

119TH CONGRESS  
2D SESSION

# S. 3865

To prevent discrimination, including harassment, in employment.

---

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2026

Mrs. MURRAY (for herself, Ms. BALDWIN, Mr. BOOKER, Mr. BLUMENTHAL, Ms. BLUNT ROCHESTER, Mr. DURBIN, Mr. FETTERMAN, Ms. HIRONO, Mr. KAINE, Ms. KLOBUCHAR, Mr. LUJÁN, Mr. MARKEY, Mr. MERKLEY, Mr. PADILLA, Mr. SANDERS, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To prevent discrimination, including 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”.

**1 SEC. 2. TABLE OF CONTENTS.**

**2** The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Purposes.

TITLE I—RESEARCHING AND PREVENTING WORKPLACE  
DISCRIMINATION, INCLUDING HARASSMENT; TIPPED EMPLOYEES

Sec. 100. Definitions.

Subtitle A—Preventing Workplace Discrimination, Including Harassment

- Sec. 101. Mandatory nondiscrimination policies.
- Sec. 102. Nondiscrimination training.
- Sec. 103. Resource materials on policies and trainings for small businesses.
- Sec. 104. Education, training, and technical assistance to employers.
- Sec. 105. Task force regarding harassment.
- Sec. 106. Resource materials on employment climate assessments.
- Sec. 107. Establishing an Office of Education and Outreach within the Equal Employment Opportunity Commission.
- Sec. 108. Relationship to other laws.
- Sec. 109. Authorization of appropriations.

Subtitle B—Research and Additional Resources for Harassment Prevention

- Sec. 111. National prevalence survey on harassment in employment.
- Sec. 112. Study and report on harassment in the Federal Government.
- Sec. 113. Studies, reports, and further research.

Subtitle C—Preventing Harassment of Tipped Employees

Sec. 121. Tipped employees.

TITLE II—STRENGTHENING WORKPLACE RIGHTS

- Sec. 201. Clarifying sexual orientation discrimination and gender identity discrimination are unlawful sex discrimination.
- Sec. 202. Covered employers.
- Sec. 203. Compensatory and punitive damages available.
- Sec. 204. Discrimination, including harassment; standards of proof.
- Sec. 205. Clarifying other standards of proof.
- Sec. 206. Supervisor liability.
- Sec. 207. Extending the statutes of limitations.
- Sec. 208. Extending the time limitations on Federal employees filing a complaint.

TITLE III—BROADENING PROTECTIONS AND ENSURING  
TRANSPARENCY

- Sec. 301. Independent contractors, interns, fellows, volunteers, and trainees.
- Sec. 302. Nondisclosure agreements.
- Sec. 303. Prohibition on mandatory arbitration and protection of concerted legal action.
- Sec. 304. Federal contractor compliance with labor and civil rights laws.

TITLE IV—NATIONWIDE GRANTS TO PREVENT AND RESPOND TO  
WORKPLACE DISCRIMINATION, INCLUDING HARASSMENT

Sec. 401. Definitions.

Subtitle A—National Grants for Preventing and Addressing Employment  
Discrimination, Including Harassment

Sec. 411. Definitions.

Sec. 412. Grants.

Sec. 413. Authorization of appropriations.

Subtitle B—Grants for Legal Assistance for Low-Income Workers

Sec. 421. Definitions.

Sec. 422. Grants for civil legal needs related to employment discrimination.

Sec. 423. Authorization of appropriations.

Subtitle C—Grants for a System of State Advocacy

Sec. 431. Purpose.

Sec. 432. Definitions.

Sec. 433. Allotments and payments.

Sec. 434. System required.

Sec. 435. Administration.

Sec. 436. Authorization of appropriations.

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, including harassment, in employment;

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

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

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

1           (5) to expand workers’ access to counsel and  
 2           advocacy services to protect the legal and human  
 3           rights of workers by preventing and reducing dis-  
 4           crimination, including harassment, and responding  
 5           to violations of worker’s rights.

6   **TITLE I—RESEARCHING AND**  
 7   **PREVENTING WORKPLACE**  
 8   **DISCRIMINATION, INCLUDING**  
 9   **HARASSMENT; TIPPED EM-**  
 10 **PLOYEES**

11 **SEC. 100. DEFINITIONS.**

12           In subtitles A and B:

13           (1) COMMISSION.—The term “Commission”  
 14           means the Equal Employment Opportunity Commis-  
 15           sion.

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

20 **Subtitle A—Preventing Workplace**  
 21 **Discrimination, Including Har-**  
 22 **assment**

23 **SEC. 101. MANDATORY NONDISCRIMINATION POLICIES.**

24           (a) POLICIES.—

1           (1) IN GENERAL.—Beginning not later than 1  
2 year after the date of enactment of this Act, each  
3 employer who has 15 or more employees shall adopt,  
4 maintain, and periodically review a comprehensive  
5 nondiscrimination policy, which shall establish poli-  
6 cies and procedures concerning prohibited discrimi-  
7 nation, including harassment, in employment.

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

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

19           (1) a definition of prohibited discrimination, in-  
20 cluding harassment, in employment;

21           (2) a description of the types of behaviors pro-  
22 hibited by the policy;

23           (3) the identification of multiple individuals to  
24 whom an employee may report such discrimination,  
25 and the contact information for those individuals;

1           (4) a description of multiple methods for re-  
2           porting such discrimination;

3           (5) a general description of how the employer  
4           will conduct prompt, thorough, and impartial inves-  
5           tigations and respond to complaints regarding such  
6           discrimination;

7           (6) a prohibition against retaliation related to  
8           such discrimination, including disclosing, reporting,  
9           or challenging such discrimination;

10          (7) a description of the confidentiality protec-  
11          tions available for such discrimination complaints;

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

14          (9) any additional components required by the  
15          Commission for the purpose of preventing such dis-  
16          crimination.

17          (c) ACCESSIBILITY.—The comprehensive non-  
18          discrimination policy shall be made available in plain  
19          English and in an accessible manner for individuals with  
20          disabilities and for individuals who primarily speak a lan-  
21          guage other than English.

22          (d) ENFORCEMENT.—

23                 (1) IN GENERAL.—Subject to paragraph (2), an  
24                 employer who fails to comply with this section shall

1 be fined not more than \$1,000 for each separate of-  
2 fense.

3 (2) REPEATED OR WILLFUL VIOLATIONS.—An  
4 employer who repeatedly or willfully fails to comply  
5 with this section shall be fined not less than \$5,000  
6 for each separate offense.

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

9 **SEC. 102. NONDISCRIMINATION TRAINING.**

10 (a) IN GENERAL.—The Commission shall promulgate  
11 regulations—

12 (1) to require appropriate employers, as deter-  
13 mined by the Commission, to provide—

14 (A) in-person or other interactive training  
15 for each employee regarding discriminatory, in-  
16 cluding harassing, behaviors in employment;  
17 and

18 (B) training specifically designed for su-  
19 pervisors regarding the prevention of and re-  
20 sponse to discrimination (including harassment)  
21 in employment, including retaliation; and

22 (2) to identify specific elements of such train-  
23 ing.

1 (b) REQUIRED TRAINING.—The requirements de-  
 2 scribed in subsection (a) shall be based on research on  
 3 effective training.

4 (c) ENFORCEMENT.—The Commission shall issue  
 5 remedies for noncompliance by regulation.

6 **SEC. 103. RESOURCE MATERIALS ON POLICIES AND**  
 7 **TRAININGS FOR SMALL BUSINESSES.**

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

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

15 (1) model comprehensive nondiscrimination  
 16 policies concerning prohibited discrimination, includ-  
 17 ing harassment, in employment, as described in sec-  
 18 tion 101, for use by employers with fewer than 15  
 19 employees, which shall—

20 (A) be designed to be easily distributed by  
 21 such employers to employees;

22 (B) take into account the resources avail-  
 23 able to such employers;

24 (C) take into account the particular needs  
 25 of employees of such employers;

1 (D) be made available in plain English and  
2 in accessible formats for individuals with dis-  
3 abilities and for individuals who primarily speak  
4 a language other than English;

5 (E) include a definition of prohibited dis-  
6 crimination, including harassment, in employ-  
7 ment;

8 (F) include examples of prohibited dis-  
9 criminatory, including harassing, behaviors;

10 (G) describe how the employer may con-  
11 duct prompt, thorough, and impartial investiga-  
12 tions and respond to complaints regarding such  
13 prohibited discrimination;

14 (H) include a prohibition against retalia-  
15 tion related to such discrimination;

16 (I) include policies that reflect the needs of  
17 a variety of different types of workplaces, in-  
18 cluding those with differing work structures, fa-  
19 cilities, or tasks;

20 (J) describe behaviors that would con-  
21 stitute retaliation; and

22 (K) include a description of potential con-  
23 sequences for violating the comprehensive non-  
24 discrimination policy; and

1           (2) model trainings regarding prohibited dis-  
2           crimination, including harassment, in employment,  
3           as described in section 102, for use by employers  
4           with fewer than 15 employees, which shall—

5                   (A) take into account the resources avail-  
6                   able to such employers;

7                   (B) take into account the particular needs  
8                   of employees of such employers;

9                   (C) be made available in plain English and  
10                  in accessible formats for individuals with dis-  
11                  abilities and for individuals who primarily speak  
12                  a language other than English;

13                  (D) be made available in an online format  
14                  that is widely available to such employers and  
15                  employees of such employers;

16                  (E) include an explanation of prohibited  
17                  discrimination, including harassment, in em-  
18                  ployment, including retaliation related to such  
19                  discrimination;

20                  (F) describe the affirmative behaviors that  
21                  contribute to preventing and reducing discrimi-  
22                  nation, including harassment, in employment;

23                  (G) include trainings designed to address  
24                  the needs of a variety of workplaces, including

1 those with differing work structures, facilities,  
2 and tasks;

3 (H) include best practices for preventing  
4 prohibited discrimination, including harassment,  
5 specific to industries in which the Commission  
6 determines that discrimination, including har-  
7 assment, is particularly prevalent or severe; and

8 (I) include any additional information the  
9 Commission determines may prevent discrimi-  
10 nation, including harassment, of employees.

11 (c) INDIVIDUALIZATION.—The Commission shall en-  
12 sure that resource materials under this section are de-  
13 signed to facilitate individual employers to customize  
14 training to address the needs of their workplaces, includ-  
15 ing differing work structures, facilities, and tasks.

16 **SEC. 104. EDUCATION, TRAINING, AND TECHNICAL ASSIST-**  
17 **ANCE TO EMPLOYERS.**

18 The Commission shall have the authority to—

19 (1) reasonably adjust the fees the Commission  
20 charges for any education, technical assistance, or  
21 training the Commission offers through the Tech-  
22 nical Assistance Training Institute established in ac-  
23 cordance with section 705(j)(1) of the Civil Rights  
24 Act of 1964 (42 U.S.C. 2000e-4(j)(1));

1           (2) use the materials developed by the Commis-  
2           sion for any education, technical assistance, or train-  
3           ing offered by the Commission in accordance with  
4           that section in any education and outreach activities  
5           carried out by the Commission; and

6           (3) use funds from the Commission’s EEOC  
7           Education, Technical Assistance, and Training Re-  
8           volving Fund, established under section 705(k) of  
9           the Civil Rights Act of 1964 (42 U.S.C. 2000e-  
10          4(k)), to pay the full salaries of any Commission em-  
11          ployees that develop and administer any education,  
12          technical assistance, or training programs offered by  
13          the Commission in connection with activities under  
14          this Act.

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

16          (a) **IN GENERAL.**—The Commission shall establish  
17          and periodically convene a harassment prevention task  
18          force (referred to in this section as the “Task Force”) to  
19          study prohibited harassment in employment.

20          (b) **MEMBERSHIP.**—The Task Force established  
21          under subsection (a) shall include membership that re-  
22          flects a broad diversity of experience and expertise relating  
23          to prohibited harassment, including—

24                  (1) employee advocates;

1           (2) researchers with expertise in organizational  
2 culture change or reducing behavior related to har-  
3 assment;

4           (3) legal practitioners with professional exper-  
5 tise related to harassment litigation on behalf of em-  
6 ployees;

7           (4) legal practitioners with experience serving  
8 as a chief legal officer or human resource officer in  
9 a corporate legal department;

10          (5) individuals with expertise in diversity and  
11 inclusion initiatives;

12          (6) individuals who have experienced prohibited  
13 harassment in employment; and

14          (7) labor organization leaders.

15       (c) DUTIES.—The Task Force shall—

16           (1) identify strategies and recommend proposals  
17 to prevent prohibited harassment in employment;  
18 and

19           (2) provide guidance on effective strategies to  
20 prevent prohibited harassment that are specific to  
21 industries in which the Task Force determines that  
22 harassment is particularly prevalent or severe.

23       (d) REPORT.—Not less than once every 5 years, the  
24 Commission shall prepare and publish a report on the

1 Commission’s website, which shall be based on the work  
2 of the Task Force and shall include—

3 (1) a review of the prevalence of prohibited har-  
4 assment in employment, including the results of the  
5 national prevalence survey described in section 111;

6 (2) recommendations for Federal, State, and  
7 local initiatives, reforms, and legislation to prevent  
8 prohibited harassment in employment;

9 (3) assessments of the effectiveness of employ-  
10 ment policies designed to prevent prohibited harass-  
11 ment in employment by changing behavior and cul-  
12 ture;

13 (4) assessments of the effectiveness of processes  
14 for investigations into prohibited harassment in em-  
15 ployment;

16 (5) assessments of the effectiveness of different  
17 types of training to reduce and prevent harassment  
18 in employment; and

19 (6) assessments of the effectiveness of other  
20 proactive initiatives and interventions to reduce and  
21 prevent harassment in employment.

22 **SEC. 106. RESOURCE MATERIALS ON EMPLOYMENT CLI-**  
23 **MATE ASSESSMENTS.**

24 (a) IN GENERAL.—Not later than 1 year after the  
25 date of enactment of this Act, the Commission shall de-

1 velop and make publicly available resource materials for  
2 employers on assessing the employment climate, including  
3 the occurrence of prohibited harassment in employment,  
4 in order to assist such employers in determining the effec-  
5 tiveness of measures the employer takes to prevent and  
6 address prohibited harassment in employment.

7 (b) EMPLOYMENT CLIMATE SURVEY.—Such resource  
8 materials shall include a model survey regarding prohib-  
9 ited harassment in employment, which shall be available  
10 for an employer to use (at the employer’s discretion and  
11 employer’s expense) in order to assess the employment cli-  
12 mate. The model survey shall be—

13 (1) designed to assess employees’ experiences  
14 related to prohibited harassment in employment;

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

17 (3) designed to solicit confidential submissions  
18 and to provide data without revealing personally  
19 identifiable information; and

20 (4) inclusive of individuals required to be af-  
21 farded protection under section 301.

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

23 (1) questions designed to assess the prevalence  
24 of prohibited harassment in employment;



1 available resources and remedies relating to those  
2 laws; and

3 (2) conduct a multi-year public awareness cam-  
4 paign to improve public awareness of the Commis-  
5 sion, which shall include disseminating information  
6 about—

7 (A) the purpose of the Commission;

8 (B) the resources available through the  
9 Commission to prevent prohibited discrimina-  
10 tion, including harassment, in employment;

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

13 (D) the process by which the Commission  
14 investigates charges of discrimination.

15 (b) INFORMATION DISSEMINATED.—The information  
16 disseminated in accordance with subsection (a)(2) shall be  
17 made available in plain English and in an accessible man-  
18 ner for individuals with disabilities and for individuals who  
19 primarily speak a language other than English.

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

21 Compliance with section 101 or 102, or use of mate-  
22 rials provided under this subtitle, is not an affirmative de-  
23 fense under applicable employment nondiscrimination  
24 laws.

1 **SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

2       There are authorized to be appropriated to the Com-  
3 mission such sums as may be necessary to carry out the  
4 Commission's duties and activities, including such duties  
5 and activities authorized under this subtitle.

6 **Subtitle B—Research and Addi-**  
7 **tional Resources for Harass-**  
8 **ment Prevention**

9 **SEC. 111. NATIONAL PREVALENCE SURVEY ON HARASS-**  
10 **MENT IN EMPLOYMENT.**

11       (a) SURVEY.—The Bureau of the Census, the Com-  
12 mission, and the Bureau of Labor Statistics shall jointly  
13 develop a national prevalence survey on the prevalence of  
14 prohibited harassment in employment (referred to in this  
15 section as the “national prevalence survey”). Such survey  
16 shall be administered by the Bureau of the Census not  
17 later than 1 year after the date of enactment of this Act,  
18 and every 3 years thereafter.

19       (b) CONTENTS.—The national prevalence survey  
20 shall include questions designed to collect such informa-  
21 tion from individuals as may be necessary to examine ex-  
22 isting beliefs, attitudes, and understanding of prohibited  
23 harassment in employment, and the extent to which such  
24 harassment is experienced or observed by individuals, su-  
25 pervisors, and employers, including the information nec-  
26 essary for the report described in subsection (c).

1 (c) REPORT.—

2 (1) IN GENERAL.—Not later than 6 months  
3 after each national prevalence survey has been ad-  
4 ministered, the Bureau of the Census, the Commis-  
5 sion, and the Bureau of Labor Statistics shall jointly  
6 prepare and submit to the Committee on Health,  
7 Education, Labor, and Pensions of the Senate and  
8 the Committee on Education and Workforce of the  
9 House of Representatives a report on the results of  
10 that survey.

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

13 (A) information about the extent to which  
14 individuals experience prohibited harassment in  
15 employment on the basis of sex (including sex-  
16 ual orientation, gender identity, sex stereotype,  
17 sex characteristics, and pregnancy, childbirth,  
18 or related medical conditions), race, color, reli-  
19 gion, national origin, age, disability, genetic in-  
20 formation, and uniformed service status, and  
21 information about the interaction of different  
22 characteristics that may be the basis of harass-  
23 ment in employment;

24 (B) information about the prevalence of  
25 each such form of prohibited harassment in em-

1           ployment, disaggregated by industry and salary  
2           level, including across all wage bands; and

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

5           (3) DISAGGREGATION OF SEX-BASED HARASS-  
6           MENT.—The report under this subsection shall sepa-  
7           rately, and in the aggregate, report each of the fol-  
8           lowing bases of sex harassment:

9                   (A) Sexual orientation.

10                  (B) Gender identity.

11                  (C) Pregnancy.

12                  (D) Childbirth.

13                  (E) A medical condition related to preg-  
14           nancy or childbirth.

15                  (F) A sex stereotype.

16                  (G) Sexual in nature.

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

21           (d) AUTHORIZATION OF APPROPRIATIONS.—There  
22           are authorized to be appropriated for the Bureau of the  
23           Census to carry out this section such sums as may be nec-  
24           essary for each fiscal year the national prevalence survey

1 is to be administered under subsection (a) or the report  
2 is to be submitted under subsection (c).

3 **SEC. 112. STUDY AND REPORT ON HARASSMENT IN THE**  
4 **FEDERAL GOVERNMENT.**

5 (a) IN GENERAL.—Not later than 1 year after the  
6 date of enactment of this Act, and not less than once every  
7 3 years thereafter, the Merit Systems Protection Board  
8 shall prepare and submit to the Committee on Health,  
9 Education, Labor, and Pensions of the Senate and the  
10 Committee on Education and Workforce of the House of  
11 Representatives a report containing the following informa-  
12 tion:

13 (1) The prevalence of specific behaviors associ-  
14 ated with prohibited harassment in employment  
15 among Federal employees, including information  
16 about such behaviors disaggregated by each wage  
17 band.

18 (2) The impact of prohibited harassment in em-  
19 ployment and violations of Federal civil rights laws  
20 on the Federal Government, in terms of monetary  
21 costs, attrition, and morale.

22 (3) The particular impact of prohibited harass-  
23 ment in employment on the experience of Federal  
24 employees with disabilities.

1           (4) Working in coordination with the Commis-  
2           sion's Office of Federal Operations, a description of  
3           the differences in Federal agency policies, strategies,  
4           reporting mechanisms, training programs, and other  
5           practices regarding preventing and addressing pro-  
6           hibited harassment in employment.

7           (5) A description of which policies, strategies,  
8           reporting mechanisms, training programs, and other  
9           practices described in paragraph (4) have prevented,  
10          addressed, or reduced prohibited harassment in em-  
11          ployment.

12          (6) Working in coordination with the Commis-  
13          sion's Office of Federal Operations, joint rec-  
14          ommendations from such Office and the Merit Sys-  
15          tems Protection Board to Federal agencies on how  
16          to prevent and address prohibited harassment in em-  
17          ployment.

18          (b) AUTHORIZATION OF APPROPRIATIONS.—There  
19          are authorized to be appropriated to the Merit Systems  
20          Protection Board such sums as may be necessary to carry  
21          out this section.

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

23          (a) STUDY AND REPORT ON ENFORCEMENT OF NON-  
24          DISCRIMINATION LAWS PROHIBITING HARASSMENT  
25          LAWS.—Not later than 1 year after the date of enactment

1 of this Act, the United States Commission on Civil Rights  
2 shall prepare and submit to the Committee on Health,  
3 Education, Labor, and Pensions of the Senate and the  
4 Committee on Education and Workforce of the House of  
5 Representatives a report that shall examine enforcement  
6 of the nondiscrimination laws prohibiting harassment in-  
7 cluding—

- 8 (1) trends in enforcement of such laws;
- 9 (2) barriers to effective enforcement of such  
10 laws;
- 11 (3) best practices in enforcement of such laws;
- 12 (4) recommendations about how to improve en-  
13 forcement of such laws, including whether estab-  
14 lishing individual liability for harassment in employ-  
15 ment would improve enforcement of such laws; and
- 16 (5) how the experience of harassment for em-  
17 ployees and individuals required to be afforded pro-  
18 tections under section 301 has changed over time  
19 since the passage of such laws.

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

- 22 (1) IN GENERAL.—Not later than 60 days after  
23 the date of enactment of this Act, the Director of  
24 the National Institutes of Health shall seek to enter  
25 into an agreement with the National Academies of

1 Sciences, Engineering, and Medicine, through which  
2 the National Academies of Sciences, Engineering,  
3 and Medicine shall conduct a study on preventing  
4 and addressing prohibited harassment in employ-  
5 ment.

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

7 (A) an evaluation of the existing research  
8 of the causes of prohibited harassment in em-  
9 ployment, including retaliation related to such  
10 harassment, and gaps in such research;

11 (B) a review of the existing research re-  
12 garding how prohibited harassment in employ-  
13 ment impacts individuals;

14 (C) an evaluation of the existing research  
15 on training to prevent prohibited harassment in  
16 employment, including essential components of  
17 effective training to prevent such prohibited  
18 harassment, including retaliation, and gaps in  
19 such research;

20 (D) an assessment of the efficacy and  
21 availability of training models and programs to  
22 prevent prohibited harassment in employment;

23 (E) the identification of employment or so-  
24 cietal factors that increase the likelihood of pro-  
25 hibited harassment in employment, particularly

1 across industries with a high number of individ-  
2 uals who are vulnerable to experiencing such  
3 prohibited harassment, including whether diver-  
4 sity in leadership positions within an organiza-  
5 tion reduces the likelihood of such prohibited  
6 harassment;

7 (F) an examination of methods of induc-  
8 ing, scaling, and sustaining institutional or or-  
9 ganizational change to prevent prohibited har-  
10 assment in employment;

11 (G) an analysis of policies, strategies, and  
12 practices that have been the most successful in  
13 preventing and addressing prohibited harass-  
14 ment in employment; and

15 (H) any other information or analysis nec-  
16 essary to identify the gaps in research and  
17 other measures described in subsection (c).

18 (3) REPORT.—Through an agreement under  
19 paragraph (1), not later than 1 year after the date  
20 of enactment of this Act, the National Academies of  
21 Sciences, Engineering, and Medicine shall prepare  
22 and submit to the Committee on Health, Education,  
23 Labor, and Pensions of the Senate, the Committee  
24 on Education and Workforce of the House of Rep-  
25 resentatives, and the Director of the National Insti-

1       tutes of Health, a report containing the results of  
2       the study conducted under this subsection and make  
3       recommendations to Congress, executive branch  
4       agencies, private employers, and researchers. Such  
5       recommendations shall include ways that such train-  
6       ing to prevent prohibited harassment in employment  
7       could be improved to result in behavioral and cul-  
8       tural changes that prevent and reduce behaviors as-  
9       sociated with prohibited harassment in employment.  
10      The report and recommendations under this para-  
11      graph shall be made publicly available.

12      (c) SUPPORTING FURTHER RESEARCH ON PRE-  
13      VENTING AND UNDERSTANDING HARASSMENT IN EM-  
14      PLOYMENT.—

15           (1) IN GENERAL.—Not later than 6 months  
16      after the submission of the report under subsection  
17      (b)(3), the Director of the National Institutes of  
18      Health, in consultation with the Commission and the  
19      Secretary of Labor, shall enter into agreements (in-  
20      cluding through the use of grants, contracts, cooper-  
21      ative agreements, or other transactions) to support  
22      research regarding—

23           (A) the gaps identified in such report in  
24      research on the causes of prohibited harassment

1 in employment, including retaliation related to  
2 such harassment;

3 (B) the gaps identified in such report in  
4 research on the psychological sequelae of pro-  
5 hibited harassment in employment, including  
6 retaliation related to such harassment;

7 (C) gaps identified in such report in re-  
8 search on special populations and the risk for  
9 prohibited harassment in employment, including  
10 retaliation related to such harassment, includ-  
11 ing such research with respect to special popu-  
12 lations, including adolescents, older individuals,  
13 racial and ethnic minorities, individuals with  
14 disabilities, women, and other populations that  
15 could be disproportionately affected by such  
16 prohibited harassment in employment, and re-  
17 tialiation related to such harassment;

18 (D) gaps identified in such report in re-  
19 search on prohibited harassment in employ-  
20 ment, including retaliation related to such har-  
21 assment, as a risk factor for various mental  
22 health problems;

23 (E) gaps identified in such report in re-  
24 search on socio-cultural correlations within pro-

1           hibited harassment in employment, including  
2           retaliation related to such harassment; and

3                   (F) systematic and quantifiable measures  
4           to evaluate prevention strategies for victims and  
5           perpetrators of prohibited harassment in em-  
6           ployment, including retaliation related to such  
7           harassment.

8           (2) AUTHORIZATION OF APPROPRIATIONS.—

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

## 12       **Subtitle C—Preventing Harassment** 13                   **of Tipped Employees**

14       **SEC. 121. TIPPED EMPLOYEES.**

15           (a) BASE MINIMUM WAGE FOR TIPPED EMPLOYEES  
16       AND TIPS RETAINED BY EMPLOYEES.—Section  
17       3(m)(2)(A)(i) of the Fair Labor Standards Act of 1938  
18       (29 U.S.C. 203(m)(2)(A)(i)) is amended to read as fol-  
19       lows:

20                   “(i) the cash wage paid such employee,  
21           which for purposes of such determination shall  
22           be not less than—

23                           “(I) for the 1-year period beginning  
24                           on the effective date under section 121(e)

1 of the BE HEARD in the Workplace Act,  
2 \$3.60 an hour;

3 “(II) for each succeeding 1-year pe-  
4 riod until the hourly wage under this  
5 clause equals the wage in effect under sec-  
6 tion 6(a)(1) for such period, an hourly  
7 wage equal to the amount determined  
8 under this clause for the preceding year,  
9 increased by the lesser of—

10 “(aa) \$1.50; or

11 “(bb) the amount necessary for  
12 the wage in effect under this clause to  
13 equal the wage in effect under section  
14 6(a)(1) for such period; and

15 “(III) for each succeeding 1-year pe-  
16 riod after the increase made pursuant to  
17 subclause (II)(bb), the minimum wage in  
18 effect under section 6(a)(1); and”.

19 (b) TIPS RETAINED BY EMPLOYEES.—Section  
20 3(m)(2)(A) of the Fair Labor Standards Act of 1938 (29  
21 U.S.C. 203(m)(2)(A)) is amended—

22 (1) in the second sentence of the matter fol-  
23 lowing clause (ii), by striking “of this subsection,  
24 and all tips received by such employee have been re-  
25 tained by the employee” and inserting “of this sub-

1 section. Any employee shall have the right to retain  
2 any tips received by such employee”; and

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

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

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

15 (d) SCHEDULED REPEAL OF SEPARATE MINIMUM  
16 WAGE FOR TIPPED EMPLOYEES.—

17 (1) TIPPED EMPLOYEES.—Section 3(m)(2)(A)  
18 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
19 203(m)(2)(A)), as amended by subsections (a) and  
20 (b), is further amended by striking the sentence be-  
21 ginning with “In determining the wage an employer  
22 is required to pay a tipped employee,” and all that  
23 follows through “of this subsection.” and inserting  
24 “The wage required to be paid to a tipped employee  
25 shall be the wage set forth in section 6(a)(1).”.

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

5           (3) EFFECTIVE DATE.—The amendments made  
6 by paragraphs (1) and (2) shall take effect on the  
7 date that is one day after the date on which the  
8 hourly wage under subclause (III) of section  
9 3(m)(2)(A)(i) of the Fair Labor Standards Act of  
10 1938 (29 U.S.C. 203(m)(2)(A)(i)), as amended by  
11 subsection (a), takes effect.

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

16           **TITLE II—STRENGTHENING**  
17           **WORKPLACE RIGHTS**

18   **SEC. 201. CLARIFYING SEXUAL ORIENTATION DISCRIMINA-**  
19           **TION AND GENDER IDENTITY DISCRIMINA-**  
20           **TION ARE UNLAWFUL SEX DISCRIMINATION.**

21          (a) EMPLOYMENT.—

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

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

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

6 (2) UNLAWFUL EMPLOYMENT PRACTICES.—  
7 Section 703 of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e-2) is amended—

9 (A) in the section header, by striking  
10 **“SEX,”** and inserting **“SEX (INCLUDING SEX-**  
11 **UAL ORIENTATION, GENDER IDENTITY,**  
12 **SEX STEREOTYPE, SEX CHARACTERISTICS,**  
13 **AND PREGNANCY, CHILDBIRTH, OR RE-**  
14 **LATED MEDICAL CONDITIONS),”**;

15 (B) except in subsection (e), by striking  
16 “sex,” each place it appears and inserting “sex  
17 (including sexual orientation, gender identity,  
18 sex stereotype, sex characteristics, and preg-  
19 nancy, childbirth, or related medical condi-  
20 tions),”;

21 (C) in subsection (e)(1), by striking “en-  
22 terprise,” and inserting “enterprise, if, in a sit-  
23 uation in which sex is a bona fide occupational  
24 qualification, individuals are recognized as  
25 qualified in accordance with their gender iden-  
26 tity,”; and

1 (D) in subsection (h), by striking “sex”  
2 the second place it appears and inserting “sex  
3 (including sexual orientation, gender identity,  
4 sex stereotype, sex characteristics, and preg-  
5 nancy, childbirth, or related medical condi-  
6 tions),”.

7 (3) OTHER UNLAWFUL EMPLOYMENT PRAC-  
8 TICES.—Section 704(b) of the Civil Rights Act of  
9 1964 (42 U.S.C. 2000e–3(b)) is amended—

10 (A) by striking “sex,” the first place it ap-  
11 pears and inserting “sex (including sexual ori-  
12 entation, gender identity, sex stereotype, sex  
13 characteristics, and pregnancy, childbirth, or re-  
14 lated medical conditions),”; and

15 (B) by striking “employment.” and insert-  
16 ing “employment, if, in a situation in which sex  
17 is a bona fide occupational qualification, indi-  
18 viduals are recognized as qualified in accord-  
19 ance with their gender identity.”.

20 (4) CLAIMS.—Section 706(g)(2)(A) of the Civil  
21 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended  
22 by striking “sex,” and inserting “sex (including sex-  
23 ual orientation, gender identity, sex stereotype, sex  
24 characteristics, and pregnancy, childbirth, or related  
25 medical conditions),”.

1           (5) EMPLOYMENT BY FEDERAL GOVERN-  
2           MENT.—Section 717 of the Civil Rights Act of 1964  
3           (42 U.S.C. 2000e–16) is amended—

4                   (A) in subsection (a), by striking “sex,”  
5                   and inserting “sex (including sexual orientation,  
6                   gender identity, sex stereotype, sex characteris-  
7                   tics, and pregnancy, childbirth, or related med-  
8                   ical conditions),”; and

9                   (B) in subsection (c), by striking “sex”  
10                  and inserting “sex (including sexual orientation,  
11                  gender identity, sex stereotype, sex characteris-  
12                  tics, and pregnancy, childbirth, or related med-  
13                  ical conditions),”.

14          (6) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
15          1991.—The Government Employee Rights Act of  
16          1991 (42 U.S.C. 2000e–16a et seq.) is amended—

17                  (A) in section 301(b), by striking “sex,”  
18                  and inserting “sex (including sexual orientation,  
19                  gender identity, sex stereotype, sex characteris-  
20                  tics, and pregnancy, childbirth, or related med-  
21                  ical conditions),”;

22                  (B) in section 302(a)(1), by striking “sex,”  
23                  and inserting “sex (including sexual orientation,  
24                  gender identity, sex stereotype, sex characteris-

1           tics, and pregnancy, childbirth, or related med-  
2           ical conditions),”; and

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

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

5           “Sections 1101(b), 1106, and 1107 of the Civil  
6 Rights Act of 1964 shall apply to this title except that  
7 for purposes of that application, a reference in that section  
8 1106 to ‘race, color, religion, sex (including sexual orienta-  
9 tion, gender identity, sex stereotype, sex characteristics,  
10 and pregnancy, childbirth, or related medical conditions),  
11 or national origin’ shall be considered to be a reference  
12 to ‘race, color, religion, sex (including sexual orientation,  
13 gender identity, sex stereotype, sex characteristics, and  
14 pregnancy, childbirth, or related medical conditions), na-  
15 tional origin, age, or disability’.”.

16                   (7) CONGRESSIONAL ACCOUNTABILITY ACT OF  
17           1995.—The Congressional Accountability Act of 1995  
18           (2 U.S.C. 1301 et seq.) is amended—

19                   (A) in section 201(a)(1) (2 U.S.C.  
20           1311(a)(1)) by striking “sex,” and inserting  
21           “sex (including sexual orientation, gender iden-  
22           tity, sex stereotype, sex characteristics, and  
23           pregnancy, childbirth, or related medical condi-  
24           tions),”; and

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

3 **“SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.**

4 “Sections 1101(b), 1106, and 1107 of the Civil  
5 Rights Act of 1964 shall apply to section 201 (and reme-  
6 dial provisions of this Act related to section 201) except  
7 that for purposes of that application, a reference in that  
8 section 1106 to ‘race, color, religion, sex (including sexual  
9 orientation, gender identity, sex stereotype, sex character-  
10 istics, and pregnancy, childbirth, or related medical condi-  
11 tions), or national origin’ shall be considered to be a ref-  
12 erence to ‘race, color, religion, sex (including sexual ori-  
13 entation, gender identity, sex stereotype, sex characteris-  
14 ties, and pregnancy, childbirth, or related medical condi-  
15 tions), national origin, age, or disability’.”.

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

19 (A) in section 2301(b)(2), by striking  
20 “sex,” and inserting “sex (including sexual ori-  
21 entation, gender identity, sex stereotype, sex  
22 characteristics, and pregnancy, childbirth, or re-  
23 lated medical conditions),”;

24 (B) in section 2302—

1 (i) in subsection (b)(1)(A), by striking  
2 “sex,” and inserting “sex (including sexual  
3 orientation, gender identity, sex stereotype,  
4 sex characteristics, and pregnancy, child-  
5 birth, or related medical conditions),”; and

6 (ii) in subsection (d)(1), by striking  
7 “sex,” and inserting “sex (including sexual  
8 orientation, gender identity, sex stereotype,  
9 sex characteristics, and pregnancy, child-  
10 birth, or related medical conditions),”; and

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

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

13 “Sections 1101(b), 1106, and 1107 of the Civil  
14 Rights Act of 1964 shall apply to this chapter (and reme-  
15 dial provisions of this title related to this chapter) except  
16 that for purposes of that application, a reference in that  
17 section 1106 to ‘race, color, religion, sex (including sexual  
18 orientation, gender identity, sex stereotype, sex character-  
19 istics, and pregnancy, childbirth, or related medical condi-  
20 tions), or national origin’ shall be considered to be a ref-  
21 erence to ‘race, color, religion, sex (including sexual ori-  
22 entation, gender identity, sex stereotype, sex characteris-  
23 ties, and pregnancy, childbirth, or related medical condi-  
24 tions), national origin, age, disability, marital status, or  
25 political affiliation’.”.

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

3 (1) by redesignating sections 1101 through  
4 1104 (42 U.S.C. 2000h et seq.) and sections 1105  
5 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections  
6 1102 through 1105 and sections 1108 and 1109, re-  
7 spectively;

8 (2) by inserting after the title heading the fol-  
9 lowing:

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

11 “(a) DEFINITIONS.—In title VII:

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

17 “(A) the race, color, religion, sex (includ-  
18 ing sexual orientation, gender identity, sex  
19 stereotype, sex characteristics, and pregnancy,  
20 childbirth, or related medical conditions), or na-  
21 tional origin, respectively, of another person  
22 with whom the individual is associated or has  
23 been associated; and

24 “(B) a perception or belief, even if inac-  
25 curate, concerning the race, color, religion, sex

1 (including sexual orientation, gender identity,  
2 sex stereotype, sex characteristics, and preg-  
3 nancy, childbirth, or related medical condi-  
4 tions), or national origin, respectively, of the in-  
5 dividual.

6 “(2) GENDER IDENTITY.—The term ‘gender  
7 identity’ means the gender-related identity, appear-  
8 ance, mannerisms, or other gender-related character-  
9 istics of an individual, regardless of the individual’s  
10 designated sex at birth.

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

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

17 “(b) RULES.—In title VII—

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

22 “(2) with respect to gender identity, an indi-  
23 vidual shall not be denied access to a shared facility,  
24 including a restroom, a locker room, and a dressing

1 room, that is in accordance with the individual’s  
2 gender identity.”; and

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

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

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

9 “(1) to limit the protection against an unlawful  
10 practice on the basis of pregnancy, childbirth, a  
11 medical condition related to pregnancy or childbirth  
12 provided by section 701(k); or

13 “(2) to limit the protection against an unlawful  
14 practice on the basis of sex available under any pro-  
15 vision of Federal law other than title VII, prohib-  
16 iting a practice on the basis of sex, including under  
17 the Pregnant Workers Fairness Act (42 U.S.C.  
18 2000gg et seq.).

19 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—  
20 Nothing in section 1101 or title VII shall be construed  
21 to limit the claims or remedies available to any individual  
22 for an unlawful practice on the basis of race, color, reli-  
23 gion, sex (including sexual orientation, gender identity, sex  
24 stereotype, sex characteristics, and pregnancy, childbirth,  
25 or related medical conditions), or national origin including

1 claims brought pursuant to section 1979 or 1980 of the  
2 Revised Statutes (42 U.S.C. 1983, 1985) or any other  
3 law, including a Federal law amended by the BE HEARD  
4 in the Workplace Act, regulation, or policy, and including  
5 the Pregnant Workers Fairness Act (42 U.S.C. 2000gg  
6 et seq.).

7 “(c) NO NEGATIVE INFERENCE.—Nothing in section  
8 1101 or title VII shall be construed to support any infer-  
9 ence that any Federal law prohibiting a practice on the  
10 basis of sex (including the Pregnant Workers Fairness Act  
11 (42 U.S.C. 2000gg et seq.)), does not prohibit discrimina-  
12 tion on the basis of gender identity, sex stereotype, and  
13 pregnancy, childbirth, or related medical conditions.

14 **“SEC. 1107. CLAIMS.**

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

20 **SEC. 202. COVERED EMPLOYERS.**

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

1 **SEC. 203. COMPENSATORY AND PUNITIVE DAMAGES AVAIL-**  
2 **ABLE.**

3 (a) CIVIL RIGHTS; DISABILITY.—

4 (1) IN GENERAL.—Section 1977A of the Re-  
5 vised Statutes (42 U.S.C. 1981a(b)) is amended—

6 (A) in subsection (b), by striking para-  
7 graph (3) and inserting the following:

8 “(3) LOSSES.—Compensatory damages are  
9 available under this section for future pecuniary  
10 losses, emotional pain, suffering, inconvenience,  
11 mental anguish, loss of enjoyment of life, and other  
12 nonpecuniary losses.”; and

13 (B) in subsection (c)—

14 (i) by striking paragraph (2);

15 (ii) by striking “this section” and all  
16 that follows through “party” and inserting  
17 “this section, any party”; and

18 (iii) by striking “; and” and inserting  
19 a period.

20 (2) CONFORMING AMENDMENTS.—

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

24 (i) by striking “and, irrespective of  
25 the size of the employing office,

1           1977A(b)(3)(D)” and inserting “and  
2           1977A(b)(3)”;

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

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

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

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

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

22           “(b)(1) Except as otherwise provided in another sub-  
23           section of this section, or section 9, the powers, remedies,  
24           and procedures set forth in sections 705, 706, 707, 709,  
25           and 710 of the Civil Rights Act of 1964 (42 U.S.C.

1 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9)  
2 shall be the powers, remedies, and procedures this Act  
3 provides to the Commission, to the Attorney General, or  
4 to any person alleging discrimination on the basis of age  
5 in violation of section 4, or regulations promulgated under  
6 section 9.”; and

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

15 **SEC. 204. DISCRIMINATION, INCLUDING HARASSMENT;**  
16 **STANDARDS OF PROOF.**

17 (a) FINDINGS.—Congress finds that—

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

20           (2) workers are harassed because of their sex  
21          (including sexual orientation, gender identity, sex  
22          stereotype, sex characteristics, and pregnancy, child-  
23          birth, or related medical conditions), race, color, reli-  
24          gion, national origin, age, disability, genetic informa-  
25          tion, and uniformed services status;

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

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

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

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

21           (A) “submission to such conduct is made  
22 either explicitly or implicitly a term or condition  
23 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 recognized 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 were based on  
19 sex and supported a finding that the workplace  
20 was objectively hostile, as in *Gallagher v. C.H.*  
21 *Robinson Worldwide, Inc.*, 567 F.3d 263 (6th  
22 Cir. 2009); and

23 (E) a single incident can alter the terms,  
24 conditions, or privileges of employment, as in

1           Howley v. Town of Stratford, 217 F.3d 141 (2d  
2           Cir. 2000);

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

6                   (A) calling an individual an “old man” and  
7                   “pops” could contribute to actionably hostile  
8                   work environment based on age, as in *Dediol v.*  
9                   *Best Chevrolet, Inc.*, 655 F.3d 435 (5th Cir.  
10                  2011);

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

17                  (C) a single incident of calling an African-  
18                  American individual the “n word” by a super-  
19                  visor is sufficient to support a finding of a hos-  
20                  tile work environment based on race, as in *Rod-*  
21                  *gers v. Western-Southern Life Insurance Co.*,  
22                  12 F.3d 668 (7th Cir. 1993); and

23           (23) similar erroneous decisions have been ren-  
24           dered in the context of harassment on the basis of  
25           sex in employment under title IX of the Education

1 Amendments of 1972 (20 U.S.C. 1681 et seq.), as  
2 in *Farmer v. Troy University*, No. 5:17–CV–70–B0  
3 (E.D.N.C. 2017).

4 (b) PURPOSES.—The purposes of this section are  
5 to—

6 (1) enact into statutory law provisions that es-  
7 tablish that workplace harassment is a violation of  
8 the—

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

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

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

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

1           (E) protections from uniformed services  
2           status discrimination found in section 4311 of  
3           title 38, United States Code; and

4           (2) establish a liability standard for workplace  
5           harassment that fulfills Congress' intent of providing  
6           broad protection from discrimination in employment  
7           on the basis of race, color, religion, sex (including  
8           sexual orientation, gender identity, sex stereotype,  
9           sex characteristics, and pregnancy, childbirth, or re-  
10          lated medical conditions), national origin, age, dis-  
11          ability, genetic information, and uniformed services  
12          status.

13          (c) ENACTING INTO STATUTORY LAW PROVISIONS  
14          ESTABLISHING WORKPLACE HARASSMENT AS AN UNLAW-  
15          FUL EMPLOYMENT PRACTICE.—

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

19               “(o)(1)(A) In this subsection, the term ‘workplace  
20               harassment’ means conduct based on race, color, religion,  
21               sex (including sexual orientation, gender identity, sex  
22               stereotype, sex characteristics, and pregnancy, childbirth,  
23               or related medical conditions), or national origin, regard-  
24               less of whether it is direct or indirect, or verbal or non-  
25               verbal, that unreasonably alters an individual’s terms, con-

1 ditions, or privileges of employment, including by creating  
2 an intimidating, hostile, or offensive work environment.

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

7 “(I) a sexual advance;

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

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

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

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

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

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

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

24 “(3) In determining, for purposes of this subsection,  
25 whether conduct constitutes workplace harassment be-

1 cause the conduct unreasonably alters an individual's  
2 terms, conditions, or privileges of employment, including  
3 by creating an intimidating, hostile, or offensive work en-  
4 vironment, the following rules shall apply:

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

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

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

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

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

1 workplace harassment. Such factors are each of the  
2 following:

3 “(i) The frequency of the conduct.

4 “(ii) The duration of the conduct.

5 “(iii) The location where the conduct oc-  
6 curred.

7 “(iv) The number of individuals engaged in  
8 the conduct.

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

13 “(vi) Whether the conduct is threatening.

14 “(vii) Any power differential between the  
15 alleged harasser and the person allegedly har-  
16 assed.

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

19 “(ix) Whether the conduct reflects stereo-  
20 types about individuals in the protected class  
21 involved.

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

1           “(A) the complaining party is not the individual  
2 being harassed;

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

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

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

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

12           “(F) the conduct occurred outside of the work-  
13 place.”.

14           (2) AMERICANS WITH DISABILITIES ACT OF  
15 1990.—Section 102(b) of the Americans with Disabil-  
16 ities Act (42 U.S.C. 12112(b)) is amended—

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

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

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

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

1           “(A) unreasonably alters an individual’s  
2 terms, conditions, or privileges of employment,  
3 including by creating an intimidating, hostile,  
4 or offensive work environment; and

5           “(B) is determined to be such harassment  
6 in accordance with paragraphs (3) and (4) of  
7 section 703(o) of the Civil Rights Act of 1964  
8 (42 U.S.C. 2000e–2(o)).”.

9           (3) REHABILITATION ACT OF 1973.—Section  
10 501(f) of the Rehabilitation Act of 1973 (29 U.S.C.  
11 791(f)) is amended by inserting “, including section  
12 102(b) of that Act (42 U.S.C. 12112(b))”, before  
13 “and the provisions”.

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

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

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

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

5           (5) GENETIC INFORMATION NONDISCRIMINA-  
6           TION ACT OF 2008.—Section 202 of the Genetic In-  
7           formation Nondiscrimination Act of 2008 (42 U.S.C.  
8           2000ff-1) is amended by adding at the end the fol-  
9           lowing:

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

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

19                 “(2) is determined to be such harassment in ac-  
20                 cordance with paragraphs (3) and (4) of section  
21                 703(o) of the Civil Rights Act of 1964 (42 U.S.C.  
22                 2000e-2(o)).”.

23           (6) CHAPTER 43 OF TITLE 38, UNITED STATES  
24           CODE.—Section 4311 of title 38, United States

1 Code, is amended by adding at the end the fol-  
 2 lowing:

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

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

13 “(2) is determined to be such harassment in ac-  
 14 cordance with paragraphs (3) and (4) of section  
 15 703(o) of the Civil Rights Act of 1964 (42 U.S.C.  
 16 2000e-2(o)).”.

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

18 (a) AMENDMENTS TO DEFINITIONS.—

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

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

1           (2) AGE DISCRIMINATION IN EMPLOYMENT ACT  
2           OF 1967.—Section 11 of the Age Discrimination in  
3           Employment Act of 1967 (29 U.S.C. 630) is amend-  
4           ed by adding at the end the following:

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

7           (3) GENETIC INFORMATION NONDISCRIMINA-  
8           TION ACT OF 2008.—Section 201 of the Genetic In-  
9           formation Nondiscrimination Act of 2008 (42 U.S.C.  
10          2000ff) is amended by adding at the end the fol-  
11          lowing:

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

15          (b) CLARIFYING PROHIBITION AGAINST IMPERMIS-  
16          SIBLE CONSIDERATION IN EMPLOYMENT PRACTICES.—

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

21          “(m) Except as otherwise provided in this title, an  
22          unlawful employment practice is established under this  
23          title when the complaining party demonstrates that race,  
24          color, religion, sex (including sexual orientation, gender  
25          identity, sex stereotype, sex characteristics, and preg-

1 nancy, childbirth, or related medical conditions), or na-  
 2 tional origin or an activity protected by section 704(a) was  
 3 a motivating factor for any employment practice, even  
 4 though other factors also motivated the practice.”.

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

8 “(e) PROOF.—

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

16 “(2) DEMONSTRATION.—In establishing a dis-  
 17 criminatory practice under paragraph (1) or by any  
 18 other method of proof, a complaining party—

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

24 “(B) shall not be required to demonstrate  
 25 that disability or an activity protected by sub-

1 section (a) or (b) of section 503 was the sole  
2 cause of an employment practice.”.

3 (3) AGE.—Section 4 of the Age Discrimination  
4 in Employment Act of 1967 (29 U.S.C. 623) is  
5 amended by inserting after subsection (f) the fol-  
6 lowing:

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

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

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

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

23 (4) GENETIC INFORMATION.—Section 202 of  
24 the Genetic Information Nondiscrimination Act of  
25 2008 (42 U.S.C. 2000ff–1), as amended by section

1 204(c)(5), is further amended by adding at the end  
2 the following:

3 “(e) PROOF.—

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

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

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

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

23 (c) CERTAIN RETALIATION CLAIMS.—

24 (1) AMERICANS WITH DISABILITIES ACT OF  
25 1990.—Section 503(c) of the Americans with Disabil-

1 ities Act of 1990 (42 U.S.C. 12203(e)) is amend-  
2 ed—

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

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

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

8 “(2) CERTAIN ANTIRETALIATION CLAIMS.—Sec-  
9 tion 107(e) shall apply to claims under section  
10 102(e)(1) with respect to title I.”.

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

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

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

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

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

24 (A) by striking “No” and inserting the fol-  
25 lowing:

1 “(1) IN GENERAL.—No”;

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

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

6 “(2) CERTAIN RETALIATION CLAIMS.—Sub-  
7 section (g) shall apply to claims under section  
8 202(d)(1).”.

9 (d) REMEDIES.—

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

14 “(c) DISCRIMINATORY MOTIVATING FACTOR.—On a  
15 claim in which an individual establishes a discriminatory  
16 practice under section 102(e)(1), and a respondent dem-  
17 onstrates that the respondent would have taken the same  
18 action in the absence of the impermissible motivating fac-  
19 tor, the 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 establishes  
19           an unlawful practice under section 4(g)(1), and a respond-  
20           ent demonstrates that the respondent would have taken  
21           the same action in the absence of the impermissible moti-  
22           vating factor, the court—

23                   “(A) may grant declaratory relief, injunctive re-  
24                   lief (except as provided in subparagraph (B)), and  
25                   attorney’s fees and costs demonstrated to be directly

1       attributable only to the pursuit of a claim under sec-  
2       tion 4(g)(1); and

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

6               (B) in subsection (c)—

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

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

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

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

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

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

1           tion in Employment Act of 1967 (29  
2           U.S.C. 623(d)(2), 626(b), 633a(c))”; and  
3           (ii) in paragraph (3)(A), by striking  
4           “section 107(a) of the Americans with Dis-  
5           abilities Act of 1990 (42 U.S.C.  
6           12117(a))” and inserting “subsections (a)  
7           and (c) of section 107, and section  
8           503(c)(2), of the Americans with Disabil-  
9           ities Act of 1990 (42 U.S.C. 12117,  
10          12203)”.

11          (2) TITLE 3, UNITED STATES CODE.—Section  
12          411 of title 3, United States Code, is amended—

13           (A) in subsection (a)(2), by striking “sec-  
14           tion 15 of the Age Discrimination in Employ-  
15           ment Act of 1967” and inserting “sections 4(g)  
16           and 15 of the Age Discrimination in Employ-  
17           ment Act of 1967”; and

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” and inserting  
22           “section 4(d)(2), paragraphs (1) and (2) of  
23           section 7(b), and section 15(c) of the Age  
24           Discrimination in Employment Act of  
25           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(e)(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(e)(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(e)(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) is amended—

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

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

9           “(e) OUTSIDE INDIVIDUALS.—Subject to section  
10          206(j) of the BE HEARD in the Workplace Act, an em-  
11          ploying office shall be liable for the acts of any individual  
12          whose harassment of a covered employee has created or  
13          continued a hostile work environment or a retaliatory hos-  
14          tile work environment that constitutes discrimination  
15          under this section if, at the time of the harassment—

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

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

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

23                 “(2) the negligence of the employing office led  
24          to the creation or continuation of that hostile work

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

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

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

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

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

15 (1) in subsection (e)—

16 (A) in paragraph (1)—

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

22 (ii) by striking “three hundred days  
23 after the alleged unlawful employment  
24 practice occurred” and inserting “4 years

1           and 120 days after the alleged unlawful  
2           employment practice occurred.”; and

3           (B) in paragraph (3)(B), by striking “two  
4           years preceding the filing of the charge” and all  
5           that follows and inserting “4 years and 120  
6           days preceding the filing of the charge.”; and

7           (2) in subsection (g)(1), by striking “two years  
8           prior to the filing of a charge” and inserting “4  
9           years and 120 days preceding the filing of the  
10          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 remun-  
25           eration 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                   ting 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 farded those protections by an employer  
10 described in paragraph (5)(A);

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

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

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

20                           (v) an individual required to be af-  
21 farded 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(e) 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 proffer or to  
4 enter into a contract or agreement with a worker, or  
5 for a covered establishment to proffer or to enter  
6 into a contract or agreement with a covered indi-  
7 vidual, as a condition of employment or contracting,  
8 promotion, compensation, benefits, or change in em-  
9 ployment status or contractual relationship, or as a  
10 term, condition, or privilege of employment or con-  
11 tracting, if that contract or agreement contains a  
12 nondisparagement clause or nondisclosure clause  
13 that covers prohibited harassment or other prohib-  
14 ited discrimination in employment or contracting, or  
15 retaliation for reporting, resisting, opposing, or as-  
16 sisting in the investigation of such harassment or  
17 other discrimination.

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

1 opposing, or assisting in the investigation of such  
2 harassment or other discrimination. An employer or  
3 covered establishment that enforces or attempts to  
4 enforce such a nondisparagement clause or such a  
5 nondisclosure clause against a worker shall be liable  
6 for the reasonable attorney's fees and costs of the  
7 worker.

8 (3) SETTLEMENT OR SEPARATION AGREE-  
9 MENTS.—

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

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

20 (ii) the clause involved is mutually  
21 agreed upon by both—

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

24 (II) the worker;

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

4 (iv) the clause involved is limited to  
5 statements made with knowledge of their  
6 falsity or with reckless disregard for their  
7 truth or falsity;

8 (v) the clause involved prohibits the  
9 employer or covered establishment from  
10 publicly disclosing the name of a victim of  
11 an alleged act of prohibited harassment or  
12 other prohibited discrimination, or dis-  
13 closing any information that would reason-  
14 ably lead to the disclosure of the identity  
15 of such a victim; and

16 (vi) the settlement agreement or sepa-  
17 ration agreement expressly states that the  
18 agreement involved does not prohibit, pre-  
19 vent, or otherwise restrict a worker from—

20 (I) filing a charge or complaint  
21 with the Commission, any other Fed-  
22 eral, State, or local agency with the  
23 authority to enforce laws (including  
24 regulations) that prohibit discrimina-  
25 tion, including harassment, in employ-

1                   ment or contracting, as the case may  
2                   be, or law enforcement;

3                   (II) testifying at, assisting, or  
4                   participating in an investigation or  
5                   proceeding conducted by the Commis-  
6                   sion, any other Federal, State, or local  
7                   agency with the authority to enforce  
8                   laws (including regulations) that pro-  
9                   hibit discrimination, including harass-  
10                  ment, in employment or contracting,  
11                  as the case may be, or law enforce-  
12                  ment; or

13                  (III) testifying in a hearing or  
14                  trial or complying with a request for  
15                  discovery in relation to civil litigation.

16                  (B) PROHIBITION ON SOLE BENEFIT.—For  
17                  purposes of this paragraph, it shall be an un-  
18                  lawful practice for an employer or covered es-  
19                  tablishment to unilaterally include a nondispar-  
20                  agement clause or nondisclosure clause that  
21                  solely benefits the employer or covered estab-  
22                  lishment in a separation or settlement agree-  
23                  ment.

24                  (C) KNOWING AND VOLUNTARY AGREE-  
25                  MENT.—For purposes of this paragraph, agree-

1           ment to a nondisparagement clause or non-  
2           disclosure clause may not be considered know-  
3           ing and voluntary unless at a minimum—

4                   (i) the nondisparagement clause or  
5                   nondisclosure clause is written in a manner  
6                   designed to ensure that the worker under-  
7                   stands the content of the clause involved;

8                   (ii) the nondisparagement clause or  
9                   nondisclosure clause is included only in ex-  
10                  change for consideration of value provided  
11                  to the worker, in addition to anything of  
12                  value to which the worker is already enti-  
13                  tled;

14                  (iii) the nondisparagement clause or  
15                  nondisclosure clause does not apply to any  
16                  rights or claims that arise after the date  
17                  the settlement or separation agreement is  
18                  executed;

19                  (iv) the worker is advised in writing to  
20                  consult with an attorney prior to agreeing  
21                  to such an agreement that includes a non-  
22                  disparagement clause or nondisclosure  
23                  clause;

24                  (v) the worker is given a period of at  
25                  least 21 days to consider any proposal for

1 a settlement or separation agreement that  
2 includes a nondisparagement clause or  
3 nondisclosure clause; and

4 (vi) the settlement or separation  
5 agreement provides that for a period of at  
6 least 7 days following the execution of such  
7 agreement the worker may revoke the  
8 agreement, and the agreement shall not be-  
9 come effective or enforceable until the rev-  
10 ocation period has expired.

11 (D) BURDEN OF PROOF.—In any dispute  
12 that may arise over whether any of the require-  
13 ments of subparagraph (A) have been met, the  
14 party asserting the validity of an agreement  
15 shall have the burden of proving that the re-  
16 quirements of subparagraph (A) have been met.

17 (E) FINANCIAL TERMS.—Notwithstanding  
18 subparagraph (A)(iv), the financial terms of the  
19 settlement or separation covered by the agree-  
20 ment may be included in a nondisclosure clause  
21 of the agreement if the nondisclosure of the fi-  
22 nancial terms is limited to a specified period of  
23 time. The nondisclosure clause shall not pro-  
24 hibit discussion of the financial terms of the

1 settlement or separation with an accountant or  
2 financial advisor.

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

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

22 (c) ENFORCEMENT AGAINST EMPLOYERS.—

23 (1) ENFORCEMENT POWERS.—With respect to  
24 the administration and enforcement of this section

1 in the case of a claim alleged by a worker against  
2 an employer for a violation of this section—

3 (A) the Commission shall have the same  
4 powers as the Commission has to administer  
5 and enforce—

6 (i) title VII of the Civil Rights Act of  
7 1964 (42 U.S.C. 2000e et seq.); or

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

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

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

23 (C) the Board (as defined in section  
24 101(a) of the Congressional Accountability Act  
25 of 1995 (2 U.S.C. 1301(a))) shall have the

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

7 (D) the Attorney General shall have the  
8 same powers as the Attorney General has to ad-  
9 minister and enforce—

10 (i) title VII of the Civil Rights Act of  
11 1964 (42 U.S.C. 2000e et seq.); or

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

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

20 (E) the President, the Commission, and  
21 the Merit Systems Protection Board shall have  
22 the same powers as the President, the Commis-  
23 sion, and the Board, respectively, have to ad-  
24 minister and enforce chapter 5 of title 3,  
25 United States Code, in the case of a claim al-

1           leged by an employee of the employer for a vio-  
2           lation of section 411 of such title; and

3           (F) a court of the United States shall have  
4           the same jurisdiction and powers as the court  
5           has to enforce—

6           (i) title VII of the Civil Rights Act of  
7           1964 (42 U.S.C. 2000e et seq.) in the case  
8           of a claim alleged by an employee of the  
9           employer for a violation of such title;

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

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

23          (iv) chapter 5 of title 3, United States  
24          Code, in the case of a claim alleged by an

1           employee of the employer for a violation of  
2           section 411 of such title.

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

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

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

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

24                   (D) the procedures and remedies applicable  
25                   for a violation of section 411 of title 3, United

1 States Code, in the case of a claim alleged by  
2 an employee of the employer for a violation of  
3 such section.

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

14 (d) ENFORCEMENT AGAINST COVERED ESTABLISH-  
15 MENTS.—

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

21 (A) the Commission shall have the same  
22 powers as the Commission has to administer  
23 and enforce title VII of the Civil Rights Act of  
24 1964 (42 U.S.C. 2000e et seq.);

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

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

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

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

21 (e) RIGHT TO REPORT RESERVED.—Notwith-  
22 standing signing (before, on, or after the effective date of  
23 this Act) any nondisparagement clause or nondisclosure  
24 clause, a worker retains—

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

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

12 (f) REGULATIONS.—

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

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

21           (3) BOARD.—The Board referred to in sub-  
22 section (c)(1)(C) shall have authority to issue regu-  
23 lations to carry out this section, in accordance with  
24 section 304 of the Congressional Accountability Act  
25 of 1995 (2 U.S.C. 1384), with respect to employees

1 described in subsection (a)(4)(C) and covered indi-  
2 viduals described in subsection (a)(3)(A)(iii).

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

8 (g) STATE AND FEDERAL IMMUNITY.—

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

14 (2) WAIVER OF STATE IMMUNITY.—

15 (A) IN GENERAL.—

16 (i) WAIVER.—A State's receipt or use  
17 of Federal financial assistance for any pro-  
18 gram or activity of a State shall constitute  
19 a waiver of sovereign immunity, under the  
20 11th Amendment to the Constitution or  
21 otherwise, to a suit brought by a covered  
22 individual in that program or activity  
23 under this section for a remedy authorized  
24 under paragraph (4).

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

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

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

21                  (4) REMEDIES AGAINST THE UNITED STATES  
22                  AND THE STATES.—Notwithstanding any other pro-  
23                  vision of this Act, in an action or administrative pro-  
24                  ceeding against the United States or a State for a  
25                  violation of this section, remedies (including rem-

1 edies at law and in equity, and interest) are avail-  
 2 able for the violation to the same extent as the rem-  
 3 edies are available for a violation of title VII of the  
 4 Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)  
 5 by an employer described in subsection (a)(5)(A),  
 6 except that—

7 (A) punitive damages are not available;

8 and

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

12 (h) RELATIONSHIP TO OTHER LAWS.—Nothing in  
 13 this section shall invalidate or limit the rights and rem-  
 14 edies available to workers under the National Labor Rela-  
 15 tions Act (29 U.S.C. 151 et seq.).

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

18 (a) PROTECTION OF CONCERTED ACTIVITY.—

19 (1) AGREEMENTS.—Section 8(e) of the Na-  
 20 tional Labor Relations Act (29 U.S.C. 158(e)) is  
 21 amended to read as follows:

22 “(e) Notwithstanding chapter 1 of title 9, United  
 23 States Code (commonly known as the ‘Federal Arbitration  
 24 Act’), or any other provision of law, it shall be an unfair  
 25 labor practice under subsection (a)(1) for any employer—

1           “(1) to enter into or attempt to enforce any  
2           agreement, express or implied, whereby prior to or  
3           after a dispute to which the agreement applies, an  
4           employee undertakes or promises not to pursue,  
5           bring, join, litigate, or support any kind of joint,  
6           class, or collective claim arising from or relating to  
7           the employment of such employee in any forum that,  
8           but for such agreement, is of competent jurisdiction;

9           “(2) to coerce an employee 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 such em-  
13          ployee; or

14          “(3) to retaliate or threaten to retaliate against  
15          an employee for refusing to undertake or promise  
16          not to pursue, bring, join, litigate, or support any  
17          kind of joint, class, or collective claim arising from  
18          or relating to the employment of such employee:

19          *Provided*, That any agreement that violates this subsection  
20          or results from a violation of this subsection shall be to  
21          such extent unenforceable and void: *Provided further*, That  
22          this subsection shall not apply to any agreement embodied  
23          in or expressly permitted by a contract between an em-  
24          ployer and a labor organization.”.



1           “(2) COVERED ENTITY.—The term ‘covered en-  
2           tity’ means—

3                   “(A) an employer; or

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

7           “(3) PRESDISPUTE ARBITRATION AGREE-  
8           MENT.—The term ‘predispute arbitration agreement’  
9           has the meaning given the term in section 401.

10           “(4) POSTDISPUTE ARBITRATION AGREE-  
11           MENT.—The term ‘postdispute arbitration agree-  
12           ment’ means any agreement to arbitrate a dispute  
13           that arose before the time of the making of the  
14           agreement.

15           “(5) WORKER.—The term ‘worker’ means—

16                   “(A) an employee engaged in an activity  
17           affecting commerce; or

18                   “(B) an individual, engaged in an activity  
19           affecting commerce, who is engaged by a cov-  
20           ered entity to perform services or work as an  
21           independent contractor (regardless of the label  
22           or classification assigned or used by the covered  
23           entity).

24           “(6) WORK DISPUTE.—The term ‘work dis-  
25           pute’—

1           “(A) means a dispute between one or more  
2 workers (or their authorized representatives)  
3 and a covered entity arising out of or related to  
4 the work relationship or prospective work rela-  
5 tionship between the workers and the covered  
6 entity; and

7           “(B) includes—

8           “(i) a dispute regarding the terms of,  
9 payment for, advertising of, recruitment of,  
10 referring of, arranging for, or discipline or  
11 discharge in connection with work per-  
12 formed in connection with such work rela-  
13 tionship;

14           “(ii) a dispute arising under any law  
15 referred to or described in section 62(e) of  
16 the Internal Revenue Code of 1986, includ-  
17 ing any part of such a law not explicitly  
18 referenced in such section that relates to  
19 protecting individuals on a basis that is  
20 protected under a law referred to or de-  
21 scribed in such section; and

22           “(iii) a dispute in which an individual  
23 or individuals seek certification—

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

1                   “(II) as a collective action under  
2                   section 16(b) of the Fair Labor  
3                   Standards Act of 1938 (29 U.S.C.  
4                   216(b)); or  
5                   “(III) under a comparable rule or  
6                   provision of State law.

7   **“§ 502. No validity or enforceability**

8           “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of this title—

10           “(1) no predispute arbitration agreement shall  
11           be valid or enforceable if it requires arbitration of a  
12           work dispute;

13           “(2) no postdispute arbitration agreement that  
14           requires arbitration of a work dispute shall be valid  
15           or enforceable unless—

16           “(A) the agreement was not required by  
17           the covered entity, obtained by coercion or  
18           threat of adverse action, or made a condition of  
19           employment, work, or any employment-related  
20           or work-related privilege or benefit;

21           “(B) each worker entering into the agree-  
22           ment was informed in writing using sufficiently  
23           plain language likely to be understood by the  
24           average worker of—

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

4           “(ii) as applicable, the protections  
5           under section 8(a)(6) of the National  
6           Labor Relations Act (29 U.S.C.  
7           158(a)(6));

8           “(C) each worker entering into the agree-  
9           ment entered the agreement after a waiting pe-  
10          riod of not fewer than 45 days, beginning on  
11          the date on which the employee was provided  
12          both the final text of the agreement and the  
13          disclosures required under subparagraph (B);  
14          and

15          “(D) each worker entering into the agree-  
16          ment affirmatively consented to the agreement  
17          in writing; and

18          “(3) no covered entity may retaliate or threaten  
19          to retaliate against a worker for refusing to enter  
20          into an agreement that provides for arbitration of a  
21          work dispute.

22          “(b) STATUTE OF LIMITATIONS.—The statute of lim-  
23          itations for bringing an action that arises from or forms  
24          the basis for the applicable work dispute shall be tolled

1 during the waiting period described in subsection  
2 (a)(2)(C).

3 “(c) CIVIL ACTION.—Any person who is injured by  
4 reason of a violation of subsection (a)(3) may bring a civil  
5 action in the appropriate district court of the United  
6 States against the covered entity within 2 years of the vio-  
7 lation, or within 3 years if such violation is willful. Relief  
8 granted in such an action shall include a reasonable attor-  
9 ney’s fee, other reasonable costs associated with maintain-  
10 ing the action, and any appropriate relief authorized by  
11 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.  
12 2000e–5(g)) or by section 1977A(b) of the Revised Stat-  
13 utes (42 U.S.C. 1981a(b)).

14 “(d) APPLICABILITY.—

15 “(1) IN GENERAL.—This chapter applies to cov-  
16 ered entities and workers to the fullest extent per-  
17 mitted by the Constitution of the United States, in-  
18 cluding the work of persons engaged in domestic  
19 service in households, as described in section 2(a) of  
20 the Fair Labor Standards Act of 1938 (29 U.S.C.  
21 202(a)). An issue as to whether this chapter applies  
22 to an arbitration agreement shall be determined  
23 under Federal law. The applicability of this chapter  
24 to an agreement to arbitrate and the validity and en-  
25 forceability of an agreement to which this chapter

1 applies shall be determined by a court, rather than  
2 an arbitrator, regardless of whether any contractual  
3 provision purports to delegate such determinations  
4 to the arbitrator and irrespective of whether the  
5 party resisting arbitration challenges the arbitration  
6 agreement specifically or in conjunction with other  
7 terms of the contract containing such agreement.

8           “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
9 Nothing in this chapter shall apply to any arbitra-  
10 tion provision in a contract between a covered entity  
11 and a labor organization, except that no such arbi-  
12 tration provision shall have the effect of waiving the  
13 right of a worker to seek judicial enforcement of a  
14 right arising under a provision of the Constitution of  
15 the United States, the constitution of a State, or a  
16 Federal or State statute, or public policy arising  
17 therefrom.”.

18           (2) TECHNICAL AND CONFORMING AMEND-  
19 MENTS.—

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

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

1 (ii) in section 2, by inserting “or 5”  
2 before the period at the end;

3 (iii) in section 208, in the second sen-  
4 tence, by inserting “or 5” before the period  
5 at the end; and

6 (iv) in section 307, in the second sen-  
7 tence, by inserting “or 5” before the period  
8 at the end;

9 (B) TABLE OF CHAPTERS.—The table of  
10 chapters for title 9, United States Code, is  
11 amended by adding at the end the following:

**“5. Arbitration of work disputes ..... 501.”.**

12 (c) EFFECTIVE DATE.—This section, and the amend-  
13 ments made by this section, shall take effect on the date  
14 of enactment of this Act and shall apply with respect to  
15 any dispute or claim that arises or accrues on or after  
16 such date, including any dispute or claim to which an  
17 agreement predating such date applies.

18 **SEC. 304. FEDERAL CONTRACTOR COMPLIANCE WITH**  
19 **LABOR AND CIVIL RIGHTS LAWS.**

20 (a) DEFINITIONS.—In this section:

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

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

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

6           (B) does not include a subcontract for the  
7       procurement of commercially available off-the-  
8       shelf items.

9           (3) EXECUTIVE AGENCY.—The term “executive  
10      agency” has the meaning given the term in section  
11      133 of title 41, United States Code.

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

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

16           (A) to represent, to the best of the  
17      offeror’s knowledge and belief, whether there  
18      has been any administrative merits determina-  
19      tion, arbitral award or decision, or civil judg-  
20      ment, as defined in guidance issued by the Sec-  
21      retary of Labor, rendered against the offeror in  
22      the preceding 3 years for violations of—

23           (i) the Fair Labor Standards Act of  
24           1938 (29 U.S.C. 201 et seq.);

1 (ii) the Occupational Safety and  
2 Health Act of 1970 (29 U.S.C. 651 et  
3 seq.);

4 (iii) the Migrant and Seasonal Agri-  
5 cultural Worker Protection Act (29 U.S.C.  
6 1801 et seq.);

7 (iv) the National Labor Relations Act  
8 (29 U.S.C. 151 et seq.);

9 (v) subchapter IV of chapter 31 of  
10 title 40, United States Code (commonly  
11 known as the “Davis-Bacon Act”);

12 (vi) chapter 67 of title 41, United  
13 States Code (commonly known as the  
14 “Service Contract Act”);

15 (vii) section 503 or 505 of the Reha-  
16 bilitation Act of 1973 (29 U.S.C. 793 or  
17 794a);

18 (viii) section 4212 of title 38, United  
19 States Code;

20 (ix) the Family and Medical Leave  
21 Act of 1993 (29 U.S.C. 2601 et seq.);

22 (x) title VII of the Civil Rights Act of  
23 1964 (42 U.S.C. 2000e et seq.);

24 (xi) the Pregnant Workers Fairness  
25 Act (42 U.S.C. 2000gg et seq.);

1 (xii) title I and section 503 (for viola-  
2 tions with respect to that title) of the  
3 Americans with Disabilities Act of 1990  
4 (42 U.S.C. 12111 et seq.; 12203);

5 (xiii) the Age Discrimination in Em-  
6 ployment Act of 1967 (29 U.S.C. 621 et  
7 seq.);

8 (xiv) title II of the Genetic Informa-  
9 tion Nondiscrimination Act of 2008 (42  
10 U.S.C. 2000ff et seq.);

11 (xv) Executive Order 13658 (79 Fed.  
12 Reg. 9851; relating to establishing a min-  
13 imum wage for contractors); or

14 (xvi) equivalent State laws, as defined  
15 in guidance issued by the Secretary of  
16 Labor;

17 (B) to require each subcontractor for a  
18 covered subcontract—

19 (i) to represent to the offeror, and the  
20 executive agency's Labor Compliance Advi-  
21 sor designated under subsection (d), to the  
22 best of the subcontractor's knowledge and  
23 belief, whether there has been any adminis-  
24 trative merits determination, arbitral  
25 award or decision, or civil judgment, as de-

1            fined in guidance issued by the Secretary  
2            of Labor, rendered against the subcon-  
3            tractor in the preceding 3 years for viola-  
4            tions of any of the labor or civil rights laws  
5            listed under subparagraph (A); and

6                    (ii) to update such information every  
7            6 months for the duration of the sub-  
8            contract; and

9            (C) to consider the advice rendered by the  
10           executive agency's Labor Compliance Advisor  
11           designated under subsection (d), or information  
12           submitted by a subcontractor pursuant to sub-  
13           paragraph (B), in determining whether the sub-  
14           contractor is a responsible source with a satis-  
15           factory record of integrity and business ethics—

16                    (i) prior to awarding the subcontract;

17                    or

18                    (ii) in the case of a subcontract that  
19            is awarded or will become effective within  
20            5 days of the prime contract being award-  
21            ed, not later than 30 days after awarding  
22            the subcontract.

23            (2) PRE-AWARD CORRECTIVE MEASURES.—

24                    (A) IN GENERAL.—A contracting officer,  
25            prior to awarding a covered contract, shall, as

1 part of the responsibility determination, provide  
2 an offeror who makes a disclosure pursuant to  
3 paragraph (1) an opportunity to report any  
4 steps taken to correct the violations of or im-  
5 prove compliance with the labor or civil rights  
6 laws listed in subparagraph (A) of such para-  
7 graph, including any agreements entered into  
8 with an enforcement agency.

9 (B) CONSULTATION.—The executive agen-  
10 cy’s Labor Compliance Advisor designated  
11 under subsection (d), in consultation with rel-  
12 evant enforcement agencies, shall advise the  
13 contracting officer whether agreements are in  
14 place or are otherwise needed to address appro-  
15 priate remedial measures, compliance assist-  
16 ance, steps to resolve issues to avoid further  
17 violations, or other related matters concerning  
18 the offeror.

19 (C) RESPONSIBILITY DETERMINATION.—  
20 The contracting officer, in consultation with the  
21 executive agency’s Labor Compliance Advisor  
22 designated under subsection (d), shall consider  
23 information provided by the offeror under this  
24 subsection in determining whether the offeror is  
25 a responsible source with a satisfactory record

1 of integrity and business ethics. The determina-  
2 tion shall be based on the guidance reissued  
3 under subsection (e)(2)(A) and the final rule  
4 reissued under subsection (e)(1).

5 (3) REFERRAL OF INFORMATION TO SUSPEN-  
6 SION AND DEBARMENT OFFICIALS.—As appropriate,  
7 contracting officers, in consultation with their execu-  
8 tive agency’s Labor Compliance Advisor, shall refer  
9 matters related to information provided under sub-  
10 paragraphs (A) and (B) of paragraph (1) to the ex-  
11 ecutive agency’s suspension and debarment official  
12 in accordance with agency procedures.

13 (c) POST-AWARD CONTRACT ACTIONS.—

14 (1) INFORMATION UPDATES.—The contracting  
15 officer for a covered contract shall require that the  
16 contractor update the information provided under  
17 subparagraphs (A) and (B) of subsection (b)(1)  
18 every 6 months.

19 (2) CORRECTIVE ACTIONS.—

20 (A) PRIME CONTRACT.—The contracting  
21 officer, in consultation with the Labor Compli-  
22 ance Advisor designated pursuant to subsection  
23 (d), shall determine whether any information  
24 provided under paragraph (1) warrants correc-  
25 tive action. Such action may include—

- 1 (i) an agreement requiring appro-  
2 priate remedial measures;  
3 (ii) compliance assistance;  
4 (iii) resolving issues to avoid further  
5 violations;  
6 (iv) the decision not to exercise an op-  
7 tion on a contract or to terminate the con-  
8 tract; or  
9 (v) referral to the agency suspending  
10 and debaring official.

11 (B) SUBCONTRACTS.—The prime con-  
12 tractor for a covered contract, in consultation  
13 with the Labor Compliance Advisor, shall deter-  
14 mine whether any information provided under  
15 subsection (b)(1)(B) warrants corrective action,  
16 including remedial measures, compliance assist-  
17 ance, and resolving issues to avoid further viola-  
18 tions.

19 (C) DEPARTMENT OF LABOR.—The Sec-  
20 retary of Labor shall, as appropriate, inform  
21 executive agencies of its investigations of con-  
22 tractors and subcontractors on covered con-  
23 tracts for purposes of determining the appro-  
24 priateness of actions described under subpara-  
25 graphs (A) and (B).

1 (d) LABOR COMPLIANCE ADVISORS.—

2 (1) IN GENERAL.—Each executive agency shall  
3 designate a senior official to act as the agency’s  
4 Labor Compliance Advisor.

5 (2) DUTIES.—The Labor Compliance Advisor  
6 shall—

7 (A) meet quarterly with the Deputy Sec-  
8 retary, Deputy Administrator, or equivalent ex-  
9 ecutive agency official with regard to matters  
10 covered under this section;

11 (B) work with the acquisition workforce,  
12 agency officials, and agency contractors to pro-  
13 mote greater awareness and understanding of  
14 the requirements of the labor and civil rights  
15 laws listed in subsection (b)(1)(A), including  
16 recordkeeping, reporting, and notice require-  
17 ments, as well as best practices for obtaining  
18 compliance with these requirements;

19 (C) coordinate assistance for executive  
20 agency contractors seeking help in addressing  
21 and preventing violations of such laws;

22 (D) in consultation with the Secretary of  
23 Labor or other relevant enforcement agencies,  
24 and pursuant to subsection (b)(2) as necessary,  
25 provide assistance to contracting officers re-

1            regarding appropriate actions to be taken in re-  
2            sponse to violations of the labor or civil rights  
3            laws listed in subsection (b)(1)(A) identified  
4            prior to or after contracts are awarded, and ad-  
5            dress complaints in a timely manner, by—

6                    (i) providing assistance to contracting  
7                    officers and other executive agency officials  
8                    in reviewing the information provided  
9                    under paragraphs (1) and (2) of subsection  
10                   (b) and subsection (c)(1), or other infor-  
11                   mation indicating such a violation, in order  
12                   to assess the serious, repeated, willful, or  
13                   pervasive nature of any such violation and  
14                   evaluate steps contractors have taken to  
15                   correct such violations or improve compli-  
16                   ance with relevant requirements;

17                   (ii) helping agency officials determine  
18                   the appropriate response to address viola-  
19                   tions of the labor or civil rights laws listed  
20                   in subsection (b)(1)(A) or other informa-  
21                   tion indicating such a violation (particu-  
22                   larly a serious, repeated, willful, or perva-  
23                   sive violation), including an agreement re-  
24                   quiring appropriate remedial measures, a  
25                   decision not to award a contract or exer-

1           cise an option on a contract, contract ter-  
2           mination, or a referral to the executive  
3           agency suspension and debarment official;

4           (iii) providing assistance to appro-  
5           priate executive agency officials in receiv-  
6           ing and responding to, or making referrals  
7           of, complaints alleging violations by agency  
8           contractors and subcontractors of the labor  
9           or civil rights laws listed in subsection  
10          (b)(1)(A); and

11          (iv) supporting contracting officers,  
12          suspension and debarment officials, and  
13          other agency officials in the coordination of  
14          actions taken pursuant to this subsection  
15          to ensure agency-wide consistency, to the  
16          extent practicable;

17          (E) as appropriate, send information to  
18          agency suspension and debarment officials in  
19          accordance with agency procedures;

20          (F) consult with the agency's Chief Acqui-  
21          sition Officer and Senior Procurement Execu-  
22          tive, and the Department of Labor and other  
23          relevant enforcement agencies as necessary, in  
24          the development of regulations, policies, and  
25          guidance addressing compliance by contractors

1 and subcontractors with the labor and civil  
2 rights laws listed in subsection (b)(1)(A);

3 (G) make recommendations to the agency  
4 to strengthen agency management of contractor  
5 compliance with such labor and civil rights  
6 laws;

7 (H) publicly report, on an annual basis, a  
8 summary of agency actions taken to promote  
9 greater compliance with such laws, including  
10 the agency's response under this section to seri-  
11 ous, repeated, willful, or pervasive violations of  
12 such laws; and

13 (I) participate in the interagency meetings  
14 regularly convened by the Secretary of Labor  
15 under subsection (e)(2)(B)(iii).

16 (e) MEASURES TO ENSURE GOVERNMENTWIDE CON-  
17 SISTENCY.—

18 (1) FEDERAL ACQUISITION REGULATION.—

19 (A) IN GENERAL.—Notwithstanding the  
20 Joint Resolution disapproving the rule sub-  
21 mitted by the Department of Defense, the Gen-  
22 eral Services Administration, and the National  
23 Aeronautics and Space Administration relating  
24 to the Federal Acquisition Regulation (Public  
25 Law 115–11; 131 Stat. 75) and section 553 of

1 title 5, United States Code, not later than 1  
2 year after the date of enactment of this Act, the  
3 Secretary of Defense, the Administrator of the  
4 General Services Administration, and the Ad-  
5 ministrator of the National Aeronautics and  
6 Space Administration shall reissue the final rule  
7 entitled “Federal Acquisition Regulation; Fair  
8 Pay and Safe Workplaces” (81 Fed. Reg.  
9 58562 (Aug. 25, 2016)), subject to subpara-  
10 graph (B).

11 (B) UPDATED DATES.—The agencies de-  
12 scribed in subparagraph (A) may, in reissuing  
13 the final rule under such subparagraph—

14 (i) update any date provided in such  
15 final rule as reasonable and necessary; and

16 (ii) revise any provision in such rule  
17 for consistency with the requirements of  
18 this section.

19 (2) DEPARTMENT OF LABOR.—

20 (A) GUIDANCE.—Not later than 1 year  
21 after the date of enactment of this Act, the Sec-  
22 retary of Labor shall reissue the guidance enti-  
23 tled “Guidance for Executive Order 13673,  
24 ‘Fair Pay and Safe Workplaces’” (81 Fed.

1 Reg. 58654 (Aug. 25, 2016)). In reissuing such  
2 guidance, the Secretary of Labor may—

3 (i) update any date provided in such  
4 guidance as reasonable and necessary; and

5 (ii) revise any provision in such guid-  
6 ance for consistency with the requirements  
7 of this section.

8 (B) ADDITIONAL ACTIVITIES.—The Sec-  
9 retary of Labor shall—

10 (i) develop a process—

11 (I) for the Labor Compliance Ad-  
12 visors designated pursuant to sub-  
13 section (d) to consult with the Sec-  
14 retary of Labor in carrying out the re-  
15 sponsibilities of such Labor Compli-  
16 ance Advisors under subsection  
17 (d)(2)(D);

18 (II) by which contracting officers  
19 and Labor Compliance Advisors may  
20 give appropriate consideration to de-  
21 terminations and agreements made by  
22 the Secretary of Labor and the heads  
23 of other executive agencies; and

24 (III) by which contractors may  
25 enter into agreements with the Sec-

1           retary of Labor, or the head of an-  
2           other executive agency, prior to being  
3           considered for a contract;

4           (ii) review data collection require-  
5           ments and processes, and work with the  
6           Director of the Office of Management and  
7           Budget, the Administrator of General  
8           Services, and other agency heads to im-  
9           prove such requirements and processes, as  
10          necessary, to reduce the burden on con-  
11          tractors and increase the amount of infor-  
12          mation available to executive agencies;

13          (iii) regularly convene interagency  
14          meetings of Labor Compliance Advisors to  
15          share and promote best practices for im-  
16          proving compliance with the labor and civil  
17          rights laws listed in subsection (b)(1)(A);  
18          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 DISCRIMINA-**  
8 **TION, INCLUDING HARASS-**  
9 **MENT**

10 **SEC. 401. DEFINITIONS.**

11           In this title:

12           (1) **COMMISSION.**—The term “Commission”  
13           means the Equal Employment Opportunity Commis-  
14           sion.

15           (2) **COVERED ESTABLISHMENT.**—The term  
16           “covered establishment” has the meaning given the  
17           term in section 302(a)(2).

18           (3) **EMPLOYMENT DISCRIMINATION.**—The term  
19           “employment discrimination” means discrimination  
20           that is in violation of applicable Federal, State, or  
21           local employment law, including each of the fol-  
22           lowing:

23                   (A) Title VII of the Civil Rights Act of  
24                   1964 (42 U.S.C. 2000e et seq.).

1 (B) The Government Employee Rights Act  
2 of 1991 (42 U.S.C. 2000e–16a et seq.).

3 (C) The Congressional Accountability Act  
4 of 1995 (2 U.S.C. 1301 et seq.).

5 (D) Subchapter II of chapter 5 of title 3,  
6 United States Code.

7 (E) The Age Discrimination in Employ-  
8 ment Act of 1967 (29 U.S.C. 621 et seq.).

9 (F) Title I and section 503 (for violations  
10 with respect to that title) of the Americans with  
11 Disabilities Act of 1990 (42 U.S.C. 12111 et  
12 seq.; 12203).

13 (G) Sections 501 and 505 of the Rehabili-  
14 tation Act of 1973 (29 U.S.C. 791, 794a).

15 (H) Section 6(d) of the Fair Labor Stand-  
16 ards Act of 1938 (commonly known as the  
17 “Equal Pay Act of 1963”) (29 U.S.C. 206(d)).

18 (I) Title II of the Genetic Information  
19 Nondiscrimination Act of 2008 (42 U.S.C.  
20 2000ff et seq.).

21 (J) Section 4311 of title 38, United States  
22 Code.

23 (K) The Pregnant Workers Fairness Act  
24 (42 U.S.C. 2000gg et seq.).

1 (L) Other Federal, State, or local employ-  
2 ment law.

3 (4) EMPLOYER.—The term “employer” has the  
4 meaning given the term in section 302(a)(5).

5 (5) WORKER.—The term “worker” has the  
6 meaning given the term in section 302(a)(8).

7 **Subtitle A—National Grants for**  
8 **Preventing and Addressing Em-**  
9 **ployment Discrimination, In-**  
10 **cluding Harassment**

11 **SEC. 411. DEFINITIONS.**

12 In this subtitle:

13 (1) DIRECTOR.—The term “Director” means  
14 the Director of the Women’s Bureau of the Depart-  
15 ment of Labor.

16 (2) ELIGIBLE ENTITY.—The term “eligible enti-  
17 ty” means any of the following:

18 (A) A nonprofit organization, including a  
19 community-based organization, nonprofit legal  
20 aid organization, or labor organization, that  
21 provides services and support to workers, in-  
22 cluding by assisting workers in filing charges of  
23 employment discrimination.

1           (B) An institution of higher education, as  
2           defined in section 101 of the Higher Education  
3           Act of 1965 (20 U.S.C. 1001).

4 **SEC. 412. GRANTS.**

5           (a) GRANTS.—The Director, in consultation with the  
6 Commission, shall award grants under this section, on a  
7 competitive basis, to eligible entities to assist such entities  
8 in carrying out a program for preventing and addressing  
9 employment discrimination, including harassment,  
10 through activities authorized under subsection (b).

11          (b) USE OF FUNDS.—

12           (1) PERMISSIBLE ACTIVITIES.—A grant award-  
13 ed under this section shall be used for activities to  
14 prevent and address employment discrimination, in-  
15 cluding harassment, which may include—

16           (A) educating workers about their rights  
17 related to employment discrimination, including  
18 harassment;

19           (B) educating employers and covered es-  
20 tablishments about their obligations to prevent  
21 and address employment discrimination, includ-  
22 ing harassment;

23           (C) providing assistance to workers in  
24 bringing complaints (including filing charges) of

1 employment discrimination, including harass-  
2 ment;

3 (D) establishing networks for education,  
4 communication, and participation in the work-  
5 place and community;

6 (E) monitoring compliance of employers  
7 and covered establishments with Federal, State,  
8 and local civil rights, labor, and employment  
9 laws;

10 (F) recruiting and hiring of staff and vol-  
11 unteers; and

12 (G) any other activity the Director, in con-  
13 sultation with the Commission, may reasonably  
14 prescribe for the purpose of preventing and ad-  
15 dressing employment discrimination, including  
16 harassment.

17 (2) PROHIBITED ACTIVITIES.—Notwithstanding  
18 paragraph (1), an eligible entity receiving a grant  
19 under this section may not use the grant funds for  
20 any purpose reasonably prohibited by the Director,  
21 in consultation with the Commission, through notice  
22 and comment rulemaking.

23 (c) TERM OF GRANTS.—Each grant awarded under  
24 this section shall be available for expenditure for a period  
25 not to exceed 3 years.

1 (d) APPLICATIONS.—

2 (1) IN GENERAL.—An eligible entity seeking a  
3 grant under this section shall submit an application  
4 for such grant to the Director in accordance with  
5 this subsection.

6 (2) PARTNERSHIPS.—Multiple eligible entities  
7 may submit a joint application under this subsection  
8 that designates a single entity as the lead entity for  
9 the purposes of receiving and disbursing funds re-  
10 ceived through a grant under this section.

11 (3) CONTENTS.—An application under this sub-  
12 section shall include—

13 (A) a description of a plan for the program  
14 that the eligible entity proposes to carry out  
15 with a grant under this section, including a  
16 long-term strategy and detailed implementation  
17 plan;

18 (B) information on the prevalence of viola-  
19 tions of prohibitions on employment discrimina-  
20 tion, including harassment, in the population  
21 served by the eligible entity;

22 (C) information on any industry or geo-  
23 graphic area targeted by the plan for such pro-  
24 gram;

1 (D) information on the type of outreach  
2 and relationship building that will be conducted  
3 under such program;

4 (E) information on the training and edu-  
5 cation that will be provided to workers, employ-  
6 ers, and covered establishments under such pro-  
7 gram; and

8 (F) the method by which the eligible entity  
9 will measure the results of such program.

10 (e) SELECTION.—

11 (1) COMPETITIVE BASIS.—In accordance with  
12 this section, the Director, in consultation with the  
13 Commission, shall, on a competitive basis, select  
14 grant recipients from among eligible entities that  
15 have submitted an application meeting the require-  
16 ments under subsection (d).

17 (2) PRIORITY.—The Director, in consultation  
18 with the Commission, in selecting grant recipients  
19 under paragraph (1), shall give priority to eligible  
20 entities that—

21 (A) serve workers in any industry or geo-  
22 graphic area that is most highly at risk for em-  
23 ployment discrimination, including harassment,  
24 as identified by the Director, in consultation  
25 with the Commission; and

1 (B) demonstrate past and ongoing work to  
2 prevent employment discrimination, including  
3 harassment.

4 (f) PERFORMANCE EVALUATIONS.—

5 (1) IN GENERAL.—Each grant recipient under  
6 this section shall develop procedures for reporting,  
7 monitoring, measuring, and evaluating the activities  
8 of each program or activity funded under this sec-  
9 tion.

10 (2) GUIDELINES.—The procedures required  
11 under paragraph (1) shall be in accordance with  
12 guidelines established by the Director, in consulta-  
13 tion with the Commission.

14 **SEC. 413. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated to the Direc-  
16 tor such sums as may be necessary to carry out this sub-  
17 title.

18 **Subtitle B—Grants for Legal Assist-**  
19 **ance for Low-Income Workers**

20 **SEC. 421. DEFINITIONS.**

21 In this subtitle:

22 (1) COVERED CLIENT.—The term “covered cli-  
23 ent” means an individual who—

24 (A) is an eligible client; and

1 (B) faces legal issues related to harass-  
2 ment or other employment discrimination.

3 (2) ELIGIBLE CLIENT.—The term “eligible cli-  
4 ent” has the meaning given the term in section 1002  
5 of the Legal Services Corporation Act (42 U.S.C.  
6 2996a) and the regulations of the Legal Services  
7 Corporation.

8 (3) ELIGIBLE ENTITY.—The term “eligible enti-  
9 ty” means—

10 (A) a nonprofit organization; and

11 (B) an individual who is licensed to prac-  
12 tice law.

13 (4) SECRETARY.—The term “Secretary” means  
14 the Secretary of Labor.

15 **SEC. 422. GRANTS FOR CIVIL LEGAL NEEDS RELATED TO**  
16 **EMPLOYMENT DISCRIMINATION.**

17 (a) GRANTS AUTHORIZED.—

18 (1) IN GENERAL.—The Secretary is authorized  
19 to provide financial assistance to eligible entities to  
20 enable those eligible entities to provide for the civil  
21 legal needs of covered clients that are related to em-  
22 ployment discrimination, and to provide for those cli-  
23 ents such other services as are necessary to carry  
24 out the purposes of this subtitle, including any of  
25 the following activities:

1 (A) Providing covered clients advice, legal  
2 services, or representation.

3 (B) Assisting covered clients in utilizing  
4 the employment discrimination complaint proc-  
5 ess of the Commission or any other Federal,  
6 State, or local agency enforcing an employment  
7 discrimination law.

8 (C) Assisting covered clients in utilizing a  
9 private employment discrimination complaint  
10 process.

11 (D) Conducting outreach activities to pub-  
12 licize the services offered under this section.

13 (2) CITIZENSHIP STATUS.—An eligible entity  
14 receiving a grant under this section shall provide  
15 services to a covered client without regard to the  
16 citizenship status or authorization to work of the  
17 covered client.

18 (b) APPLICATION.—In order to be eligible to receive  
19 a grant under this section, an eligible entity shall submit  
20 an application to the Secretary at such time and in such  
21 manner as the Secretary may require. Such application  
22 shall include—

23 (1) a description of the services that the eligible  
24 entity proposes to provide, implement, improve, or  
25 expand;

1           (2) a description of the covered clients the eligi-  
2           ble entity intends to serve;

3           (3) evidence of the eligible entity's capacity to  
4           provide services to covered clients, such as the eligi-  
5           ble entity's record of success representing eligible cli-  
6           ents in legal matters relating to employment dis-  
7           crimination, or the eligible entity's prior experience  
8           serving clients who cannot afford legal counsel;

9           (4) an explanation of how the services the eligi-  
10          ble entity intends to provide will assist covered cli-  
11          ents in addressing legal issues related to employment  
12          discrimination; and

13          (5) any other information that the Secretary  
14          may require.

15          (c) AWARD BASIS.—The Secretary shall, in consulta-  
16          tion with the Legal Services Corporation, award and over-  
17          see grants under this section pursuant to such procedures  
18          and criteria as the Secretary may require. Such proce-  
19          dures and criteria shall include consideration of—

20               (1) whether the eligible entity has demonstrated  
21               an understanding of the legal needs of covered cli-  
22               ents;

23               (2) the eligible entity's capacity to provide serv-  
24               ices to covered clients, which may be demonstrated  
25               through evidence described in subsection (b)(3);

1           (3) the eligible entity's knowledge of applicable  
2       Federal, State, and local employment discrimination  
3       laws;

4           (4) the eligible entity's capacity and ability to  
5       access other resources;

6           (5) the eligible entity's ability to ensure con-  
7       tinuity of service to covered clients with pending  
8       legal issues; and

9           (6) other factors that the Secretary determines  
10      are relevant.

11      (d) **EQUITABLE DISTRIBUTION.**—To the extent prac-  
12      ticable, in awarding grants under this section, the Sec-  
13      retary, in consultation with the Legal Services Corpora-  
14      tion, shall ensure that the grants are made so as to provide  
15      the most economical and effective delivery of services de-  
16      scribed in subsection (a)(1) to covered clients in both  
17      urban and rural areas, with consideration of the geo-  
18      graphic distribution of persons in poverty.

19      (e) **DURATION OF THE GRANT.**—

20           (1) **IN GENERAL.**—A grant under this section  
21      shall be for a term of not less than 1 year and not  
22      more than 5 years.

23           (2) **RENEWAL.**—The Secretary may renew a  
24      grant awarded under this section for a period of not  
25      more than 2 additional years if the eligible entity

1 demonstrates that the eligible entity is effectively  
2 using funds and that the renewal of the grant will  
3 allow the eligible entity to scale up the provision of  
4 services, replicate the program involved, or provide  
5 continuity of service to covered clients.

6 (f) REPORT.—Not later than 2 years after the date  
7 of enactment of this section, the Secretary shall provide  
8 to the Committee on Health, Education, Labor, and Pen-  
9 sions of the Senate and the Committee on Education and  
10 Workforce of the House of Representatives a report on  
11 the implementation of the grant program under this sec-  
12 tion, including—

13 (1) a description of the services provided using  
14 grant assistance under this section, including a de-  
15 tailed description of the types of legal issues ad-  
16 dressed by eligible entities and the number of cov-  
17 ered clients served; and

18 (2) an assessment of the number of individuals  
19 facing one or more legal issues related to employ-  
20 ment discrimination who cannot afford adequate  
21 legal counsel, and the largest areas of unmet need  
22 for that counsel.

23 **SEC. 423. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated to carry out  
25 this subtitle such sums as may be necessary.

1     **Subtitle C—Grants for a System of**  
2                     **State Advocacy**

3     **SEC. 431. PURPOSE.**

4             The purpose of this subtitle is to provide allotments  
5 to support a system of advocacy (referred to in this sub-  
6 title as a “system”) in each State to protect the legal and  
7 human rights of workers in accordance with applicable  
8 Federal, State, and local employment discrimination law.

9     **SEC. 432. DEFINITIONS.**

10            In this subtitle:

11                (1) RECORD.—The term “record” includes—

12                    (A) a report prepared by an employer, cov-  
13                    ered establishment, or staff person charged with  
14                    investigating reports of employment discrimina-  
15                    tion that describes incidents of possible dis-  
16                    crimination and the steps taken to investigate  
17                    those incidents;

18                    (B) statistical information related to em-  
19                    ployment decisions and the race, sex (including  
20                    sexual orientation and gender identity), religion,  
21                    national origin, age, disability, genetic informa-  
22                    tion, or other protected characteristics of work-  
23                    ers;

1 (C) records described in section 11(c) of  
2 the Fair Labor Standards Act (29 U.S.C.  
3 211(c)); and

4 (D) any such similar record, as may be  
5 necessary to carry out the purposes of this sub-  
6 title.

7 (2) SECRETARY.—The term “Secretary” means  
8 the Secretary of Labor.

9 (3) STATE.—The term “State”, except as oth-  
10 erwise provided, includes, in addition to each of the  
11 several States of the United States, the District of  
12 Columbia, the Commonwealth of Puerto Rico, the  
13 United States Virgin Islands, Guam, American  
14 Samoa, and the Commonwealth of the Northern  
15 Mariana Islands.

16 **SEC. 433. ALLOTMENTS AND PAYMENTS.**

17 (a) ALLOTMENTS.—

18 (1) IN GENERAL.—To assist States in carrying  
19 out a system meeting the requirements under section  
20 434, including the activities for which the system  
21 has authority as described in that section, the Sec-  
22 retary shall make allotments, on a fiscal year basis,  
23 to States from the amounts appropriated under sec-  
24 tion 436 and not reserved under paragraph (5).

1           (2) MINIMUM ALLOTMENTS.—In any case in  
2       which—

3           (A) the total amount appropriated under  
4       section 436 for a fiscal year is not less than  
5       \$20,000,000, the allotment under paragraph  
6       (1) for such fiscal year—

7           (i) to each of American Samoa,  
8       Guam, the United States Virgin Islands,  
9       and the Commonwealth of the Northern  
10      Mariana Islands may not be less than  
11      \$100,000; and

12          (ii) to any State not described in  
13      clause (i) may not be less than \$200,000;  
14      and

15          (B) the total amount appropriated under  
16      section 436 for a fiscal year is less than  
17      \$20,000,000, the allotment under paragraph  
18      (1) for such fiscal year—

19          (i) to each of American Samoa,  
20      Guam, the United States Virgin Islands,  
21      and the Commonwealth of the Northern  
22      Mariana Islands may not be less than  
23      \$50,000; and

24          (ii) to any State not described in  
25      clause (i) may not be less than \$150,000.

1           (3) REDUCTION OF ALLOTMENT.—Notwith-  
2 standing paragraphs (1) and (2), if the aggregate of  
3 the amounts to be allotted to the States pursuant to  
4 such paragraphs for any fiscal year exceeds the total  
5 amount appropriated for such allotments under sec-  
6 tion 436 for such fiscal year, the amount to be allot-  
7 ted to each State for such fiscal year shall be pro-  
8 portionately reduced.

9           (4) INCREASE IN ALLOTMENTS.—If the sum ap-  
10 propriated under section 436 and not reserved under  
11 paragraph (5) for any fiscal year exceeds the aggre-  
12 gate of the minimum allotments for all States under  
13 this subsection for that fiscal year, such excess  
14 amount shall be allotted among the States, including  
15 American Samoa, Guam, the United States Virgin  
16 Islands, and the Commonwealth of the Northern  
17 Mariana Islands, so as to increase proportionately  
18 the minimum allotment for each State.

19           (5) TECHNICAL ASSISTANCE; AMERICAN INDIAN  
20 CONSORTIUMS.—In any case in which the total  
21 amount appropriated under section 436 for a fiscal  
22 year is more than \$24,500,000, the Secretary  
23 shall—

24                   (A) use not more than 2 percent of the  
25 amount appropriated to provide technical assist-

1           ance to systems that meet the requirements  
2           under section 434 with respect to activities car-  
3           ried out under this subtitle (consistent with re-  
4           quests by such systems for such assistance for  
5           the year); and

6                   (B) provide a grant in accordance with sec-  
7           tion 434(d) and in an amount described in  
8           paragraph (2)(A)(i), to an American Indian  
9           consortium to provide protection and advocacy  
10          services.

11          (6) REALLOTMENTS.—

12                   (A) IN GENERAL.—If the Secretary deter-  
13          mines that an amount of an allotment to a  
14          State for a use in a fiscal year (or the following  
15          fiscal year, as provided in subsection (c)) will  
16          not be required by the State during the fiscal  
17          year (or during such following fiscal year) for  
18          the purpose for which the allotment was made,  
19          the Secretary shall reallocate the amount as de-  
20          scribed in this paragraph.

21                   (B) TIMING.—The Secretary may make  
22          such a reallocation from time to time, on such  
23          date as the Secretary may fix, but not earlier  
24          than 30 days after the Secretary has published

1 notice of the intention of the Secretary to make  
2 the reallocation in the Federal Register.

3 (C) AMOUNTS.—The Secretary shall reallocate  
4 the amount to other States with respect to  
5 which the Secretary has not made the deter-  
6 mination described in subparagraph (A). The  
7 Secretary shall reallocate that amount in propor-  
8 tion to the original allotments of the other  
9 States for such fiscal year, but shall reduce  
10 such proportionate amount for any of the other  
11 States by the sum (if any) of the proportionate  
12 amount that exceeds the total that the Sec-  
13 retary estimates the State needs and will be  
14 able to use in a fiscal year (or the following fis-  
15 cal year, as provided in subsection (c)) and  
16 shall proportionately reallocate such sum to the re-  
17 maining States.

18 (D) TREATMENT.—Any amount reallocated  
19 to a State under this subsection for a fiscal  
20 year shall be deemed to be a part of the allot-  
21 ment of the State under paragraph (1) for such  
22 fiscal year.

23 (b) PAYMENT TO SYSTEMS.—The Secretary shall pay  
24 directly to each State that has a system in the State that  
25 complies with the provisions of this subtitle the amount

1 of the allotment made for the State under this section,  
 2 unless the system specifies otherwise, to be used in sup-  
 3 port of the system.

4 (c) UNOBLIGATED FUNDS.—Any amount paid to a  
 5 State under this subtitle for a fiscal year and remaining  
 6 unobligated at the end of such year shall remain available  
 7 to such State for the next fiscal year, for the purposes  
 8 for which such amount was paid.

9 **SEC. 434. SYSTEM REQUIRED.**

10 (a) IN GENERAL.—In order for a State to receive an  
 11 allotment under this subtitle, the State shall—

12 (1) have in effect a system to protect and advo-  
 13 cate for the rights of workers within the State who  
 14 are or who may be eligible for relief from applicable  
 15 employment discrimination laws; and

16 (2) designate a private nonprofit entity (re-  
 17 ferred to in this subtitle as an “lead entity”) to sup-  
 18 port and carry out the activities of that system.

19 (b) LEAD ENTITY REQUIREMENTS.—

20 (1) CHARACTERISTICS OF LEAD ENTITY.—The  
 21 State shall ensure that the lead entity designated  
 22 under subsection (a) shall—

23 (A) not be administered by the State, or  
 24 an agency or instrumentality of a State; and

1 (B) be independent of any entity that rep-  
2 represents the interest of the State, employers,  
3 covered establishments, or other corporations.

4 (2) NO REDESIGNATION OF LEAD ENTITY.—  
5 The lead entity designated under subsection (a) shall  
6 not be redesignated unless—

7 (A) there is good cause for the redesigna-  
8 tion;

9 (B) the State has given the lead entity no-  
10 tice of the intention to make such redesigna-  
11 tion, including notice regarding the good cause  
12 for such redesignation, and given the lead entity  
13 an opportunity to respond to the assertion that  
14 good cause has been shown;

15 (C) the lead entity has given timely notice  
16 of the intended redesignation directly to clients  
17 of the lead entity;

18 (D) the State has provided, in plain  
19 English and in accessible formats for individ-  
20 uals with disabilities and for individuals who  
21 primarily speak a language other than English,  
22 an opportunity for public comment; and

23 (E) the lead entity has an opportunity to  
24 appeal the redesignation to the Secretary, on

1           the basis that the redesignation was not for  
2           good cause.

3           (3) COSTS OF NOTICE.—The costs of the notice  
4           required under paragraph (2)(C) shall be paid by  
5           the State.

6           (c) SYSTEM REQUIRED.—The system described in  
7           subsection (a) shall—

8           (1) have the authority to—

9                   (A) pursue legal, administrative, and other  
10                  appropriate remedies or approaches, as applica-  
11                  ble, to ensure the protection of, and advocacy  
12                  for, the rights of individuals within the State  
13                  who are or who may be eligible for relief from  
14                  employment discrimination; and

15                  (B) provide information on and referral to  
16                  programs and services addressing the needs of  
17                  such individuals;

18           (2) have the authority—

19                   (A) to investigate incidents of employment  
20                  discrimination, including harassment, and to  
21                  conduct investigations of systemic employment  
22                  discrimination, of such individuals if the inci-  
23                  dents are reported to the lead entity or if there  
24                  is probable cause to believe that the incidents  
25                  occurred; and

1 (B) to, as necessary and appropriate, in-  
2 vestigate and gather data regarding the wages,  
3 hours, and other conditions and practices of  
4 employment, enter and inspect such places and  
5 such records (and make such transcriptions  
6 thereof), question individuals described in para-  
7 graph (1)(A), and investigate facts, conditions,  
8 practices, or matters;

9 (3) on an annual basis, develop, submit to the  
10 Secretary, and take action with regard to goals and  
11 priorities developed through data driven strategic  
12 planning for the system's activities;

13 (4) on an annual basis, provide to the public,  
14 including individuals described in paragraph (1)(A),  
15 the regional office of the Commission that serves the  
16 State, and any State agency whose purpose is to re-  
17 duce, eliminate, or redress employment discrimina-  
18 tion, an opportunity to comment on—

19 (A) the goals and priorities established by  
20 the lead entity and the rationale for the estab-  
21 lishment of such goals; and

22 (B) the activities of the lead entity, includ-  
23 ing the coordination of services with the Dis-  
24 trict office of the Commission that serves the  
25 State, any State agency whose purpose is to re-

1           duce, eliminate, or redress employment dis-  
2           crimination, and entities carrying out other re-  
3           lated programs;

4           (5) establish a grievance procedure for clients  
5           or prospective clients of the lead entity to ensure  
6           that individuals described in paragraph (1)(A) have  
7           full access to services of the lead entity;

8           (6) have access at reasonable times to any indi-  
9           vidual described in paragraph (1)(A) in a location in  
10          which services and other assistance are provided to  
11          such an individual, in order to carry out the purpose  
12          of this subtitle;

13          (7) have access, not later than 3 business days  
14          after the lead entity makes a written request, to the  
15          records of any individual described in paragraph  
16          (1)(A) (including Federal and State workers) who is  
17          a client of the lead entity if such individual, or other  
18          legal representative of such individual, has author-  
19          ized the lead entity to have such access;

20          (8) hire and maintain sufficient numbers and  
21          types of staff (qualified by training and experience)  
22          to carry out the lead entity's functions, except that  
23          the State involved shall not apply hiring freezes, re-  
24          ductions in force, prohibitions on travel, or other  
25          policies to the staff of the lead entity, to the extent

1 that such policies would impact the staff or func-  
2 tions of the lead entity funded with Federal funds  
3 or would prevent the lead entity from carrying out  
4 the functions of the system under this subtitle;

5 (9) have the authority to educate policymakers;

6 and

7 (10) provide assurances to the Secretary that  
8 funds allotted to the State under section 433 will be  
9 used to supplement, and not supplant, the non-Fed-  
10 eral funds that would otherwise be made available  
11 for the purposes for which the allotted funds are  
12 provided.

13 (d) AMERICAN INDIAN CONSORTIUM.—

14 (1) IN GENERAL.—Upon application to the Sec-  
15 retary, the Secretary shall allot funds to one or more  
16 American Indian consortiums established to provide  
17 services under this subtitle, in accordance with sec-  
18 tion 433(a)(5). Such funds shall be used to support  
19 services under this subtitle.

20 (2) COORDINATION OF SYSTEMS.—An American  
21 Indian consortium under paragraph (1) shall be con-  
22 sidered to be a system for purposes of this subtitle  
23 and shall coordinate those services with other sys-  
24 tems serving the same geographic area.

1           (3) RESPONSIBLE PARTY.—The Tribal council  
2           that designates the consortium shall carry out the  
3           responsibilities and exercise the authorities specified  
4           for a State in this subtitle, with regard to the con-  
5           sortium.

6 **SEC. 435. ADMINISTRATION.**

7           (a) GOVERNING BOARD.—The system described in  
8           section 434 shall be organized as a private nonprofit entity  
9           with a multimember governing board, and such governing  
10          board shall be selected according to the policies and proce-  
11          dures of the system, except that—

12                (1) the governing board shall be composed of  
13                members who broadly represent or are knowledge-  
14                able about the needs of the individuals served by the  
15                system;

16                (2) a majority of the members of the board  
17                shall be—

18                    (A) attorneys representing the interests of  
19                    workers;

20                    (B) advocates for workers with experience  
21                    working to protect or expand workers' rights; or

22                    (C) workers who have experienced employ-  
23                    ment discrimination;

24                (3) not more than  $\frac{1}{3}$  of the members of the  
25                governing board may be appointed by the chief execu-

1       utive officer of the State involved, in the case of any  
2       State in which such officer has the authority to ap-  
3       point members of the board;

4           (4) the membership of the governing board  
5       shall be subject to term limits set by the system to  
6       ensure rotating membership; and

7           (5) any vacancy in the board shall be filled not  
8       later than 60 days after the date on which the va-  
9       cancy occurs.

10       (b) LEGAL ACTION.—

11           (1) IN GENERAL.—Nothing in this subtitle shall  
12       preclude a system from bringing a suit on behalf of  
13       individuals described in section 434(c)(1)(A) against  
14       a State, or an agency or instrumentality of a State.

15           (2) USE OF AMOUNTS FROM JUDGMENT.—An  
16       amount received pursuant to a suit described in  
17       paragraph (1) through a court judgment may only  
18       be used by the system to further the purpose of this  
19       subtitle and shall not be used to augment payments  
20       to legal contractors or to award personal bonuses.

21       (c) PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—

22       The Secretary shall provide advance public notice of, and  
23       solicit public comments regarding, any Federal pro-  
24       grammatic or administrative onsite review of a system  
25       conducted under this subtitle. The Secretary shall prepare

1 an onsite visit report containing the results of such review,  
2 which shall be distributed to the Governor of the State  
3 and to other interested public and private parties. The  
4 comments received in response to the notice and public  
5 comment solicitation shall be included in the onsite visit  
6 report.

7 (d) REPORTS.—

8 (1) IN GENERAL.—Beginning for the fiscal year  
9 after the fiscal year during which this Act is en-  
10 acted, each system established in a State pursuant  
11 to this subtitle shall annually prepare and transmit  
12 to the Secretary a report that describes the activi-  
13 ties, accomplishments, and expenditures of the sys-  
14 tem during the preceding fiscal year, including—

15 (A) a description of the system’s goals, the  
16 extent to which the goals were achieved, and  
17 barriers to that achievement; and

18 (B) the process used to obtain public  
19 input, the nature of such input, and how such  
20 input was used.

21 (2) DISCLOSURE OF INFORMATION.—For pur-  
22 poses of the report described in paragraph (1), the  
23 Secretary shall not require the system to disclose the  
24 identity of, or any other personally identifiable infor-

1       mation related to, any individual requesting assist-  
2       ance from the system.

3 **SEC. 436. AUTHORIZATION OF APPROPRIATIONS.**

4       There are authorized to be appropriated for allot-  
5       ments under section 433 such sums as may be necessary.

6 **TITLE V—GENERAL PROVISIONS**

7 **SEC. 501. SEVERABILITY.**

8       If any provision of this Act, an amendment made by  
9       this Act, or the application of such provision or amend-  
10      ment to any person or circumstance is held to be unconsti-  
11      tutional, the remainder of this Act and the amendments  
12      made by this Act, and the application of the provision or  
13      amendment to any other person or circumstance, shall not  
14      be affected.

○