ii) in paragraph (3)(A), by striking “section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a))” and inserting “subsections (a) and (c) of section 107, and section 503(c)(2), of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117, 12203)”.

(2) TITLE 3, UNITED STATES CODE.—Section 411 of title 3, United States Code, is amended—

(A) in subsection (a)(2), by striking “section 15 of the Age Discrimination in Employment Act of 1967” and inserting “sections 4(g) and 15 of the Age Discrimination in Employment Act of 1967”; and

(B) in subsection (b)—

(i) in paragraph (2)(A), by striking “section 15(c) of the Age Discrimination in Employment Act of 1967” and inserting “section 4(d)(2), paragraphs (1) and (2) of section 7(b), and section 15(c) of the Age Discrimination in Employment Act of 1967”; and

1 (ii) in paragraph (3)(A), by striking
 2 “section 107(a) of the Americans with Dis-
 3 abilities Act of 1990” and inserting “sub-
 4 sections (a) and (c) of section 107, and
 5 section 503(c)(2), of the Americans with
 6 Disabilities Act of 1990”.

7 (3) GOVERNMENT EMPLOYEE RIGHTS ACT OF
 8 1991.—Section 302 of the Government Employee
 9 Rights Act of 1991 (42 U.S.C. 2000e–16b) is
 10 amended—

11 (A) in subsection (a)(2), by striking “sec-
 12 tion 15 of the Age Discrimination in Employ-
 13 ment Act of 1967 (29 U.S.C. 633a)” and in-
 14 serting “sections 4(g) and 15 of the Age Dis-
 15 crimination in Employment Act of 1967 (29
 16 U.S.C. 623(g), 633a)”; and

17 (B) in subsection (b)—

18 (i) in paragraph (1), by inserting
 19 “(and, in the case of a violation of sub-
 20 section (a)(3), sections 107(c) and
 21 503(c)(2) of the Americans with Disabil-
 22 ities Act of 1990 (42 U.S.C. 12117(c),
 23 12203(c)(2)))” before “, and”; and

24 (ii) in paragraph (2), by striking “sec-
 25 tion 15(c) of the Age Discrimination in

1 Employment Act of 1967 (29 U.S.C.
 2 633a(c))” and inserting “section 4(d)(2),
 3 paragraphs (1) and (2) of section 7(b),
 4 and section 15(c) of the Age Discrimina-
 5 tion in Employment Act of 1967 (29
 6 U.S.C. 623(d)(2), 626(b), 633a(c))”.

7 (h) APPLICATION.—This section, and the amend-
 8 ments made by this section, shall apply to all claims pend-
 9 ing on or after the date of enactment of this Act.

10 **SEC. 206. SUPERVISOR LIABILITY.**

11 (a) AMENDMENT TO TITLE VII OF THE CIVIL
 12 RIGHTS ACT OF 1964.—

13 (1) STANDARD FOR EMPLOYER LIABILITY FOR
 14 HOSTILE WORK ENVIRONMENT.—Section 703 of the
 15 Civil Rights Act of 1964 (42 U.S.C. 2000e–2), as
 16 amended by 204(c)(1), is further amended by adding
 17 at the end the following:

18 “(p) Subject to section 206(j) of the BE HEARD in
 19 the Workplace Act, an employer shall be liable for the acts
 20 of any individual whose harassment of an employee has
 21 created or continued a hostile work environment that con-
 22 stitutes an unlawful employment practice under this sec-
 23 tion if, at the time of the harassment—

24 “(1) such individual was authorized by that em-
 25 ployer—

1 “(A) to undertake or recommend tangible
2 employment actions affecting the employee; or

3 “(B) to direct the employee’s daily work
4 activities; or

5 “(2) the negligence of the employer led to the
6 creation or continuation of that hostile work environ-
7 ment.”.

8 (2) STANDARD FOR EMPLOYER LIABILITY FOR
9 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-
10 tion 704 of the Civil Rights Act of 1964 (42 U.S.C.
11 2000e–3), as amended by section 201(a)(3), is fur-
12 ther amended—

13 (A) by redesignating subsection (b) as sub-
14 section (c); and

15 (B) by inserting after subsection (a) the
16 following:

17 “(b) Subject to section 206(j) of the BE HEARD in
18 the Workplace Act, an employer shall be liable for the acts
19 of any individual whose harassment of an employee has
20 created or continued a retaliatory hostile work environ-
21 ment that constitutes an unlawful employment practice as
22 described under subsection (a) if, at the time of the har-
23 assment—

24 “(1) such individual was authorized by that em-
25 ployer—

1 “(A) to undertake or recommend tangible
2 employment actions affecting the employee; or

3 “(B) to direct the employee’s daily work
4 activities; or

5 “(2) the negligence of the employer led to the
6 creation or continuation of that retaliatory hostile
7 work environment.”.

8 (3) FEDERAL EMPLOYEES.—Section 717 of the
9 Civil Rights Act of 1964 (42 U.S.C. 2000e–16), as
10 amended by section 205(e)(1), is further amended
11 by adding at the end the following:

12 “(h) The provisions of sections 703(p) and 704(b)
13 shall apply to hostile work environment claims and retalia-
14 tory hostile work environment claims, respectively, under
15 this section.”.

16 (b) AMENDMENT TO THE AGE DISCRIMINATION IN
17 EMPLOYMENT ACT OF 1967.—

18 (1) STANDARD FOR EMPLOYER LIABILITY FOR
19 HOSTILE WORK ENVIRONMENT.—Section 4 of the
20 Age Discrimination in Employment Act of 1967 (29
21 U.S.C. 623), as amended by section 204(c)(4), is
22 further amended by adding at the end the following:

23 “(o) Subject to section 206(j) of the BE HEARD in
24 the Workplace Act, an employer shall be liable for the acts
25 of any individual whose harassment of an employee has

1 created or continued a hostile work environment that is
 2 unlawful under this section if, at the time of the harass-
 3 ment—

4 “(1) such individual was authorized by that em-
 5 ployer—

6 “(A) to undertake or recommend tangible
 7 employment actions affecting the employee; or

8 “(B) to direct the employee’s daily work
 9 activities; or

10 “(2) the negligence of the employer led to the
 11 creation or continuation of that hostile work environ-
 12 ment.”.

13 (2) STANDARD FOR EMPLOYER LIABILITY FOR
 14 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-
 15 tion 4(d)(1) of the Age Discrimination in Employ-
 16 ment Act of 1967 (29 U.S.C. 623(d)(1)), as amend-
 17 ed by section 205(c)(2), is further amended by strik-
 18 ing “or litigation under this Act.” and inserting “or
 19 litigation under this Act. Subject to section 206(j) of
 20 the BE HEARD in the Workplace Act, an employer
 21 shall be liable for the acts of any individual whose
 22 harassment of an employee has created or continued
 23 a retaliatory hostile work environment that is unlaw-
 24 ful under this subsection if, at the time of the har-
 25 assment—

1 “(A) such individual was authorized by
2 that employer—

3 “(i) to undertake or recommend tan-
4 gible employment actions affecting the em-
5 ployee; or

6 “(ii) to direct the employee’s daily
7 work activities; or

8 “(B) the negligence of the employer led to
9 the creation or continuation of that retaliatory
10 hostile work environment.”.

11 (3) FEDERAL EMPLOYEES.—Section 15 of the
12 Age Discrimination in Employment Act of 1967 (29
13 U.S.C. 633a), as amended by section 205(e)(3), is
14 further amended by adding at the end the following:

15 “(i) Subsections (d) and (o) of section 4 shall apply
16 to retaliatory hostile work environment claims and hostile
17 work environment claims, respectively, under this sec-
18 tion.”.

19 (c) AMENDMENT TO THE AMERICANS WITH DISABIL-
20 ITIES ACT OF 1990.—

21 (1) STANDARD FOR EMPLOYER LIABILITY FOR
22 HOSTILE WORK ENVIRONMENT.—Section 102 of the
23 Americans with Disabilities Act of 1990 (42 U.S.C.
24 12112), as amended by section 205(b)(2), is further
25 amended by adding at the end the following:

1 “(f) Subject to section 206(j) of the BE HEARD in
 2 the Workplace Act, an employer shall be liable for the acts
 3 of any individual whose harassment of an employee has
 4 created or continued a hostile work environment that con-
 5 stitutes discrimination against a qualified individual on
 6 the basis of disability under this section if, at the time
 7 of the harassment—

8 “(1) such individual was authorized by the em-
 9 ployer—

10 “(A) to undertake or recommend tangible
 11 employment actions affecting the qualified indi-
 12 vidual; or

13 “(B) to direct the qualified individual’s
 14 daily work activities; or

15 “(2) the negligence of the employer led to the
 16 creation or continuation of that hostile work environ-
 17 ment.”.

18 (2) STANDARD FOR EMPLOYER LIABILITY FOR
 19 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-
 20 tion 503 of the Americans with Disabilities Act of
 21 1990 (42 U.S.C. 12203) is amended—

22 (A) by redesignating subsection (c) as sub-
 23 section (d);

24 (B) by inserting after subsection (b) the
 25 following:

1 “(c) Subject to section 206(j) of the BE HEARD in
 2 the Workplace Act, an employer shall be liable for the acts
 3 of any individual whose harassment of an employee has
 4 created or continued a retaliatory hostile work environ-
 5 ment that constitutes retaliatory discrimination, as de-
 6 scribed in subsection (a), or the carrying out of any unlaw-
 7 ful acts described in subsection (b), if, at the time of the
 8 harassment—

9 “(1) such individual was authorized by the em-
 10 ployer—

11 “(A) to undertake or recommend tangible
 12 employment actions affecting the employee; or

13 “(B) to direct the employee’s daily work
 14 activities; or

15 “(2) the negligence of the employer led to the
 16 creation or continuation of that retaliatory hostile
 17 work environment.”; and

18 (C) in subsection (d), as redesignated by
 19 subparagraph (A), by striking “subsections (a)
 20 and (b)” and inserting “subsections (a), (b),
 21 and (c)”.

22 (d) AMENDMENT TO THE REHABILITATION ACT OF
 23 1973.—

24 (1) STANDARD FOR EMPLOYER LIABILITY FOR
 25 HOSTILE WORK ENVIRONMENT AND RETALIATORY

1 HOSTILE WORK ENVIRONMENT.—Section 501 of the
 2 Rehabilitation Act of 1973 (29 U.S.C. 791) is
 3 amended by adding at the end the following:

4 “(h) Subject to section 206(j) of the BE HEARD in
 5 the Workplace Act, each department, agency, and instru-
 6 mentality in the executive branch of Government and the
 7 Smithsonian Institution shall be liable for the acts of any
 8 individual within such department, agency, instrumen-
 9 tality, or the Smithsonian Institution whose harassment
 10 of an individual with a disability has created or continued
 11 a hostile work environment, or a retaliatory hostile work
 12 environment, that constitutes nonaffirmative action em-
 13 ployment discrimination under this section if, at the time
 14 of the harassment—

15 “(1) such individual was authorized by that de-
 16 partment, agency, instrumentality, or the Smithso-
 17 nian Institution—

18 “(A) to undertake or recommend tangible
 19 employment actions affecting the individual
 20 with a disability; or

21 “(B) to direct the daily work activities of
 22 the individual with a disability; or

23 “(2) the negligence of that department, agency,
 24 instrumentality, or the Smithsonian Institution led
 25 to the creation or continuation of that hostile work

1 environment or retaliatory hostile work environ-
 2 ment.”.

3 (2) STANDARD FOR EMPLOYER LIABILITY FOR
 4 HOSTILE WORK ENVIRONMENT AND RETALIATORY
 5 HOSTILE WORK ENVIRONMENT.—Section 504 of the
 6 Rehabilitation Act of 1973 (29 U.S.C. 794) is
 7 amended by adding at the end the following:

8 “(e) Subject to section 206(j) of the BE HEARD in
 9 the Workplace Act, an employer described under sub-
 10 section (b) shall be liable for the acts of any individual
 11 whose harassment of a qualified individual with a dis-
 12 ability has created or continued a hostile work environ-
 13 ment, or a retaliatory hostile work environment, that con-
 14 stitutes employment discrimination under this section if,
 15 at the time of the harassment—

16 “(1) such individual was authorized by such
 17 employer—

18 “(A) to undertake or recommend tangible
 19 employment actions affecting the qualified indi-
 20 vidual with a disability; or

21 “(B) to direct the daily work activities of
 22 the qualified individual with a disability; or

23 “(2) the negligence of such employer led to the
 24 creation or continuation of that hostile work environ-
 25 ment or retaliatory hostile work environment.”.

1 (3) REMEDIES.—Section 505 of the Rehabilita-
 2 tion Act of 1973 (29 U.S.C. 794a) is amended by
 3 adding at the end of subsection (a) the following:

4 “(3) Sections 501(h) and 504(e) shall apply to
 5 hostile work environment claims and retaliatory hos-
 6 tile work environment claims under this section.”.

7 (e) AMENDMENT TO SECTION 1977 OF THE REVISED
 8 STATUTES.—Section 1977 of the Revised Statutes (42
 9 U.S.C. 1981) is amended by adding at the end the fol-
 10 lowing:

11 “(d) Subject to section 206(j) of the BE HEARD in
 12 the Workplace Act, a nongovernmental employer shall be
 13 liable for the acts of any individual whose harassment of
 14 an employee has created a hostile work environment or
 15 a retaliatory hostile work environment, constituting an un-
 16 lawful employment practice, if, at the time of the harass-
 17 ment—

18 “(1) such individual was authorized by the em-
 19 ployer—

20 “(A) to undertake or recommend tangible
 21 employment actions affecting the employee; or

22 “(B) to direct the employee’s daily work
 23 activities; or

1 “(2) the negligence of the employer led to the
2 creation or continuation of that hostile work environ-
3 ment or retaliatory hostile work environment.”.

4 (f) AMENDMENT TO THE GENETIC INFORMATION
5 NONDISCRIMINATION ACT OF 2008.—

6 (1) STANDARD FOR EMPLOYER LIABILITY FOR
7 HOSTILE WORK ENVIRONMENT.—Section 202 of the
8 Genetic Information Nondiscrimination Act of 2008
9 (42 U.S.C. 2000ff–1), as amended by sections
10 204(c)(5) and 205(b)(4), is further amended by add-
11 ing at the end the following:

12 “(f) Subject to section 206(j) of the BE HEARD in
13 the Workplace Act, an employer shall be liable for the acts
14 of any individual whose harassment of an employee has
15 created or continued a hostile work environment that con-
16 stitutes an unlawful employment practice under this sec-
17 tion if, at the time of the harassment—

18 “(1) such individual was authorized by the em-
19 ployer—

20 “(A) to undertake or recommend tangible
21 employment actions affecting the employee; or

22 “(B) to direct the employee’s daily work
23 activities; or

1 “(2) the negligence of the employer led to the
2 creation or continuation of that hostile work environ-
3 ment.”.

4 (2) STANDARD FOR EMPLOYER LIABILITY FOR
5 RETALIATORY HOSTILE WORK ENVIRONMENT.—Sec-
6 tion 207(f)(1) of the Genetic Information Non-
7 discrimination Act (42 U.S.C. 2000ff–6(f)(1)), as
8 amended by section 205(c)(2), is further amended
9 by striking “violations of this subsection.” and in-
10 serting “violations of this subsection. Subject to sec-
11 tion 206(j) of the BE HEARD in the Workplace
12 Act, an employer shall be liable for the acts of any
13 individual whose harassment of an employee has cre-
14 ated or continued a retaliatory hostile work environ-
15 ment that constitutes discrimination under this sub-
16 section if, at the time of the harassment—

17 “(A) such individual was authorized by the
18 employer—

19 “(i) to undertake or recommend tan-
20 gible employment actions affecting the em-
21 ployee; or

22 “(ii) to direct the employee’s daily
23 work activities; or

1 “(B) the negligence of the employer led to
 2 the creation or continuation of that retaliatory
 3 hostile work environment.”.

4 (g) AMENDMENT TO THE GOVERNMENT EMPLOYEE
 5 RIGHTS ACT OF 1991.—Section 302 of the Government
 6 Employee Rights Act of 1991 (42 U.S.C. 2000e–16b) is
 7 amended by adding at the end the following:

8 “(c) Subject to section 206(j) of the BE HEARD in
 9 the Workplace Act, an employer of an individual described
 10 under section 304(a) shall be liable for the acts of any
 11 individual whose harassment of a State employee de-
 12 scribed in section 304 has created or continued a hostile
 13 work environment or a retaliatory hostile work environ-
 14 ment constituting discrimination under this section, if at
 15 the time of the harassment—

16 “(1) such individual was authorized by such
 17 employer—

18 “(A) to undertake or recommend tangible
 19 employment actions affecting the employee; or

20 “(B) to direct the employee’s daily work
 21 activities; or

22 “(2) the negligence of the employer led to the
 23 creation or continuation of that hostile work environ-
 24 ment or retaliatory hostile work environment.”.

1 (h) AMENDMENT TO TITLE 3, UNITED STATES
2 CODE.—Section 411 of title 3, United States Code, is
3 amended—

4 (1) by redesignating subsections (c) through (f)
5 as subsections (d) through (g), respectively;

6 (2) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) LIABILITY OF EMPLOYING OFFICE.—Subject to
9 section 206(j) of the BE HEARD in the Workplace Act,
10 an employing office shall be liable for the acts of any indi-
11 vidual whose harassment of a covered employee has cre-
12 ated or continued a hostile work environment or a retalia-
13 tory hostile work environment constituting discrimination
14 under this section if, at the time of the harassment—

15 “(1) such individual was authorized by the em-
16 ploying office—

17 “(A) to undertake or recommend tangible
18 employment actions affecting the covered em-
19 ployee; or

20 “(B) to direct the covered employee’s daily
21 work activities; or

22 “(2) the negligence of the employing office led
23 to the creation or continuation of that hostile work
24 environment or retaliatory hostile work environ-
25 ment.”; and

1 (3) in subsection (f), as redesignated by para-
 2 graph (1), by striking “subsections (a) through (c)”
 3 and inserting “subsections (a) through (d).”.

4 (i) AMENDMENT TO THE CONGRESSIONAL ACCOUNT-
 5 ABILITY ACT OF 1995.—Section 201 of the Congressional
 6 Accountability Act of 1995 (2 U.S.C. 1311), as amended
 7 by section 302(a) of the Congressional Accountability Act
 8 of 1995 Reform Act, is further amended—

9 (1) by striking subsection (e); and

10 (2) by adding at the end the following:

11 “(e) OUTSIDE INDIVIDUALS.—Subject to section
 12 206(j) of the BE HEARD in the Workplace Act, an em-
 13 ploying office shall be liable for the acts of any individual
 14 whose harassment of a covered employee has created or
 15 continued a hostile work environment or a retaliatory hos-
 16 tile work environment that constitutes discrimination
 17 under this section if, at the time of the harassment—

18 “(1) such individual was authorized by the em-
 19 ploying office—

20 “(A) to undertake or recommend tangible
 21 employment actions affecting the covered em-
 22 ployee; or

23 “(B) to direct the covered employee’s daily
 24 work activities; or

1 “(2) the negligence of the employing office led
2 to the creation or continuation of that hostile work
3 environment or retaliatory hostile work environ-
4 ment.”.

5 (j) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion shall be construed to limit the availability of, or access
7 to, defenses available under the law.

8 (k) APPLICATION.—This section, and the amend-
9 ments made by this section, shall apply to all claims pend-
10 ing on or after the date of enactment of this Act.

11 **SEC. 207. EXTENDING THE STATUTES OF LIMITATIONS.**

12 (a) CIVIL RIGHTS ACT OF 1964; AMERICANS WITH
13 DISABILITIES ACT OF 1990; GENETIC INFORMATION
14 NONDISCRIMINATION ACT OF 2008.—Section 706 of the
15 Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amend-
16 ed—

17 (1) in subsection (e)—

18 (A) in paragraph (1)—

19 (i) by striking “one hundred and
20 eighty days after the alleged unlawful em-
21 ployment practice occurred” and inserting
22 “4 years after the alleged unlawful employ-
23 ment practice occurred.”; and

24 (ii) by striking “three hundred days
25 after the alleged unlawful employment

1 practice occurred” and inserting “4 years
 2 and 120 days after the alleged unlawful
 3 employment practice occurred.”; and

4 (B) in paragraph (3)(B), by striking “two
 5 years preceding the filing of the charge” and all
 6 that follows and inserting “4 years preceding
 7 the filing of the charge.”; and

8 (2) in subsection (g)(1), by striking “two years
 9 prior to the filing of a charge” and inserting “4
 10 years preceding the filing of the charge”.

11 (b) AGE DISCRIMINATION IN EMPLOYMENT ACT OF
 12 1967.—Section 7(d) of the Age Discrimination in Employ-
 13 ment Act of 1967 (29 U.S.C. 626(d)) is amended—

14 (1) in the second sentence, by redesignating
 15 paragraphs (1) and (2) as subparagraphs (A) and
 16 (B), respectively;

17 (2) by striking “(d)” and all that follows
 18 through “No” and inserting “(d)(1) No”; and

19 (3) in paragraph (1), as designated by para-
 20 graph (2) of this subsection—

21 (A) by striking “Secretary. Such” and in-
 22 serting “Secretary, and such”;

23 (B) in subparagraph (A), by striking “180
 24 days after the alleged unlawful practice oc-

1 curred” and inserting “4 years after the alleged
2 unlawful practice occurred”; and

3 (C) in subparagraph (B), by striking “300
4 days after the alleged unlawful practice oc-
5 curred” and inserting “4 years and 120 days
6 after the alleged unlawful practice occurred”.

7 **SEC. 208. EXTENDING THE TIME LIMITATIONS ON FEDERAL**
8 **EMPLOYEES FILING A COMPLAINT.**

9 (a) IN GENERAL.—The Equal Employment Oppor-
10 tunity Commission (referred to in this section as “the
11 Commission”) shall ensure that a covered Federal em-
12 ployee shall not be required to take any action necessary
13 to bring a complaint to the department, agency, unit, or
14 instrumentality involved prior to 4 years from the date of
15 the matter alleged to be discriminatory or, in the case of
16 personnel action, 4 years from the effective date of the
17 personnel action.

18 (b) COVERED EMPLOYEES AND COMPLAINTS.—In
19 this section, the term “covered Federal employee”
20 means—

21 (1) an employee or applicant to whom section
22 717(a) of the Civil Rights Act of 1964 (42 U.S.C.
23 2000e–16(a)) applies, in the case of a complaint
24 brought under section 717 of that Act (42 U.S.C.
25 2000e–16);

1 (2) an employee or applicant to whom section
 2 15(a) of the Age Discrimination in Employment Act
 3 of 1967 (29 U.S.C. 633a(a)) applies, in the case of
 4 a complaint brought under section 15 of that Act
 5 (29 U.S.C. 633a);

6 (3) an employee or applicant to whom section
 7 501 of the Rehabilitation Act of 1973 (29 U.S.C.
 8 791) applies, in the case of a complaint brought to
 9 enforce that section under section 505 of that Act
 10 (29 U.S.C. 794a); and

11 (4) an employee or applicant described in sec-
 12 tion 201(2)(A)(v) of the Genetic Information Non-
 13 discrimination Act of 2008 (42 U.S.C.
 14 2000ff(2)(A)(v)), in the case of a complaint brought
 15 to enforce title II of that Act (42 U.S.C. 2000ff et
 16 seq.) under section 207(e) of that Act (42 U.S.C.
 17 2000ff–6(e)).

18 **TITLE III—BROADENING PRO-** 19 **TECTIONS AND ENSURING** 20 **TRANSPARENCY**

21 **SEC. 301. INDEPENDENT CONTRACTORS, INTERNS, FEL-** 22 **LOWS, VOLUNTEERS, AND TRAINEES.**

23 (a) COVERED EMPLOYER OR ENTITY.—All protec-
 24 tions afforded to an employee or individual under a provi-
 25 sion that consists of title VII of the Civil Rights Act of

1 1964 (42 U.S.C. 2000e et seq.), the Government Em-
 2 ployee Rights Act of 1991 (42 U.S.C. 2000e–16a et seq.),
 3 the Congressional Accountability Act of 1995 (2 U.S.C.
 4 1301 et seq.), subchapter II of chapter 5 of title 3, United
 5 States Code, the Age Discrimination in Employment Act
 6 of 1967 (29 U.S.C. 621 et seq.), title I and section 503
 7 (for violations with respect to that title) of the Americans
 8 with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.,
 9 12203), sections 501 and 505 of the Rehabilitation Act
 10 of 1973 (29 U.S.C. 791, 794a), section 6(d) of the Fair
 11 Labor Standards Act of 1938 (commonly known as the
 12 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)), title II
 13 of the Genetic Information Nondiscrimination Act of 2008
 14 (42 U.S.C. 2000ff et seq.), and section 4311 of title 38,
 15 United States Code, shall be afforded, in the same manner
 16 and to the same extent, to—

17 (1) an individual who is engaged by an em-
 18 ployer or entity covered by that provision (referred
 19 to in this subsection as a “covered employer or enti-
 20 ty”) as an independent contractor (regardless of
 21 business structure, including organization as a legal
 22 or commercial entity) or as an intern, fellow, volun-
 23 teer, or trainee, whether or not the individual re-
 24 ceives compensation, academic credit, or other remu-
 25 neration from the covered employer or entity; or

1 (2) an individual who applies or seeks to be-
 2 come such an independent contractor (regardless of
 3 business structure, including organization as a legal
 4 or commercial entity), intern, fellow, volunteer, or
 5 trainee, for the covered employer or entity.

6 (b) COVERED ESTABLISHMENTS.—

7 (1) DEFINITION.—In this subsection, the term
 8 “covered establishment” means an individual or enti-
 9 ty that—

10 (A) is not acting as an employer or entity
 11 covered by a provision specified in subsection
 12 (a); and

13 (B) engages the services (including solici-
 14 tating such services) of an independent con-
 15 tractor (regardless of business structure, includ-
 16 ing organization as a legal or commercial enti-
 17 ty), intern, fellow, volunteer, or trainee by
 18 means of an instrument of transportation or
 19 communication in interstate commerce, or
 20 through an arrangement that involves the use
 21 of such an instrument to carry out or be con-
 22 veyed to carry out those services.

23 (2) PROTECTIONS.—All protections afforded to
 24 an employee or individual under a provision that
 25 consists of title VII of the Civil Rights Act of 1964,

1 the Age Discrimination in Employment Act of 1967,
2 title I and section 503 (for violations with respect to
3 that title) of the Americans with Disabilities Act of
4 1990, section 6(d) of the Fair Labor Standards Act
5 of 1938, title II of the Genetic Information Non-
6 discrimination Act of 2008, and section 4311 of title
7 38, United States Code, shall be afforded, in the
8 same manner and to the same extent that the provi-
9 sion covers an individual described in section 701(f)
10 of the Civil Rights Act of 1964 (42 U.S.C.
11 2000e(f)), to—

12 (A) an individual who is engaged by a cov-
13 ered establishment as an independent con-
14 tractor (regardless of business structure, includ-
15 ing organization as a legal or commercial enti-
16 ty) or as an intern, fellow, volunteer, or trainee,
17 whether or not the individual receives com-
18 pensation, academic credit, or other remunera-
19 tion from the covered establishment; or

20 (B) an individual who applies or seeks to
21 become such an independent contractor (regard-
22 less of business structure, including organiza-
23 tion as a legal or commercial entity), intern, fel-
24 low, volunteer, or trainee, for the covered estab-
25 lishment.

1 (c) DOMESTIC SERVICE.—For purposes of the provi-
 2 sions listed in subsection (a) and the provisions of this
 3 Act, an individual or entity who engages the services (by
 4 means of an instrument of transportation or communica-
 5 tion in interstate commerce, or through an arrangement
 6 that involves the use of such an instrument to carry out
 7 or be conveyed to carry out those services) of a person
 8 in domestic service in a household, as an employee, or as
 9 an independent contractor, intern, fellow, volunteer, or
 10 trainee, referred to in subsection (a) or (b) shall be consid-
 11 ered to be engaged in interstate commerce.

12 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
 13 tion shall be construed to limit the individuals protected
 14 under any provision described in subsection (a).

15 (e) INTERSTATE COMMERCE.—In this section, the
 16 term “interstate commerce” means Commerce (as defined
 17 in section 3 of the Fair Labor Standards Act of 1938 (29
 18 U.S.C. 203)) among the several States.

19 **SEC. 302. NONDISCLOSURE AGREEMENTS.**

20 (a) DEFINITIONS.—In this section:

21 (1) COMMISSION.—The term “Commission”
 22 means the Equal Employment Opportunity Commis-
 23 sion.

1 (2) COVERED ESTABLISHMENT.—The term
2 “covered establishment” has the meaning given the
3 term in section 301.

4 (3) COVERED INDIVIDUAL.—The term “covered
5 individual” means—

6 (A) in the case of an individual required to
7 be afforded protections under section 301(a)—

8 (i) an individual required to be af-
9 forded those protections by an employer
10 described in paragraph (5)(A);

11 (ii) an individual required to be af-
12 forded those protections by an employer
13 described in paragraph (5)(B);

14 (iii) an individual required to be af-
15 forded those protections by an employer
16 described in paragraph (5)(C);

17 (iv) an individual required to be af-
18 forded those protections by an employer
19 described in paragraph (5)(D); or

20 (v) an individual required to be af-
21 forded those protections by an employer
22 described in paragraph (5)(E); and

23 (B) in the case of an individual required to
24 be afforded protections under section 301(b) by
25 a covered establishment, that individual.

1 (4) EMPLOYEE.—The term “employee”
2 means—

3 (A) an employee (including an applicant),
4 as defined in section 701(f) of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000e(f));

6 (B) a State employee (including an appli-
7 cant) described in section 304(a) of the Govern-
8 ment Employee Rights Act of 1991 (42 U.S.C.
9 2000e–16c(a));

10 (C) a covered employee (including an appli-
11 cant), as defined in section 101 of the Congres-
12 sional Accountability Act of 1995 (2 U.S.C.
13 1301), including an individual treated as a cov-
14 ered employee under that section;

15 (D) a covered employee (including an ap-
16 plicant), as defined in section 411(c) of title 3,
17 United States Code; or

18 (E) an employee or applicant to which sec-
19 tion 717(a) of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e–16(a)) applies.

21 (5) EMPLOYER.—The term “employer”
22 means—

23 (A) an employer (as defined in section
24 701(b) of the Civil Rights Act of 1964 (42
25 U.S.C. 2000e(b)));

1 (B) an entity employing a State employee
2 described in section 304(a) of the Government
3 Employee Rights Act of 1991;

4 (C) an employing office, as defined in sec-
5 tion 101(a) of the Congressional Accountability
6 Act of 1995 (2 U.S.C. 1301(a));

7 (D) an employing office, as defined in sec-
8 tion 411(c) of title 3, United States Code; or

9 (E) an entity to which section 717(a) of
10 the Civil Rights Act of 1964 applies.

11 (6) NONDISCLOSURE CLAUSE.—The term “non-
12 disclosure clause” means a provision in a contract or
13 agreement establishing that each party to the con-
14 tract or agreement agrees not to disclose informa-
15 tion covered by the terms and conditions of the con-
16 tract or agreement.

17 (7) NONDISPARAGEMENT CLAUSE.—The term
18 “nondisparagement clause” means a provision in a
19 contract or agreement requiring one or more parties
20 to the contract or agreement not to make negative
21 statements about another such party.

22 (8) WORKER.—The term “worker” means an
23 employee or a covered individual.

24 (b) UNLAWFUL PRACTICES.—

1 (1) NONDISPARAGEMENT AND NONDISCLOSURE
2 CLAUSES.—Subject to paragraph (3), it shall be an
3 unlawful practice for an employer to enter into a
4 contract or agreement with a worker, or for a cov-
5 ered establishment to enter into a contract or agree-
6 ment with a covered individual, as a condition of em-
7 ployment or contracting, promotion, compensation,
8 benefits, or change in employment status or contrac-
9 tual relationship, or as a term, condition, or privilege
10 of employment or contracting, if that contract or
11 agreement contains a nondisparagement clause or
12 nondisclosure clause that covers prohibited discrimi-
13 nation or harassment in employment or contracting,
14 or retaliation for reporting, resisting, opposing, or
15 assisting in the investigation of such discrimination
16 or harassment.

17 (2) PROHIBITION ON ENFORCEMENT.—Subject
18 to paragraph (3) but notwithstanding any other pro-
19 vision of law, it shall be an unlawful practice for an
20 employer or covered establishment to enforce or at-
21 tempt to enforce a nondisparagement clause or non-
22 disclosure clause that covers prohibited discrimina-
23 tion or harassment in employment or contracting, or
24 retaliation for reporting, resisting, opposing, or as-
25 sisting in the investigation of such discrimination or

1 harassment. An employer or covered establishment
 2 that enforces or attempts to enforce such a non-
 3 disparagement clause or such a nondisclosure clause
 4 against a worker shall be liable for the reasonable
 5 attorney's fees and costs of the worker.

6 (3) SETTLEMENT OR SEPARATION AGREE-
 7 MENTS.—

8 (A) IN GENERAL.—The provisions of para-
 9 graphs (1) and (2) do not apply to a nondispar-
 10 agement clause or nondisclosure clause con-
 11 tained in a settlement agreement or separation
 12 agreement that resolves legal claims or disputes
 13 if—

14 (i) such legal claims accrued or such
 15 disputes arose before the settlement agree-
 16 ment or separation agreement was exe-
 17 cuted;

18 (ii) the clause involved is mutually
 19 agreed upon by and mutually benefits
 20 both—

21 (I) the employer or covered es-
 22 tablishment, as the case may be; and

23 (II) the worker;

1 (iii) the worker's agreement to such
2 clause is knowing and voluntary, as de-
3 scribed in subparagraph (C); and

4 (iv) the settlement agreement or sepa-
5 ration agreement expressly states that the
6 agreement involved does not prohibit, pre-
7 vent, or otherwise restrict a worker from—

8 (I) filing a complaint with the
9 Commission, any other Federal, State,
10 or local agency with the authority to
11 enforce laws (including regulations)
12 that prohibit discrimination or harass-
13 ment in employment or contracting,
14 as the case may be, or law enforce-
15 ment;

16 (II) testifying at, assisting, or
17 participating in an investigation or
18 proceeding conducted by the Commis-
19 sion, any other Federal, State, or local
20 agency with the authority to enforce
21 laws (including regulations) that pro-
22 hibit discrimination or harassment in
23 employment or contracting, as the
24 case may be, or law enforcement; or

1 (III) testifying in a hearing or
2 trial or complying with a request for
3 discovery in relation to civil litigation.

4 (B) PROHIBITION ON SOLE BENEFIT.—For
5 purposes of this paragraph, it shall be an un-
6 lawful practice for an employer or covered es-
7 tablishment to unilaterally include a nondispar-
8 agement clause or nondisclosure clause that
9 solely benefits the employer or covered estab-
10 lishment in a separation or settlement agree-
11 ment.

12 (C) KNOWING AND VOLUNTARY AGREE-
13 MENT.—For purposes of this paragraph, agree-
14 ment to a nondisparagement clause or non-
15 disclosure clause may not be considered know-
16 ing and voluntary unless at a minimum—

17 (i) the nondisparagement clause or
18 nondisclosure clause is written in a manner
19 designed to ensure that the worker under-
20 stands the content of the clause involved;

21 (ii) the nondisparagement clause or
22 nondisclosure clause is included only in ex-
23 change for consideration of value provided
24 to the worker, in addition to anything of

1 value to which the worker is already enti-
2 tled;

3 (iii) the nondisparagement clause or
4 nondisclosure clause does not apply to any
5 rights or claims that arise after the date
6 the settlement or separation agreement is
7 executed;

8 (iv) the worker is advised in writing to
9 consult with an attorney prior to agreeing
10 to such an agreement that includes a non-
11 disparagement clause or nondisclosure
12 clause;

13 (v) the worker is given a period of at
14 least 21 days to consider any proposal for
15 a settlement or separation agreement that
16 includes a nondisparagement clause or
17 nondisclosure clause; and

18 (vi) the settlement or separation
19 agreement provides that for a period of at
20 least 7 days following the execution of such
21 agreement the worker may revoke the
22 agreement, and the agreement shall not be-
23 come effective or enforceable until the rev-
24 ocation period has expired.

1 (D) BURDEN OF PROOF.—In any dispute
2 that may arise over whether any of the require-
3 ments of subparagraph (A) have been met, the
4 party asserting the validity of an agreement
5 shall have the burden of proving that the re-
6 quirements of subparagraph (A) have been met.

7 (E) PARTICIPATION IN INVESTIGATIONS OR
8 PROCEEDINGS.—No nondisparagement clause
9 or nondisclosure clause may affect the ability of
10 a worker to testify at, assist, or participate in
11 an investigation or proceeding conducted by the
12 Commission, any Federal, State, or local agency
13 with the authority to enforce laws (including
14 regulations) that prohibit discrimination in em-
15 ployment or contracting, as the case may be, or
16 a law enforcement agency.

17 (F) PROHIBITION ON DAMAGES.—Under
18 no circumstances shall a worker be required to
19 pay damages for breach of a nondisparagement
20 clause or nondisclosure clause permitted by this
21 paragraph in excess of an amount equal to the
22 consideration of value provided to the worker in
23 exchange for the workers' agreement to the
24 nondisparagement clause or nondisclosure
25 clause.

1 (c) ENFORCEMENT AGAINST EMPLOYERS.—

2 (1) ENFORCEMENT POWERS.—With respect to
3 the administration and enforcement of this section
4 in the case of a claim alleged by a worker against
5 an employer for a violation of this section—

6 (A) the Commission shall have the same
7 powers as the Commission has to administer
8 and enforce—

9 (i) title VII of the Civil Rights Act of
10 1964 (42 U.S.C. 2000e et seq.); or

11 (ii) sections 302 and 304 of the Gov-
12 ernment Employee Rights Act of 1991 (42
13 U.S.C. 2000e–16b and 2000e–16c),

14 in the case of a claim alleged by an employee
15 of the employer for a violation of such title, or
16 of section 302(a)(1) of the Government Em-
17 ployee Rights Act of 1991 (42 U.S.C. 2000e–
18 16b(a)(1)), respectively;

19 (B) the Librarian of Congress shall have
20 the same powers as the Librarian of Congress
21 has to administer and enforce title VII of the
22 Civil Rights Act of 1964 (42 U.S.C. 2000e et
23 seq.) in the case of a claim alleged by an em-
24 ployee of the employer for a violation of such
25 title;

1 (C) the Board (as defined in section
2 101(a) of the Congressional Accountability Act
3 of 1995 (2 U.S.C. 1301(a))) shall have the
4 same powers as the Board has to administer
5 and enforce the Congressional Accountability
6 Act of 1995 (2 U.S.C. 1301 et seq.) in the case
7 of a claim alleged by an employee of the em-
8 ployer for a violation of section 201(a)(1) of
9 such Act (2 U.S.C. 1311(a)(1));

10 (D) the Attorney General shall have the
11 same powers as the Attorney General has to ad-
12 minister and enforce—

13 (i) title VII of the Civil Rights Act of
14 1964 (42 U.S.C. 2000e et seq.); or

15 (ii) sections 302 and 304 of the Gov-
16 ernment Employee Rights Act of 1991 (42
17 U.S.C. 2000e–16b and 2000e–16c),

18 in the case of a claim alleged by an employee
19 of the employer for a violation of such title, or
20 of section 302(a)(1) of the Government Em-
21 ployee Rights Act of 1991 (42 U.S.C. 2000e–
22 16b(a)(1)), respectively;

23 (E) the President, the Commission, and
24 the Merit Systems Protection Board shall have
25 the same powers as the President, the Commis-

1 sion, and the Board, respectively, have to ad-
2 minister and enforce chapter 5 of title 3,
3 United States Code, in the case of a claim al-
4 leged by an employee of the employer for a vio-
5 lation of section 411 of such title; and

6 (F) a court of the United States shall have
7 the same jurisdiction and powers as the court
8 has to enforce—

9 (i) title VII of the Civil Rights Act of
10 1964 (42 U.S.C. 2000e et seq.) in the case
11 of a claim alleged by an employee of the
12 employer for a violation of such title;

13 (ii) sections 302 and 304 of the Gov-
14 ernment Employee Rights Act of 1991 (42
15 U.S.C. 2000e–16b and 2000e–16c) in the
16 case of a claim alleged by an employee of
17 the employer for a violation of section
18 302(a)(1) of such Act (42 U.S.C. 2000e–
19 16b(a)(1));

20 (iii) the Congressional Accountability
21 Act of 1995 (2 U.S.C. 1301 et seq.) in the
22 case of a claim alleged by an employee of
23 the employer for a violation of section
24 201(a)(1) of such Act (2 U.S.C.
25 1311(a)(1)); and

1 (iv) chapter 5 of title 3, United States
2 Code, in the case of a claim alleged by an
3 employee of the employer for a violation of
4 section 411 of such title.

5 (2) PROCEDURES AND REMEDIES.—The proce-
6 dures and remedies applicable to a claim alleged by
7 a worker against the employer for a violation of this
8 section are—

9 (A) the procedures and remedies applicable
10 for a violation of title VII of the Civil Rights
11 Act of 1964 (42 U.S.C. 2000e et seq.) in the
12 case of a claim alleged by an employee of the
13 employer for a violation of such title;

14 (B) the procedures and remedies applicable
15 for a violation of section 302(a)(1) of the Gov-
16 ernment Employee Rights Act of 1991 (42
17 U.S.C. 2000e–16b(a)(1)) in the case of a claim
18 alleged by an employee of the employer for a
19 violation of such section;

20 (C) the procedures and remedies applicable
21 for a violation of section 201(a)(1) of the Con-
22 gressional Accountability Act of 1995 (2 U.S.C.
23 1311(a)(1)) in the case of a claim alleged by an
24 employee of the employer for a violation of such
25 section; and

1 (D) the procedures and remedies applicable
2 for a violation of section 411 of title 3, United
3 States Code, in the case of a claim alleged by
4 an employee of the employer for a violation of
5 such section.

6 (3) OTHER APPLICABLE PROVISIONS.—With re-
7 spect to a claim alleged by an employee described in
8 subsection (a)(4)(C) or a covered individual de-
9 scribed in subsection (a)(3)(A)(iii) for a violation of
10 this section, title III of the Congressional Account-
11 ability Act of 1995 (2 U.S.C. 1381 et seq.) shall
12 apply in the same manner as such title applies with
13 respect to a claim alleged by such an employee for
14 a violation of section 201(a)(1) of such Act (2
15 U.S.C. 1311(a)(1)).

16 (d) ENFORCEMENT AGAINST COVERED ESTABLISH-
17 MENTS.—

18 (1) ENFORCEMENT POWERS.—With respect to
19 the administration and enforcement of this section
20 in the case of a claim alleged by a covered individual
21 against a covered establishment for a violation of
22 this section—

23 (A) the Commission shall have the same
24 powers as the Commission has to administer

1 and enforce title VII of the Civil Rights Act of
 2 1964 (42 U.S.C. 2000e et seq.);

3 (B) the Attorney General shall have the
 4 same powers as the Attorney General has to ad-
 5 minister and enforce title VII of the Civil
 6 Rights Act of 1964; and

7 (C) a court of the United States shall have
 8 the same jurisdiction and powers as the court
 9 has to enforce title VII of the Civil Rights Act
 10 of 1964,

11 in the case of a claim alleged by an employee de-
 12 scribed in subsection (a)(4)(A) for a violation of
 13 such title.

14 (2) PROCEDURES AND REMEDIES.—The proce-
 15 dures and remedies applicable to a claim alleged by
 16 a covered individual against the covered establish-
 17 ment for a violation of this section are the proce-
 18 dures and remedies applicable for a violation of title
 19 VII of the Civil Rights Act of 1964 (42 U.S.C.
 20 2000e et seq.) in the case of a claim alleged by an
 21 employee described in subsection (a)(4)(A) for a vio-
 22 lation of such title.

23 (e) RIGHT TO REPORT RESERVED.—Notwith-
 24 standing signing (before, on, or after the effective date of

1 this Act) any nondisparagement clause or nondisclosure
2 clause, a worker retains—

3 (1) any right that person would otherwise have
4 had to report a concern about harassment, including
5 sexual harassment, in employment or contracting or
6 another violation of the law to the Commission, an-
7 other Federal agency (including an office of the leg-
8 islative or judicial branch), a State or local fair em-
9 ployment practices agency or any other State or
10 local agency, or a law enforcement agency; and

11 (2) any right that person would otherwise have
12 had to bring an action in a court of the United
13 States.

14 (f) REGULATIONS.—

15 (1) IN GENERAL.—Except as provided in para-
16 graphs (2), (3), and (4), the Commission shall have
17 authority to issue regulations to carry out this sec-
18 tion.

19 (2) LIBRARIAN OF CONGRESS.—The Librarian
20 of Congress shall have authority to issue regulations
21 to carry out this section with respect to workers of
22 the Library of Congress.

23 (3) BOARD.—The Board referred to in sub-
24 section (c)(1)(C) shall have authority to issue regu-
25 lations to carry out this section, in accordance with

1 section 304 of the Congressional Accountability Act
2 of 1995 (2 U.S.C. 1384), with respect to employees
3 described in subsection (a)(4)(C) and covered indi-
4 viduals described in subsection (a)(3)(A)(iii).

5 (4) PRESIDENT.—The President shall have au-
6 thority to issue regulations to carry out this section
7 with respect to employees described in subsection
8 (a)(4)(D) and covered individuals described in sub-
9 section (a)(3)(A)(iv).

10 (g) STATE AND FEDERAL IMMUNITY.—

11 (1) ABROGATION OF STATE IMMUNITY.—A
12 State shall not be immune under the 11th Amend-
13 ment to the Constitution from a suit brought in a
14 Federal court of competent jurisdiction for a viola-
15 tion of this section.

16 (2) WAIVER OF STATE IMMUNITY.—

17 (A) IN GENERAL.—

18 (i) WAIVER.—A State's receipt or use
19 of Federal financial assistance for any pro-
20 gram or activity of a State shall constitute
21 a waiver of sovereign immunity, under the
22 11th Amendment to the Constitution or
23 otherwise, to a suit brought by a covered
24 individual in that program or activity

1 under this section for a remedy authorized
2 under paragraph (4).

3 (ii) DEFINITION.—In this subpara-
4 graph, the term “program or activity” has
5 the meaning given the term in section 606
6 of the Civil Rights Act of 1964 (42 U.S.C.
7 2000d–4a).

8 (B) EFFECTIVE DATE.—With respect to a
9 particular program or activity, subparagraph
10 (A) applies to conduct occurring on or after the
11 day, after the date of enactment of this Act, on
12 which a State first receives or uses Federal fi-
13 nancial assistance for that program or activity.

14 (3) REMEDIES AGAINST STATE OFFICIALS.—An
15 official of a State may be sued in the official capac-
16 ity of the official by a covered individual who has
17 complied with the applicable procedures of sub-
18 section (c), for equitable relief that is authorized
19 under this section. In such a suit the court may
20 award to the prevailing party those costs authorized
21 by section 722 of the Revised Statutes (42 U.S.C.
22 1988).

23 (4) REMEDIES AGAINST THE UNITED STATES
24 AND THE STATES.—Notwithstanding any other pro-
25 vision of this Act, in an action or administrative pro-

ceeding against the United States or a State for a violation of this section, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by an employer described in subsection (a)(5)(A), except that—

(A) punitive damages are not available;

and

(B) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

SEC. 303. PROHIBITION ON MANDATORY ARBITRATION AND PROTECTION OF CONCERTED LEGAL ACTION.

(a) PROTECTION OF CONCERTED ACTIVITY.—

(1) AGREEMENTS.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(A) in paragraph (5), by striking the period at the end and inserting “; and”; and

(B) by adding at the end the following:

“(6)(A) to enter into or attempt to enforce any agreement, express or implied, whereby prior to a dispute to which the agreement applies, a worker

1 (for purposes of this paragraph, as defined in sec-
2 tion 401 of title 9, United States Code) undertakes
3 or promises not to pursue, bring, join, litigate, or
4 support any kind of joint, class, or collective claim
5 arising from or relating to the employment of, or
6 provision of services by, such worker in any forum
7 that, but for such agreement, is of competent juris-
8 diction;

9 “(B) to coerce such worker into undertaking or
10 promising not to pursue, bring, join, litigate, or sup-
11 port any kind of joint, class, or collective claim aris-
12 ing from or relating to the employment of, or provi-
13 sion of services by, such worker; or

14 “(C) to retaliate or threaten to retaliate against
15 a worker for refusing to undertake or promise not
16 to pursue, bring, join, litigate, or support any kind
17 of joint, class, or collective claim arising from or re-
18 lating to the employment of, or provision or services
19 by, such worker:

20 *Provided*, That any agreement that violates this
21 paragraph or results from a violation of this para-
22 graph shall be to such extent unenforceable and
23 void: *Provided further*, That this paragraph shall not
24 apply to any agreement embodied in or expressly

1 permitted by a contract between an employer and a
 2 labor organization.”.

3 (2) CONFORMING AMENDMENT.—Section 10(b)
 4 of the National Labor Relations Act (29 U.S.C.
 5 160(b)) is amended by striking “discharge” and in-
 6 serting “discharge, or unless the person aggrieved
 7 thereby is a worker alleging a violation of section
 8 8(a)(6) whose charge involves a postdispute arbitra-
 9 tion agreement that meets the requirements under
 10 section 402(a)(2) of title 9, United States Code, in
 11 which event the six-month period shall be computed
 12 from the day the waiting period described in sub-
 13 paragraph (C) of such section ends”.

14 (b) ARBITRATION OF WORK DISPUTES.—

15 (1) IN GENERAL.—Title 9 of the United States
 16 Code is amended by adding at the end the following:

17 **“CHAPTER 4—ARBITRATION OF WORK**
 18 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

19 **“§ 401. Definitions**

20 “In this chapter—

21 “(1) the terms ‘commerce’, ‘employee’, and ‘em-
 22 ployer’ have the meanings given the terms in section
 23 3 of the Fair Labor Standards Act of 1938 (29
 24 U.S.C. 203);

1 “(2) the term ‘covered entity’ means—

2 “(A) an employer; or

3 “(B) an individual or entity that is not
4 acting as an employer and engages the services
5 of a worker;

6 “(3) the term ‘predispute arbitration agree-
7 ment’ means any agreement to arbitrate a dispute
8 that had not yet arisen at the time of the making
9 of the agreement;

10 “(4) the term ‘postdispute arbitration agree-
11 ment’ means any agreement to arbitrate a dispute
12 that arose before the time of the making of the
13 agreement;

14 “(5) the term ‘worker’ means—

15 “(A) an employee; or

16 “(B) an individual who is engaged by a
17 covered entity to perform services or work as an
18 independent contractor (regardless of the label
19 or classification assigned or used by the covered
20 entity); and

21 “(6) the term ‘work dispute’—

22 “(A) means a dispute between one or more
23 workers (or their authorized representatives)
24 and a covered entity arising out of or related to
25 the work relationship or prospective work rela-

1 tationship between the workers and the covered
2 entity; and

3 “(B) includes, but is not limited to—

4 “(i) a dispute regarding the terms of,
5 payment for, advertising of, recruitment of,
6 referring of, arranging for, or discipline or
7 discharge in connection with such work;

8 “(ii) a dispute arising under any law
9 referred to or described in section 62(e) of
10 the Internal Revenue Code of 1986, includ-
11 ing any part of such a law not explicitly
12 referenced in such section that relates to
13 protecting individuals on a basis that is
14 protected under a law referred to or de-
15 scribed in such section; and

16 “(iii) a dispute in which an individual
17 or individuals seek certification—

18 “(I) as a class under rule 23 of
19 the Federal Rules of Civil Procedure;

20 “(II) as a collective action under
21 section 16(b) of the Fair Labor
22 Standards Act of 1938 (29 U.S.C.
23 216(b)); or

24 “(III) under a comparable rule or
25 provision of State law.

1 **“§ 402. Validity and enforceability**

2 “(a) IN GENERAL.—Notwithstanding any other chap-
3 ter of this title—

4 “(1) no predispute arbitration agreement shall
5 be valid or enforceable if it requires arbitration of a
6 work dispute;

7 “(2) no postdispute arbitration agreement that
8 requires arbitration of a work dispute shall be valid
9 or enforceable unless—

10 “(A) the agreement was not required by
11 the covered entity, obtained by coercion or
12 threat of adverse action, or made a condition of
13 employment, work, or any employment-related
14 or work-related privilege or benefit;

15 “(B) each worker entering into the agree-
16 ment was informed in writing using sufficiently
17 plain language likely to be understood by the
18 average worker of—

19 “(i) the right of the worker under
20 paragraph (3) to refuse to enter the agree-
21 ment without retaliation; and

22 “(ii) the protections under section
23 8(a)(6) of the National Labor Relations
24 Act (29 U.S.C. 158(a)(6));

25 “(C) each worker entering into the agree-
26 ment entered the agreement after a waiting pe-

1 riod of not fewer than 45 days, beginning on
 2 the date on which the employee was provided
 3 both the final text of the agreement and the
 4 disclosures required under subparagraph (B);
 5 and

6 “(D) each worker entering into the agree-
 7 ment affirmatively consented to the agreement
 8 in writing; and

9 “(3) no covered entity may retaliate or threaten
 10 to retaliate against a worker for refusing to enter
 11 into an agreement that provides for arbitration of a
 12 work dispute.

13 “(b) STATUTE OF LIMITATIONS.—During the waiting
 14 period described in subsection (a)(2)(C), the statute of
 15 limitations for any claims that arise from or form the basis
 16 for the applicable work dispute shall be tolled.

17 “(c) CIVIL ACTION.—Any person who is injured by
 18 reason of a violation of subsection (a)(3) may bring a civil
 19 action in the appropriate district court of the United
 20 States against the covered entity within 2 years of the vio-
 21 lation, or within 3 years if such violation is willful. Relief
 22 granted in such an action shall include a reasonable attor-
 23 ney’s fee, other reasonable costs associated with maintain-
 24 ing the action, and any appropriate relief authorized by
 25 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.

1 2000e–5(g)) or by section 1977A(b) of the Revised Stat-
 2 utes (42 U.S.C. 1981a(b)).

3 “(d) APPLICABILITY.—

4 “(1) IN GENERAL.—This chapter applies to cov-
 5 ered entities and workers engaged in activity affect-
 6 ing commerce to the fullest extent permitted by the
 7 Constitution of the United States, including the
 8 work of persons engaged in domestic service in
 9 households, as described in section 2(a) of the Fair
 10 Labor Standards Act of 1938 (29 U.S.C. 202(a)).

11 An issue as to whether this chapter applies to an ar-
 12 bitration agreement shall be determined under Fed-
 13 eral law. The applicability of this chapter to an
 14 agreement to arbitrate and the validity and enforce-
 15 ability of an agreement to which this chapter applies
 16 shall be determined by a court, rather than an arbi-
 17 trator, regardless of whether any contractual provi-
 18 sion purports to delegate such determinations to the
 19 arbitrator and irrespective of whether the party re-
 20 sisting arbitration challenges the arbitration agree-
 21 ment specifically or in conjunction with other terms
 22 of the contract containing such agreement.

23 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

24 Nothing in this chapter shall apply to any arbitra-
 25 tion provision in a contract between a covered entity

1 and a labor organization, except that no such arbi-
 2 tration provision shall have the effect of waiving the
 3 right of a worker to seek judicial enforcement of a
 4 right arising under a provision of the Constitution of
 5 the United States, the constitution of a State, or a
 6 Federal or State statute, or public policy arising
 7 therefrom.”.

8 (2) TECHNICAL AND CONFORMING AMEND-
 9 MENTS.—

10 (A) IN GENERAL.—Title 9 of the United
 11 States Code is amended—

12 (i) in section 1, by striking “of sea-
 13 men,” and all that follows through “inter-
 14 state commerce”;

15 (ii) in section 2, by inserting “or as
 16 otherwise provided in chapter 4” before the
 17 period at the end;

18 (iii) in section 208—

19 (I) in the section heading, by
 20 striking “**Chapter 1; residual**
 21 **application**” and inserting “**Ap-**
 22 **plication**”; and

23 (II) by adding at the end the fol-
 24 lowing: “This chapter applies to the

1 extent that this chapter is not in con-
 2 flict with chapter 4.”; and
 3 (iv) in section 307—

4 (I) in the section heading, by
 5 striking “**Chapter 1; residual**
 6 **application**” and inserting “**Ap-**
 7 **plication**”; and

8 (II) by adding at the end the fol-
 9 lowing: “This chapter applies to the
 10 extent that this chapter is not in con-
 11 flict with chapter 4.”.

12 (B) TABLE OF SECTIONS.—

13 (i) CHAPTER 2.—The table of sections
 14 for chapter 2 of title 9, United States
 15 Code, is amended by striking the item re-
 16 lating to section 208 and inserting the fol-
 17 lowing:

“208. Application.”.

18 (ii) CHAPTER 3.—The table of sec-
 19 tions for chapter 3 of title 9, United States
 20 Code, is amended by striking the item re-
 21 lating to section 307 and inserting the fol-
 22 lowing:

“307. Application.”.

1 (C) TABLE OF CHAPTERS.—The table of
 2 chapters for title 9, United States Code, is
 3 amended by adding at the end the following:

“4. Arbitration of work disputes 401.”.

4 (c) EFFECTIVE DATE.—This section, and the amend-
 5 ments made by this section, shall take effect on the date
 6 of enactment of this Act and shall apply with respect to
 7 any dispute or claim that arises or accrues on or after
 8 such date, including any dispute or claim to which an
 9 agreement predating such date applies.

10 **SEC. 304. FEDERAL CONTRACTOR COMPLIANCE WITH CIVIL**
 11 **RIGHTS LAWS.**

12 (a) DEFINITIONS.—In this section:

13 (1) COVERED CONTRACT.—The term “covered
 14 contract” means a Federal contract for the procure-
 15 ment of property or services, including construction,
 16 valued in excess of \$500,000.

17 (2) COVERED SUBCONTRACT.—The term “cov-
 18 ered subcontract”—

19 (A) means a subcontract for property or
 20 services under a Federal contract that is valued
 21 in excess of \$500,000; and

22 (B) does not include a subcontract for the
 23 procurement of commercially available off-the-
 24 shelf items.

1 (3) EXECUTIVE AGENCY.—The term “executive
2 agency” has the meaning given the term in section
3 133 of title 41, United States Code.

4 (b) REQUIRED PRE-CONTRACT AWARD ACTIONS.—

5 (1) DISCLOSURES.—The head of an executive
6 agency shall ensure that the solicitation for a cov-
7 ered contract requires the offeror—

8 (A) to represent, to the best of the
9 offeror’s knowledge and belief, whether there
10 has been any administrative merits determina-
11 tion, arbitral award or decision, or civil judg-
12 ment, as defined in guidance issued by the Sec-
13 retary of Labor, rendered against the offeror in
14 the preceding 3 years for violations of—

15 (i) the Fair Labor Standards Act of
16 1938 (29 U.S.C. 201 et seq.);

17 (ii) the Occupational Safety and
18 Health Act of 1970 (29 U.S.C. 651 et
19 seq.);

20 (iii) the Migrant and Seasonal Agri-
21 cultural Worker Protection Act (29 U.S.C.
22 1801 et seq.);

23 (iv) the National Labor Relations Act
24 (29 U.S.C. 151 et seq.);

1 (v) subchapter IV of chapter 31 of
2 title 40, United States Code (commonly
3 known as the “Davis-Bacon Act”);

4 (vi) chapter 67 of title 41, United
5 States Code (commonly known as the
6 “Service Contract Act”);

7 (vii) Executive Order 11246 (42
8 U.S.C. 2000e note; relating to equal em-
9 ployment opportunity);

10 (viii) section 503 of the Rehabilitation
11 Act of 1973 (29 U.S.C. 793);

12 (ix) section 4212 of title 38, United
13 States Code;

14 (x) the Family and Medical Leave Act
15 of 1993 (29 U.S.C. 2601 et seq.);

16 (xi) title VII of the Civil Rights Act of
17 1964 (42 U.S.C. 2000e et seq.);

18 (xii) the Americans with Disabilities
19 Act of 1990 (42 U.S.C. 12101 et seq.);

20 (xiii) the Age Discrimination in Em-
21 ployment Act of 1967 (29 U.S.C. 621 et
22 seq.);

23 (xiv) title II of the Genetic Informa-
24 tion Nondiscrimination Act of 2008 (42
25 U.S.C. 2000ff et seq.);

1 (xv) Executive Order 13658 (79 Fed.
2 Reg. 9851; relating to establishing a min-
3 imum wage for contractors); or

4 (xvi) equivalent State laws, as defined
5 in guidance issued by the Secretary of
6 Labor;

7 (B) to require each subcontractor for a
8 covered subcontract—

9 (i) to represent to the offeror, and the
10 entity designated by the final rule reissued
11 under subsection (e)(1), to the best of the
12 subcontractor's knowledge and belief,
13 whether there has been any administrative
14 merits determination, arbitral award or de-
15 cision, or civil judgment, as defined in
16 guidance issued by the Secretary of Labor,
17 rendered against the subcontractor in the
18 preceding 3 years for violations of any of
19 the labor laws listed under subparagraph
20 (A); and

21 (ii) to update such information every
22 6 months for the duration of the sub-
23 contract; and

24 (C) to consider the advice rendered by the
25 entity designated by the final rule reissued

under subsection (e)(1), or information submitted by a subcontractor pursuant to subparagraph (B), in determining whether the subcontractor is a responsible source with a satisfactory record of integrity and business ethics—

(i) prior to awarding the subcontract;

or

(ii) in the case of a subcontract that is awarded or will become effective within 5 days of the prime contract being awarded, not later than 30 days after awarding the subcontract.

(2) PRE-AWARD CORRECTIVE MEASURES.—

(A) IN GENERAL.—A contracting officer, prior to awarding a covered contract, shall, as part of the responsibility determination, provide an offeror who makes a disclosure pursuant to paragraph (1) an opportunity to report any steps taken to correct the violations of or improve compliance with the labor laws listed in subparagraph (A) of such paragraph, including any agreements entered into with an enforcement agency.

(B) CONSULTATION.—The executive agency's Labor Compliance Advisor designated

1 under subsection (d), in consultation with rel-
2 evant enforcement agencies, shall advise the
3 contracting officer whether agreements are in
4 place or are otherwise needed to address appro-
5 priate remedial measures, compliance assist-
6 ance, steps to resolve issues to avoid further
7 violations, or other related matters concerning
8 the offeror.

9 (C) RESPONSIBILITY DETERMINATION.—

10 The contracting officer, in consultation with the
11 executive agency's Labor Compliance Advisor
12 designated under subsection (d), shall consider
13 information provided by the offeror under this
14 subsection in determining whether the offeror is
15 a responsible source with a satisfactory record
16 of integrity and business ethics. The determina-
17 tion shall be based on the guidance reissued
18 under subsection (e)(2)(A) and the final rule
19 reissued under subsection (e)(1).

20 (3) REFERRAL OF INFORMATION TO SUSPEN-

21 SION AND DEBARMENT OFFICIALS.—As appropriate,
22 contracting officers, in consultation with their execu-
23 tive agency's Labor Compliance Advisor, shall refer
24 matters related to information provided under sub-
25 paragraphs (A) and (B) of paragraph (1) to the ex-

ecutive agency's suspension and debarment official
in accordance with agency procedures.

(c) POST-AWARD CONTRACT ACTIONS.—

(1) INFORMATION UPDATES.—The contracting
officer for a covered contract shall require that the
contractor update the information provided under
subparagraphs (A) and (B) of subsection (b)(1)
every 6 months.

(2) CORRECTIVE ACTIONS.—

(A) PRIME CONTRACT.—The contracting
officer, in consultation with the Labor Compli-
ance Advisor designated pursuant to subsection
(d), shall determine whether any information
provided under paragraph (1) warrants correc-
tive action. Such action may include—

(i) an agreement requiring appro-
priate remedial measures;

(ii) compliance assistance;

(iii) resolving issues to avoid further
violations;

(iv) the decision not to exercise an op-
tion on a contract or to terminate the con-
tract; or

(v) referral to the agency suspending
and debarring official.

1 (B) SUBCONTRACTS.—The prime con-
2 tractor for a covered contract, in consultation
3 with the Labor Compliance Advisor, shall deter-
4 mine whether any information provided under
5 subsection (b)(1)(B) warrants corrective action,
6 including remedial measures, compliance assist-
7 ance, and resolving issues to avoid further viola-
8 tions.

9 (C) DEPARTMENT OF LABOR.—The Sec-
10 retary of Labor shall, as appropriate, inform
11 executive agencies of its investigations of con-
12 tractors and subcontractors on current Federal
13 contracts for purposes of determining the ap-
14 propriateness of actions described under sub-
15 paragraphs (A) and (B).

16 (d) LABOR COMPLIANCE ADVISORS.—

17 (1) IN GENERAL.—Each executive agency shall
18 designate a senior official to act as the agency's
19 Labor Compliance Advisor.

20 (2) DUTIES.—The Labor Compliance Advisor
21 shall—

22 (A) meet quarterly with the Deputy Sec-
23 retary, Deputy Administrator, or equivalent ex-
24 ecutive agency official with regard to matters
25 covered under this section;

1 (B) work with the acquisition workforce,
2 agency officials, and agency contractors to pro-
3 mote greater awareness and understanding of
4 the requirements of the labor laws listed in sub-
5 section (b)(1)(A), including record keeping, re-
6 porting, and notice requirements, as well as
7 best practices for obtaining compliance with
8 these requirements;

9 (C) coordinate assistance for executive
10 agency contractors seeking help in addressing
11 and preventing violations of such laws;

12 (D) in consultation with the Secretary of
13 Labor or other relevant enforcement agencies,
14 and pursuant to subsection (b)(2) as necessary,
15 provide assistance to contracting officers re-
16 garding appropriate actions to be taken in re-
17 sponse to violations of the labor laws listed in
18 subsection (b)(1)(A) identified prior to or after
19 contracts are awarded, and address complaints
20 in a timely manner, by—

21 (i) providing assistance to contracting
22 officers and other executive agency officials
23 in reviewing the information provided
24 under paragraphs (1) and (2) of subsection
25 (b) and subsection (c)(1), or other infor-

1 mation indicating such a violation, in order
2 to assess the serious, repeated, willful, or
3 pervasive nature of any such violation and
4 evaluate steps contractors have taken to
5 correct such violations or improve compli-
6 ance with relevant requirements;

7 (ii) helping agency officials determine
8 the appropriate response to address viola-
9 tions of the labor laws listed in subsection
10 (b)(1)(A) or other information indicating
11 such a violation (particularly a serious, re-
12 peated, willful, or pervasive violation), in-
13 cluding an agreement requiring appro-
14 priate remedial measures, a decision not to
15 award a contract or exercise an option on
16 a contract, contract termination, or a re-
17 ferral to the executive agency suspension
18 and debarment official;

19 (iii) providing assistance to appro-
20 priate executive agency officials in receiv-
21 ing and responding to, or making referrals
22 of, complaints alleging violations by agency
23 contractors and subcontractors of the labor
24 laws listed in subsection (b)(1)(A); and

1 (iv) supporting contracting officers,
2 suspension and debarment officials, and
3 other agency officials in the coordination of
4 actions taken pursuant to this subsection
5 to ensure agency-wide consistency, to the
6 extent practicable;

7 (E) as appropriate, send information to
8 agency suspension and debarment officials in
9 accordance with agency procedures;

10 (F) consult with the agency's Chief Acqui-
11 sition Officer and Senior Procurement Execu-
12 tive, and the Department of Labor as nec-
13 essary, in the development of regulations, poli-
14 cies, and guidance addressing compliance by
15 contractors and subcontractors with the labor
16 laws listed in subsection (b)(1)(A);

17 (G) make recommendations to the agency
18 to strengthen agency management of contractor
19 compliance with such labor laws;

20 (H) publicly report, on an annual basis, a
21 summary of agency actions taken to promote
22 greater compliance with such laws, including
23 the agency's response under this section to seri-
24 ous, repeated, willful, or pervasive violations of
25 such laws; and

1 (I) participate in the interagency meetings
2 regularly convened by the Secretary of Labor
3 under subsection (e)(2)(B)(iii).

4 (e) MEASURES TO ENSURE GOVERNMENT-WIDE
5 CONSISTENCY.—

6 (1) FEDERAL ACQUISITION REGULATION.—

7 (A) IN GENERAL.—Notwithstanding Public
8 Law 115–11 (131 Stat. 75) and section 553 of
9 title 5, United States Code, not later than 1
10 year after the date of enactment of this Act, the
11 Secretary of Defense, the Administrator of the
12 General Services Administration, and the Ad-
13 ministrator of the National Aeronautics and
14 Space Administration shall reissue the final rule
15 entitled “Federal Acquisition Regulation; Fair
16 Pay and Safe Workplaces” (81 Fed. Reg.
17 58,562 (Aug. 25, 2016)), subject to subpara-
18 graph (B).

19 (B) UPDATED DATES.—The agencies de-
20 scribed in subparagraph (A) may, in reissuing
21 the final rule under such subparagraph, update
22 any date provided in such final rule as reason-
23 able and necessary.

24 (2) DEPARTMENT OF LABOR.—

1 (A) GUIDANCE.—Not later than 1 year
2 after the date of enactment of this Act, the Sec-
3 retary of Labor shall reissue the guidance enti-
4 tled “Guidance for Executive Order 13673,
5 ‘Fair Pay and Safe Workplaces’” (81 Fed.
6 Reg. 58,654 (Aug. 25, 2016)). In reissuing
7 such guidance, the Secretary of Labor may up-
8 date any date provided in such guidance as rea-
9 sonable.

10 (B) ADDITIONAL ACTIVITIES.—The Sec-
11 retary of Labor shall—

12 (i) develop a process—

13 (I) for the Labor Compliance Ad-
14 visors designated pursuant to sub-
15 section (d) to consult with the Sec-
16 retary of Labor in carrying out their
17 responsibilities under subsection
18 (d)(2)(D);

19 (II) by which contracting officers
20 and Labor Compliance Advisors may
21 give appropriate consideration to de-
22 terminations and agreements made by
23 the Secretary of Labor and the heads
24 of other executive agencies; and

1 (III) by which contractors may
2 enter into agreements with the Sec-
3 retary of Labor, or the head of an-
4 other executive agency, prior to being
5 considered for a contract;

6 (ii) review data collection require-
7 ments and processes, and work with the
8 Director of the Office of Management and
9 Budget, the Administrator of General
10 Services, and other agency heads to im-
11 prove such requirements and processes, as
12 necessary, to reduce the burden on con-
13 tractors and increase the amount of infor-
14 mation available to executive agencies;

15 (iii) regularly convene interagency
16 meetings of Labor Compliance Advisors to
17 share and promote best practices for im-
18 proving labor law compliance; and

19 (iv) designate an appropriate contact
20 for executive agencies seeking to consult
21 with the Secretary of Labor with respect to
22 the requirements and activities under this
23 section.

1 (3) OFFICE OF MANAGEMENT AND BUDGET.—

2 The Director of the Office of Management and
3 Budget shall—

4 (A) work with the Administrator of Gen-
5 eral Services to include in the Federal Awardee
6 Performance and Integrity Information System
7 the information provided by contractors pursu-
8 ant to subsections (b)(1)(A) and (c)(1) and
9 data on the resolution of any issues related to
10 such information; and

11 (B) designate an appropriate contact for
12 agencies seeking to consult with the Office of
13 Management and Budget on matters arising
14 under this section.

15 (4) GENERAL SERVICES ADMINISTRATION.—

16 (A) IN GENERAL.—The Administrator of
17 General Services, in consultation with other rel-
18 evant executive agencies, shall establish a single
19 Internet website for Federal contractors to use
20 for all Federal contract reporting requirements
21 under this section, as well as any other Federal
22 contract reporting requirements to the extent
23 practicable.

24 (B) AGENCY COOPERATION.—The heads of
25 executive agencies with covered contracts shall

1 provide the Administrator of General Services
2 with the data necessary to maintain the Inter-
3 net website established under subparagraph
4 (A).

5 (5) MINIMIZING COMPLIANCE BURDEN.—After
6 reissuing the guidance under paragraph (2)(A) or
7 the final rule under paragraph (1), the Secretary of
8 Labor or the Secretary of Defense, the Adminis-
9 trator of the General Services Administration, and
10 the Administrator of the National Aeronautics and
11 Space Administration may, respectively, amend such
12 guidance or final rule consistent with the require-
13 ments under chapter 5 of title 5, United States
14 Code.

15 (f) IMPLEMENTING REGULATIONS.—Not later than 9
16 months after the date of enactment of this Act, the Fed-
17 eral Acquisition Regulatory Council shall amend the Fed-
18 eral Acquisition Regulation to carry out the provisions of
19 this section.

20 (g) RULES OF CONSTRUCTION.—Nothing in this sec-
21 tion shall be construed as—

22 (1) impairing or otherwise affecting the author-
23 ity granted by law to an executive agency or the
24 head thereof; or

1 (2) impairing or otherwise affecting the func-
 2 tions of the Director of the Office of Management
 3 and Budget relating to budgetary, administrative, or
 4 legislative proposals.

5 **TITLE IV—NATIONWIDE GRANTS**
 6 **TO PREVENT AND RESPOND**
 7 **TO WORKPLACE HARASS-**
 8 **MENT**

9 **SEC. 401. DEFINITIONS.**

10 In this title:

11 (1) COMMISSION.—The term “Commission”
 12 means the Equal Employment Opportunity Commis-
 13 sion.

14 (2) EMPLOYEE.—The term “employee” has the
 15 meaning given the term in section 302(a)(4).

16 (3) EMPLOYMENT DISCRIMINATION.—The term
 17 “employment discrimination” means discrimination
 18 that is in violation of applicable Federal, State, or
 19 local employment law, including:

20 (A) Title VII of the Civil Rights Act of
 21 1964 (42 U.S.C. 2000e et seq.).

22 (B) The Government Employee Rights Act
 23 of 1991 (42 U.S.C. 2000e–16a et seq.).

24 (C) The Congressional Accountability Act
 25 of 1995 (2 U.S.C. 1301 et seq.).

1 (D) Subchapter II of chapter 5 of title 3,
2 United States Code.

3 (E) The Age Discrimination in Employ-
4 ment Act of 1967 (29 U.S.C. 621 et seq.).

5 (F) Title I and section 503 (for violations
6 with respect to that title) of the Americans with
7 Disabilities Act of 1990 (42 U.S.C. 12111 et
8 seq., 12203).

9 (G) Sections 501 and 505 of the Rehabili-
10 tation Act of 1973 (29 U.S.C. 791, 794a).

11 (H) Section 6(d) of the Fair Labor Stand-
12 ards Act of 1938 (commonly known as the
13 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)).

14 (I) Title II of the Genetic Information
15 Nondiscrimination Act of 2008 (42 U.S.C.
16 2000ff et seq.).

17 (J) Section 4311 of title 38, United States
18 Code.

19 (K) Other Federal, State, or local employ-
20 ment law.

21 (4) WORKER.—The term “worker” has the
22 meaning given the term in section 302(a)(7).

1 **Subtitle A—National Grants for**
2 **Preventing and Addressing Em-**
3 **ployment Discrimination, In-**
4 **cluding Harassment**

5 **SEC. 411. DEFINITIONS.**

6 In this subtitle:

7 (1) **DIRECTOR.**—The term “Director” means
8 the Director of the Women’s Bureau of the Depart-
9 ment of Labor.

10 (2) **ELIGIBLE ENTITY.**—The term “eligible enti-
11 ty” means any of the following:

12 (A) A nonprofit organization, including a
13 community-based organization, nonprofit legal
14 aid organization, or labor organization, that
15 provides services and support to workers, in-
16 cluding by assisting workers in filing charges of
17 employment discrimination.

18 (B) An institution of higher education, as
19 defined in section 101 of the Higher Education
20 Act of 1965 (20 U.S.C. 1001).

21 **SEC. 412. GRANTS.**

22 (a) **GRANTS.**—The Director, in consultation with the
23 Commission, shall award grants under this section, on a
24 competitive basis, to eligible entities to assist such entities
25 in carrying out a program for preventing and addressing

1 employment discrimination, including harassment,
2 through activities authorized under subsection (b).

3 (b) USE OF FUNDS.—

4 (1) PERMISSIBLE ACTIVITIES.—A grant award-
5 ed under this section shall be used for activities to
6 prevent and address employment discrimination, in-
7 cluding harassment, which may include—

8 (A) educating workers about their rights
9 related to harassment in employment under
10 Federal, State, and local civil rights, labor, and
11 employment laws;

12 (B) educating employers about their obli-
13 gations to prevent and address harassment in
14 employment under Federal, State, and local
15 civil rights, labor, and employment laws;

16 (C) providing assistance to workers in
17 bringing complaints of employment discrimina-
18 tion, including filing charges of harassment;

19 (D) establishing networks for education,
20 communication, and participation in the work-
21 place and community;

22 (E) monitoring employer compliance with
23 Federal, State, and local civil rights, labor, and
24 employment laws;

1 (F) recruiting and hiring of staff and vol-
2 unteers; and

3 (G) any other activity the Director, in con-
4 sultation with the Commission, may reasonably
5 prescribe for the purpose of preventing and ad-
6 dressing employment discrimination, including
7 harassment.

8 (2) PROHIBITED ACTIVITIES.—Notwithstanding
9 paragraph (1), an eligible entity receiving a grant
10 under this section may not use the grant funds for
11 any purpose reasonably prohibited by the Director,
12 in consultation with the Commission, through notice
13 and comment rulemaking.

14 (c) TERM OF GRANTS.—Each grant awarded under
15 this section shall be available for expenditure for a period
16 not to exceed 3 years.

17 (d) APPLICATIONS.—

18 (1) IN GENERAL.—An eligible entity seeking a
19 grant under this section shall submit an application
20 for such grant to the Director in accordance with
21 this subsection.

22 (2) PARTNERSHIPS.—Multiple eligible entities
23 may submit a joint application under this subsection
24 that designates a single entity as the lead entity for

1 the purposes of receiving and disbursing funds re-
2 ceived through a grant under this section.

3 (3) CONTENTS.—An application under this sub-
4 section shall include—

5 (A) a description of a plan for the program
6 that the eligible entity proposes to carry out
7 with a grant under this section, including a
8 long-term strategy and detailed implementation
9 plan;

10 (B) information on the prevalence of viola-
11 tions of prohibitions on employment discrimina-
12 tion, including harassment, under Federal,
13 State, and local civil rights, labor, and employ-
14 ment laws in the population served by the eligi-
15 ble entity;

16 (C) information on any industry or geo-
17 graphic area targeted by the plan for such pro-
18 gram;

19 (D) information on the type of outreach
20 and relationship building that will be conducted
21 under such program;

22 (E) information on the training and edu-
23 cation that will be provided to workers and em-
24 ployers under such program; and

1 (F) the method by which the eligible entity
2 will measure the results of such program.

3 (e) SELECTION.—

4 (1) COMPETITIVE BASIS.—In accordance with
5 this section, the Director, in consultation with the
6 Commission, shall, on a competitive basis, select
7 grant recipients from among eligible entities that
8 have submitted an application meeting the require-
9 ments under subsection (d).

10 (2) PRIORITY.—The Director, in consultation
11 with the Commission, in selecting grant recipients
12 under paragraph (1), shall give priority to eligible
13 entities that—

14 (A) serve workers in any industry or geo-
15 graphic area that is most highly at risk for em-
16 ployment discrimination, including harassment,
17 as identified by the Director, in consultation
18 with the Commission; and

19 (B) demonstrate past and ongoing work to
20 prevent employment discrimination, including
21 harassment.

22 (f) PERFORMANCE EVALUATIONS.—

23 (1) IN GENERAL.—Each grant recipient under
24 this section shall develop procedures for reporting,
25 monitoring, measuring, and evaluating the activities

1 of each program or activity funded under this sec-
 2 tion.

3 (2) GUIDELINES.—The procedures required
 4 under paragraph (1) shall be in accordance with
 5 guidelines established by the Director, in consulta-
 6 tion with the Commission.

7 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the Direc-
 9 tor such sums as may be necessary to carry out this sub-
 10 title.

11 **Subtitle B—Grants for Legal Assist-**
 12 **ance for Low-Income Workers**

13 **SEC. 421. DEFINITIONS.**

14 In this subtitle:

15 (1) SECRETARY.—The term “Secretary” means
 16 the Secretary of Labor.

17 (2) COVERED CLIENT.—The term “covered cli-
 18 ent” means an individual who—

19 (A) is an eligible client; and

20 (B) faces legal issues related to employ-
 21 ment discrimination, including harassment.

22 (3) ELIGIBLE CLIENT.—The term “eligible cli-
 23 ent” has the meaning given the term in section 1002
 24 of the Legal Services Corporation Act (42 U.S.C.

1 2996a) and the regulations of the Legal Services
2 Corporation.

3 (4) ELIGIBLE ENTITY.—The term “eligible enti-
4 ty” means—

5 (A) a nonprofit organization; and

6 (B) an individual who is licensed to prac-
7 tice law.

8 **SEC. 422. GRANTS FOR CIVIL LEGAL NEEDS RELATED TO**
9 **EMPLOYMENT DISCRIMINATION.**

10 (a) GRANTS AUTHORIZED.—

11 (1) IN GENERAL.—The Secretary is authorized
12 to provide financial assistance to eligible entities to
13 enable those eligible entities to provide for the civil
14 legal needs of covered clients that are related to em-
15 ployment discrimination, and to provide for those cli-
16 ents such other services as are necessary to carry
17 out the purposes of this subtitle, including any of
18 the following activities:

19 (A) Providing covered clients advice, legal
20 services, or representation.

21 (B) Assisting covered clients in utilizing
22 the Commission employment discrimination
23 complaint process.

24 (C) Assisting covered clients in utilizing a
25 private employment complaint process.

1 (D) Conducting outreach activities to pub-
2 licize the services offered under this section.

3 (2) CITIZENSHIP STATUS.—An eligible entity
4 receiving a grant under this section shall provide
5 services to a covered client without regard to the
6 citizenship status or authorization to work of the
7 covered client.

8 (b) APPLICATION.—In order to be eligible to receive
9 a grant under this section, an eligible entity shall submit
10 an application to the Secretary at such time and in such
11 manner as the Secretary may require. Such application
12 shall include—

13 (1) a description of the services that the eligible
14 entity proposes to provide, implement, improve, or
15 expand;

16 (2) a description of the covered clients the eligi-
17 ble entity intends to serve;

18 (3) evidence of the eligible entity's capacity to
19 provide services to covered clients with legal issues
20 related to employment discrimination, such as the el-
21 igible entity's record of success representing eligible
22 clients in employment-related legal matters, or the
23 eligible entity's prior experience serving clients who
24 cannot afford legal counsel;

1 (4) an explanation of how the services the eligi-
2 ble entity intends to provide will assist covered cli-
3 ents in addressing legal issues related to employment
4 discrimination; and

5 (5) any other information that the Secretary
6 may require.

7 (c) AWARD BASIS.—The Secretary shall, in consulta-
8 tion with the Legal Services Corporation, award and over-
9 see grants under this section pursuant to such procedures
10 and criteria as the Secretary may require. Such proce-
11 dures and criteria shall include consideration of—

12 (1) whether the eligible entity has demonstrated
13 an understanding of the legal needs of covered cli-
14 ents;

15 (2) the eligible entity's capacity to provide serv-
16 ices to covered clients with legal issues related to
17 employment discrimination, which may be dem-
18 onstrated through evidence described in subsection

19 (b)(3);

20 (3) the eligible entity's knowledge of applicable
21 Federal, State, and local employment laws;

22 (4) the eligible entity's capacity and ability to
23 access other resources;

1 (5) the eligible entity's ability to ensure con-
2 tinuity of service to covered clients with pending
3 legal issues; and

4 (6) other factors that the Secretary determines
5 are relevant.

6 (d) **EQUITABLE DISTRIBUTION.**—To the extent prac-
7 ticable, in awarding grants under this section, the Sec-
8 retary, in consultation with the Legal Services Corpora-
9 tion, shall ensure that grants are made so as to provide
10 the most economical and effective delivery of legal assist-
11 ance to covered clients in both urban and rural areas, with
12 consideration of the geographic distribution of persons in
13 poverty.

14 (e) **DURATION OF THE GRANT.**—

15 (1) **IN GENERAL.**—A grant under this section
16 shall be for a term of not less than 1 year and not
17 more than 5 years.

18 (2) **RENEWAL.**—The Secretary may renew a
19 grant awarded under this section for a period of not
20 more than 2 additional years if the eligible entity
21 demonstrates that the eligible entity is effectively
22 using funds and that the renewal of funds will allow
23 the eligible entity to scale up the provision of serv-
24 ices, replicate the program, or provide continuity of
25 service to covered clients.

1 (f) REPORT.—Two years after the enactment of this
 2 section, the Secretary shall provide to the Committee on
 3 Health, Education, Labor, and Pensions of the Senate and
 4 the Committee on Education and Labor of the House of
 5 Representatives a report on the implementation of the
 6 grant program under this section, including—

7 (1) a description of the services provided using
 8 grant assistance under this section, including a de-
 9 tailed description of the types of legal issues ad-
 10 dressed by eligible entities and the number of cov-
 11 ered clients served; and

12 (2) an assessment of the number of individuals
 13 facing one or more legal issues related to employ-
 14 ment discrimination who cannot afford adequate
 15 legal counsel, and the largest areas of unmet need.

16 **SEC. 423. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated to carry out
 18 this subtitle such sums as may be necessary.

19 **Subtitle C—Grants for a System of**
 20 **State Advocacy**

21 **SEC. 431. PURPOSE.**

22 The purpose of this subtitle is to provide allotments
 23 to support a system of advocacy (referred to in this sub-
 24 title as a “system”) in each State to protect the legal and

1 human rights of workers in accordance with applicable
2 Federal, State, and local employment discrimination laws.

3 **SEC. 432. DEFINITIONS.**

4 In this subtitle:

5 (1) RECORD.—The term “record” includes—

6 (A) a report prepared by an employer or
7 staff person charged with investigating reports
8 of employment discrimination that describes in-
9 cidents of possible discrimination and the steps
10 taken to investigate those incidents;

11 (B) statistical information related to em-
12 ployment decisions and the race, sex (including
13 sexual orientation and gender identity), religion,
14 national origin, age, disability, genetic informa-
15 tion, or other protected characteristics of work-
16 ers;

17 (C) records described in section 11(c) of
18 the Fair Labor Standards Act (29 U.S.C.
19 211(c)); and

20 (D) any such similar record, as may be
21 necessary to carry out the purposes of this sub-
22 title.

23 (2) SECRETARY.—The term “Secretary” means
24 the Secretary of Labor.

1 (3) STATE.—The term “State”, except as oth-
 2 erwise provided, includes, in addition to each of the
 3 several States of the United States, the District of
 4 Columbia, the Commonwealth of Puerto Rico, the
 5 United States Virgin Islands, Guam, American
 6 Samoa, and the Commonwealth of the Northern
 7 Mariana Islands.

8 **SEC. 433. ALLOTMENTS AND PAYMENTS.**

9 (a) ALLOTMENTS.—

10 (1) IN GENERAL.—To assist States in meeting
 11 the requirements of section 434, the Secretary shall
 12 make allotments to States from the amounts appro-
 13 priated under section 436 and not reserved under
 14 paragraph (5).

15 (2) MINIMUM ALLOTMENTS.—In any case in
 16 which—

17 (A) the total amount appropriated under
 18 section 436 for a fiscal year is not less than
 19 \$20,000,000, the allotment under paragraph
 20 (1) for such fiscal year—

21 (i) to each of American Samoa,
 22 Guam, the United States Virgin Islands,
 23 and the Commonwealth of the Northern
 24 Mariana Islands may not be less than
 25 \$100,000; and

1 (ii) to any State not described in
 2 clause (i) may not be less than \$200,000;
 3 and

4 (B) the total amount appropriated under
 5 section 436 for a fiscal year is less than
 6 \$20,000,000, the allotment under paragraph
 7 (1) for such fiscal year—

8 (i) to each of American Samoa,
 9 Guam, the United States Virgin Islands,
 10 and the Commonwealth of the Northern
 11 Mariana Islands may not be less than
 12 \$50,000; and

13 (ii) to any State not described in
 14 clause (i) may not be less than \$150,000.

15 (3) REDUCTION OF ALLOTMENT.—Notwith-
 16 standing paragraphs (1) and (2), if the aggregate of
 17 the amounts to be allotted to the States pursuant to
 18 such paragraphs for any fiscal year exceeds the total
 19 amount appropriated for such allotments under sec-
 20 tion 436 for such fiscal year, the amount to be allot-
 21 ted to each State for such fiscal year shall be pro-
 22 portionately reduced.

23 (4) INCREASE IN ALLOTMENTS.—If the sum ap-
 24 propriated under section 436 and not reserved under
 25 paragraph (5) for any fiscal year exceeds the aggre-

gate of the minimum allotments for all States under this subsection for that fiscal year, such excess amount shall be allotted among the States, including American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, so as to increase proportionately the minimum allotment for each such State.

(5) TECHNICAL ASSISTANCE.—In any case in which the total amount appropriated under section 436 for a fiscal year is more than \$24,500,000, the Secretary shall—

(A) use not more than 2 percent of the amount appropriated to provide technical assistance to eligible systems with respect to activities carried out under this subtitle (consistent with requests by such systems for such assistance for the year); and

(B) provide a grant in accordance with section 434(d) and in an amount described in paragraph (2)(A)(i), to an American Indian consortium to provide protection and advocacy services.

(6) REALLOTMENTS.—

(A) IN GENERAL.—If the Secretary determines that an amount of an allotment to a

1 State for a period (of a fiscal year or longer)
2 will not be required by the State during the pe-
3 riod for the purpose for which the allotment
4 was made, the Secretary shall reallocate the
5 amount.

6 (B) TIMING.—The Secretary may make
7 such a reallocation from time to time, on such
8 date as the Secretary may fix, but not earlier
9 than 30 days after the Secretary has published
10 notice of the intention of the Secretary to make
11 the reallocation in the Federal Register.

12 (C) AMOUNTS.—The Secretary shall reallocate
13 the amount to other States with respect to
14 which the Secretary has not made that deter-
15 mination. The Secretary shall reallocate the
16 amount in proportion to the original allotments
17 of the other States for such fiscal year, but
18 shall reduce such proportionate amount for any
19 of the other States to the extent the propor-
20 tionate amount exceeds the sum that the Sec-
21 retary estimates the State needs and will be
22 able to use during such period.

23 (D) REALLOTMENT OF REDUCTIONS.—The
24 Secretary shall similarly reallocate the total of the

1 reductions among the States whose propor-
2 tionate amounts were not so reduced.

3 (E) TREATMENT.—Any amount reallotted
4 to a State under this subsection for a fiscal
5 year shall be deemed to be a part of the allot-
6 ment of the State under paragraph (1) for such
7 fiscal year.

8 (b) PAYMENT TO SYSTEMS.—The Secretary shall pay
9 directly to each State that has a system in the State that
10 complies with the provisions of this subtitle the amount
11 of the allotment made for the State under this section,
12 unless the system specifies otherwise, to be used in sup-
13 port of the system.

14 (c) UNOBLIGATED FUNDS.—Any amount paid to a
15 State under this subtitle for a fiscal year and remaining
16 unobligated at the end of such year shall remain available
17 to such State for the next fiscal year, for the purposes
18 for which such amount was paid.

19 **SEC. 434. SYSTEM REQUIRED.**

20 (a) IN GENERAL.—In order for a State to receive an
21 allotment under this subtitle the State shall—

22 (1) have in effect a system to protect and advo-
23 cate for the rights of workers within the State who
24 are or who may be eligible for relief from applicable
25 employment discrimination laws; and

1 (2) designate a private nonprofit entity (re-
2 ferred to in this subtitle as an “agency”) to support
3 and carry out the activities of that system.

4 (b) AGENCY REQUIREMENTS.—

5 (1) CHARACTERISTICS OF AGENCY.—The State
6 shall ensure that the agency designated under sub-
7 section (a) shall—

8 (A) not be administered by the State, or
9 an agency or instrumentality of a State; and

10 (B) be independent of any entity that rep-
11 resents the interest of the State, employers, or
12 other corporations.

13 (2) NO REDESIGNATION OF AGENCY.—The
14 agency implementing the system shall not be red-
15 esignated unless—

16 (A) there is good cause for the redesigna-
17 tion;

18 (B) the State has given the agency notice
19 of the intention to make such redesignation, in-
20 cluding notice regarding the good cause for
21 such redesignation, and given the agency an op-
22 portunity to respond to the assertion that good
23 cause has been shown;

1 (C) the agency has given timely notice of
2 the intended redesignation directly to clients of
3 the agency;

4 (D) the State has provided, in plain
5 English and in accessible formats for individ-
6 uals with disabilities and for individuals who
7 primarily speak a language other than English,
8 an opportunity for public comment; and

9 (E) the agency has an opportunity to ap-
10 peal the redesignation to the Secretary, on the
11 basis that the redesignation was not for good
12 cause.

13 (3) COSTS OF NOTICE.—The costs of the notice
14 required under paragraph (2)(C) shall be paid by
15 the State.

16 (c) SYSTEM REQUIRED.—The system described in
17 subsection (a) shall—

18 (1) have the authority to—

19 (A) pursue legal, administrative, and other
20 appropriate remedies or approaches, as applica-
21 ble, to ensure the protection of, and advocacy
22 for, the rights of individuals within the State
23 who are or who may be eligible for relief from
24 employment discrimination; and

1 (B) provide information on and referral to
2 programs and services addressing the needs of
3 such individuals;

4 (2) have the authority—

5 (A) to investigate incidents of employment
6 discrimination, including harassment, and to
7 conduct investigations of systemic employment
8 discrimination, of such individuals if the inci-
9 dents are reported to the agency or if there is
10 probable cause to believe that the incidents oc-
11 curred; and

12 (B) to investigate and gather data in the
13 same manner as the Secretary under section
14 11(a) of the Fair Labor Standards Act (29
15 U.S.C. 211(a));

16 (3) on an annual basis, develop, submit to the
17 Secretary, and take action with regard to goals and
18 priorities developed through data driven strategic
19 planning for the system's activities;

20 (4) on an annual basis, provide to the public,
21 including individuals described in paragraph (1)(A),
22 the regional office of the Commission that serves the
23 State, and any State agency whose purpose is to re-
24 duce or eliminate employment discrimination, an op-
25 portunity to comment on—

1 (A) the goals and priorities established by
2 the agency and the rationale for the establish-
3 ment of such goals; and

4 (B) the activities of the agency, including
5 the coordination of services with the District of-
6 fice of the Commission that serves the State,
7 and any State agency whose purpose is to re-
8 duce, eliminate, or redress employment dis-
9 crimination, and with entities carrying out
10 other related programs;

11 (5) establish a grievance procedure for clients
12 or prospective clients of the agency to ensure that
13 individuals described in paragraph (1)(A) have full
14 access to services of the agency;

15 (6) have access at reasonable times to any indi-
16 vidual described in paragraph (1)(A) in a location in
17 which services and other assistance are provided to
18 such an individual, in order to carry out the purpose
19 of this subtitle;

20 (7) have access, not later than 3 business days
21 after the agency makes a written request, to the
22 records of any individual described in paragraph
23 (1)(A) (including Federal and State workers) who is
24 a client of the agency if such individual, or other

1 legal representative of such individual, has author-
2 ized the agency to have such access;

3 (8) hire and maintain sufficient numbers and
4 types of staff (qualified by training and experience)
5 to carry out the agency's functions, except that the
6 State involved shall not apply hiring freezes, reduc-
7 tions in force, prohibitions on travel, or other poli-
8 cies to the staff of the agency, to the extent that
9 such policies would impact the staff or functions of
10 the agency funded with Federal funds or would pre-
11 vent the agency from carrying out the functions of
12 the system under this subtitle;

13 (9) have the authority to educate policymakers;
14 and

15 (10) provide assurances to the Secretary that
16 funds allotted to the State under section 433 will be
17 used to supplement, and not supplant, the non-Fed-
18 eral funds that would otherwise be made available
19 for the purposes for which the allotted funds are
20 provided.

21 (d) AMERICAN INDIAN CONSORTIUM.—

22 (1) IN GENERAL.—Upon application to the Sec-
23 retary, the Secretary shall allot funds to one or more
24 American Indian consortium established to provide
25 services under this subtitle, in accordance with sec-

1 tion 433(a)(5). Such funds shall be used to support
2 services under this subtitle.

3 (2) COORDINATION OF SYSTEMS.—An American
4 Indian consortium under paragraph (1) shall be con-
5 sidered to be a system for purposes of this subtitle
6 and shall coordinate those services with other sys-
7 tems serving the same geographic area.

8 (3) RESPONSIBLE PARTY.—The tribal council
9 that designates the consortium shall carry out the
10 responsibilities and exercise the authorities specified
11 for a State in this subtitle, with regard to the con-
12 sortium.

13 **SEC. 435. ADMINISTRATION.**

14 (a) GOVERNING BOARD.—The system described in
15 section 434 shall be organized as a private nonprofit entity
16 with a multimember governing board, and such governing
17 board shall be selected according to the policies and proce-
18 dures of the system, except that—

19 (1) the governing board shall be composed of
20 members who broadly represent or are knowledge-
21 able about the needs of the individuals served by the
22 system;

23 (2) a majority of the members of the board
24 shall be—

1 (A) attorneys representing the interests of
2 workers;

3 (B) advocates for workers with experience
4 working to protect or expand workers' rights; or

5 (C) workers who have experienced employ-
6 ment discrimination;

7 (3) not more than $\frac{1}{3}$ of the members of the
8 governing board may be appointed by the chief exec-
9 utive officer of the State involved, in the case of any
10 State in which such officer has the authority to ap-
11 point members of the board;

12 (4) the membership of the governing board
13 shall be subject to term limits set by the system to
14 ensure rotating membership; and

15 (5) any vacancy in the board shall be filled not
16 later than 60 days after the date on which the va-
17 cancy occurs.

18 (b) LEGAL ACTION.—

19 (1) IN GENERAL.—Nothing in this subtitle shall
20 preclude a system from bringing a suit on behalf of
21 individuals described in section 434(c)(1)(A) against
22 a State, or an agency or instrumentality of a State.

23 (2) USE OF AMOUNTS FROM JUDGMENT.—An
24 amount received pursuant to a suit described in
25 paragraph (1) through a court judgment may only

1 be used by the system to further the purpose of this
2 subtitle and shall not be used to augment payments
3 to legal contractors or to award personal bonuses.

4 (c) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—

5 The Secretary shall provide advance public notice of, and
6 solicit public comments regarding, any Federal pro-
7 grammatic or administrative onsite review of a system
8 conducted under this subtitle. The Secretary shall prepare
9 an onsite visit report containing the results of such review,
10 which shall be distributed to the Governor of the State
11 and to other interested public and private parties. The
12 comments received in response to the notice and public
13 comment solicitation shall be included in the onsite visit
14 report.

15 (d) REPORTS.—

16 (1) IN GENERAL.—Beginning for the fiscal year
17 after the fiscal year during which this Act is en-
18 acted, each system established in a State pursuant
19 to this subtitle shall annually prepare and transmit
20 to the Secretary a report that describes the activi-
21 ties, accomplishments, and expenditures of the sys-
22 tem during the preceding fiscal year, including—

23 (A) a description of the system's goals, the
24 extent to which the goals were achieved, and
25 barriers to that achievement; and

1 (B) the process used to obtain public
2 input, the nature of such input, and how such
3 input was used.

4 (2) DISCLOSURE OF INFORMATION.—For pur-
5 poses of the report described in paragraph (1) the
6 Secretary shall not require the system disclose the
7 identity of, or any other personally identifiable infor-
8 mation related to, any individual requesting assist-
9 ance from the system.

10 **SEC. 436. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated for allot-
12 ments under section 433 such sums as may be necessary.

13 **TITLE V—GENERAL PROVISIONS**

14 **SEC. 501. SEVERABILITY.**

15 If any provision of this Act, an amendment made by
16 this Act, or the application of such provision or amend-
17 ment to any person or circumstance is held to be unconsti-
18 tutional, the remainder of this Act and the amendments
19 made by this Act, and the application of the provision or
20 amendment to any other person or circumstance, shall not
21 be affected.

